

26, 1935

In the Privy Council

No. 24 of 1934.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

IN THE MATTER OF THE RAILWAY ACT, 1919;
AND IN THE MATTER OF LOT 31, PLAN 5-A and PARCEL
9-C, PLAN 153-E, South of the Esplanade in the City of Toronto
AND IN THE MATTER OF AN ARBITRATION

BETWEEN

THE STANDARD FUEL COMPANY OF TORONTO,
LIMITED,
(Claimant) APPELLANT;

—AND—

THE TORONTO TERMINALS RAILWAY COMPANY,
(Contestant) RESPONDENT.

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In the Privy Council

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

IN THE MATTER OF THE RAILWAY ACT, 1919.

THE TORONTO TERMINALS RAILWAY COMPANY,
APPLICANTS,

AND

C. R. BOULTON (OWNER), AND THE STANDARD FUEL
COMPANY LIMITED (TENANTS),
RESPONDENTS,

10

AND IN THE MATTER OF LOT 31, Plan 5A and Parcel 9-C, Plan
153-E. South of the Esplanade, in the City of Toronto.

AND IN THE MATTER OF AN ARBITRATION

BETWEEN:

C. R. BOULTON (OWNER), AND THE STANDARD FUEL
COMPANY OF TORONTO, LIMITED (TENANT),
CLAIMANTS,

AND

THE TORONTO TERMINALS RAILWAY COMPANY,
CONTESTANT.

20

The Arbitration in this matter was opened before the Honourable Mr.
Justice Fisher, Justice of Appeal, Supreme Court of Ontario, at Osgoode Hall,
Toronto, at

—10.30 A.M. MONDAY, APRIL 4TH, 1932.

COUNSEL:

MR. I. F. HELLMUTH, K.C., AND
MR. D. M. FLEMING,
for C. R. BOULTON (Owner).

MR. GLYN OSLER, K.C., AND
MR. R. C. H. CASSELS, K.C.,
for STANDARD FUEL COMPANY LIMITED
(Tenant).

30

MR. W. N. TILLEY, K.C.,
MR. JOHN D. SPENCE, K.C., AND
MR. S. J. DEMPSEY,
for TORONTO TERMINALS RAILWAY COMPANY.

OPENING.

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—His Lordship administered the oath to the Reporter, Reginald L. Baldwin, C.S.R.

HIS LORDSHIP: I suppose the order will go in?

MR. HELLMUTH: Well, my Lord, first of all the notice of expropriation; in chronological order that will go in first. It is dated the 5th day of November, 1926, and is addressed to C. R. Boulton, owner, and Standard Fuel Company of Toronto, Limited, tenant, and it describes the property to be expropriated, being water lot 31, according to the plan filed in the Registry Office as No. 5A, and then it also describes water lot known as parcel 9C, granted under authority of Order-in-Council dated the 12th June, 1893, saving certain lands which are set out in that which Your Lordship will see in a moment from the plan; it is shown on a plan. And then there is the offer of the compensation to be given both the Standard Fuel Company as lessee and to Boulton as owner. There is a plan, which I may show to Your Lordship, attached, which goes with this notice. All that is marked in the pink is the land to be taken. The reason you find a blue or faint gray line through the property is that that is Lake Street, which has never been opened I may say. This is the part of lot 31, and this is the lot known as 9C or C9, which is land largely if not altogether covered with water. This is, or was before the expropriation, filled land where it had been partly covered with water. That is the property. (Indicating to His Lordship on plan attached to Exhibit 1).

HIS LORDSHIP: I have a plan here and it is exactly the same.

MR. HELLMUTH: That is exactly the same.

HIS LORDSHIP: So that the part marked pink is the part expropriated.

MR. HELLMUTH: Yes.

And may we have this marked now as Exhibit 1?

HIS LORDSHIP: That is the notice of expropriation filed.

MR. HELLMUTH: Yes. The certificate of the Land Surveyor is attached to it, I think, my Lord.

EXHIBIT "1": Notice of expropriation 5th November, 1926; certificate of Surveyor; plan by Speight & Van Nostrand, 12th July, 1926.

MR. HELLMUTH: Then I think perhaps in proper chronological order we should put in the order appointing Your Lordship as Arbitrator.

HIS LORDSHIP: Yes, that will go in, the notice of appointment.

MR. HELLMUTH: That will be Exhibit 2. That is an order, my Lord, dated the 20th day of October, 1930, made by the Chief Justice of Ontario.

EXHIBIT "2": Order of Chief Justice Sir William Mulock, 20th October, 1930, appointing Hon. Mr. Justice Fisher, Arbitrator herein.

Then, my Lord, I might make this statement, which I have already communicated to my friend Mr. Tilley after receiving a letter from him referring to my verbal communication to him, and I don't know whether it would be in order perhaps if my friends desire it to put in the letters, but I think I can make the statement; my friend Mr. Spence can either affirm or differ as the case may be and we can then put in the letters if it should be necessary. The arrangement made was to obviate the necessity, which otherwise Your Lordship would have had to decide upon, as to the varied interests of the tenant and the land owner in the actual amount awarded for the property outside the
 10 question of dealing with disturbance or value of buildings. Neither of the two latter the owner is interested in at all; that is, he is not interested in such amount as the tenant may be entitled to for disturbance and he is not interested in the value of the buildings which did not belong to the owner but to the tenant. But the tenant had a claim for some interest in the property, the land itself, which was expropriated, and an arrangement was made between the tenant and the landlord that whatever amount might be awarded by Your Lordship, or indeed if there were any appeal, by any court before which the award might come, should be divided in certain proportions, with the result that what Your Lordship has to find in regard to this land is only what its
 20 value is as though it were practically held by one owner; as though we had the whole of it or as if the tenant had the whole of it. That is what I think is understood. I do not mean to say that what rent the tenant was paying cannot have some effect upon Your Lordship, I mean as to values, but when you come to this you have not to say the landlord is entitled to four-fifths or five-sixths or whatever it may be, because we have agreed upon those proportions, and that I think will probably save a great deal of time, my Lord.

HIS LORDSHIP: So then it is the value of the land to the owner and business disturbance.

MR. HELLMUTH: And buildings. Business disturbance and buildings is
 30 to the tenant, and the landlord is not interested in that. I think that is correct, is it not?

MR. SPENCE: Yes. This does not involve any admission by us that any party is entitled to allowance for buildings or business disturbance.

MR. HELLMUTH: No no, I am not suggesting that.

My friend is not even conceding that the owner is entitled to anything for the land.

HIS LORDSHIP: It is the value of the land, buildings and business disturbance.

MR. HELLMUTH: Those are the three things, but as to the value of the
 40 land you have not to differentiate between the interests of the tenant and the land owner.

HIS LORDSHIP: I understand.

MR. HELLMUTH: I think my friend assents to that. Is that not so?

MR. SPENCE: That is correct.

MR. HELLMUTH: Then I need not put in the letters because they only make that plain.

Then we have agreed upon a statement which may obviate the giving

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of certain evidence. Now, my Lord, I think perhaps it would be well that I give your Lordship that memorandum; in fact I think I should read it to Your Lordship. That memorandum agreed upon reads as follows:

“RE: C. R. BOULTON, STANDARD FUEL Co., LTD.
AND TORONTO TERMINALS RAILWAY COMPANY—

LOT 31, PLAN 5-A, AND PARCEL 9-C, PLAN 153-E.

“Memorandum agreed upon by Counsel for the above parties with respect to matters affecting the lands in question in this arbitration:

1. The object of this arbitration is to determine the compensation to be paid with respect to the taking of the lands and premises known as Lot 31, Plan 5-A, and Parcel 9-C, Plan 153-E, as described in Notice of Expropriation dated the 5th day of November, 1926, as of the said 4th day of October, 1926.” 10

The 4th day of October, my Lord, was the date at which the plans were filed and that is the date that Your Lordship has to find the value on.

HIS LORDSHIP: 4th October, 1926.

MR. HELLMUTH: Yes, that is the date. (Continues):

“2. (a) Water Lot 31, Plan 5-A, comprising an area of 92,021 square feet south of the C.P.R. right-of-way was filled in to the northern limit of Lake Street (Old Windmill Line) and a triangular shaped portion of Lake Street comprising 620 sq. ft. was also filled in.” 20

Your Lordship has that plan before you.

HIS LORDSHIP: Yes.

MR. HELLMUTH: You see there was no Lake Street at the time that was filled in.

HIS LORDSHIP: This white piece between the two pinks, is that filled in?

MR. HELLMUTH: Only partly, my Lord.

HIS LORDSHIP: To the east.

MR. HELLMUTH: Yes. It says here, “was filled in to the northern limit of Lake Street and a triangular shaped portion of Lake Street comprising 620 sq. ft. was also filled in.” Your Lordship will see that at that time there was no Lake Street and the property in the old days went only to the Old Windmill Line and then we filled in up to the Old Windmill Line and a portion of Lake Street. 30

HIS LORDSHIP: Yes.

MR. HELLMUTH: Now, my Lord, I want to point out that while I have given you from this agreement the square feet according to the memorandum it does not exactly correspond with the number of square feet as given in the notice of expropriation. The fact of the matter is that it was ascertained there was a little more square feet, 256 additional square feet, when it came to be figured out, and this, the agreement, concedes that. 40

HIS LORDSHIP: I see.

MR. HELLMUTH: I think that is as clear as I can state it. (Continues reading):

“(b) Parcel 9-C comprising an area of 118,016 square feet covered with water extended southerly from the south limit of Lake Street to the New Windmill Line.

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“3. The Windmill Line Agreement March 15, 1888 provided for the issue of Crown Patents of the water lots lying between the Old and the New Windmill Lines in such manner that

‘each such person or corporation who has then any estate, right, title or interest in any property abutting upon said Windmill Line shall have and be entitled to the same estate, right, title and interest in that part of the lands so to be granted as aforesaid, which lies in front of his said property, and is included within lines drawn parallel to the prolongation of the nearest city streets running north and south, and the city shall convey to them so much of the said lands as lie in front of their respective riparian properties or private riparian properties, as herein mentioned; and shall lease such portions thereof as lie in front of riparian property owned by the said corporation, but held under lease to the respective lessees or sub-lessees of such properties respectively, at a nominal rent for the unexpired term of such existing lease or sub-lease.

(a) The leases of such added lands shall be renewable from time to time at the option of the respective lessees, if the existing leases are renewable, and then on the same terms and conditions and with such covenant or covenants for renewal, if any, as are contained in the existing leases of the present riparian property as above respectively mentioned, provided always that in fixing the rent upon any such renewal, the tenant and his executors, administrators and assigns shall never be chargeable with rent in respect of any improvements made upon such property by or at the expense of any person other than the superior landlord; or in respect of the added lands, it being nevertheless distinctly understood that on the resumption of the land by the owner in pursuance of any term or condition of the lease in that behalf contained, the lessee shall not be entitled to any compensation in respect of the value of the added land, but only for or in respect of the lessee’s improvements thereon or thereto, which said improvements are to include the proportionate part of any actual expenditure made or incurred by the lessee in making the new street herein provided for, due allowance being made for the lessee’s use thereof.’”

Now, my Lord, just let me stop there for a moment and show to Your Lordship what was added to our piece. Everything south of the Old Windmill Line.

HIS LORDSHIP: To the wharf.

MR. HELLMUTH: Yes, quite right. The Old Windmill Line, Your Lordship sees it is put there. Now all this with the exception of Lake Street was added to our property. (Indicating). It was added in this way, that a deed in our case, as is set out, was given to the City to hold in trust for them;

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they were simply their trustee; and in the original Act or Windmill Agreement which is referred to there was not quite as long a piece as this but by a subsequent Order-in-Council it added, taking from the Old Windmill Line, some 644 feet; or from Lake Street, as is mentioned there, 568 from Lake Street; down to the New Windmill Line.

HIS LORDSHIP: That was added.

MR. HELLMUTH: That was added.

HIS LORDSHIP: I did not just catch what the City was to convey to the riparian owners on either side.

MR. HELLMUTH: That. (Indicating on plan). 10

HIS LORDSHIP: Then there was some question of streets. This is Church Street.

MR. HELLMUTH: They have not to convey any of Church Street. Your Lordship sees that according to their plan beneath or south of Lake Street there was 568 feet and some inches conveyed to the City to be held in trust for us.

Then the agreement goes on:

“Paragraphs 3 and 6 (c) of the Windmill Line Agreement provided that grants of the said water lots were to be made to the City in trust for persons so interested, or in certain cases direct to the owners in fee 20 upon certain terms as to filling, etc.

“4. Patent of Parcel 9-C, Plan 153-E, was given by the Dominion Government to the City of Toronto as Trustee under date of 5th December, 1895.

“5. C. R. Boulton, owner of the fee of Lot 31, Plan 5-A, did not obtain a patent from the Crown or conveyance from the City of Parcel 9-C, Plan 153-E. (See, however, 20 Geo. V. (Ont.) Ch. 106, Sec. 1).”

Which shows that this is held for Mr. Boulton, for the owner. (Continues reading):

“6. Lake Street, which lies immediately south of the Windmill Line, 30 now called the Old Windmill Line, is excepted from the patent to the City referred to above as follows:

‘excepting therefrom a strip of land being 66 feet in width throughout measured at right angles to the said Old Mindmill Line and lying immediately south thereof, which is reserved by Her Majesty as and for an allowance for a public highway.’

“See Sec. 4, Windmill Line Agreement, 15th March, 1888.

“7. Sec. 5 of the Windmill Line Agreement provides that

‘Upon such last mentioned allowance a street (commonly called Lake Street) is to be constructed (within fifteen years from the date 40 of the patent to the City; or within such shorter period as the same may be petitioned for as hereinafter provided), that is to say:

‘1st. As to the portions thereof which are prolongations of the existing streets running southerly, by the City; and

'2nd. As to the portions thereof between the said prolongations by the respective owners and lessees in proportion to their several and respective interests in the riparian property, etc., etc.'

"The Windmill Line agreement was validated by Chap. 70 Ontario Statutes 1904, Sec. 1 (4), except as to the location of Lake Street and the laying of railway tracks thereon. The date within 15 years from which Lake Street was to be built, was declared by the Act to be the 18th day of December, 1893. Accordingly the time for building Lake Street expired on the 18th day of December, 1908. Lake Street has neither been opened in fact (although it was filled in across some lots) nor used as a public highway east of Yonge Street. Except as stated in paragraph 2, it was never filled in across Lot 31.

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"8. The patent to the City of Parcel 9-C is made 'upon the trust' " (as stated before) " 'that they will carry into effect the provisions of said memorandum of agreement' (Windmill Line Agreement)

"9. Grants to the City of Toronto were made of the street extensions to the Old Windmill Line and New Windmill Line, including Church Street, dated respectively 28th November, 1894, and 16th March, 1905, and on the same trust as the foregoing grant to the City of Parcel 9-C, Plan 153-E.

"10. By order No. 7200, dated 9th June, 1909, The Dominion Railway Board directed the elevation of the railway tracks upon a Viaduct 18 feet high, with the south limit of the Esplanade as its centre line. The Railway Companies contested the jurisdiction of the Board to make this order and litigation ensued. Their appeal was finally dismissed by the Judicial Committee (P.C.) on 10th May, 1911—See (1911) A.C. 461.

"11. The Railway Companies then appealed to the Governor General in Council upon the merits: the appeal resulted in an agreement being made dated 29th July, 1913, between the City, the Harbour Commissioners and the Railway Companies, which provided for building the Viaduct upon a direct route out in the waters of the Harbour from the foot of Parliament Street to the new Union Station between Bay Street and York Street. The location of the Viaduct occupied Lake Street from Frederick Street to Scott Street, to which the title has been acquired by the Toronto Terminals Ry. Co. from the Dominion, the remaining portions having been similarly acquired by the City, the Harbour Commissioners, the C.P.R. and C.N.R., upon which the lands of the parties respectively abut. (Sec. 14 Viaduct Agreement, 7th November, 1924).

"12. During the war period, 1914-1918, no progress was made with building the Viaduct, and matters were allowed to remain in abeyance.

"13. The Toronto Terminals Railway Company, incorporated by Chap. 170, 1906, Dominion Statutes, to build the New Union Station

was authorized by subsequent legislation” (I haven’t quoted those; you have them before you, my Lord) “to build the Viaduct and expropriate the lands from the railways’ right of way to the New Windmill Line east of Yonge Street for Viaduct and works.

“14. A second agreement was made for building the viaduct dated 7th November, 1924, between the City, C.N.R., C.P.R., and Harbour Commissioners, validated by Chap. 70, 1924 Dom. Stats. and by Sec. 1, Order No. 7200, all orders amending or supplementing the agreement of 29th July, 1913, and any orders of the Board relating thereto ‘are hereby annulled and declared to be of no effect, and no person shall have any claim or right of action for anything done or omitted to be done thereunder.’ 10

“15. Plans, profiles and books of reference approved by the Board for expropriating the lands necessary for the Viaduct and works in carrying out the agreement of 7th Nov., 1924, were registered in the Registry Office for the City of Toronto on the 4th October, 1926, as No. 222 Ry. E.

“16. On 4th Nov., 1925, the Toronto Harbour Commissioners obtained a patent from the Crown in the right of the Dominion to land covered with water south of the New Windmill Line to the Harbour Head Line between Yonge Street and Parliament Street as authorized 20 by Order-in-Council No. P.C. 1079.”

The boundary now, my Lord, out into the bay is no longer the New Windmill Line but is out to what is called now the Harbour Head Line, farther out into the bay.

HIS LORDSHIP: That is all south of the New Windmill Line.

MR. HELLMUTH: All south of the New Windmill Line, my Lord.

“17. On November 24th, 1926, an order for possession of the said Lot 31 and Parcel 9-C was made by Rose, J.” (he was then) “on terms as to time and otherwise agreed upon by the parties and set out in the order.” 30
 You see within a very short time of the notice.

“18. The payments provided for in the order of Rose, J., have been made by the Toronto Terminals Railway Company, which Company is entitled to receive credit therefor on account of the compensation to which the claimants shall ultimately be found entitled for the taking of the lands mentioned in the Notice of Expropriation.”
 Then I will file it, my Lord, if I may.

EXHIBIT “3”: Memorandum agreed upon by Counsel quoted above.

HIS LORDSHIP: Are not the facts here in this case very much the same, so far as Lake Street is concerned and the New and Old Windmill Lines, as 40 they were in the Canada Steamship Case?

MR. HELLMUTH: Oh I should not think they should be much different, my Lord.

HIS LORDSHIP: No, I think not.

MR. HELLMUTH: Your Lordship will find this—I don't know now whether these documents perhaps show it but it can be put in—but in regard to Lake Street, even had it been constructed, which it was not, Your Lordship will see, within the time, there was complete access to it by the owners of the land and over it. I mean in a sense Lake Street was sort of no man's land which the owners had a perfect right to pass over to get to their property.

HIS LORDSHIP: Lot 9-C, has that been filled in? Is that water lot now?

MR. HELLMUTH: It is filled in since they have taken possession; it was
10 eventually, but none of it was filled in before that.

MR. SPENCE: If your Lordship will look a little to the south of the upper parcel colored pink there you will see a line with dots, black dots. That line with the black dots represents the filling at the time in question.

HIS LORDSHIP: That is immediately south—

MR. SPENCE: Immediately south of the upper portion.

HIS LORDSHIP: Of the Old Windmill Line.

MR. SPENCE: Yes.

MR. HELLMUTH: I think, my Lord, that perhaps I should put in an order of the Privy Council of the 13th July, 1926,; the number is P.C. 1083. It
20 explains itself, but perhaps if I read it it won't require any further explanation:

“The Committee of the Privy Council have had before them a Report dated 9th July, 1926, from the Acting Minister of Public Works, submitting as follows:

“That the Toronto Harbour Commissioners have applied, under Section 7, Chapter 115, Revised Statutes of Canada, 1906—the Navigable Waters Protection Act—for the approval of a set of four plans of works known as rock levee and dock walls proposed to be built in Toronto Bay from a point at or near the foot of Church Street to the production of the easterly limit of Parliament Street, Toronto, and of the site thereof,
30 according to the description attached.

“That protests have been filed against the granting of the application by owners and tenants of lands and works on Toronto Bay in front of which the proposed rock levee and dock walls will be constructed; a hearing of the interested parties was held in the office of the Minister of Public Works on December 9, 1925, where the reasons advanced in support of the protests were presented, and subsequently submitted in writing. In brief, the protestants state that the proposed works will affect their rights as riparian owners and prevent access to navigable waters, which will greatly reduce the value of their properties.

40 “That the District Engineer of the Department of Public Works at first recommended the approval of the application from the standpoint of navigation, which recommendation was concurred in by the Chief Engineer, but subsequently, in view of the protests received, he advised that the approval of the application be withheld until the owners of the properties adversely affected would be adequately compensated.

“That the Deputy Minister of Public Works, taking into consideration the reasons advanced by the protestants at the hearing and in their

written representations, and the final recommendation of the District Engineer, has suggested, as a solution of the matter, that the approval of the plans and site of the proposed works might be given on the express condition that before the works or any portion thereof shall be constructed so as to prevent access by water to and from any of the properties on which the works front, the applicant shall initiate proceedings by filing the necessary plans for the purpose of either acquiring such property or extinguishing right of access by water thereto.

“That the site of the proposed works is still vested in the Crown as represented by the Dominion Government. The Department of Marine and Fisheries, however, which has jurisdiction over the land required as a site for such works, has advised that steps are now under way for the granting of the patent of the land in question, and that it has no objection to the approval of the application under section 7 of the Navigable Waters Protection Act. 10

“That the Department of Justice has reported that all the requirements of section 7 of the Navigable Waters Protection Act have been complied with and that the application may now properly be submitted to the Governor General in Council for approval, subject to the condition that the applicants shall secure the land required as a site for the proposed works from the Department of Marine and Fisheries, advising, at the same time, that the further condition suggested above respecting the mode of compensation to be adopted for the settlement of the riparians claims may be imposed if so desired. 20

“The Minister therefore recommends, under section 7, chapter 115, Revised Statutes of Canada, 1906—The Navigable Waters Protection Act—the approval of the annexed set of four plans of a rock levee and dock walls proposed to be constructed by the Toronto Harbour Commissioners in Toronto Bay from a point at or near the foot of Church Street to the production of the easterly limit of Parliament Street, Toronto, and of the site thereof, according to the description attached, the said approval, however, to be subject to the following conditions: 30

“1. That the applicants shall secure from the Department of Marine and Fisheries the land required for the proposed works.

“2. That before the works or any portion thereof shall be constructed so as to prevent access by water to and from any of the properties on which the works front, the applicant shall initiate proceedings by filing the necessary plans for the purpose of either acquiring such property or extinguishing right of access by water thereto. 40

“The Committee submit the same for approval.”

EXHIBIT “4”: Certified copy of Minute of Meeting of the Committee of the Privy Council, 13th July, 1926, No. P.C. 1083, above quoted.

Your Lordship will see that the paragraphs re riparian rights say that in

any taking or making of this levee and dock walls they would first have to expropriate our lands and pay for whatever, if there were any, riparian rights; that we could not be dealt with as though we had no riparian rights when they came.

MR. SPENCE: I think perhaps I might point out here that it is only in respect of lands between Church Street and Parliament.

MR. HELLMUTH: No.

MR. SPENCE: I think I am correct as to that.

HIS LORDSHIP: It said Church to Parliament. However, does that
10 effect the issue very much?

MR. SPENCE: I think not, but I thought I should make that remark.

MR. HELLMUTH: Well if there is any question raised here as to our having lost any riparian rights by reason of the construction of these works that order makes it quite clear that it is not so.

HIS LORDSHIP: Very well.

MR. HELLMUTH: Now, my Lord, I will call the owner, Mr. Boulton.

Arbitration
Proceedings

No. 1
Opening
April 4, 1932
—concluded

No. 2

CLAIMANT'S CASE

CHRISTOPHER ROBINSON BOULTON, Sworn:

20 EXAMINED BY MR. HELLMUTH:

Q. Mr. Boulton, you are the present owner of the property which is referred to and mentioned in the notice of Arbitration with a plan attached?

A. I am the legal owner.

Q. And how far back does your recollection of that property go? A. Since my father's death in 1882.

HIS LORDSHIP: You are speaking now of Lot 31.

MR. HELLMUTH: Yes. Lot 31 first, and also of 9-C when it came. He knows both properties.

Q. Since 1882 you have had the entire management and control of
30 that property? A. Yes.

Q. As owner? A. Yes. Not as owner; it wasn't conveyed to me for some time.

Q. No, I know, but I mean the legal owner? A. Not even as legal owner before.

Q. But subsequently it was? A. Subsequently it was conveyed to me.

Q. But it was in the family? A. Oh yes.

Q. It had come from your father? A. Yes.

Q. Then in what way was the property used or leased at the time that
40 you first became the manager of it, if I might say managing it, and looking after it, in 1882? How was the property used then? A. It was leased to a coal merchant named Stephen Nairn.

Arbitration
Proceedings

Claimant's
Evidence
No. 2
Christopher
Robinson Boulton
Examination

Q. Is this the lease, Mr. Boulton (showing)? A. Yes.

Q. That is a lease, my Lord, dated the 1st day of August, 1875, between John Boulton—that was your father? A. My father.

Q. And Stephen Nairn. Now before I take up the terms of this lease, Mr. Boulton, did that cover more land than lot 31? Of course it did not cover 9-C because that had not been granted then, but did it cover more than what is now shown as lot 31? A. Also included a piece of land on the north side of the Esplanade.

Q. It was part of lot 31? A. Yes, I think the old water lot limit was prior to that. 10

BY HIS LORDSHIP: Q. Do I understand lot 31 was north of the Esplanade? A. Part of it.

BY MR. HELLMUTH: Q. And can you tell me about how far it went? Did it go across the Esplanade? A. I don't think it was called lot 31 at all, it was called water lot A, north of the Esplanade, water lot A; water lot 31 I think only applied to the part south of the Esplanade.

Q. But you had at that time property north of the Esplanade? A. Yes.

Q. Running in line with lot 31? A. Yes.

Q. And this lease covered not only the water lot 31 but the land to the north of the Esplanade? A. Yes. 20

Q. Have you any recollection about how many feet that land went north of the Esplanade? A. 70 feet on the north side of the Esplanade by about 209 feet I think in depth.

Q. That is to say that it was the same—you use the word depth; I would use the word width—but I mean the same depth or width as the water lot? A. No, only 70 feet on the Esplanade. It was a comparatively small piece.

Q. Well now in the description of that it refers to part of water lot A granted to one William Cooper and part of a certain lot granted to one William Bergen and which said water lot or tract of land and premises may be more particularly known and described as follows: And then follows a description by metes and bounds? A. Yes. 30

HIS LORDSHIP: Does that help any, Mr. Hellmuth?

MR. HELLMUTH: Well I want to show the way the amount in the lease increased from time to time, my Lord. I think so.

Q. That lease was apparently for \$1,840? A. Yes.

BY HIS LORDSHIP: Q. A year? A. A year, yes.

MR. HELLMUTH: A year. And I will put in that lease, my Lord.

EXHIBIT "5": Lease John Boulton to Stephen Nairn, 21 years from 1st August, 1875. 40

Q. And the lease has a covenant for perpetual renewal? A. Yes.

Q. At an increased rent? A. Yes.

Q. And taxes? A. Yes.

Q. That is the tenant paid the taxes? A. The tenant paid the taxes.

BY HIS LORDSHIP: Q. Were the same buildings upon lot 31 north of the Esplanade in 1875 or 1882 as on the 4th October, 1926? Were they the same buildings? A. They were not there in 1875.

Q. Any buildings there in '75? A. Nothing except a dock.

HIS LORDSHIP: Just a dock.

BY MR. HELLMUTH: Q. Well in this Nairn lease I must refer to one other matter. There is a provision as follows:

“And the said Lessee for himself his heirs executors administrators and assigns hereby covenants with the said Lessor his heirs and assigns to pay rent and to pay taxes.”

Arbitration
Proceedings

Claimant's
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No. 2
Christopher
Robinson Boulton
Examination
—continued

10

“And the said Lessee for himself his heirs executors administrators and assigns further covenants with the said Lessor his heirs and assigns that he will within three years from the date hereof fill up that part of the demised premises now covered with water under the dock or wharf now erected on the said premises in a substantial and durable manner with good solid earth as high as the level of the Esplanade and that he will before the first day of May A.D. 1882 fill up all that other part of the said premises which is covered with water extending from the Esplanade southerly to the distance of one hundred feet in a like substantial and durable manner with good solid earth as high as the level of the Esplanade. And also that he will if he shall see fit before the expiration of the said term of twenty one years” (the lease was a twenty-one year lease) “fill up the remainder of the said premises in a like substantial and durable manner and with the like material as high as the level of the Esplanade aforesaid. And that he the said Lessee his executors administrators and assigns will accept and take a new lease and all further renewals thereof perpetually at the times upon the terms and conditions and at the rental hereinafter provided and will in every case execute such new lease and renewal.”

20

HIS LORDSHIP: Just a moment: The Lessee was to fill.

MR. HELLMUTH: Yes.

HIS LORDSHIP: Well then the buildings must have been upon this strip running north of the Esplanade, is that it?

30

WITNESS: No. There were no buildings that I know of, none that I ever saw there, on the north side.

MR. HELLMUTH: I might mention, my Lord, and Mr. Boulton will confirm this: And the lot south of the Esplanade at the date of '75 or previous was under water. I mean was covered with water.

WITNESS: There was a dock; I don't think it was filled even under the dock.

Q. No? A. That is in '75.

Q. Yes, in '75, so that what this tenant undertook to do was to fill under the dock, that is to fill within three years a hundred feet farther and then at his option to fill the balance of the lot? That was what he undertook to do, at his option? A. Yes.

40

HIS LORDSHIP: The balance of the lot down to Lake Street?

MR. HELLMUTH: Down to the Old Windmill Line.

HIS LORDSHIP: That would be it?

MR. HELLMUTH: Yes, that would be it practically; Lake Street doesn't run parallel to the Old Windmill Line, but Your Lordship is quite correct.

BY HIS LORDSHIP: Q. Then I don't just understand: Was there a piece of this lot A north of the Esplanade running narrow. A. A narrow piece.

Q. Then this man Nairn leased that property and the property south of the Esplanade, it had only a dock south of the Esplanade, for the purpose of filling it up 100 feet first and then down to the Old Windmill Line in time, and then he was given this lease. What was the lease for? A. Twenty-one years.

Q. I know, but what was the object of giving the lease? What was he taking the lease for? A. For a coal dock. 10

BY MR. HELLMUTH: Q. Now, Mr. Boulton, in 1882 when you took charge of the matter how far had it been filled in then?

HIS LORDSHIP: Well now, pardon me just a moment, you are away back before 1882. It is the value of this property to the owner on the 4th October, 1926.

MR. HELLMUTH: Exactly, my Lord, and I think it is very material to show, with great respect, how that property improved in value during the years from then on.

HIS LORDSHIP: Well it is obvious to any person that property improved since 1882, but is it necessary to go back? Am I not to have evidence on 20 what is the actual value to the owner of that property say on the 4th October, 1926?

MR. HELLMUTH: Yes, my Lord, you are.

HIS LORDSHIP: You are giving the history of it away back in 1882 I mean if you have to do it—

MR. HELLMUTH: I will do it very shortly; I think it may become material.

HIS LORDSHIP: Very well.

MR. HELLMUTH: Then in 1896, that is the next lease.

HIS LORDSHIP: The lease of 1875; then you mentioned 1882.

MR. HELLMUTH: 1882 is when he came in, and I just wanted to know 30 if it had been all filled up.

WITNESS: In 1882 when I first knew it it was all filled out to the Old Windmill Line.

Q. I understand in 1882 there was a slight adjustment of the rent, was there not? A. Yes.

Q. It was changed from what to what? A. Changed from \$1,840 to \$2,035; about \$200 increase.

BY HIS LORDSHIP: Q. About \$200 increase? A. Increase.

Q. Per month? A. No, per year.

BY MR. HELLMUTH: Q. Up to that time had he continued to hold the 40 land north of the Esplanade, the tenant? A. Oh, yes.

Q. Well, now, in 1887, a portion of your property was taken by the Ontario and Quebec Railway? A. Well, they served notice.

Q. The amount for that portion was not settled till a very much later date, was it? A. A long time later.

HIS LORDSHIP: Was that property south of the Esplanade?

MR. HELLMUTH: Yes. I think perhaps I can show it to your Lordship on that plan.

Q. It was immediately north of your property, the first bit they took, was it? A. It was a strip across the property.

Q. Yes, but was it north—?

MR. OSLER: It was across the north end. A. Across the north end.

BY HIS LORDSHIP: Q. South of the Esplanade? A. South of the Esplanade.

BY MR. HELLMUTH: Q. It was a strip about 26 feet? A. 28 feet in 10 depth, for a right of way.

Q. Well then in 1896 you entered into a renewal lease of the property? A. Yes.

Q. With people to whom Nairn had assigned his lease? A. It had come through different mesne assignments.

Q. And this was a lease to Dickson & Eddy I think? A. Yes.

Q. (Shows witness lease). A. Yes, this is it.

Q. And did that cover the land north of the Esplanade? A. Yes.

Q. And that lease was for \$2,580 a year? A. That is right.

Q. At that time that strip 28 feet wide had been taken by the railway, 20 in 1896, although not paid for? A. It had been taken possession of.

Q. That is what I mean, it had been taken possession of.

BY HIS LORDSHIP: Q. And you would have to go over the tracks of that Railway Company to get into your property? A. Yes.

MR. HELLMUTH: Well there was you know the other track, my Lord.

HIS LORDSHIP: Yes, I know that, but I am speaking of this Ontario & Quebec.

BY MR. HELLMUTH: Q. Well, then, that was the lease of 1896 which would expire in 1917, required a renewal there? A. Yes.

HIS LORDSHIP: For how many years?

30 MR. HELLMUTH: Twenty-one years, my Lord. It contained also the same covenant for renewal, my Lord, at an increased rent.

BY HIS LORDSHIP: Q. Does that include the property north of the Esplanade, the strip? A. Yes, but at that time the piece north of the Esplanade was leased to other parties.

Q. Yes, I know, but did it include it in this particular lease? A. Yes.

EXHIBIT "6": Lease September 1st, 1896, M. R. Boulton and others to Dickson & Eddy.

BY MR. HELLMUTH: Q. Then on 31st December, 1901, Dickson & Eddy released or surrendered that part north of the Esplanade, did they not? 40 A. Yes.

Q. Surrendered it to you? A. Yes.

Q. I will put that in. And a reduction was made in the rent? A. Yes.

Q. To \$2,160? The rent became \$2,160? A. A reduction of \$420 was made in the original rent. Is that it, \$2,160?

MR. HELLMUTH: Yes, \$2,160.

EXHIBIT "7": Surrender dated December 31st, 1901, J. B. Dickson et al, to M. R. Boulton et al.

Q. Well, now, in July, 1902, you obtained from the Ontario & Quebec, which subsequently became the Canadian Pacific Railway, compensation for that portion that they had taken, did you not? A. Yes.

Q. And the compensation for that portion was itself as of the date of the taking \$9,585? A. Yes, that is right.

Q. But as they didn't pay you until July, 1902, they paid you interest on that sum for that period of \$2,838.75? A. From the date of the expiry of that term until the date of payment.

Q. Yes, they paid you that? A. Yes.

Q. And that was an agreement made without any Arbitration? A. 10
Oh, yes.

Q. That was a voluntary agreement made between the railway and yourself for that strip. What about the interest of the tenant in that? A. Oh, he had been settled with years before when they took possession.

Q. But that was what came to you, as the owner? A. That came to me as owner. The tenant had paid me the full rental up to the expiry of the term for that piece included although he had been deprived of it.

Q. Then in December, 1919, the Ontario & Quebec expropriated a further strip across your land? A. Yes.

Q. They had taken the 28 feet odd from the north portion of your land 20
and then they took from what was left what had become the north portion; they took another strip? A. Another strip.

Q. Of how much? A. 24 feet 6 inches.

Q. Making a total that then became 54 feet something? A. 52 feet 6.

Q. Whatever is shown on the plan? A. Yes.

Q. They took that bit? And was the price for that settled by arrangement? It was 24 feet 6 inches and it had an area of 5,218½ square feet, what they took? A. Well—

Q. Well, I think we have that on the plan. Then what did they pay
you for that? A. \$17,000. 30

Q. And that was an agreement? A. That was by agreement.

Q. And the tenant's interest was not included there? A. No.

Q. Now on the 31st day of July, 1917, the term of the 1896 lease came
to an end? A. Yes.

Q. And what proceedings or steps were taken? Was there at that time
anything definitely settled between the tenant and land owner by agreement
or by arbitration for the renewal for the next twenty-one years? At that time
was there anything settled, July of 1917? A. Not at that time.

Q. But were negotiations started? A. Soon after that.

Q. Then was there an interim agreement made on the 20th May, 1918? 40
A. Yes.

Q. Can you tell me why a renewal was not taken in 1917, as one had been
taken before, at the termination in 1896? A. It was largely due to the fact
that the war was still going on and business was very unsettled and also affairs
along the Esplanade very very unsettled, because we didn't know when the
expropriation was going to be carried out.

Q. You knew of the Orders-in-Council? A. Yes.

Q. That is to say the condition of property there, as to whether it would be expropriated or not, you didn't know whether there would be—? A. Nor when it was going to take place.

MR. HELLMUTH: Well now, my Lord, there are portions of this memorandum of agreement of the 20th May which I might read: I am not reading the whole of it.

HIS LORDSHIP: That is a renewal lease between Dickson et al?

MR. HELLMUTH: No, this is Standard Fuel.

BY HIS LORDSHIP: Q. When did the Standard Fuel come in? A. I
10 think in 1912.

HIS LORDSHIP: I haven't anything as to that yet. You mean as the successors of the others?

MR. HELLMUTH: Yes. They could buy that lease from Dickson & Eddy and without any agreement with Mr. Boulton, and I was looking to see when they came in.

BY MR. HELLMUTH: Q. But at all events you knew that the Standard Fuel were then the tenants? A. Oh, no doubt, when they came in.

MR. HELLMUTH: Well then, it reads:

20 "AND WHEREAS the said renewal lease expired on the 1st day of August, 1917:

AND WHEREAS" and so on;

AND WHEREAS the Ontario & Quebec Railway Company has taken steps, under its Statutes and the Provisions of the Railway Act, to expropriate a certain portion . . ." firstly and secondly, and then they set out those portions;

"AND WHEREAS it has been agreed between the parties hereto that the said land so expropriated should be excluded from any renewal lease to the said Lessees, a formal surrender of the said excepted strip to be executed by the Lessees if required;

30 "AND WHEREAS it has been agreed. . ." and then it sets out the lands;

"AND WHEREAS the said Lessors are the persons entitled to the reversion of the said lands and premises, and the said Lessee, as assignee of the above-mentioned Lease, is entitled to receive a renewal of the said Lease for a term of twenty-one years from the first of August, 1917, in accordance with the terms of the original hereinbefore mentioned Lease and renewal;

40 "AND WHEREAS the parties have agreed to an arbitration to fix the yearly rent to be paid by the Lessee or its assigns to the Lessors or their assigns in accordance with the terms of the said renewal lease of the first of September, 1896, but subject to the variations of the said terms as contained in this Agreement;"

Those Arbitrators were appointed, Mr. Harton Walker on behalf of one and Mr. McLaughlin on behalf of the other.

BY MR. HELLMUTH: Q. Did that Arbitration proceed? A. The Arbitrators had a discussion themselves and tried to get together.

Q. Was anything done? A. Nothing was done in the way of Arbitration.

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—continued

EXHIBIT "8": Agreement above quoted from, dated 20th May, 1918, between C. R. Boulton and A. St. G. Boulton, and Standard Fuel Company of Toronto.

Q. And then on the 17th June, 1918, you entered into an agreement with the tenant, did you not, the Standard Fuel? Just look at that (showing)?

A. Yes.

Q. Now this agreement recites about the expiry of the other lease and that the Lessees are entitled to a renewal, and further says:

"AND WHEREAS negotiations have been in progress between the parties to fix the renewal rent for the said renewal term, and the parties have executed an Agreement dated the 20th day of May, 1918, providing for the fixing of the said renewal rent by reference to arbitrators as therein provided, but such arbitration has not yet been held; 10

"AND WHEREAS the Lessees have represented to the Lessors that owing to the present exceptional conditions and situation affecting all financial and business relations caused by the present state of war, it would be unsatisfactory to proceed with the arbitration at the present time, and have requested the Lessors to fix a rental for the current year, namely from the 1st August, 1917, to the 1st August, 1918, to be paid by the Lessees as a fixed rent for the said period by quarterly instalments payable as in the original Lease set forth; 20

"AND WHEREAS the Lessees have proposed to pay to the Lessors as such fixed rent for the year ending 1st August, 1918, the sum of Four Thousand Dollars, and in addition to pay over to the Lessors any amounts paid to the Lessees by the Canadian Pacific Railway Company by way of occupation, rent or otherwise for the strip of land taken and used by that Company across the northerly part of the demised premises which has accrued since 1st August, 1917, or which may hereafter accrue;

"AND WHEREAS the Lessors have agreed to the said proposal upon the terms and conditions hereinafter expressed, which are agreed to by both parties; 30

"NOW THEREFORE THIS AGREEMENT WITNESSETH that the rent for the premises for which the said renewal Lease is to be made pursuant to the Agreement of 20th May, 1918, shall, for the year ending 1st August, 1918, being the first year of the renewal term, be Four Thousand Dollars, payable quarterly as in the said Lease is provided: and that the Lessees will in addition pay over to the Lessors as and when received all moneys paid to them by the Canadian Pacific Railway Company in respect of rental or otherwise for the strip of land occupied by that Railway and accruing since 1st August, 1917; 40

"AND THIS AGREEMENT FURTHER WITNESSETH that notwithstanding anything herein contained the said Agreement of 20th May, 1918, shall remain in full force and effect and shall not be deemed to have been in any wise altered or otherwise affected by these presents:

"AND FURTHER that this Agreement as to the amount of rental to be paid for the year ending 1st August, 1918, or for such further period as may be agreed upon between the parties is made merely as a temporary

arrangement owing to the unusual conditions at present prevailing, and consequently it is distinctly understood that the acceptance of said rental for such limited period is not to be considered as an admission or evidence that the same is considered in any wise as being an adequate rental to be paid under the renewal lease; the intention being that the said arbitrators upon proceeding to fix such rental under the renewal lease shall not be in any way influenced by the sum herein agreed to be accepted as rental for such limited period, but such rental payable under the renewal lease shall be fixed by said arbitrators as if this Agreement had never been made and executed; And the said arbitration may be proceeded with at the instance of either party at any time.

10

“AND THIS AGREEMENT FURTHER WITNESSETH that if the parties shall hereafter so agree the said rent may be fixed for a further term of one year, and in that event this Agreement shall be deemed to be continued in force and to cover the rent payable up to the 1st day of August, 1919, without any further evidence of such agreement beyond an endorsement of such extension upon this agreement signed by the parties hereto or their Solicitors;”

20 A. Then you did receive that Four Thousand for that year ending in 1918? Yes.

EXHIBIT “9”: Agreement 17th June, 1918, Boulton and Standard Fuel above quoted from.

Q. Well then, was there any further agreement made? A. Yes.

Q. Then was there any agreement written or verbal in regard to the next year? A. Next year there was a verbal agreement to pay an additional \$500.

Q. That is \$4,500? A. \$4,500.

Q. That would take it up to 1919? A. Yes.

Q. Well then, was there further agreement made? A. A further extension for a short year at the additional Five Hundred.

30 Q. Making \$5,000? A. Five thousand for the third year.

Q. That took it up till the year 1920? A. Yes, first of August, 1920.

Q. Then, Mr. Boulton, there was a new lease made, was there not, between you and the Standard Fuel on the first of August, 1921? A. Yes.

Q. Renewing it for twenty-one years from the first of August, 1896? A. Yes.

Q. Also from the first of August, 1917? A. From '17 when it expired.

Q. Now was that the result of an arbitration or the result of an agreement with the tenant? A. Of an agreement.

Q. The arbitration didn't proceed? A. No.

40 Q. And this I take it is the lease (showing)? A. Yes.

Q. That is the lease in question and it is dated the first day of August, 1921. It makes recital in regard to the strips taken and all those and then it goes on:

“AND WHEREAS the said term of twenty-one years granted by the said Indenture of lease dated the 1st September, 1896, expired on 1st August, 1917.” And so on; and then:

“AND WHEREAS the parties hereto have agreed that the rental to be

paid in respect of the premises hereby demised for the said renewal term shall be fixed at the sum of \$6,000 per annum, and have consented and agreed that the said sum shall be the annual rental for said premises hereby demised for the said renewal term which shall be payable in equal quarterly payments on the first days of November, February, May, and August, in each year during the said term notwithstanding that the amount of said rental has been fixed by agreement between the said parties and not by arbitration as provided by the said Indenture of lease and renewal as aforesaid," and so on.

Now you say that was the result of negotiations. Why was there not an Arbitration at that time? A. There were long discussions between Mr. Harton Walker and Mr. McLaughlin, the two men appointed as Arbitrators, who were both real estate experts, there were long discussions between them and after they had got much nearer together than they were at the beginning Colonel Marshall came by himself.

Q. He was the President of the Standard Fuel? A. Yes.

HIS LORDSHIP: Oh well, you have come down to it by written document to \$6,000.

Q. Well then that was agreed between you? A. Yes, between us.

HIS LORDSHIP: That takes us down to 1938.

Q. Of course I can state it does not include the expropriated strips? A. No, they were left out.

Q. Nor the water lot? A. No. Only as far as the Old Windmill Line, what was in the original lease.

Q. And you were left to your rights in regard to the water lot? A. Yes.

BY HIS LORDSHIP: Q. That was not discussed at all, just the original quantity of land less what was taken by the railway? A. Yes.

MR. HELLMUTH: And I ought to have perhaps said no value was attached, my Lord, they didn't add anything because they couldn't under the terms of the Windmill Line Agreement add anything.

HIS LORDSHIP: No, I understand.

MR. HELLMUTH: In the lease there is a clause acknowledging the parties to have had rights in regard to the added portion, whatever they may be. I think I had better read that to Your Lordship, because that is made very distinct, in the lease.

Q. Will you tell me about how soon the lot was filled down to the Old Windmill Line after the first twenty-one years? A. It was all filled when I first knew it in 1882.

MR. HELLMUTH: This is the clause:

"AND THIS INDENTURE FURTHER WITNESSETH and it is hereby agreed and understood by the parties hereto that these presents are not to be deemed or construed to be a lease of the land covered by water in front of the premises hereby demised, and being part of the added lands referred to in the Windmill Line Agreement dated the 15th March, 1888, a copy of which is referred to in Chapter 70, of the Ontario Statutes of 4 Edward VII assented to on the 25th April, 1904; but the parties

are to be left to their rights with regard thereto unaffected by these presents."

I think that is all as far as I am concerned.

MR. OSLER: I have no questions, my Lord.

HIS LORDSHIP: Have you any, Mr. Cassels?

MR. CASSELS: No.

HIS LORDSHIP: Mr. Spence?

MR. SPENCE: Nothing, my Lord.

MR. HELLMUTH: I call Mr. McBrien.

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10 EXHIBIT "10": Lease C. R. Boulton, trustee, to Standard Fuel Co. of Toronto, referred to, 1st August, 1921.

No. 3

WILLIAM CARSON McBRIEN, Sworn:

EXAMINED BY MR. HELLMUTH:

Q. Mr. McBrien, what is your present occupation and position, please?

A. I am the Manager of the Real Estate Department of the Sterling Trusts Corporation.

Q. Yes, what else? Anything? A. I do valuations for the Succession Duties Department of the Ontario Government, Official Guardian.

20 Q. Don't go too fast. What about Public Trustee? A. Well I am a member of the Advisory Committee of the Public Trustee.

Q. Well now what about your actual experience in regard to house building or anything of that kind? A. Well I built 128 houses in Toronto, some thirty stores and apartment houses.

Q. When did you commence operating? Had you a real estate office here? A. I had a real estate office after I came back from the war on Roncesvalles Avenue.

30 Q. In what? A. I had one first on Roncesvalles at first; then one in the Stair Building and one in the Temple Building before I took my present position, which I took in March, 1926.

Q. That is with the Sterling Trusts? A. Yes.

Q. And before that from 1919 you had these various real estate offices? A. Yes, and previous to that, previous to the war, I was engaged in the building business.

Q. Well then what knowledge or connection have you had with anything in regard to the Toronto Harbor? A. I was a member of the Toronto Harbor Commission from 1927 till 1930.

Q. About what time in 1927? A. I was appointed I think in February, 1927.

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Q. And you resigned in 1930? A. Yes.

Q. And then since your resignation have you sold any property on the waterfront? A. Yes, I have sold over half a million dollars' worth of property on the waterfront since that term.

Q. Had you anything to do with the University Avenue extension? A. Yes. I negotiated the deal for Bowes & Company on Wellington Street to the City of Toronto amounting to \$265,000.

Q. Have you done any work for any individual owners or solicitors in valuations? A. Yes. I act for several loaning companies and I do considerable work in the way of valuation for solicitors and loan companies and financial companies. 10

Q. Well have you occupied the enviable position of an expert on any of these before any of these Arbitrations or boards or anything?

HIS LORDSHIP: I think he might qualify as one all right.

MR. HELLMUTH: I think so too. Perhaps he will say.

WITNESS: I think I have acted on over a hundred arbitrations with the city, that is before the Official Arbitrator, the County Court and the Hydro Electric and the Ontario Railway Board.

BY HIS LORDSHIP: Q. You are a sort of professional witness? A. I suppose so, sir. 20

MR. HELLMUTH: Well more than a witness, my Lord; a little more than a witness—a dealer.

BY MR. HELLMUTH: Q. Well then I don't think that I need ask you anything more; you have spoken about the valuations; I think we can pass over that now.

Now, Mr. McBrien, are you familiar with the Boulton property? A. Yes sir.

Q. Were you requested to make a valuation of it as of say the 4th October I think it would be, 1926? A. I was.

Q. Will you just tell me now what if any difference the value of that property would be in 1926 as compared to 1930 or 1931 say? A. I think there was a real increase in values all over the City of Toronto between 1919 and 1925 and 1926, and I think from 1926 to 1930 values outside of certain business locations downtown and isolated sections have remained practically the same. 30

Q. So that the value you put on it in 1926, would not be materially added to if it were 1931, or would it be decreased? A. I would say that the value in 1926 was equally as high as what the property would sell for in 1930. I would say in a general way that the values were about the same.

Q. Then taking that property as of 1926 what value did you place 40 upon it? A. \$396,000.

BY HIS LORDSHIP: Q. Does that include both lots? A. Yes sir.

BY MR. HELLMUTH: Q. That is the property shown as pink on the plan? A. The property shown as pink on the exhibit, yes.

BY HIS LORDSHIP: Q. Does that include the buildings at all? A. No, has nothing to do with the buildings.

Q. Land itself? A. Land and water, sir—land and land covered by water.

BY MR. HELLMUTH: Q. Then you just said for the land and the land covered with water? A. Yes.

Q. That would be the part of lot 31 in pink and the part of lot 9-C? A. Yes.

Q. Or C-9, whatever it may be? A. Or, to describe it, it is a piece of property approximately 204 feet 6 inches frontage on the Esplanade by a depth of 1100 feet, less of course Lake Street; that cuts through the centre of it.

10 BY HIS LORDSHIP: Q. Wait a moment. How many feet on Esplanade? A. Well I am taking it directly across instead of on the bias: 204 feet 6 inches.

BY MR. HELLMUTH: Q. But across the line 212? A. 212 across the line.

Q. 213, I am wrong? A. Yes, and approximately 1100 feet deep including Lake Street which has to be deducted.

BY HIS LORDSHIP: Q. That is going away back to the New Windmill Line? A. Yes.

20 Q. How many feet on Esplanade Street? A. Approximately 1100. That varies in the different places, but I think that is fairly close to it, in round figures.

BY MR. HELLMUTH: A. Well now will you tell me what basis you adopt in the figure that you have given of \$396,000? Would you tell me what basis you adopted? A. Do you mean the dividing of property between land and water?

Q. Yes. Did you divide it up at all? A. Yes. There was 92,641 square feet of filled land which I valued at \$3 per square foot, and 118,016 square feet of land covered by water which I valued at \$1 per square foot, making a total of \$395,939, which works out to those figures.

30 BY HIS LORDSHIP: Q. In order to come to that estimate what value did you place upon the frontage fronting on Esplanade? A. \$1940 a foot frontage on the Esplanade back to the entire depth, back to the New Windmill Line, which works out to about \$1.90 a square foot including land and water. An average price of it.

BY MR. HELLMUTH: Q. Yes. Now before I ask you for any comparisons upon which you may have based it (you have to throw yourself back you know to 1926) what was that property—?

HIS LORDSHIP: Well has he? You say he has to, but has he?

MR. HELLMUTH: Has he done it?

40 HIS LORDSHIP: I say Has he?

Q. Have you thrown yourself back to 1926 in these valuations? A. Yes.

MR. HELLMUTH: He said, my Lord, there is no difference in value between 1931 and 1926.

HIS LORDSHIP: Oh, I beg your pardon, you are quite right. I thought you were back to 1896.

WITNESS: I wouldn't know anything about that, sir.

Q. Well then, Mr. McBrien, putting yourself back to that property

at that time what do you say that that property was suitable for? A. Well it was suitable for the type of business that was carried on by the tenant, a coal business. It would also have been suitable for dock or for a steamship company; it would have been suitable for a supply yard.

BY HIS LORDSHIP: Q. What do you mean by supply yard? A. Anything that handles cement, stone, sewer pipe.

BY MR. HELLMUTH: Q. Yes? A. It would have been suitable for a business such as a heating plant, a grain elevator.

BY HIS LORDSHIP: Q. Wait a moment. A heating plant, what do you mean by that? A. We didn't have heating plants perhaps in 1926 but there was a possibility of them. 10

Q. You mean to establish a plant there to heat part of the city? A. Some part of the city, close to it, yes, owing to the fact it was close to Yonge; it would be suitable for a grain elevator, flour mill.

MR. HELLMUTH: Q. Yes? A. Or any other large manufacturing concern that would require rail and water transportation for either raw or manufactured material.

Q. Yes? A. In fact it was a very suitable location for any person who wanted to have a location on the waterfront.

Q. Well what would you say as to any increase or decrease in water lot values, Mr. McBrien? Was there an increase or decrease, we will say from— let us go back some distance—1909 up to 1926? A. Well of course 1909 was a little before my own experience downtown, but I would say from 1914 to 1926 there was a decided increase in values of water lots on the waterfront owing to the development of the Welland Canal which had a great deal of publicity, what work was started, and also to the proposal for the deepening of the St. Lawrence River, and it was also very apparent that large coal companies and oil companies saw the possibilities of shipping in by boat rather than by rail after the war. 20

Q. Of course the shipping by boat, I suppose it is common knowledge, is very much cheaper than transportation by rail? A. Yes. But owing to the fact that the Welland Canal was shallow it had only been done in small boats up to the time that that was proposed. 30

Q. Well can you tell me when the Welland Canal was commenced? A. I can't tell you exactly when it was commenced; it was completed in 1930; and what I am trying to say is during that period of time which it was in the course of building it had an effect on values to people who had waterfront property.

Q. Now you have spoken of the advantage, of the increase; was there anything within your knowledge that would act as a detriment on values at all of waterfront property? A. On this particular piece of property, you mean? 40

Q. Yes? A. Well, there was the plan of the Harbour Commission of 1913 and '14.

Q. Yes? A. That plan was a proposition when practically all the waterfront property in Toronto was taken over by the Commission and therefore anybody holding property on the waterfront it was very doubtful what

the future of it was and it was very doubtful if that property could have been sold from 1914 to 1926 owing to, I might say, a blight on the title owing to the fact that no person would want to go in there and buy property knowing it might be confiscated or expropriated from them afterward. I believe there was very little property changed hands during that time.

Q. That would prevent the change of hands? A. I would think so.

Q. Or it would be a detriment to the change? A. I don't think it would be commonsense to go in and purchase lands to develop it that would be liable to be taken from you in one or two years or five years.

10 Q. Now can you give me any comparisons of values—you say there was very little sale made during that period owing to this projected development by the Harbour Commissioners and the others and the building of the viaduct—can you tell me whether you can compare at all with any sales that you actually know of; I don't want hearsay? A. Well, first I made a complete revaluation of all the property on the harbour front in 1927.

Q. You made that yourself? A. Yes. I might say that I was appointed by the Harbour Commission in the spring of 1927 and just after the investigation by Judge Denton and as a reorganization of the new Board we desired to create a new financial structure, and new sales structure of the land, and
20 there had been a previous valuation used in the investigation which in my opinion and in the opinion of the other Commissioners was too low, and I was asked by the other Commissioners to personally put a valuation on all the property on the waterfront.

Q. That is to say that the Commission owned? A. As a Commissioner, and was asked by my fellow Commissioners to do this. Which I did. And it was completed in the spring and summer of 1927. One reason we wanted it, they were getting out a new basis of sales and had hired a Chartered Accountant to prepare a synopsis for us and I was asked to get these figures out believing that the previous valuation was too low, and I made a complete
30 valuation of all properties on the waterfront in 1927, and also am conversant with all the sales that took place on the waterfront from 1926 to the time I resigned from the Commission. Since resigning from the Commission I have negotiated three or four deals and have completed two or three others on the waterfront property.

Q. Well now can you tell me of any property that you have, during the period you speak of, actual knowledge of or that you actually yourself made a sale of? A. Well I have an actual knowledge of all the sales that have gone through during the time I was on the Commission, owing to the fact that I was asked to approve of them before they were accepted.

40 Q. Yes? A. Just at the time I was leaving the Commission I negotiated a sale between the Harbour Commission and the City of Toronto for the police court site they had all the controversy in the newspapers about. It was a block bounded by Harbour Street on the south, York Street on the west, the new Fleet Street on the north; it came over close to the Harbour Commission Building.

BY HIS LORDSHIP: Q. Just wait a moment; I want to get that focussed in my mind; I never knew where it was? A. I will show you, sir.

Q. Is it east or west of this block? A. Oh it is quite a bit west, sir. You see the whole plan has been changed. (Produces a plan).

Q. Now where is the Boulton property? A. The Boulton property doesn't show on this plan.

Q. All I want to know, just about how far distant to the west? A. Here is Scott Street, sir; the Boulton property is just past Scott Street here. Here is the viaduct. The portion set aside for the police court building was that block there. (Indicating).

Q. This is between Bay and York? A. Yes. Just to the west of the present head office of the Harbour Commission. 10

Q. What do you mean by making a statement a moment ago—I did not quite get the significance of it—because the previous valuations were too low? A. Well there was a valuation made during the investigation owing to the fact that they wanted it for the investigation, to find out—

Q. What investigation? A. An investigation into the Toronto Harbor Commission which was held by Judge Denton in 1926, in November and December, I think, of 1926.

Q. The valuations made then you say were too low? A. There was a valuation made then of all property south of the viaduct and that was the only valuation as to values that was before the Harbor Commission at that time. 20

Q. Well why were the Harbor Commission interested in values being too low? A. Owing to the fact that it was the duty of the Harbour Commission to make the whole Harbor deal sound—financially sound.

Q. They thought the properties too low, they were going to sell, and wanted a price—? A. Yes. And furthermore there was an outstanding bond issue on this property—or I might say, sir, to qualify what I said, that that other valuation amounted to, what was known as the Poucher-Bosley valuation, amounted to \$21,000,000 for the land unsold; land sold and leased \$3,000,000, building and equipment \$2,115,000; and on the valuation that I made I raised the value of that land from \$21,000,000 to \$28,000,000 or about 30 \$7,000,000, or about thirty-three and one-third per cent. It wasn't done on a percentage basis at all, some of it was only five, some ten, and some as high as a hundred.

Q. On what basis did you make the increase, or why did you increase it? A. Because I believed that was the value of the property.

Q. But where would you get at the value of the property if you were going to put out a bond mortgage or something of the kind or to increase an undertaking such as this and you thought a previous valuation was too low and you wanted to increase it and you were called upon and you did increase it—?

A. Yes. 40

Q. Upon what basis? A. On the basis that—

Q. Future uses that might be made of that? A. Yes, and what people could purchase a similar piece of property in a different situation in the City of Toronto.

Q. With like facilities? A. Yes. I might say that in 1927 there was over—. No, not in 1927. In 1928 there was \$1,537,000 worth of property

sold at a price equal to my valuation or better. In 1929 there was \$1,124,970 worth sold. In 1930 there was over \$1,000,000 worth sold.

Q. The land of course was soaring at that time, that was at the height of prosperity? A. I wouldn't say that, sir. I would say the height of prosperity dropped pretty badly in 1929.

Q. And you made your valuation when? A. In 1927.

BY MR. HELLMUTH: Q. Well now let us just understand this, Mr. McBrien: The valuations that you made, when you came as you did to make sales did you get the amounts that you had valued those properties at or less
10 or more? A. Generally more.

Q. Then what sales you made were generally at a higher figure than you had made these valuations? A. Yes, sir.

MR. SPENCE: I object to this evidence, my Lord, on the ground, first, that it is not made as of the time which is applicable in this case.

HIS LORDSHIP: Oh yes, I am keeping that in mind.

MR. SPENCE: And further there is no evidence as to where these sales took place.

MR. HELLMUTH: I am going to give that.

HIS LORDSHIP: I think Mr. Hellmuth will be coming to that, but my
20 mind of course must be focussed upon the value in 1926, October, no matter what took place afterward.

MR. SPENCE: It is October.

HIS LORDSHIP: It is October of course.

Q. Let me just understand, Mr. McBrien: His Lordship says that it is important that the valuation must indeed be based on the 4th October, 1926?

A. I have kept that in mind, sir.

Q. Have you kept that in mind in the valuations you made in 1927? Was there any difference? A. No, I would say that the valuations made in 1927 were approximately the same as 1926.

30 Q. And I think you have already said that the sales made in 1930, the values would not be different from what they were in 1926? A. No. Owing to the fact that there wasn't any competition of sales here, the property was all owned by the one concern, anything that was saleable, practically everything south of the viaduct, and those people were very anxious to sell it, owing to the fact it was a public Commission and anything that they could secure in the way of new industry would be very beneficial to the city as a whole in the way of giving employment and paying taxes to the city. It wasn't the same as a private concern selling land for profit.

40 Q. Well then you mention an offer of the Police Commissioners. I want to find out what price that was fixed at? A. That piece was sold at \$3.17 a square foot. This property had no—

BY HIS LORDSHIP: Q. Now when was that? What date? A. That was in June, 1930.

HIS LORDSHIP: What has that to do with the value of property on the 4th October, 1926?

MR. HELLMUTH: This witness already said there was no difference at those periods.

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HIS LORDSHIP: Very well.

MR. HELLMUTH: I understood him to say that.

HIS LORDSHIP: Then this property would be then worth \$3.17 per square foot in 1926?

MR. HELLMUTH: No.

HIS LORDSHIP: I mean this particular Police Commission property.

WITNESS: If developed into streets down there, yes.

HIS LORDSHIP: Very well.

BY MR. HELLMUTH: Q. Then what other property have you in mind?

A. Well I leased a dockage to the British-American Oil Company. 10

Q. Where is that? A. That is on Keating Channel, which is the diversion of the Don River.

BY HIS LORDSHIP: Q. Where is that? A. It is the diversion of the Don River and just east of Cherry Street.

Q. How far would that be east of this particular property. A. It would be about a mile.

BY MR. HELLMUTH: Q. A mile east? A. It would be a good mile, yes.

BY HIS LORDSHIP: Q. A dockage leased there to the British-American Oil? A. Yes.

Q. When? A. In November, 1930, I leased a strip of land 600 feet 20 by a depth of 68 feet on the north side of Keating Channel starting at a point 650 feet easterly from Cherry Street for five per cent. per year on a value of \$60,000, plus taxes, twenty-one year lease.

BY MR. HELLMUTH: Q. What would that work out per square foot?

A. Well there was an easement over the entire frontage of this property, that is a frontage on Keating Street, and deducting the easement of about 18 feet that price would work out at \$2 a square foot.

Q. Well now that property you say is a mile east of the Boulton property?

A. Practically, yes.

Q. And just let me ask you this: Is property east, as you go farther 30 east from Yonge Street—does it increase or decrease in value? A. Oh it decreases.

Q. It decreases? A. Yes.

Q. Perhaps I can ask you now, you know the Canada Steamship property

A. Yes.

Q. You have made a valuation of that? I mean you have considered that property? A. Well, do you mean by a foot frontage?

Q. Yes?

HIS LORDSHIP: Do you mean the old?

MR. HELLMUTH: The old Canada Steamship, yes. 40

WITNESS: About \$3,300 a foot frontage.

Q. And about what a square foot, taking land and water both? A. That would work out about \$3.75.

Q. \$3.75 a square foot? A. Yes.

Q. Now then let us just follow this for a minute: That comes up to Yonge Street? A. Yes, that is the corner of Yonge and Esplanade.

Q. And is that the most valuable or the least valuable portion of the

waterfront? A. I would say the Canada Steamship Company as of 1926 was the most valuable piece of property, the old line—

Q. We are speaking of the old line? A. Yes, of the old line, the most valuable property was the Canada Steamship property; values went both east and west from the value of that property, that was the key piece.

Q. Now we have the Canada Steamship, and just let us follow this for a minute. The next lot east takes you to Scott Street, doesn't it, from Yonge Street? A. Yes. The balance of that.

10 Q. Now what would you say would be the value of the property immediately east of the old Canada Steamship's?

I think, my Lord, if we were to put in the larger plan showing this it would be better.

HIS LORDSHIP: Where is the Canada Steamship property? Here are some plans that were left with me, I don't know what they are.

WITNESS: I have a long plan here if you wish it.

Q. Show it to His Lordship and see if it is the same as he has. Whose plan is this? A. I understand this is one got out by the Terminal Railway Company.

20 Q. Yes, it is a Terminal Railway Company plan. Now show His Lordship the Yonge Street. A. Here is the Canada Steamship property.

Q. That is the old one? A. Yes.

BY HIS LORDSHIP: Q. Where is the Boulton property? A. The Boulton property is there. (Indicating).

BY MR. HELLMUTH: Q. Now let us just follow that: The block immediately east of the Canada Steamship is what? A. It was the property occupied by the Toronto Electric Light Company. They had an auxiliary power plant there.

30 Q. And about how many feet were there in that property? A. The Canada Steamship didn't own the— They occupied the entire property from Scott Street to Yonge Street but there was a strip in there the freehold was owned by the Harbor Commission.

Q. We quite understand that, but when you get east? A. When you get east of Scott Street the next block—

Q. Well, wait a minute. The property up to Scott Street is owned by whom? A. The Canada Steamship Company—or occupied by them.

Q. I am speaking of the old one? A. Yes.

Q. Then from Scott Street to Church Street? A. Well there was two pieces in there, the Toronto Hydro Electric and the Standard Fuel Company, and the Standard Fuel Company is the piece in which we are interested.

40 Q. Yes, I understand. So that there were only from Scott Street east what?

HIS LORDSHIP: Excuse me, immediately to the east of Scott Street?

WITNESS: That was occupied by the Toronto Hydro Electric.

HIS LORDSHIP: And then you came to the Boulton?

WITNESS: Yes.

Q. Now you have given me a value for the Canada Steamship at both a frontage foot and a square foot value. Now I want to ask you in regard

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to frontage value, which you placed at what for the Canada Steamship—?
A. \$3,300.

Q. What do you place the frontage value on, I suppose we must say from Scott to Church Street? A. Excluding the Boulton property, from Scott Street to the westerly side of the Boulton property.

Q. Yes, well take that? A. I figure there would be a drop of at least twenty-five percent. in the frontage value, which would bring it down to \$2,425.

Q. And what on the square foot, did you figure that? A. I haven't got that particular piece worked out, Mr. Hellmuth.

Q. Well then you drop it down to how much? A. To \$2,425. 10

Q. Well when you come to the next property, is the Boulton property?
Q. Yes.

Q. And when you come to the Boulton property what do you drop it there? A. I drop it down twenty percent. below the Toronto Hydro property, an additional twenty percent.

Q. And what does that bring it to? A. \$1,940 a foot.

Q. Well then when you cross Church and you get to what is known as the Ewart property on the other side of Church Street what do you drop there? A. Well I think it is down an additional twenty percent. still; that will bring that one down to about \$1,500 a foot frontage. And I think after 20 that the reduction is much lower in proportion, that it would drop to maybe ten percent. for a couple of blocks and that when you get further down it would be only five percent.

Q. You tell His Lordship that in your opinion there is a general drop from Yonge Street in value going east and that that drop is at its highest point twenty-five percent. from the Canada Steamship till you get to the property that the Hydro were in? A. Yes.

Q. And then another twenty percent. drop when you get to the Boulton property? A. Yes.

Q. And another twenty percent. drop when you cross Church Street 30 and then a gradual decrease from then on but not so great? A. Yes. But owing to the fact that I believe that everybody values this type of land according to its influence from Yonge Street.

BY HIS LORDSHIP: Q. That is the peak, at Yonge Street? A. I would say so, yes. Of course conditions have changed since there by moving the wharves to different places, but at that time in 1926 that was the heart of shipping.

BY MR. HELLMUTH: Q. Now can you show His Lordship on that plan where the Keating Channel is, because it is a long way off? A. No, it is not on that plan. 40

MR. HELLMUTH: We won't take any time about that. I think we might put in this plan, my Lord.

HIS LORDSHIP: If it is of assistance, yes, you may put it in. You have no objection to that?

MR. SPENCE: It is merely put in to show the relation of the properties.

MR. HELLMUTH: Oh yes, there is no question about that.

WITNESS: I understand it is the only plan.

HIS LORDSHIP: It is a plan of the Terminals?

MR. HELLMUTH: Yes.

EXHIBIT "11": Plan above referred to, dated October 1st, 1926, prepared by Speight & Van Nostrand, "Toronto Terminals Railway Co., plan shewing lands required for the purposes of the Toronto Viaduct and works and for carrying out the agreement in respect thereof dated 7th November, 1924, to be taken pursuant to the provisions of such agreement and of Ch. 54 of the Statutes of Canada 1914 and of Ch. 70 of the Statutes of Canada 1924."

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WITNESS: If you want to see that Keating plan, here is a plan; this is a regular Harbor Commission. That is the diversion of the Don River.

BY HIS LORDSHIP: Q. And where is Yonge Street? A. And Yonge Street is here; that is Cherry Street, and Parliament Street. (Indicating).

BY MR. HELLMUTH: Q. Well now you have given some properties that were actually sold and the prices at which they were sold to your knowledge in 1930. What about the Canadian Rail & Terminal Company? A. Well they were properties sold previous to 1926.

20 Q. Oh, not 1926? A. Yes. Or that property I believe was sold in 1926.

Q. Do you know what that was sold for? A. Yes, it was sold for about \$50,000 an acre.

BY HIS LORDSHIP: Q. \$50,000 per acre? A. Yes. There was fourteen and one-half acres in it.

BY MR. HELLMUTH: Q. Where is that? A. That is between Bay and York Street, on the new water line.

30 BY HIS LORDSHIP: Q. Between Bay and where? A. Bay and York. No, it is westerly from York, just starts at York Street and runs westerly on the new wharfage.

Q. Well, how far is that from the Boulton property? About? A. From Bay Street to Yonge Street and then it is about 1,200 feet southerly I suppose. No, it would be more than that, it would be 2,000 feet further south and it would be from York to Bay—oh, it would be from Scott to Bay difference.

BY MR. HELLMUTH: Q. Church to York? A. From Church to York, yes.

40 Q. By the way, while you are speaking of distances perhaps it might be useful to have for His Lordship how far is that from the east side of Yonge Street to the Boulton property? How many feet frontage? A. I think it is approximately 900 feet to the east side.

Q. That is from the east side of Yonge to the west side of the Boulton property? A. From the east side of Yonge to the west side of the Boulton property is I believe 900 feet. I am giving you that in round figures.

Q. Yes. Mr. McBrien, I would like to get some further sales if you know of them, and if you can give me the feet frontage? A. Well I can discuss, I think, practically every sale that has been made on the waterfront since 1926. Some of them were made by outside agents; some of them since

1930 have been made by myself. The only one, and I think the important one, was one that I made last year at the corner of George and Fleet.

Q. That is the new Fleet Street? A. Yes.

Q. When I say new, it isn't quite so new as some of the others? A. That was 70 by 150 feet for \$26,250.

BY HIS LORDSHIP: Q. At the corner of George and Fleet Streets?

A. George and Fleet Street.

Q. How far west? A. That is east, sir. George Street is just past—

Q. About how far east? A. It would be about five blocks east of Yonge Street. That worked out on a basis of \$2.50 a square foot, and that land has 10 no water facilities.

BY MR. HELLMUTH: Q. No riparian rights? A. No. That is a sale which I completed myself.

Q. What was the name of that? A. That was the Harbor Commission to the British-American Oil.

BY HIS LORDSHIP: Q. Another one to the British American Oil? A. Yes.

BY MR. HELLMUTH: Q. Is that street a through street? A. No. It was a blind street. It only ran from Fleet Street to the viaduct.

Q. George Street? A. Yes. 20

Q. Didn't go under the viaduct? A. No.

Q. And you sold it at \$2.50? A. \$2.50 a square foot. No, no, it wasn't a sale, sir, it was a twenty-one year lease.

Q. But on that basis? A. Yes.

Q. Based on the \$2.50? A. Yes. It is considered just the same as a sale though, a twenty-one year lease.

Q. Well, is there any other? A. I know of all the sales that transpired on the harbor front between 1926 and 1927. Certain properties in different sections; also in Ashbridge's Bay. And all of these properties sold during those three years at an amount equal to if not greater than the amount I 30 placed on them in 1927.

Q. And you have explained about there being practically the same values when the land was valued as there would have been in 1926? A. Yes. I also negotiated with the Arena Gardens people for a site on Fleet Street. The deal was not completed owing to the fact that they decided to go up on College Street, for other financial reasons, and the price they got for that piece of property from the Harbor Commission was \$3.25 a square foot. That was on the corner of Fleet and Yonge Street, didn't have any dockage or any water, it was a huge piece of property containing 93,375 square feet.

Q. That is not much bigger than the balance of the Boulton property 40 at '31? A. Oh no, but it is considered a big block of property to sell.

Q. Where is this piece of property that you speak of? A. At the Arena Gardens?

Q. Yes? A. On the corner of Fleet and Yonge—at the corner of New Fleet Street and Yonge.

Q. And what do you say it worked out at? A. \$3.25 a square foot.

BY HIS LORDSHIP: Q. What year was that? A. That was '31, sir.

Q. And what relation would that have to 1926? A. Well there wasn't any—I have stated that there was no increase in sale price of anything on the Harbor Commission between that time; approximately not.

Q. Do you think you would have valued that property at \$3.25 a square foot in 1926? A. I think so. In 1926 the development hadn't got that far east. The new Fleet Street, I think it was water in 1926.

BY MR. HELLMUTH: Q. But assuming that it had been filled? A. Yes, assuming that you had the same land in 1926 as you had in 1931, that is the valuation I put on it at Yonge Street.

10 Q. Now you have spoken of some of these properties that you dealt with as not having any riparian rights? Do you attach any importance to riparian rights? A. Yes, I do. There was very little property on the waterfront that wasn't beneath the control, of either the City of Toronto, the railways or the Harbor Commission, and there was only three or four properties that had these riparian rights, owing to the fact that the rest were all gathered in under a general scheme.

Q. Now just stop there. The property west of Yonge Street, how was that largely owned? A. It was all largely by the railways and by the City of Toronto. The City of Toronto owned several blocks around John Street, 20 the waterworks pumping system and two or three other places there, and the balance of the property to the east was owned either by the city or the railroads. I might say there was no property west of Yonge Street owned by individual owners in 1926.

Q. Now taking properties of the size of the Boulton property, what other property, apart from those owned by the city, or anything like that size, were in private hands? A. There were some, going east, east of Yonge Street, but the Boulton property was the first property in my opinion that was available for purchase east of Yonge Street, owing to the fact that the first one was owned by the Canada Steamship Company which it was hardly possible would 30 be saleable and the next one was owned by the Toronto Hydro Commission; therefore the first possibility of sale in my opinion would have been the Boulton property, and next to that the Ewart property.

Q. So that in your opinion had there been any demand for property, anyone coming for property with such a frontage as it had of 200 feet, the Boulton, apart from the Canada Steamship's you said and the Hydro, those were not saleable, it was the first property available? A. I would think so, yes.

Q. And then the Ewart property after that? A. And then this is the preferable property, because—the Boulton property is the preferable property, 40 because it is close to Yonge Street, and after the Boulton property the Ewart property, and then as you go on down east—

Q. There is very little there except small lots? A. Just small lots, outside of probably the Polson.

Q. Until you get to the Polson? A. Yes.

Q. So that for the purpose of selection there was no property practically for private purchase west of Yonge Street and east of Yonge Street, the Boulton property stood out preeminent, in your view? A. Yes.

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Q. Well then speaking of the coal business, you spoke of this property as suitable for it, and it had been so used of course, we have that all developed, but are the other properties available for that class of business? A. At the present time?

Q. Yes? A. No. Except you go down to the Eastern Harbor Terminal; there wasn't any possibility of getting a site west of Yonge Street for coal business, owing to the fact that the property was being sold to a high type of manufacturing or high type of warehousing business and the coal business was considered, might I say, a nuisance business, they were carrying on that type of development.

10

BY HIS LORDSHIP: Q. So that you had to go to get the coal business property how far east? A. Well you would have to go—the fact of the matter is, sir, you have got to go to the old Fisherman's Island, which is situated at the foot of Cherry Street. Keating's Channel is a mile; it would be a mile and a quarter from this present location.

BY MR. HELLMUTH: Q. Would that apply from 1926 on? A. It would apply from 1926 on, yes. There were a few coal leases given on Cherry Street. There was one coal lease given on Cherry Street to a wharf there but the other ones were only from year to year, with the ultimate intention that coal business and dirty business had to go down to Ashbridge's Bay, they had to get off all property at Yonge Street—

Q. That is that the city was selling and making restrictions? A. Yes. They had that privilege and that right.

Q. Well now in these more recent sales that you speak of and that you have knowledge of, both as a member of the Commission and otherwise, do the purchasers of the land get the riparian rights? A. There are no riparian rights given on any property that is leased or sold by the Toronto Harbor Commission at the present time. The Harbor Commission themselves were only allowed to lease property beneath their control.

BY HIS LORDSHIP: Q. Didn't the new Canada Steamship Company property have riparian rights? A. No, sir. I will explain that to you. It had always been the policy of the Dominion Government not to sell freehold the property on the Great Lakes carrying riparian rights and the Harbor Commission found it impossible to dispose of their land owing to the fact that where it had to be underwritten for bonds or securities the owner of the land became a first mortgage as to the second mortgage of the bondholder owing to the fact that they couldn't buy it outright—or might I say if the owner defaulted the first claim on the land would be in the hands of the Harbor Commission and they found it very hard to dispose of land on the waterfront beneath those conditions. Therefore they went back to the government and they got the government to approve of a scheme that the width of the dock structure was deleted from the transaction; the purchaser is sold the fee of the property adjoining the dock and the property occupied by the dock is leased to him in perpetuity for a dollar a year; that is the width of the dock structure all around the wall is still retained in the name of the Harbor Commission and leased to the tenant for ninety-nine years at a dollar a year. The tenant doesn't buy this in actuality but he does because it is included in the

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value. The reason of that is that if the Harbor Commission or any other public body with the right of expropriation or condemnation required this freehold it is understood that the owner will receive no compensation for his dock and riparian rights in other words that goes to the Harbor Commission, what is called port insurance, that no combine or shipping company can come in here and control the waterfront, because the Commission can come in from time to time and expropriate property.

BY MR. HELLMUTH: Q. You were saying you attached considerable importance, I think you said, to the fact that the Boulton property had these
10 riparian rights? A. Yes. I took that into consideration in making my value.

Q. Now in the sales that were made from time to time by the Harbor Board was it their desire to get rid of their land as rapidly as possible at what they thought was a reasonable price or was it a matter of holding off for higher prices? A. No, the principle of the Harbor Commission is to give service for waterbound traffic to the citizens and shippers of the land as quickly as possible so that it can begin to draw taxes to benefit the City of Toronto; that is actually the principle of the Harbor Commission. They are very anxious to sell.

MR. HELLMUTH: My Lord, I have practically finished with the witness
20 but Mr. Osler may want to ask something. By the right time it is just one o'clock.

HIS LORDSHIP: Then we can adjourn now. I would like to see if we can fix the time we are to sit.

—After discussion His Lordship fixed the hours of sitting from 10.30 a.m. to 1.00 p.m. and from 2.15 p.m. until 4.30 p.m.

—1.00 p.m. Arbitration adjourned until 2.15 p.m.

2.15 P.M. (MONDAY, APRIL 4TH, 1932).

RESUMED:

WILLIAM CARSON McBRIEN—continued:

30 HIS LORDSHIP: Mr. Dempsey, have you any objection to starting without Mr. Spence?

MR. DEMPSEY: No, my Lord.

EXAMINED BY MR. OSLER:

Q. Mr. McBrien, you spoke about the effect on sales of properties on the waterfront of the uncertainty as to the possible expropriation and as to what might happen in the way of development of the property. Do you mean that that had an effect on value or on transactions? A. No, I would say

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that it didn't have any actual effect on value, that the value was still there, but the saleability of the property was a great deal less owing to the fact that this blight of the restriction was on.

Q. When you say saleability do you mean the possibility of actually effecting a sale? A. Yes. The commonsense viewpoint is that a person would not purchase property in there and carry on any kind of development beneath the conditions that existed between 1914 and 1926.

Q. Well then when you found that in 1927 the change had been made so that properties could be disposed of the properties that you had valued began to find a market? A. Yes. 10

Q. And that market was at the values that you have mentioned? A. Yes.

Q. Then do you know on the basis of what in values other coal companies were able to get coal dock properties and storage properties and where in relation to the waterfront? A. Well there was no coal dock property available on the south side of the bay; the closest was on Cherry Street, which is a mile or mile and a quarter further east, and even on Cherry Street there is only one twenty-one year lease, the balance of them are on a lease for one year only, owing to the fact that it was always the intention of the Harbor Commission to confine the coal business to what is known as Fisherman's Island, 20 which is down over the second bridge on Cherry Street.

BY HIS LORDSHIP: Q. Fisherman's Island, you say? A. Yes. That is down about in there half a mile south of Fleet Street on Cherry Street, which is about a mile or mile and a quarter east of Yonge Street.

BY MR. OSLER: Q. And do you know on what basis of valuation coal companies who went to that locality were able to get properties? A. A twenty-one year lease to the Century Coal Company, which I understand has about ten years yet to run, was on a valuation of \$81,968 an acre.

BY HIS LORDSHIP: Q. Where is the Century Coal Company? A. The Century Coal Company is on a dock that protrudes into the bay westerly 30 from Cherry Street.

Q. Can you show us that on the plan? A. Yes, I could. I will have to show it to you on another plan here. This property is here, and our property is here. (Indicating).

Q. About a mile and a quarter east? A. Yes, and it is on the easterly extremity of the bay. And when I speak of Fisherman's Island, sir, I mean this property in here that they had to put a cantilever bridge over here to get to it. They wanted the waterlot up to that part and that is where they brought the other parts. Previous to the time of this development this portion was all a marsh. 40

BY MR. HELLMUTH: Q. When you say "this" what do you mean?

MR. OSLER: I am going to get him to put in the plan. That is the only way to do.

BY HIS LORDSHIP: Q. You said the Century Coal Company is what? A. A tenant of the Harbor Commissioners of that block.

Q. When did they get the lease? A. Ten years to go, that would be about eleven years ago; that would be about 1920.

BY MR. OSLER: Q. What plan is this you referred to? A. This is a plan of the whole harbor front development stretching from the Humber River to the eastern city limits.

Q. Prepared by whom? A. An engineer of the Toronto Harbor Commission.

Q. From the Humber to where? A. The eastern boundary of the city.

MR. OSLER: I will put that plan in to show the general location.

EXHIBIT "12": Plan referred to "Toronto Harbor Commissioners—waterfront development."

10 Q. Well then, referring to Exhibit 12, Mr. McBrien, will you just mark with a letter A the approximate location, and show His Lordship, of the Century Coal Dock, and with the letter B the general location of what you call Fisherman's Island, and just put arrows to show these? A. Yes. (Witness marks).

BY HIS LORDSHIP: Q. That is to say the policy of the Harbor Commission was not to make leases for coal companies excepting out there? A. Yes. But when they adopted that policy there was this one lease in existence and all other leases were—

Q. That is the Century Coal? A. Yes.

20 Q. But they would not grant any additional leases to any person except on Fisherman's Island? A. Excepting on a yearly basis or excepting as the development of Fisherman's Island was completed.

Q. Is that completed now? A. Yes.

Q. When was it completed? A. In 1930.

BY MR. OSLER: Q. Then you spoke about a bridge across the ship channel going across to Fisherman's Island? A. Yes.

Q. Will you mark with the letter C that bridge? A. It is the continuation of Cherry Street. (Marking).

30 BY HIS LORDSHIP: Q. Is there a bridge there now? A. Yes, sir, cantilever bridge.

Q. And when was that put in operation? A. 1930, I think. 1930 or 1931, I am not sure of the date. It took it a year or two to be constructed, it was quite a large job.

BY MR. OSLER: Q. That is the figure that you gave us, an amount per acre of \$81,000 odd? A. Yes. The figure was \$81,968.

BY HIS LORDSHIP: Q. Per what? A. Per acre.

Q. When? A. That would be in about 1920.

40 BY MR. OSLER: Q. That was the basis on which the rental was calculated? A. For that kind of dockage, yes. There were other coal companies in the east end who were on land on the mainland that averaged around \$40,000 or \$50,000, according to the closeness.

Q. Let me ask first about the Century Coal. A. Yes.

Q. What is the rate per square foot that \$81,000 works out at? A. Well it is a little less than three thousand. There are 43,000 odd feet in an acre.

Q. So that was a little less than \$2 a square foot? A. Yes.

Q. Then you were going to mention some other coal companies? A.

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Well there are half a dozen coal companies down in what we call the Ash-bridge's Bay district.

Q. Mark it with the letter D on the plan? A. That takes in the whole area (indicating); it is called the Ashbridge's Bay district.

Q. And approximately where are these other coal companies? A. They were spread along any place they could get accommodation for docks and material on Cherry Street.

Q. And those you say were on leases for a year? A. For one year, yes.

BY HIS LORDSHIP: Q. Why? A. Well owing to the fact that the Harbor Commission eventually intended to turn them out and make them go down to this area where they intended to segregate the coal business, and they allowed them to use that property temporarily until such time as they could get the bridge up to get them down in the new place.

BY MR. OSLER: Q. And on those values what basis were the rentals fixed? A. A dollar approximately a square foot.

HIS LORDSHIP: Mr. Cassels, do you wish to ask any questions?

MR. CASSELS: No.

CROSS-EXAMINED BY MR. TILLEY:

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Q. Mr. McBrien, when did you first consider the value of the Boulton property? A. As an individual property, do you mean, sir? 20

Q. Yes, putting it that way to get started? A. Well as an individual property within the last few months.

Q. Well you say within the last few. How many? A. Three.

Q. Do you need three then, or would one or two not cover it? A. Well I can't remember just exactly the date, sir; it has been within the last three months when I compiled these figures which I have given here.

Q. And of course then you had to fix your value as of six years or five and one-half years before? A. On October, 1926.

Q. Well then you speak of dealing with this property individually. Did you deal with it in any other way at any other time? A. Well, in 1927 30 I placed a value on the southern portion of it that belonged to the Harbor Commission.

Q. That is in connection with the general revaluation that you made? A. The general valuation of the Harbor Commission.

Q. We will deal with that just a little later on, but the first time that you were called in by either the Boultons or the Standard Fuel was within the last two or three months? A. Yes, sir.

Q. And would you just draw a distinction between 1926 and subsequent years as against the earlier time before 1926 and let us know what dealings you had before 1926? A. I had mentioned the only thing that I had, Mr. 40 Tilley, previous to 1926 was the information which was given to me regarding the few sales that had taken place previously along the Esplanade, which was collected by some other members of the Harbor Commission and given to me. I had that as well. The previous sales were very few.

Q. Mr. McBrien, do you mean that these sales were handed to you

about 1927? A. Yes. Well in 1926 I remember I made a valuation of the John Hallam property which was on the corner of Jarvis Street and Front extending back to the Esplanade and I collected some data at that time regarding sales that had taken place in there, and with that and with other general information that we scurried around and collected that is the basis on which we formed our conclusion.

Q. When you say "we" do you mean yourself? A. Yes, I was in charge of it although I was helped by the clerks working with the Harbor Commission.

10 Q. Were you then on the Harbor Commission? A. Yes.

Q. I think you went on there—? A. In 1927.

Q. Now I am getting back to before 1926 and I was wondering what experience you had before 1926? A. Well I didn't have any experience before 1926 other than the valuation that I made of the John Hallam piece in 1926, the early spring of 1926.

Q. How long had you been in the real estate business then? A. Well downtown from 1920, that is in the downtown business areas; I was building and in the real estate business in the suburban sections of the city.

20 Q. Were you a builder or in the hardware business? A. I was in the hardware and the building business up till the war and then after the war I went directly in the real estate business and did some building as well.

Q. Well the building operations that you carried on were what kind of property? A. Mostly small houses. There was one substantial factory on Geary Avenue which we built in about 1913; it was in the northwest section of the city.

30 Q. And I may take it, and I don't want to labor it and I am not minimizing the experience one gets from doing that sort of business, but the fact is that it was in connection with properties quite different from anything we are concerned with here? A. As far as building is concerned, yes. I was what you call a small builder.

Q. Yes, a small builder? A. Yes.

Q. Well then we have to start when you came back from the war to get at your real estate experience? A. Yes.

Q. And I was just wondering what it was prior to 1926 that brought you in touch with this waterfront property to any extent? A. Prior to 1926 just a general idea of downtown properties that one picks up in the real estate business.

40 Q. Well downtown, we usually speak of that being south of Bloor, don't we, for that purpose? A. No, I wouldn't say that; I would say the downtown property is that property you might say south of Queen Street.

Q. South of Queen Street? A. Yes. Especially in 1926.

Q. And north of Front? I mean we never regarded the waterfront property as downtown property? A. No. From Front Street to Queen Street, yes.

Q. And then I am tempted to ask you once more was there anything prior to 1926 that brought you into sort of first hand knowledge of the proper-

ties below Front Street? A. There wasn't anything, any more than I had a fairly good record of the transactions that had happened in there.

Q. What do you mean by a record? You don't keep a record of all transactions, do you? A. No, but from general information that a person acquires from time to time of sales that had been made.

Q. Well one doesn't acquire much information about a class of business that he isn't really giving his attention to, would be my thought? A. Well I think a person who is in business to do business in any particular type of business might from time to time acquire knowledge; in the real estate, the same as law. 10

Q. Well a lawyer sometimes tackles a job without knowing very much about it? A. So does the real estate man.

Q. And I was wondering if you were more fortunate. At any rate the Hallam valuation is as near to any transaction you got in that district?

A. Yes. I picked up quite a bit of knowledge that I had about the previous sales owing to the fact that I made the Hallam valuation.

Q. Whom did you make that for? A. I made it for Mr. Hallam.

Q. For what purpose? A. A reorganization of his company.

Q. That is there was no transaction going to take place on it? A. No, it was a straight valuation. 20

Q. It was to carry into the books of some company? A. I suppose; I don't know just what use was made of it.

Q. And you were never called upon to advise any person as to what money he could safely put into any property in that district? A. Previous to 1926?

Q. Yes? A. No.

Q. Well now then from 1926 on has your connection been, would it be fair to say, wholly from the standpoint of the Harbor Commission of which you were a member in 1927? A. Partly on account of that; I wouldn't say wholly, but largely I think would be the way. 30

Q. Don't let me interrupt you when you are wanting to answer, but largely that? A. Yes.

Q. Well what else would you add to that by way of experience? A. Oh just a general knowledge of real estate values.

Q. To use your own type of expression in another case it was a dead area, wasn't it? A. Yes, it was. It was a blighted area.

Q. That was the word? A. Yes.

Q. A blighted area. And that is rather an important feature to have to consider when you put values on properties, whether it is in a progressive or a blighted area, isn't it? A. Yes. 40

BY HIS LORDSHIP: Q. When do you say it was a blighted area? A. The whole area was blighted there—I would say it was blighted from 1913 on.

BY MR. TILLEY: Q. It was almost blighted from your birth on, wasn't it? A. Well, perhaps.

Q. Not that you had anything to do with it? A. No. But there was little possibility of an actual sale from 1913 on to 1926.

Q. Well, Mr. McBrien, I don't want to go into ancient history, but

nevertheless we must get at how serious the blight is and I am suggesting to you that for a long time prior to 1913 it was a blighted area? A. Well we have sales of property further east on the Esplanade.

Q. Well you get sales of property even in blighted areas? A. Yes.

Q. There are some people who deal in that kind of thing, but they are bargain cases when they deal in blighted areas? A. Yes. But the property was pretty well all occupied.

Q. Well occupied only for coal yards? A. Coal yards, lumber yards. The Polson people had a place, Reid & Brown.

10 Q. When did Polsons go into a state of—? A. I would imagine some place after the war sometime.

Q. And that was a large area? A. Yes.

Q. Do you know how many acres in the Polson Block? A. I think—no, I can't tell you exactly, but it is approximately about the same area as the Boulton property I would say; I think perhaps a little bigger, a little more frontage, but somewhere around there, between two and three hundred feet frontage; I think, I am not sure of that now. I will tell you on the plan, but that is the way it runs in my mind.

20 Q. And how far from the Boulton? A. It would be at least about 1,500 feet east of it.

Q. Now starting with the Canada Steamship property, which we will not consider for the moment, it was what would be fairly described as a blighted area from that property as far east as you could go along the waterfront?

A. From the sales standpoint, yes.

30 Q. It did not require the building of the viaduct to put the blight on the property, it was a blighted property before the viaduct came along? A. No, I don't think that is the final answer, to the question. The possibilities of development were, if the Harbor Commission scheme hadn't gone through, would have been very good to some of that area, because the area would have had to extend easterly from Yonge Street.

Q. That is to say if the Harbor scheme hadn't developed there would have been a forcing of transactions in that neighborhood? A. I would think so.

Q. Due to the large extent to which the railways occupied west of Yonge?

A. Yes, and to the nominal growth of business in the City of Toronto.

Q. To the actual growth? A. Or the actual.

40 Q. And the actual growth never got over in your day or in my day to that property east of Yonge, did it, from Yonge Street clean through as far as you could go along the waterfront? A. No, because the place had a cloud over it, owing to the agreement with the Harbour Commission, from 1913 on, which practically held this property up for thirteen years, and during that period of thirteen years, or at least the period in my own life when things were fairly prosperous in the City of Toronto, outside of the war years.

Q. Yes, but nothing could really equal the ease with which that property remained so during that period of your time. There was no person kept out of a site who wanted one, whom you ever heard of, was there? A. Well of course I am not prepared to answer that.

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Q. Oh no, but you must be prepared to answer if you are going to say—?
A. As far as I know, no. Yes.

Q. Yes. That is to say, in a period that commenced with 1909, if my recollection is right about the orders of the Railway Board for a new viaduct—?

A. Yes, they were completed—I believe it was signed in 1913.

Q. And then the 1913 was the agreement? A. Yes.

Q. But the orders started long before? A. About 1909.

Q. From 1913 it went along till 1925, was it? A. 1924.

Q. Was the new Act in 1924? And then we come to the expropriation in 1926, and I ask you to point to any concern that you heard of during that period of time that was wanting a site of the character we have here and was being kept out of it? A. I don't know of any. 10

Q. No? A. No.

BY HIS LORDSHIP: Q. Well then why do you say, if you don't know of any concern, that it was a blighted area? A. There may have been lots of people apply, sir, for sites that I don't know anything about, and Mr. Tilley is asking me a direct question and my answer is No, I don't, but—

BY MR. TILLEY: Q. There may have been but you don't know of any?
A. Yes.

Q. But, Mr. McBrien, I want to be fair to you, as you will be to me: When you say a blighted area you mean a rundown area, that the property is getting into a state of disrepair, isn't that it? A. Well you hardly have the same quality here, sir, as you would have on the other property that you speak of, owing to the fact that it is a square foot area, it is a storage area and supply, rather than a business block or houses or flats or anything of that kind.

Q. You mean you wouldn't compare it to the south side of Queen Street which was the other property we were talking of? A. No. One is a large property occupied in large blocks while the other is occupied in small individual pieces.

Q. But there was no owner who had a property who was putting a modern building on it which was improving his premises in your day? A. No. 30

Q. Not in your whole life, you know that? A. No, but there was a perfectly good reason why they wouldn't from 1909 on.

Q. There may have been a perfectly good reason, but it didn't seem to need any added reason from the way it had been running before? A. Well that was the reason, whether it was added or not.

Q. Now I just want to get at one phase of your evidence, although it is taking it a little out of order: You joined the Harbor Board in 1927? A. In the spring, February, 1927.

Q. How soon after that did you come into contact with the Poucher-Bosley valuation? A. That was one of the first things I came in contact with after I was appointed. 40

Q. Would we be right in saying February or March or April? A. Yes, in those months, because I know some of my own valuations were put on in those months and I think in a general way they were pretty well completed up by May.

Q. Now, Mr. McBrien, just let me ask you this: Did you do something

by way of valuing that was put in a prepared statement to the Harbor Commission, or was it a verbal matter? A. No, there was on every property, on each individual piece of property.

Q. Have you it here? A. I have some of it here, yes.

Q. Will you let me have it—let me see it? A. I don't think you will understand it; it is in hieroglyphics.

Q. Well it won't be the first time I have been stumped? A. (Producing a plan). This is a portion of it, and then some of it was worked out on detailed plans afterwards.

10 Q. That is to say you took certain plans? Will you mind coming here and just telling me about this, so that we can get it on the notes? What is it you are producing to me? It is a Harbor Commission plan of their waterfront improvements? A. This is a general plan of the waterfront improvements. This is in sections.

Q. And then on this you have got certain figures that you put on? A. Yes.

Q. Is that right? A. Yes.

20 Q. Now I wouldn't want to commit you to all these figures being yours, because something might be done by some person else, but speaking generally they are yours, is that what you mean? A. Yes. As far as the actual marking I don't think the actual marking is mine, because I don't think we marked it on this plan, but this is a plan which was marked up after we had the valuation made, and given to me for a record.

Q. Now, Mr. McBrien, I would have thought there would be a report from you? A. Well it wasn't done in just the same way as what you would pay a paid valuator for, owing to the fact that I was giving it free gratis.

Q. You would have had it in a morocco cover if it had been otherwise?

30 A. Yes. And I had a clerk to put down the prices and I just went over it with him and as far as the compiling was concerned it was all done in the office.

Q. How long did your operation take? A. What do you mean?

Q. Of putting the values on? A. Two or three months.

Q. Do you mean by that you were two or three months making inspections? A. Yes, and compiling my figures, yes.

Q. Was it done by you only or done by you and the Commissioners?

A. No, the Commissioners didn't have anything to do with it; the Commissioners didn't happen to be practical real estate men and they asked me if I would do it.

40 Q. Did you have before you the Poucher-Bosley figures? A. The clerks had in some cases.

Q. No, what you had regarding the Poucher-Bosley with you? A. No, any more than I marked down in a cost figure on that plan their valuation as well. It is in a cost mark, Mr. Tilley; I can read it but I don't know whether anybody else can. It is in hieroglyphics.

Q. Can you give us the code? A. Well I suppose I could, yes. For instance, here—

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Q. Could you take the plan and turn it into figures and then we don't need to bother you for your code? A. Yes.

Q. I will not delay you to do that just at the moment? A. Yes.

Q. But it would shorten it if you could do that? A. Yes, I can do that.

Q. And if you have the Bosley figure there too you could put that one on at the same time, the one in blue and the one in red? A. In the ones that had been previously leased or sold we didn't bother with them, because they had passed out of the picture.

Q. You just took the twenty-one million—? A. The twenty-one million. 10

Q. And you only revalued that then, did you? A. Yes, owing to the fact the other had been sold or leased.

EXHIBIT "13": Bundle of 12 plans, being general plan of waterfront improvements, above referred to.

Q. Now just to be clear about it, that was the first thing you did that brought you in touch with this kind of property; nothing had happened between 1926 and 1927 that gave you knowledge of this property? A. No, not any more than I was carrying on a real estate business.

Q. And was it a case of revising figures? A. I wouldn't say so, no.

Q. What was the purpose of it? A. The purpose of the whole thing 20 was that some of the other Commissioners felt that the valuation was too low.

Q. That is those who knew nothing about it? A. Well they were people who had been on the Commission and certainly have something to do with the policy of sale and the financial structure of the whole thing and they were business men, such as Mr. Hogg and Mr. Mulholland.

Q. I thought you spoke of them as not knowing, but you mean they were in touch with the policy in regard to sales? A. Yes.

Q. And knew the expenditures they were making? A. Yes.

Q. Was it for the purpose of getting out what an ordinary company might call a prospectus to show the good work the Harbor Commission had 30 been doing? A. No. It wasn't that at all; it was a question that there had been an investigation, certain facts had been brought out in the investigation, and as a result of the finding we started to clean house as it were and to remodel the whole organization over from top to bottom.

Q. That is raise the values? A. Well no, if it hadn't been proper to do so it wouldn't have been done.

Q. No, I am not saying that? A. But it was a question of that the whole financial structure of the Harbor Commission was certainly reviewed after the investigation to get as much benefit out of a costly investigation as possible. 40

Q. It was a costly investigation? A. Yes. All investigations cost a lot of money.

Q. So it was to pay for the cost of the investigation? A. No, it wasn't to pay for the cost of the investigation.

Q. Will you agree with me if I put it this way: First there was some criticism of the Harbor Board? A. Yes, there was.

Q. The result of that criticism was that an investigation was held before His Honor Judge Denton? A. Yes.

Q. That in connection with the presentation of what might be called the Harbor Commissioners' side of the case, Mr. Poucher and Mr. Bosley as real estate men were retained to put values on? A. Yes.

Q. For the purpose of showing what value the Commission had in its properties? A. Yes, during the investigation, so that the Judge would know what the assets were, whether the assets were more than the liabilities or the bonds or any way you want to put it.

10 Q. And I am not saying it would influence them but at any rate there would be the view that the point would be to make that valuation look as favorable as it could from the standpoint of actual value in properties? A. Are you speaking of the impression created by the two previous valuations, or of mine?

Q. No, not of you. A. Well I don't know now.

Q. That would be the attitude? A. I can't tell you what Mr. Poucher's or Mr. Bosley's attitude would be.

Q. No. But at any rate I don't want to elaborate that and I am not saying it influenced them, except that it was not decrying the properties?

20 A. Other than they might have a certain viewpoint on that locality, what it was like, as against another man who might think it might be a little higher or another man who might be real enthusiastic about it.

Q. Could any person be got who knew more about that kind of property than Mr. Poucher? A. Well I don't think that—

Q. You don't want to answer that question? A. I don't want to answer that question; I don't think it is a fair question.

Q. You don't think it is fair to ask you? A. No, I think Mr. Poucher is—

30 Q. I am just talking about his experience? A. I am not discussing Mr. Poucher.

Q. No, I am not asking you to discuss him, but I mean wasn't he a man regarded by all as being very much in touch with all these big schemes of improvements and central properties and harbor properties? A. He had had quite a bit of experience, yes; I think far more so than Mr. Bosley.

Q. Oh, yes, Mr. Bosley was the real estate man at the Union Trust Company? A. Yes.

Q. Now, then, how soon after Judge Denton's investigation—I suppose Mr. Poucher gave evidence there? A. I don't know; I didn't follow the investigation.

40 Q. He likely did. How soon after that were you putting these valuations on? A. Oh, within a month, I suppose. I was appointed to the Commission immediately after the investigation or after the finding; I don't know which one, I think it was sometime between the closing of the investigation and the finding.

Q. Now let us deal for a moment with this: You will give me Mr. Poucher's figures and your own if you have them on this in plain figures? You will when we have an adjournment, will you? A. Yes.

Q. Thank you, very much. Now let me ask another thing: Do you in your valuation pay any attention to the harbor improvements brought about by the Harbor Commissioners' scheme? A. In certain things, yes.

Q. As applied to the Boulton property? A. Well, now are you speaking of my valuation now?

Q. Yes? A. Or are you speaking of the valuation of the Boulton property?

Q. I mean the valuation of the Boulton property? A. Well, no, the valuation of the Boulton property was made as of 1926 when there wasn't any harbor scheme out in front at all, nothing but water or mud. 10

Q. And was the Boulton property then in the same condition that it is today? A. No, the Boulton property in 1926 was just the same as it was previous to that time, and then after they took it over in 1926 the wall was built and it was filled in with the sandsucker afterwards.

Q. Now tell me then, had you ever inspected that property in its original condition. A. Well, just in a general way in looking over all the properties. From time to time the Commissioners looked over the Canada Steamship properties and the surrounding properties, at the time they were being taken.

Q. Were you ever down on the Boulton property? A. Yes, I was right down on the Boulton property—right past it. 20

Q. Right past it? A. I wasn't in the buildings of it, but the Commissioners did inspect the freight sheds of the Canada Steamship Company, owing to the fact they intended to move them up the shore into a different location, and we had a general view and inspection of the property.

Q. You don't get much view of the Boulton property from looking at the sheds of the Canada Steamship Company? A. It just depends how much interested you are in it, Mr. Tilley.

Q. You weren't interested then surely expecting you would ever be called upon to value it? A. No, but I certainly was interested as far as any property was concerned in the Commission. 30

Q. Then in 1926 did you regard—I don't say you did it in 1926, but you did it as of 1926; when you were doing that and getting at the value as of 1926 did you treat the westerly (and I mean west of Yonge Street), in the state of development that the Harbor Commission's scheme had it in—? A. The west of Yonge Street?

Q. The west of Yonge Street, or did you regard that as being as it was before? A. Well, I just don't understand your question.

Q. Before the Harbor Commissioners' scheme was started? A. I don't get your question. You mean west of Yonge Street?

Q. Yes? The Harbor Commissioners' scheme did away with the condition that you have referred to as the property being held largely by railways? A. Yes. They pushed out the pierhead line another 1100 feet or something and created another 300 acres of land. 40

Q. Well, then there was a very fine and expensive retaining wall put along on the new line and slips and dockage made available. A. Yes.

Q. Then I want to know when you were valuing the Boulton property as of 1926 did you treat it as a property that was in the condition it had been

without any improvements in that locality and did you treat it as being in competition, let us put it, with the property that was made available west of Yonge Street by the Harbor Commission? Do you follow me? A. Yes. I treated it as though the Harbor Commission development did not go on past say Yonge Street or Bay Street.

Q. Well, of course in fact it didn't, so you needn't talk about that? A. Yes.

Q. But it did go to Yonge Street? A. Well it stopped pretty well at Bay Street.

10 Q. There was a good substantial part of their work done in 1926? A. In 1926 up to Bay Street, yes.

Q. Up to Bay Street, and slipping in to Yonge? A. And the other was only held up on account of the expropriation.

Q. And there was land available though that came into competition possibly with Boulton's? Presume it did, you don't require to be expert to tell us that. I want to know whether you regarded that land west of Yonge Street or at Bay, wherever you call it, as land held originally, as it was, by the railways or did you regard it as land that had been developed by the Harbor Commission and take it as it then stood?

20 A. Well, partly both. The Boulton property has to be considered, in my mind, as though it hadn't been disturbed by the development to the west.

Q. I quite agree; you would say not as it was physically disturbed by the work to the west? A. Yes.

Q. But would you say that as a property in its original physical condition it was then to be compared to property west of Yonge Street that had been developed by the Harbor Commission, that is what I want to get at? A. Well, that is a pretty hard question to answer.

30 Q. You are the one; I want to know how you get at it? A. Well, I will have to add, comparable to what had been paid perhaps easterly and what I consider a firm would pay for that particular piece of property for the kind of business that would be carried on there.

Q. Well, now you have said you took it as comparable with sales easterly. What sales? A. Well, sales that had been made previously along the Esplanade.

Q. Like what? A. Well, there had been sales made around a dollar or \$1.41 a square foot down on the Esplanade further east that didn't have any water with them. One was the Taylor Safe Works at \$1.41 a square foot.

40 Q. We can't absorb it that fast. If you took any properties and based a value on them for the Boulton property I want to know what properties you took? A. I took the general idea of—or the general information that I had at hand. For instance, you had a sale in February, 1926, of the Taylor Safe Works down on the Esplanade at \$1.41 a square foot.

Q. Well, by whom to whom?

A. I think it was purchased by the Taylor Safe Works from the City of Toronto; I am not just sure who the vendor was.

Q. Now, where is that property? A. Well, that is down around Frederick Street.

Q. Of course you will identify it.

BY HIS LORDSHIP: Q. How far east of Yonge would that be? A. I will try to find it, sir. That was on the northwest corner of Frederick and Esplanade, and that is six streets, six blocks east of Yonge Street.

BY MR. TILLEY: Q. Well now, Mr. McBrien, it was on the northwest corner; it was property they occupied and they were buying from the landlord? Yes, I understand so.

Q. And what is the size of the property? A. I think it was 70 by 167, something like that.

Q. 70 feet on the Esplanade, I suppose. A. Yes, on the corner. 10

Q. And now then, was that property in any way comparable or does a transaction of that kind affect your estimate of values. A. Well, it is a comparison on it, yes.

Q. Any other transaction? A. Well, there was the Yonge Street Fruit Market which was sold in 1920 for around \$5 a foot. That was a well known sale that everybody knew about.

Q. Sold by whom to whom? A. It was sold to one of the railways.

BY HIS LORDSHIP: Q. To one of the railways? A. I think so.

BY MR. TILLEY: Q. Well, now where did you get your information about that? A. Well, this is general information. 20

Q. General information but pretty inaccurate? A. Well, I know, but it is a sale there, \$5 a square foot, that has been quoted and practically every real estate man in the City of Toronto could tell you about it.

Q. You treated that as an actual transaction any way and took it into account? A. Well no, it is part of the general information I had in my mind.

Q. Yes? A. Yes.

Q. Anything else, an actual transaction? A. Well, there was some other ones. There was the City of Toronto to the Imperial Oil, it was around a dollar a foot. There was another one to the Firstbrook Box Company and 30 then there was two or three small sales. There was one sale—

Q. I either want a reference to them or I don't want them. Tell us the Firstbrook, that was one? A. That was the corner of Princess Street and Esplanade, the northeast corner.

Q. And how far is that east—? A. That is two streets further east than Frederick Street.

Q. Two streets still farther east? A. Yes.

BY HIS LORDSHIP: Q. About eight blocks? A. Yes.

BY MR. TILLEY: Q. What size. A. That had a frontage of 132 feet 10 inches. 40

Q. By a depth of what? A. I think it was 200 and some odd feet.

Q. Do you know anything about the transaction? Were you in the transaction? A. No, any more than general information.

Q. What is your general information? A. It was sold a little over \$2 a square foot.

Q. By whom to whom? A. From the Firstbrook Box Company to the Imperial Oil. It was a corner property.

Q. Used for what by the Imperial Oil? A. I suppose for oil refinery or storage or whatever—— They had buildings on it afterwards.

Q. They put up buildings on it? A. I think so. I know they had some new buildings.

Q. Anything else? A. No. That is some of them. And then there was the knowledge of what stuff was leasing for on Front Street.

Q. Well, Mr. McBrien, if there is any other transaction that you founded your opinion on I would like to have that? A. Just them.

10 Q. That is the last? A. And the fact that land on Front Street was being leased by the city to tenants at around \$4 to \$5 a foot.

Q. Where? A. On Front.

Q. That is where, up on Front Street? A. Yes.

Q. Would that govern you at all, comparing them with Esplanade. A. Oh, it wouldn't be a comparison, but it is general information of property in that locality.

Q. That is the renewals of city leases up on Front? North or south side of Front? A. Well, along Front Street around \$4 a square foot.

Q. What property do you refer to? A. I had them; I haven't got that with me. There were two or three properties along there.

20 Q. Did you identify any one of them? Eby Blain? A. I have them in my office; I haven't got them here; different properties.

Q. With that addition have you got the list? A. Pretty well.

Q. Well, now you specified there one thing that you had, and we can see what that means later, and then in addition to that you said what a person would pay for a property that could be used for the purpose to which the Boulton property could be used? I think that is the way you put it? A. Yes I took that into consideration.

MR. OSLER: Are you referring to properties he had in mind in 1927, not at the present time?

30 MR. TILLEY: At the time he made this valuation.

WITNESS: At the time I made the valuation.

MR. TILLEY: Not the time as of which he made the value but at the time he made the value.

WITNESS: As of November, 1926.

MR. OSLER: What I meant was he was giving the information as to the properties that he had in mind when he made his 1927 valuation; he wasn't referring to the present?

MR. TILLEY: No, it is the valuation of the Boulton property I was talking about.

40 Q. When you made that valuation you had these transactions in mind? I asked you whether you compared the east to the west of Yonge Street and you went on to tell me in getting at the Boulton value, as I understood you, and if it is wrong correct it, that you had in mind certain transactions that had taken place, that is one thing, and in addition to that what a person might pay for that property who wanted it for the purposes to which it could be put?

A. Yes.

Q. I thought I understood you right. Now we are coming now to the

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purposes to which it could be put and I think you listed them somewhat in this way: Coal, for a dock, for a supply yard, a central heating plant, a grain elevator and a flour mill? A. Or any other—

Q. Or any large manufacturing concern, which rather groups it up, doesn't it? A. Yes.

Q. Now, Mr. McBrien, on the whole, aren't these all of the cheapest kind of that class of property?

A. I wouldn't say that. I told you a steamship company, which is perhaps the high class type that would operate.

Q. That is for a dock? A. Yes, for a terminal company. 10

Q. We will keep that separate then, that is a rather high class thing. Anything else? A supply yard is that cheap class; coal is really in a class it has got a sort of large nuisance value to get rid of it, hasn't it? A. Yes, but of course you had a very short haul there to your heavy business downtown.

Q. Yes, but I am only talking about the class of business now? A. Yes.

Q. And coal is in that class? I mean coal yard is the class of business that an owner would hesitate to put his property to because of the detrimental effect it might have on him getting any higher class of business? Isn't that so? A. Well— 20

Q. If he were wise? A. If he had a whole development, yes. If he only had one individual piece of property it doesn't make any difference to him who goes on it as long as he can get the income out of it.

Q. Yes. Well at any rate if he once puts it to coal purposes he is rather putting it in the list of properties that are not attractive to people who want it for any better purposes? A. No, I wouldn't say that.

Q. I thought you went that far this morning, it had almost a nuisance value? A. No, I didn't say anything of the kind. I stated this morning that the Harbor Commission, owing to the fact that they had huge blocks of land to sell for good clean manufacturing concerns didn't want coal yards 30 in or around these good factories.

Q. Why not? A. Owing to the fact it would have been detrimental to the sale of other properties.

Q. Why? Why? A. Owing to the fact that other people wouldn't want to go in close to it.

Q. Well then I will put it that way. We will put it as a property that has influence on property that would also be available for coal yards, the whole character of the district is rather unattractive? A. Yes, but the owner of this property had his entire property used by coal yard business; he wasn't so much concerned about the other property. 40

Q. No, but I am suggesting to you the fact that he had years before, when possibly he had to do it, put it into coal yard business, he was putting it in the coal yard class and that that was something that detrimentally affected its value? A. No, I wouldn't say that.

Q. You wouldn't agree to that? I thought it was the class of business that when it was carried on in the vicinity rather made properties such that

they could be used only for a second grade sort of thing like coal yards and that sort of thing? A. No, I wouldn't say that.

Q. You wouldn't say that? A. No.

Q. Well at any rate the area going from the Canada Steamships east, you first find the Hydro Electric? A. Yes.

Q. And that consisted of old buildings and—? A. Very substantial large brick buildings.

Q. Of course they had to be substantial and solid, but they were old? A. Fairly old.

10 Q. And then east of that? What was next to that? A. The Boulton property.

Q. And then what was the Ewart used for? A. It had been a coal yard.

Q. The Ewart property, that is on the east side of Church? A. Yes.

Q. And then east of Ewart again? A. I haven't got the details of it and I don't remember; there was a half a dozen concerns down there right down to the Polson Iron Works all carrying on a somewhat similar type of business.

20 Q. Well now so much for the coal yards. Let us assume that the value of this had been a value for coal yard purposes, have you ever had to act in a transaction of purchase or sale of a coal yard or property to be used as a coal yard? A. No, but I have had a tremendous amount of people in the coal business trying to get sites on the bay front for coal locations.

Q. What ones? A. Oh half a dozen, a dozen.

Q. What ones? A. Different coal companies coming in here.

Q. Name them? A. Well I haven't got exactly the names.

Q. I want the names? A. Well I haven't got them here, but I have had people approach me during the last couple of years about it.

Q. I am not concerned during the present time. I want to know if you have had any person wanting to put a coal yard there on the waterfront?

30 A. Yes, I have.

Q. What one? A. Some people—I haven't got the correspondence with me; I have the correspondence in my office.

Q. Then we would like to see it? A. All right, we can produce it.

Q. Any others? A. I have had verbal conversations with people in the coal business in Toronto who came here and tried to get coal sites on the bay front.

Q. Toronto coal dealers? A. Toronto coal dealers.

40 Q. Tell me who? A. A man by the name of White, who was mixed up in the coal company which was—I forget the name of the firm—his name was John White; he tried to get a site.

Q. What company? For himself or for his firm? A. Well for a coal company he was manager of.

Q. What company? A. I haven't the name here. I have it in the office though.

Q. When was that? A. Within the last two or three years.

Q. Within the last two or three years? A. Yes, within the last two or three years.

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Q. You can get those two, they are both in correspondence? A. Yes.

Q. Any others? A. No, but general information from the people who are in the coal business and couldn't get permanent sites on the eastern harbor terminals in that portion of the harbor front.

Q. I am asking whether there are any. If you have any letters I would like to have them and I would like you to produce them if you have any? A. I have some correspondence in the office from these people.

Q. Are they all cases where it came up in correspondence? A. No, they are not. Some of them came in—I know of one particular case that I know I have the correspondence there—

Q. But where you have the correspondence there you will get it, but do you know of any that you had verbal conversation with without any correspondence? A. Yes, I had some that way too.

Q. What one? A. Well I am telling you this man White was one.

Q. I thought you told me his was correspondence? A. No, no, his was a verbal application.

Q. When was that? A. As I told you within the last two or three years.

Q. And you don't know the name of the company? A. No, but I can find out for you, but I haven't got it here.

Q. You are going to let us have as much as you have? A. Yes.

Q. I don't know what you mean by saying that what a person who wanted a coal yard would likely pay. How do you get at that figure? A. I didn't say what a person who wanted a coal yard—all I said, what a person who would want to be located on the waterfront. I am not saying this property could only be used for a coal yard.

Q. You have so many purposes. What was the choicest of these purposes that gave it its highest value according to you? A. It just depends who wants to come to Toronto and wants to locate and wants that particular location; I only told you what the property would be suitable for.

Q. And are we to understand from that that you would find out first what the person wanted to get the property for and that would affect the price that ought to be paid for it? A. Oh no.

Q. Well I would like to know the theory on which you value it, because you are rather in a new field for you, valuing a property on the waterfront? A. Oh no, I had a—

Q. We have had your experience; if there is anything to add to it let us have it? A. No, that is all right.

Q. You never sold any waterfront properties? A. You mean actually on the water?

Q. Yes? A. Well I sold since 1926.

Q. I mean on the harbor front? A. No, I sold since then for the Harbor Commission.

Q. What one? A. I sold to the British-American Oil Company some four hundred thousand odd dollars.

Q. For the Harbor Commission? A. No, I sold it as an agent.

Q. For the owner? A. Yes, after I was off the Commission.

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Q. Who was the owner? A. The owner was the Harbor Commission.

Q. That is what I said, for the Harbor Commission? A. Yes.

Q. Now I do want to get at how you got that value. You have got some instances and then you have what some person who wants property on that location would likely pay and I would like that? A. Well there are certain types of people who desire a location on the water with certain facilities of boat shipment and with rail.

Q. Do you regard this property as a water property, the whole of it?

A. It certainly had the facilities of a water property, yes.

10 Q. Well it had the facilities? Do you say the whole property from north to south is a property on the water? A. Is a property on the water, yes.

Q. Then how do you deal with Lake Street? A. Lake Street is covered in the terms of the agreement that they have the right to tunnel under it or build bridges over it to send their goods from one section of their property to the other.

Q. It is in the agreement, they may tunnel under Lake Street? A. Yes, or they can build a bridge across it and run pipe lines across it.

Q. What agreement is that in? A. That is in the Windmill Line agreement.

20 Q. And did you regard that as a possible scheme, tunneling under it, or did you consider it? A. It is part and parcel of it and it also placed the property in the position of having three frontages instead of one.

Q. Well now, just a moment. You regarded it, Lake Street, that you could tunnel under it or build overhead bridges? A. Yes.

Q. Would it be less valuable if it hadn't that right? A. I wouldn't say so, no.

Q. Well that is to say, when I asked you how you dealt with Lake Street and you say you could tunnel under it or go over it, and then I ask you if you attach any value or importance to it, I gather you don't? A. Oh yes.

30 In the history of the leases, I have read the lease, it gave the owners and the lessee the right to cross such streets by underground or overhead, to run pipe lines through the property for private use, the right to use existing railway tracks, to construct tunnels under the street or overhead bridges, and have the free use of the property until such time as that street is built. That is the synopsis I made up of that.

Q. Did you regard the right to tunnel under it as a right to carry on that way if the street were built? A. Well that is a possibility.

40 Q. Well did you regard that as their right under the document? A. Well I don't think any person would hardly have a tunnel beneath it, but I do think that some of the firms certainly might have put overhead bridges there.

Q. Did you regard, that they had the right to do that as a matter of law, as incident to the property they owned after the street would be opened up and Lake Street carried through? A. I took it as a right, that they had the right of building a bridge from the south to the north, as a convenience, a bridge to bring material over, or if necessary to tunnel.

Q. And that was a right that could be exercised even after Lake Street

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was opened, is that what you mean? A. No, I wouldn't say that—As far as carrying a bridge across the street, yes.

Q. That is by virtue of their title deeds they would have that right?
A. Yes.

Q. Did you attach any value to that? A. No, but it was part and parcel of all the things I took into consideration.

Q. But you didn't attach any value to it though you say it is there? A. Well it is general knowledge.

Q. Yes? A. Yes.

Q. And then you gave other things that they could use the property for; just let me ask you about them; What do you mean by a dock? Was there any demand for properties to be used as dock properties in 1926? A. My answer to that is there has always been a certain amount of demand for dock properties. 10

Q. Tell me any property? When you said dock, I thought you meant similar to the Canada Steamship's. Was there any other concern? Wasn't it a company that had grouped up all the different steamship companies on the lakes? A. There is not anything to say that within a very short period of time there wouldn't be other independent companies operating.

Q. How soon? 20

MR. OSLER: Playfair.

MR. TILLEY: My friend should not suggest. He may know better than the witness but the witness can take care of himself.

A. I am not prepared to say how soon, Mr. Tilley, but it was certainly in the realm of possibility.

Q. But you are putting a money value on it though? A. Well it has potential value.

Q. You have never heard of any inquiry of a steamship company for a dock? A. There had been afterwards. In fact the Harbor Commission had a frontage for dockage for the Gray line when they started to operate. They didn't last very long, but still they were in business. 30

Q. In 1926 there were lots of docking facilities west of Yonge? A. There were some, yes.

Q. Well we will leave that. A. But the dockage facilities east of Yonge Street were all beneath the conditions of the new Harbor Commission.

Q. Well now we will leave the supply yard too; there is nothing special about a supply yard? A. No, any more than it is a short haul for their product to all parts of the city.

Q. Well, Mr. McBrien, it is an uphill haul? A. Very little uphill.

Q. What is the grade of Yonge Street? A. Well it is a pretty gradual grade, it isn't a steep hill as you have along in Seattle or San Francisco. 40

Q. No, we are not dealing with Seattle or San Francisco, we are dealing with Toronto, and is it not so that the importers prefer to get where they are hauling their loads down rather than up. A. I think that is an extreme point as far as Toronto is concerned, because Toronto is practically and Yonge Street is level for all general purposes; it is a grade all the way north, but taking

it on the whole there isn't any severe grade anywhere in Toronto excepting possibly Avenue Road and a few streets like that.

Q. Then the central heating plant, what is your reference to that? A. That is a possibility.

Q. What kind of possibility? A. Well you have a central heating plant now on Fleet Street.

Q. Furnishing what? A. Furnishing the Union Station and the Royal York Hotel. There isn't any reason that the future won't produce maybe a half dozen, say or a dozen such plants in Toronto.

10 Q. That is the only one, is it, in that locality now? A. That is the only one in that locality now but it is a possibility.

Q. And a grain elevator. What is this about a grain elevator here? A. Well you have a grain elevator operating now down there, the first one erected over a period of years, and they seem to be making money.

Q. What one is that? A. Playfair.

A. And where is that? A. It is down easterly from Spadina Avenue.

A. That is to say on the—? A. On the new harbor front.

Q. What is the depth there? A. Oh they had two or three acres there.

20 Q. And what is the depth of water there? A. They have about thirty feet of water there.

Q. What depth of water is there on the Boulton property? A. 12 or 14 feet.

Q. Do you say that that could be worked? A. Yes.

Q. For a grain elevator? A. Well—

Q. Are you serious when you say that? A. Certainly. If you build a grain elevator there your present dockage in that will all be a series of new construction and that will very likely take care of—they would have it to take care of a deepening of the water.

30 Q. I know, but Mr. McBrien, we are at that site now and we are not carrying on that. Where would you think your dock would come? How would you build it or get at it? A. I am not an engineer.

Q. Oh no, but you are valuing a property? A. Yes.

Q. And you are suggesting a dock; I want to know how you are going to arrange your property? A. Well you could have your dock on the Church Street slip or to the west of the Church Street slip and you could extend your land well out there into your waterlot or both.

Q. Would you? What is your scheme? A. I am not an engineer, Mr. Tilley. I don't draw plans for a grain elevator.

40 Q. No, but I understand a person talking about market value, because there is a market value even though he hasn't a market, and he comes to talk about what some person would put on that kind of property and he suggests a dock, I want to know what he knows about the way this property would appeal to a dock man. Now if you are suggesting a dock what is there about this property which would appeal to any person? A. Well the fact that this property in my opinion was really the first property east of Yonge Street that was in a position of sale, owing to the fact that the Canada Steamship was located on the first piece and the Hydro was located on the second.

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Q. Let us put it that way for the moment? A. Yes.

Q. I understood that there was a perpetually renewable lease for twenty-one years in favor of the tenant, the Standard Fuel? A. Yes.

Q. Do you say that was available then? A. Well, I was asked to value this property on the combination of the interests of the owner and tenant combined.

Q. I am not suggesting anything to the contrary of that, but you spoke of this as being available, the first available piece? A. Well, I would say it would be far more available even beneath those conditions than either of the other two properties. 10

Q. It might be more available. Then the first thing is that it can be got, that is one thing that makes it available from a dock standpoint; I suppose if you can't buy it at all that would end that; so you can buy it. What else is there that would appeal to a dock man, a man who wants a terminal? A. The fact it would have room for development out in your waterlot.

Q. What depth of water would you, if you were a dock man, think the Welland Canal would have, deepened? What is the depth of the Welland? A. It has to take about thirty feet of water, and the depth of your western gap at that time was about twenty feet.

Q. But that is being taken down? A. Gradually. 20

Q. As is needed? A. Yes.

Q. And that is why at the Playfair there is some thirty feet of water? A. There are portions that are less, that have only thirteen feet of water.

Q. But that is to take care of that? A. But you have some sections in front of the bay front construction which has only fourteen feet of water until you get down to rock.

Q. I don't want to touch rock too soon; I am coming to rock, if you will let me? A. Yes.

Q. Where is the rock at the foot of the Boulton property? Take the south limit of the Boulton property and then on the waterlot if you like, how far is the rock from the surface of the water at Boulton's property? A. You have about fourteen feet out there of water. 30

Q. At the south limit? A. At the south limit.

Q. Of the waterlot? A. I don't know. I haven't got these figures.

Q. I just wanted to know. Have you made a study of that to find that out? A. No. I understand there are people that will prepare all these. I am not an engineer.

Q. Then you say that any information as to whether it could be used for a steamship terminal you would have to leave to others? A. Well, now I think— 40

Q. All you know is there is water in proximity and therefore—. A. I have heard what the figures are but I can't quote them.

Q. But, Mr. McBrien, you didn't put your judgment to bear on that; you have taken what others told you about it? A. When I want to know something about engineering I always go to an engineer about it; and when I want to know anything about law I go to a lawyer.

Q. I don't know that you always do that? A. Well, I try to.

Q. But possibly you should? A. Yes.

Q. Just following that for a moment, did you go to some person to find out whether this could be made a steamship dock? A. Yes.

Q. And you were told that it could be? A. Yes.

Q. And that is all the basis you have for that? A. Yes.

Q. Well then, that is not your judgment, so we will leave that grain elevator. Then a flour mill. What sort of flour mill are you going to put there in these days when the flour mills do it in such quantities as they do and ship it in the way they do? Are you serious about putting a flour mill on the
10 Boulton property? A. People said the same thing about a grain elevator. They told me for years you would never have a grain elevator in the City of Toronto. Well, you have one at the foot of Spadina Avenue.

Q. Is that the answer? A. Yes, that is the answer; there is a possibility for everything.

Q. It is the consensus of opinion there cannot be a grain elevator, but you say that there is? A. It is a reality; it is here.

Q. Mr. McBrien, do you realize that if the consensus of opinion is that there will be no grain elevator in Toronto it does not give much by way of added value to property to say some person may want it for that purpose?

20 A. Oh, I wouldn't say that.

Q. If the people generally think there will be no such thing come that won't give any added value to the property? A. The fact that one has come and operating with success is a great help to insure the possibility of something else.

Q. You know about the success, do you? A. From appearance, yes.

Q. What do you mean? Do you know about the success or do you not? A. As far as rumors on the street are concerned.

Q. What are the rumors on the street? A. That it is going over and that it is full of grain, that it is doing its job, that it is getting by, which is
30 pretty good for any ordinary concern these days.

Q. That it is full of grain? A. Yes.

Q. Then do you regard the property as one that you would have to put expensive walls around for dock purposes, or do you know? A. I would say yes. I would say a person buying that property would extend the area that is now land out into the water.

Q. But you don't know just how? A. No, that is an engineering job. The land is there to be developed beneath some particular scheme.

Q. And do you mean a passenger terminal? A. Not necessarily a passenger terminal. It might be a passenger terminal if the business justified it.

40 Q. How many tracks were there to go over when you passed over to the Boulton property? A. There was two rights of way off the front of it.

Q. I mean to say how many tracks did you have to cross to get out the Esplanade? Do you know? A. No, I don't know.

Q. Well, from the valuation which you say you did of this property I gather you attached no importance one way or the other then to Lake Street being open or closed? A. Oh yes, you had in reality two distinct pieces of property; a person couldn't build over Lake Street though they had the use

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of Lake Street until such time as the city desired to open up the street. Of course there was a possibility that the street might never be opened out, but still no person would ever put a structure on it.

Q. And at the time you made the valuation of the Harbor Properties embraced in the \$21,000,000 of land according to Poucher and Bosley, you raised that to \$28,000,000 I gather. A. Yes. Approximately, yes.

Q. That is you just got it a third higher? A. No.

Q. Well, that is the result?

A. No, that isn't the answer at all. I didn't go along and say, Well that is \$100, we will raise it up to \$133. In some cases the property was left the same and other places it was raised five to ten percent or thirty percent or one hundred percent. 10

Q. Well, some places it would have to be rather a big jump? A. Well—

Q. But on the whole it was thirty-three and one-third percent over Poucher? A. Yes, higher.

Q. Were they wanting to issue bonds at that time, the Harbor Commission? A. No, the bonds are issued on the strength of the guarantee issued by the City of Toronto.

Q. Did they want to issue bonds is the question I am asking you. A. To a certain extent, yes. They had to get—they had to arrange another four or five million dollars at that time. The bonds of the Harbor Board are not sold on the strength of their holdings there; they are more sold on the strength of the guarantee of the City of Toronto. 20

Q. I am not asking whether it is more or less on the guarantee, but I am suggesting to you that here is your attack made on the Harbor Commission and the value of their property and they were in the market to get something and they had to make a value, and that real estate people made a value in 1926 for the purposes of the investigation and then they hand it over to you and you put it up thirty-three and one-third percent higher? A. Excuse me, Mr. Tilley the Harbor Commission didn't go into the bond market to sell bonds; any additional money they got in after 1926 was raised on the strength of the guarantee of the City of Toronto and sold by the city themselves. There was no bonds sold after the first allotment of twenty-five million. 30

Q. There were none sold at the time of this valuation by you? A. There was none sold afterwards as harbor bonds.

Q. I thought that was between the first and second issue of bonds? A. No. The second amount of money that was given the Harbor Commission to complete their job was a grant covering a period of years given to them by the City Council of Toronto and not secured by the sale of bonds.

Q. Well, now then, just let us look at it from another angle: The value that you put on this property is just short of \$396,000, isn't it? A. Yes. 40

Q. And that works out at \$3 a square foot for the dry? A. Yes, \$3 a square foot for the dry; \$1 a square foot for the water, and an average value for the whole thing of about \$1.90.

Q. And is that the way you have valued it, three for the dry and one for the water? A. No.

Q. Or did you just divide it up to see how it worked? A. No, I worked it three or four ways.

Q. I know, but did you get at the total and see what it meant per foot or take it per foot and then get the total? A. No, I took it into consideration.

Q. I think it would be either one or the other? A. No I worked it out from the whole three angles. I didn't just go and put a price on it and then divide it up so that it would work out.

Q. No, I was just wondering how you would get \$3 a square foot.
10 What do you compare it with to make it \$3 a square foot for the dry land?

A. Well, that is my opinion what the land was worth in 1926.

Q. Why not \$2.50 or \$2? A. Because I figured it was worth \$3.

Q. Can we not get at it any closer than that? A. I don't think so, no.

Q. Mr. Osler suggests you would say four. Is that right? A. No, I think four would be too high

Q. Why? A. Owing to the fact of its small distance from Yonge Street— Well, you might just as well say why isn't any property twice its value in the City of Toronto?

Q. I know, but I am wanting to know how you get at its value, whether
20 it is twice its value or half. If you had said \$4 how would I check it any more than if you had said three? A. On the general condition along the waterfront, that is what I considered to be a fair value.

Q. Mr. McBrien, I am going to put just that question to you: Have you anything at all which you can say by way of justifying \$3 as distinct from \$4 or as distinct from \$2 per foot, or do you rely on it that it is just your opinion? A. No, no, we have sales on the waterfront of property since 1926 that have certainly justified that to my mind.

Q. Well, what property since then? A. Well, there is lots of sales. There is a sale that was made to the Imperial Oil Company just west of York
30 Street on the gore, \$4.60 a square foot; that is a very nice sale at a very nice price.

Q. When? A. In 1930 or 1931 I think.

Q. 1930 or 1931? A. Wait a minute. That sale was in 1930.

Q. Did you use that transaction? A. No, but I had that in my mind just as well as I had all the other transactions down there.

Q. Well, very well then, let us know any others; just list them. There is the gore? A. Yes.

Q. What size is the gore? A. It contains 7,611 square feet.

Q. And how is it for streets? A. It has a street on two sides of it.

40 Q. And what is the property used for? A. Gasoline service station.

Q. Well now, Mr. McBrien, just let us touch that for a moment: How many properties do you know were reserved, or was there a limit placed by the Harbor Board on the number of gasoline stations they would admit into that district? A. There was west of York Street on the old plan, but this station was sold after they registered the new plan and that other policy was the policy of the old Commission, it wasn't the policy of the new Commission.

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Q. Were you on the new Commission? A. Yes.

Q. Or the old? A. On the new.

Q. You refer to yourself as the new? A. Yes. There has been one newer one since.

Q. You are not the newest? A. No.

Q. But you are new? A. Yes.

Q. When you say the earlier Board did that what did they do? Tell us what rule they established first? A. They set aside certain properties there; they stated there would only be so many gasoline stations between a set area.

Q. Would it be right to say three? A. No, it would be more than that; I think it was four or five.

Q. There was a limit placed? A. There was at one time a limit, but the policy that I was in favor of was anything you could sell to get rid of it and get the price for it.

Q. When did you go off the Board? A. 1930. June 1930.

Q. Was this property sold in your day? A. It was sold before I went off the Board.

Q. And how long had it been available for sale? A. Well, that street had only been through about a year. I think that plan of the new street was approved in 1928, that is, to divert Fleet Street northerly.

Q. I am suggesting to you that the opportunity of getting one of the choice sites for a gasoline service station gave great value to the property? A. No, I wouldn't say that.

Q. That was one of the opportunities of the Commission to charge a good whacking price? A. No, I wouldn't say that. I would say this, that those men in the gasoline business estimate the gallonage that can be sold in any one particular site and they pay in proportion.

Q. Then this is not just the value of the land but there is an opportunity to deal with them on, can we say, a special basis? A. No, if traffic going past makes it more valuable for gasoline people it makes it more valuable for automobile people or anything else.

Q. Of course, and I am suggesting to you that that traffic is there for that development and that traffic is not for Boulton? A. No, it isn't there.

Q. Where is the traffic in front of Boulton's property? Trains going up and down the tracks? A. Yes, but that is only one of the considerations you take into consideration, Mr. Tilley; the Boulton property had dockage, it had a wharfage.

Q. Oh, wonderful dockage and wharfage? A. It had waterfront where you didn't have that on some other property at all; it was just a block of property in a brand new development.

Q. But it hadn't become known to some person that it presented such very special features. But at any rate, you don't compare that to this gasoline filling station? The gasoline filling station place had a tremendous traffic? A. To a certain extent, yes.

Q. Well, what street is it on? The main street passed it? A. Which, the filling station?

Q. Yes? A. It is on the corner of Fleet and Harbor Street.

Q. Is it Fleet, the street in Toronto which has the most traffic now?

A. Well, I wouldn't say the most traffic, but it certainly does pretty well.

Q. Well, now we have that property. Any other property? Did you take that into account? Now really are we to consider it? A. That was part of my general knowledge of values, yes.

Q. I know, but would you say : Now here is that property that was taken for a gas filling station at that point and I think that property is worth probably a third more than down here at Boulton's? Is that the way you got at it? A. No. It is a question of having a general knowledge of values all along there, and where one had railway facilities and the other had dockage and the other didn't have either it is a question of common sense after all.

10

Q. Well I don't know, I musn't belittle your particular work? A. No.

Q. I am trying to test whether it is commonsense? A. That is all right.

Q. Now what rate did that work out per foot? A. \$4.60 a square foot.

Q. What was the total price? A. \$35,000.

Q. Well now let us see: Just here is a property of that size on those streets and you say that that is part of the knowledge that you would bring to bear in getting at Boulton value? A. Then right close to the property I arranged
20 a sale with the City Council for the much disputed police court building next to the Harbor Building.

Q. It wasn't disputed, was it? A. Very much, by the solicitors, sir.

Q. Do you mean they didn't want to go down there? A. They didn't want to go down there.

Q. Let us get at that. That was a transaction which was proposed and never went through? A. It was signed, sealed and delivered.

Q. It never went through? A. No.

Q. The money paid and returned? A. Owing to the fact that the Harbor Commission are under certain obligations to the City Council they
30 allowed them out of it even though the deal was all signed and cleaned up.

Q. But then it is really a case of taking money out of one pocket and putting it in another? A. I know, but that would be a good reason to buy it extremely cheap.

Q. Or a good reason that you had of selling some down there at a good price average I should think. I would have thought you would have had more cunning than that. Possibly you are trying to pose as an innocent gentleman?

A. No, I am not innocent; I don't even pretend to be innocent.

Q. When you have acres and acres for sale, and you think it was not a good thing for the Harbor Board to make a good price to itself? A. No,
40 that statement is unfair.

Q. That is what you said? A. No, that statement is unfair.

Q. A reason for making a cheap price? A. The fact that the Harbor Commission from time to time had to approach the city for certain things induced them to make a lower price to the city than they had given to anybody else, and also the fact they wanted the building down there to attract more people to the waterfront development.

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Q. Did the T.T.C. buy a property in that same neighborhood? A. A couple of years previously, yes.

Q. The Toronto Transportation Commission? A. Yes.

Q. Where did it buy? A. Corner of Queen's Quay and York Street, they bought one, and they bought another one—

Q. I mean beside this one? A. Beside this one?

Q. Yes? A. No, they didn't buy any other.

Q. No, the Toronto Terminals, did they buy another property besides this? A. Early in 1926, yes.

Q. If you don't mind I would like to keep close to 1926. A. That is 10 all right.

Q. I was wondering whether you objected to my going back to 1926? A. And also I want to point out to you that that was the first decent sale or big sale down around the Harbor front property.

Q. I know, but we haven't had any sale at all down around poor old Boulton in your lifetime? A. No.

Q. Now tell us what that was? A. It was west from York Street on the waterfront.

Q. On the waterfront? A. Yes.

Q. And what was the price? A. \$50,000 an acre. 20

Q. What did that work out at? A. I think it was fourteen and one-half acres, as near as I remember.

Q. What did it work out at per square foot? A. I think it was fourteen and one-half acres.

HIS LORDSHIP: Is this a sale to the Toronto Terminals?

Q. Now, Mr. McBrien, you are just sort of playing with me, seeing that I don't know where I am at? A. I wouldn't think of playing with you.

Q. Now just cross York Street; let us get the property just across York Street, we will come to this other property which is down there on the front, but on the opposite side now from this police station that you talk about, 30 there is a property which was got by the Terminals, was there not? A. No, across from this police station you have Yardley's.

Q. And north of that? A. And north of that you have a property—

Q. The steam plant site? A. Oh, the steam plant site.

Q. Yes? Now tell us about that, now that we have reached that? A. That was a sale; sold to the Terminal Railway Company. I was thinking of the Terminal Warehouse when you spoke before.

Q. So was I? A. That was a sale again to them previous to the time that any arrangement had been made regarding the repurchase of land on the waterfront. 40

Q. What do you mean by repurchase? A. Well in the original agreement the Harbor Commission had to purchase back from the Terminals Railway all the tag ends south of the viaduct and they sold, as near as I can remember the actual price of it was \$80,000, I am not just quite sure of the exact figure but it was I think a little more than that, and then it was brought down to that price.

Q. Yes, and that worked out at what? A. I think it was around

\$65,000 an acre; I am not quite sure of the acreage that was in it. I know the total price of that sale was about \$90,000 approximately, because that sale was used in the general saw-off in the settlement between the Harbor Commission and—

Q. Do you disregard that sale because of some circumstances? A. I certainly do.

Q. What are the circumstances? A. The circumstances were that the Harbor Commission would eventually have to purchase a lot of property back from the Terminal Company and it wasn't wise for them to establish 10 too high a price until such time as they had the property back.

Q. Then you think that they fixed a price there to keep down the price of land in the district? A. To a certain extent.

Q. Really, with all the land they had for sale? A. I was on the Commission when that deal went through.

Q. You say then that you fixed a low price when you had so much property for sale? A. Yes, but we had to buy the tag ends on thousands of dollars' worth of property from the Terminal Company people later on.

Q. I know, and you had hundreds of thousands of dollars of property to sell, too? A. Yes.

20 Q. Where they were taking it for the viaduct? A. Yes.

Q. And were you on the Commission when Mr. Poucher was appointed to fix the price arbitrarily so to speak between you all? A. For the whole thing?

Q. Yes? A. Now just a minute, I don't think that he did.

Q. Well for the electric light site? A. We had Mr. Cousins on that committee looking after our interests.

Q. For the electric light property? A. The Hydro property.

Q. Did you have Mr. Poucher making an adjustment between all the owners, the railways—? A. No, we had some say in that too.

30 Q. Do you mean to say checking Mr. Poucher? A. Checking everybody.

Q. That is to say when you and others agreed to leave it to Mr. Poucher as you and the railways and so on did leave it to Mr. Poucher—? A. Yes.

Q. You say that you had a hold on Mr. Poucher to control the price that he fixed? A. No.

Q. That is what you are suggesting? A. No, that is hardly fair.

Q. I should think it is very far from fair or accurate? A. No, just a minute. That was a very complicated deal owing to the fact that there was certain leasehold rights there that certain people had forgotten to renew; 40 the Harbor Commission were the owners of the fee, but the Harbor people—

Q. I am not talking about the renewal at all, I am talking about the value of the property, and did your Commission—? A. I believe they did, yes.

Q. Well then why not be frank about it and say so instead of beating about the bush? A. Well I want to get these things clearly in my mind.

Q. Certainly, very well. Then I am asking you one further question? A. Just give me that in with the others.

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Q. Yes? A. When you asked me first about it I thought you were referring to the general settlement of properties south of the viaduct, which was looked after for us by Mr. Cousins.

Q. Just to be clear about it, I am talking about the block, and it is quite a large block of property, right between the Canada Steamship property—?

A. Yes, I know where it is.

Q. And the Boulton property? A. Yes.

Q. Right next to the very property we are now dealing with? A. Yes. Well all right, I know what you are talking about now.

Q. And you were then a Harbor Commissioner? A. Yes. 10

Q. And the Harbor Commissioners and the railways and the Terminals and the city and all there have a lot of properties that have to be dealt with, they are taken by the railroads and they are taken by the Commission and the Commission selling some to the railways, and so on, and they leave it to Mr. Poucher to fix a value to them, left the control over it, didn't they? A. Yes.

Q. Now then I am asking you one thing more: Did you in those circumstances have such a position that you were able to control Mr. Poucher?

A. No. No, I didn't have anything to do with that particular deal.

Q. And he did fix the value, did he not? A. Yes. To a certain extent, yes. 20

Q. And it was adopted by all? A. Yes, but there were certain things that had to be taken into consideration there owing to the fact that the Harbor Commission had to buy back the surplus land south of the viaduct.

Q. Well, Mr. McBrien, can you suggest any case where you are apt to get a fairer value fixed for property more than the case where some are both buying and selling and others are buying only and these big corporations all say "Leave it to Poucher?" A. I don't think the Toronto Hydro deal has anything to do with the values down there.

Q. It is a transaction? A. Certainly.

Q. It shows first who the parties thought was competent to fix values? A. Yes. 30

Q. And secondly it is right next door to the Boulton property? A. Yes. But the fact still remains that the Harbor Commission were not selling an entire property, they were only selling a small portion of their holdings to the Terminal Railway Company.

Q. Well the situation can be discussed? A. All right.

Q. Well now we have that property. Will you tell me was the Williams property such that you would know about it? A. Yes.

Q. Was it close to this property? A. Yes.

Q. I am now talking about this police station property? A. It was a 40 piece of property, just the same as the steam heating plant, that was up against a viaduct with a high fourteen foot bank along the whole thing and along the whole side of it, it was a triangular piece of property at the corner of Bay Street. I think that is the property you are referring to.

Q. Yes? A. And it was a similar property to the property sold for the heating plant. It was another gore; it was one gore on Bay Street and a

gore on York Street; and it wasn't a property that would be of very considerable value among ordinary concerns.

Q. Well, Mr. McBrien, land there has a value? A. Certainly.

Q. And I am just suggesting to you that transactions of that kind better illustrate value than some other transactions—? A. No, I don't think so.

Q. Where they went on for a gas filling station? A. I don't think so, owing to the fact that you were in a very peculiar position; you had a piece of property that was a three-cornered piece of property close against a high embankment created by the viaduct, and it would be very doubtful if such property would be saleable.

Q. Great publicity? A. Great publicity?

Q. Yes? A. Oh no, I wouldn't say so.

Q. You think not? A. No.

Q. That is with the viaduct there overlooking it? A. Well there wouldn't be anything from the viaduct to any great extent.

Q. Wouldn't there? A. No.

Q. Other people attach values and they say you are taking away our value? A. I think it is pretty far-fetched.

Q. Well that is the way we get it; we get it both ways you see. Is there a highway between that property and the viaduct? A. Yes sir— Between which property?

Q. The Williams? A. No.

Q. Will you look at your plan and see? A. I haven't got my plan here. I think you have the plan.

Q. (Shows witness a plan). Have you it? A. No, I don't think I have the plan of that particular piece here.

Q. Does that refresh your memory, Mr. McBrien (showing a plan)? A. That plan was entirely changed afterwards. That is not the present.

Q. You mean it wasn't laid out according to that plan? A. No. It was changed. That is the old plan.

Q. I am told that it was that way, according to that plan, with a street to the north at the time it was sold? A. Well I can't dispute that but as far as I understand the property there wasn't any street to the north. Bay was—

Q. In the final workout? A. Yes.

Q. Do you know what that sold at per foot? A. I think it sold for \$65,000 an acre, as near as I can recall that.

Q. That is about a dollar and a half? A. Yes.

BY HIS LORDSHIP: Q. You say that is the Williams property? A. Yes. But that was also a dicker with the Terminal people.

BY MR. TILLEY: Q. It fronts on Bay Street? A. Yes. A corner of it; it is right up against the viaduct, just as you get through the subway.

Q. Well, Mr. McBrien, wouldn't you agree that as between Bay and Yonge Bay Street is equal in importance if not more important than Yonge?

A. Beneath the present development I say it is just as good, yes.

Q. Bay as good as Yonge? A. Yes. But you have to take into consideration that development has been transferred to there owing to the fact

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that the development was carried on largely west of York Street before the development was completed—

Q. Mr. McBrien, what I am asking you that for is just to bring out that very point, that that all takes away from the Boulton? A. I wouldn't say so, no; I would say the value was still there.

Q. The value might still be there, but here is Yonge Street, which I understand you emphasized this morning, Yonge Street is the key? A. As of 1926.

Q. As of 1926, let it be so? A. As of today perhaps not.

Q. What would you say is the key today? A. I would say that the key 10 as is is Bay Street; I would say as will be is Yonge Street.

Q. You mean by that what? A. I mean owing to the fact that you had a development to the west it more or less improves the position of Bay Street today which when the development goes further easterly will eventually be transferred to Yonge Street.

Q. Well, Mr. McBrien, that is really saying that of course everything is going to swing back. I thought when you went west you went west and kept going? A. No.

Q. That is not true? A. No.

Q. Then I am misinformed? A. You are misinformed if you think 20 that.

Q. That is to say you have a sort of idea that Yonge Street east is going to pick up and be so improved that Yonge Street will again become the center?

A. Yes.

Q. And it will be because of things on the east of Yonge that will make it the hub? A. By a development which is bound to come east of Yonge Street.

Q. How soon? A. If I could tell that I could make a million.

Q. Well I was just trying to see if I could make the million? A. Well I 30 couldn't, I haven't any control over conditions, but if Toronto had gone ahead as it normally had during the past ten years it would come very soon.

Q. I know, but, Mr. McBrien, things do not just move that way, and I should think that any person who could foresee that east of Yonge Street was going to build up to Yonge in a way that would again make Yonge Street the center he could make a million, and a good many millions, because the public will be a long time thinking that? A. As long as you have your big buildings on the corner of King and Yonge and your development down there and your Customs and Post Office, you are going to have Yonge Street a very important and THE important street of the whole city.

Q. But you have got to wait till traffic starts again? A. I know. 40

Q. And there is no sign of it yet? A. This is just a little splurge for a few years, because this property hasn't been developed.

Q. Really I don't know what you mean by just a little splurge, but do you think that I will ever see it? A. I don't know how old you are, Mr. Tilley.

Q. Well sixty-four? A. Well it just depends how long you live.

Q. Well how long will I have to live? A. Well I wouldn't like to say that; I would like to see you live a long time.

Q. Because I would like really to see your forecast come true so that I could have confidence restored in you? A. I kind of think you will.

Q. East of Yonge Street on the waterfront? A. I am speaking of at Yonge Street and to the east.

Q. On the waterfront, you mean below Front? A. Yes, I don't think the people appreciate the development you are going to have on the waterfront in this city.

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10 MR. OSLER: Come up to our office and take a look at it; it looks very much different to what it did some years ago.

WITNESS: I am very much sold on it myself.

Q. Well I should think so? A. And you would.

Q. What state is it now? A. Just in a state of construction.

Q. But not in any state of—? A. In a state of development.

Q. But it isn't in that state today? A. Oh yes it is.

Q. Nothing is being done? A. So is property all over the City of Toronto.

20 Q. Oh no? A. Oh yes, Mr. Tilley, there is very little building going on anywhere, in the City of Toronto anywhere today, but an odd few little houses.

Q. Now, Mr. McBrien, in recent times we have had some very large buildings going up? A. In the business section downtown, yes, a certain type of buildings, for office buildings only.

Q. Let us take the British-American Oil property which you spoke of? A. Yes.

Q. You said there was a dockage there of 600 feet by 68 feet in depth? A. Yes.

30 Q. And there it is, leased space at \$60,000 per acre, is that what you said? A. No, \$60,000 value for the whole thing. It is not on an acreage basis.

Q. No, quite? A. It is based on a value of a hundred dollars a foot frontage; 600 feet would be \$60,000.

Q. And what depth of water there, do you know? A. There is only— In that agreement it distinctly states that the tenant cannot ask the Harbor Commission to go a depth of more than 16 feet below elevation 245.

Q. Well then does the deal also require the Harbor to provide them with something deeper than that? A. To a certain extent, yes.

40 Q. Well what is the bargain, because I am told that there are other considerations besides just the turning over of that dockage? A. Well if it had got so that the dockage—owing to the fact that they don't want to deepen the Don channel any deeper than it is at the present time for lots of reasons,—if it got imperative that they should have boats drawing a deeper draught of water that they would make an arrangement that they could get dockage at some public dock.

Q. Erected by the Harbor Commission? A. Well they would have to

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pay on a gallonage system or pumping system of some type after that. These people have taken over the lease and have developed.

Q. How far is that from the Boulton property? A. Oh that would be a mile and a quarter.

Q. And it is all dockage property? A. No. It is between the dock wall and the street, it is very narrow at that particular place, but you couldn't call it all dockage.

Q. Was the property owned by the British-American Oil before? A. No.

Q. Didn't they have property there? A. They had property to the north of it.

Q. From 1904? A. Yes, they had leases on certain lots away back to—

Q. And this was to get access to the water? A. To bring boats in with oil. Previous to that time they were strong advocates of bringing it in by rail.

Q. And when did that scheme of bringing in oil by water rather than rail commence? A. Oh I would say '26, '27 or '28, somewhere along there.

Q. And that was a distinct development in oil, wasn't it? A. In itself, yes. Well of course the oil business has developed very rapidly during the last two years all over.

Q. Well now then at the same time that they made this transaction with regard to the dockage did they acquire their property that they had been holding before under lease? A. Yes; I sold them that too.

Q. At what price? A. \$22,500 an acre.

Q. What did that work out at? A. Well that would work about fifty cents a square foot.

Q. And how far was that from the other property? A. That was across the street to the north; it didn't have any dockage or any means of transportation—any means of water transportation.

Q. How close was that to the water? A. What do you mean?

Q. How far from the water? A. Well the street is 200 feet wide. 200 feet wide and 68 feet, that is to say there was 68 feet removed; they bought their property before they took the dockage; it was all cleaned up at the same time.

Q. It was all part of the one transaction I am told? A. No, they started out to buy the property months before they took their dockage.

Q. They might have started out to buy—? A. We closed it altogether. Even if they hadn't bought the dockage they would have bought the other property at \$22,500 an acre.

Q. And that is what a square foot? A. Fifty cents a square foot. And I think that shows the relative values between land at Cherry Street and land up town.

BY MR HELLMUTH: Q. What do you mean by up town? A. Oh around Yonge Street and Bay Street.

BY MR. TILLEY: Q. Well that is pretty far down east possibly. Was there a dock wall there? A. Yes, there was.

Q. What width? A. Well I couldn't tell you that.

Q. Was that built by the Harbor Commission? A. Yes, it was a

diversion of the Don River; when the Don River used to run straight down into Ashbridge's Bay they diverted it with a straight turn westerly and that is what they call the Keating cut.

Q. And they have made use of that? A. That is the only place they have to tie their boats up there.

Q. Yes? A. Yes.

Q. Is that lease on the same basis as west of Yonge Street on the harbor front by the Harbor Commissioners? A. Well instead of just conveying the width of the dock like they do there, they lease the whole thing; there is no
10 sale of the rear lot land at all, when you might come along and say we will take twenty-five feet off and we will leave you twenty-five, they give you the whole thing.

Q. Take the situation west of Yonge Street, and you referred to the riparian rights; I would like to know just what your view is with regard to the riparian rights west of Yonge Street on this new Harbor-front. How do you deal with it? You said this morning and I gathered that there were no riparian rights there in one sense but that they had certain rights? A. No, the width of the wall structure is deducted as in the Canada Steamship and the Terminal Warehouse and all these other places from the ground that is
20 sold freehold.

Q. Yes? A. And the occupier, or the owner, gets that dockage given to him for a nominal rental of a dollar a year. In reality it is included in the whole cost of it although he doesn't get a title to that. The reason of that is what the Harbor Commissioners call dock insurance and any time they want to go along and expropriate your dockage under some power they don't have to pay for riparian rights or the wall structure; it is a protection, that is all, it is an insurance.

Q. I am not so sure? A. Well they believe it is anyway, and that is the only means whereby the Dominion Government would allow the land to
30 be sold on the water.

Q. But that is leased at a dollar a year for the land? Q. Ninety-nine years.

Q. Well it is 999? A. Well 999 years.

Q. 999 years is quite a long time, isn't it? A. Oh yes, it is more than you and I will see.

Q. Yes, we are safe in that at any rate. Quite a long time, and it is just like fee simple, isn't it? A. No, owing to that proviso that if the Harbor Commission desired to expropriate they don't have to pay for riparian rights, or—

Q. But if they expropriate the land back of it they have to pay for land
40 which is just right attached to that? A. Yes.

Q. And if there is a difference there—? A. And it certainly proves, in my mind, that the people who should know it ought to and certainly put a high value on riparian rights.

Q. Why? A. Simply because they absolutely refuse to sell them.

Q. They don't refuse to sell it? A. Oh yes they do.

Q. Now first they give just the same rate that they include for the whole

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of it in the price they charge for the inland property; they include the price, don't they? A. Yes.

Q. And then they give a dollar a year for 999 years on the wall structure. Now will you tell me what the difference is between that and fee simple? A. Well owing to the fact, in one particular instance, in fee simple he has certain rights in that way he hasn't got in the other.

Q. If they ever come to expropriate him they don't pay for riparian rights, is that it? A. No, and they don't have to pay for the actual wall structure.

Q. What do you mean? A. Well owing to the fact that the man don't 10 own it.

Q. That is to say the Harbor Commission pays for it, the Harbor Commission erected it? A. The man couldn't claim anything for it.

Q. The cost of that wall structure is what? A. Well just depends who builds it.

Q. You know; you were on the Harbor Commission; I am asking an actual fact? A. In some cases, according to their type of construction, it cost up to \$200 a foot.

Q. \$200 a lineal foot? A. Yes.

Q. And was it less at any other place or more? Was that a fair price? 20
A. I am not an engineer; I can't tell you.

Q. Was that a fair price? A. I can't just answer that.

Q. You don't know? A. No.

Q. Well of course that retaining wall is a wall that holds the whole fill?
A. Yes. It is a series of docks filled up with filling.

Q. And it is the protection to the whole fill that has been put in behind?
A. Yes, the whole fill behind it and the weight that has to be put on the center.

Q. Now then you had a sort of stepdown value from Canada Steamships Yonge Street, being the best, and you have Toronto Electric Light twenty- 30 five per cent less than the Steamships? A. Well I only gave that as an illustration of what I thought the reduction was in value as you got easterly.

Q. Yes. Now you put \$3,300 a foot front on the Steamships? A. Yes.

Q. How did you get at that? A. It works out to \$3.75 a square foot for land and water.

Q. If you gave me the \$3.75 I could get the frontage, and if you gave me the frontage I could get the \$3.75, but how do you satisfy yourself on that?

A. That is the opinion that I came to regarding the value of that land.

Q. Anything at all that you want to compare it with or base it on? A. 40 No no, just general knowledge.

Q. And does that \$3.75 include land and water? A. Yes.

Q. That is to say you are putting a value of \$3.75 on the land and water? A. On the whole holding, yes.

Q. And then how do you get at twenty-five percent step down for the next property? A. That is the opinion I have between the value between Yonge Street and the piece next. It has a corner influence and it has the

Yonge Street influence and it gradually goes down as you get further from Yonge Street.

Q. You have no illustration to give to bear this out? A. No other, because on some streets it goes down a great deal faster than it does on others.

Q. At any rate that is your view of that? A. Yes.

Q. Now you gave as an illustration the Canadian Rail & Harbor terminal property \$50,000? A. I think there was something said about it.

Q. It is fourteen and one-half acres? A. Yes. That was the first big sale that was ever made on the harbor front and it was a development that
10 was very necessary if there was ever going to be any inflated activity.

Q. Now is there not in connection with that property 2200 feet of dockage? A. I don't know exactly what the dockage is. I understand on the Canada Steamship, I checked it over roughly the other day, the Canada Steamship, which is next to that other, have got about 2335 feet.

Q. And that property is all laid out by the Harbor Commission? A. By the Harbor Commission, yes.

Q. And have you a plan of it there you can just show His Lordship? A. Of which?

Q. The Canadian Rail? A. No, I haven't got one of theirs; but it is
20 on one of those plans.

Q. It is marked on these; we will be putting in plans afterwards, and this is just to show it. (Producing a plan). And it has dockage down on the three sides, hasn't it? A. Here it is here. (Indicating). Yes.

Q. And that of course is provided not by them but by the Harbor Commission? A. Provided by the Harbor Commission, but that is part and parcel of the creation of 300 acres of land to the rear of it.

Q. Well it is part, but I am pointing out it has very large dockage facilities? A. Yes.

Q. Having regard to its area? A. Yes, and also it was the first big
30 sale made in the Central area, and like every other subdivision they got very good concessions for being the first.

Q. Oh yes, and I suppose they will east of Yonge too probably? A. They might, yes.

Q. If some person would go and take the Boulton property? A. Well I don't know.

MR. CASSELS: Are you putting that in as an exhibit?

MR. TILLEY: No. We will be referring to it later.

Q. Then you referred to a lease at the corner of George and Fleet for twenty-one years? A. Yes.

40 Q. \$26,250 for 70 by 150? A. Yes.

Q. At \$2.50 a square foot? A. Yes.

Q. Is that another filling station site? A. Filling station, yes.

Q. And a prominent one? A. No, not a prominent one.

Q. Have you a map there you can show it? A. Yes. But where I consider is a good location east of Yonge Street owing to the fact it is on a good corner, but personally not a place I consider a good place for a filling station.

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BY MR. HELLMUTH: Q. Is that east of Yonge? A. Yes, that is east of Yonge, and I think that is the only sale that has been made in there.

BY MR. TILLEY: Q. Well when you speak of Canada Steamships being \$3,300 a foot frontage and then Toronto Electric Light twenty-five percent less and Boulton twenty percent less you seem to be disregarding how much filling is done in each of those instances, is that right? A. No, owing to the fact that you couldn't work it out on the square foot basis the other way, because there is a difference in fill, there is the difference in width and there is the difference in square foot area regarding the depth.

Q. Well do you pay any attention to these factors when you come to fix the value? A. Yes, I usually do. 10

Q. Starting with \$3,300 a foot frontage for Canada Steamship you take off twenty-five per cent. and bring it down to \$2,425 per foot frontage? A. Yes.

Q. For the Toronto Electric Light or the Hydro property? A. Yes.

Q. Now then does that assume that they are filled the same or does it assume anything? A. Well those two are more or less filled the same owing to the fact that each had docks running out toward the New Windmill Line, whereas the next property has a great deal more square footage.

Q. Of what? A. Of water. You understand what I mean, that the—

Q. Then when you take off twenty percent. for the next property, what I wanted to get at, do you take off that percentage because it has more water as compared to the land? A. No. 20

Q. Or do you regard it? Do you disregard the extent of its fill? A. No, I take that into consideration too but in the square footage at the \$3.75 for the Canada Steamship, on my same figures it only works out to \$1.90 for the square footages, in the Boulton; it has a greater drop in proportion than it would be between \$3,300 and \$1,940 owing to the fact that one has a greater depth and has far more square feet. In fact the Canada Steamship's has got I think in round figures 190,000 square feet as against our property which has 213,000 square feet, and we have a smaller frontage than they have. 30

Q. Mr. McBrien, what I want to get at is this: When you say you would reduce twenty-five percent. in one case and twenty percent. in the other case do you mean other things being equal that is the reduction I make? A. Yes.

Q. That is values slide down going down, other things being equal? A. Yes.

Q. Fill and so on? A. Well fill, and then these people have an extra depth.

Q. The other things would have to be taken into it apart from the twenty-five percent.? A. Yes, but it all works out practically the same.

Q. Well then the Arena Gardens, did you speak of that property? A. That was— 40

Q. \$3.25, wasn't it, a square foot? A. Yes.

Q. It didn't go through? A. No.

Q. They got more attractive property farther north? A. Yes, Eaton's, yes.

Q. That is on the corner of Yonge and Fleet? A. Yes. It hasn't got any dockage or any—

Q. No, you couldn't have that property there and have dockage at the same time? A. No.

Q. But you have got about the most valuable you can get down there, haven't you? A. That is an entirely different type of property owing to the fact it is not dockage, it is a commercial property.

Q. It is a commercial property? A very very valuable property? A. Yes. Good stuff. But it was a tremendous large crack of property to be sold at the one time.

10 Q. You know when experts get valuing these things they attach value to having a larger block? A. Yes.

Q. If it suits the man who wants it? A. Yes. but in an organization like the Harbor Board they attach a lot to getting the cash in too if they can get it.

Q. You seem to consider the Harbor Board is a Board that is needing money? A. Well I would hate to say anything else, Mr. Tilley, to be honest.

20 Q. Agreed. Supposing that an owner one day dropped in owning the Boulton property and had it for sale with no lease, everything just ready to turn into possession, how long do you think he would be getting \$396,000 for it, back in 1926? A. Just depends what the demand was at the time he wanted to sell it for that particular type of property.

Q. Mr. McBrien, have you any notion at all that an owner could get any such price for the Boulton? A. I think that is the value of the property, yes.

Q. I am not asking that. Could he get it? A. Yes, I think so.

Q. You think that? A. If I didn't think he could have got it I wouldn't have put that value on it.

30 Q. That is to say if Boulton wanted to sell and put it in the hands of an agent to sell with conditions as they were in 1926 would he have a chance of getting \$396,000? A. I would certainly think so, yes.

Q. He would? A. Yes.

Q. Well it is a large sum of money? A. Yes, it is a good piece of property.

Q. Well it depends on how much more is available. Is it better than the Ewart property? A. I would say so, yes.

Q. Why? A. Because it is closer to Yonge Street.

40 Q. But the Ewart, the way the streets run in, so that the acute angle is going east from the Boulton property, and the Ewart property is more or less facing you as you go along? A. No, the value is placed on all the streets going east and west from Yonge Street in the first two or three blocks. Regarding its closeness to Yonge Street I think that would be right.

Q. That may be so, but when you come to a piece on each side of Church Street I would suggest to you that Church Street is really a highway for both, isn't it? A. A highway for which property?

Q. For the Boulton and Ewart? A. No, I would say that Yonge Street was used more than Church Street to get to it.

Q. Well at any rate across the tracks. A. Well you asked me which

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is the highway for them; I say that I think Yonge Street would be used more than Church Street to get down to them.

Q. Down to the Esplanade? A. Yes.

Q. Or down to Front? A. No, down to the Esplanade, that the people were educated to get down there via Yonge Street rather than via Church Street.

BY MR. OSLER: Q. What is the width of the access from the viaduct at Church Street? A. There is no subway at Church Street.

MR. TILLEY: No.

MR. OSLER: Same difficulty in using it as access to both properties then. 10

BY MR. TILLEY: Q. Well are you valuing this with the subways? A. No, I am—

Q. Let us understand; are you valuing it with the viaduct there or without it? A. 1926 was before the viaduct was there.

Q. Which way did you value it? A. I valued it as the property was in 1926.

Q. Assuming a viaduct or not assuming a viaduct? A. Well everybody knew or expected—everybody knew that the viaduct was coming, but it wasn't there in 1926.

Q. ~~Would that affect the value, the viaduct coming?~~ A. Well the 20 viaduct coming—the viaduct were the people who were taking the property.

Q. My friend suggests you couldn't get through the viaduct to Church Street. I am asking you did you value the property on that basis? A. No I did not. I valued the property as a level crossing at Church Street and a level crossing at Yonge Street.

Q. Without any viaduct at all? A. Yes.

Q. Just as it stood? A. As it stood in 1926.

Q. I thought my friend was suggesting something else to you? A. Oh no.

—4.35 p m. Arbitration adjourned until 10.30 a.m. Tuesday, April 5th, 1932. 30

—10.30 A.M., TUESDAY, APRIL 5th, 1932, RESUMED:

WILLIAM CARSON McBRIEN—continued:

CROSS-EXAMINATION CONTINUED BY MR. TILLEY:

Q. Mr. McBrien, you were going to put in any correspondence you had with possible—? A. There is one. I haven't had much chance to go through all my files.

Q. You say this is one. Is it one or some? Which is the right word? A. Well I had more than one; I was able to find that one in the short time I had.

Q. You said there was one? A. You understand I am not quite sure I have them all in my records, Mr. Tilley, but that is one I did find. The name of Mr. White's Company was the Coal Importers Company Limited.

Q. In Toronto? A. Yes, yes, a Toronto man. And I think he had connections with a Buffalo concern.

Q. Now I notice this letter, I am not sure whether it starts at the back or the front, they are all one date, January 29th, 1931? A. That was my answer to him. (Indicating). I had that on file.

HIS LORDSHIP: Answer to whom?

10 MR. TILLEY: To Mr. Mathiott of the Valley Camp Coal Company.

WITNESS: Yes. He wrote me first, or he had a man come in to see me first and then this gentleman told me he would be in to see me in a few days and then when he was in town he couldn't catch me.

Q. This letter says:

20 "I attempted to communicate with you when in Toronto last Saturday in connection with a dock property, which I believe you discussed with Mr. Paisley. As I will not be in Toronto for some days, I am wondering if you would be kind enough to send me particulars, together with a chart on any location you might have on Toronto Harbor suitable for a coal dock."

And you replied on the 31st January, 1931:

"I beg to acknowledge receipt of your letter of January 30th in reference to a location for a coal business with dockage on the Toronto Waterfront.

30 "Coal sites on the Toronto waterfront are in a rather unsettled condition at the present time owing to the fact that the Toronto Harbor Commission, of which the writer was one of the Commissioners up until June of last year, are contemplating the moving of all coal businesses to a certain area so as to improve the general appearance of the waterfront, and all present tenants in the coal business are now only on one year leases. A new area is being opened up south of the ship canal by a bascule bridge which will be completed this spring. This area will be an exceptionally good one for the coal business owing to the fact that it will guarantee a short haul for the Toronto business with direct through streets to all sections of the City of Toronto.

40 "It would be necessary for me to have some particulars regarding the amount of area required for your business, the dockage required and the area of storage space. If you will let me have this information at your earliest convenience, I will secure for you a plan of the Toronto waterfront showing locations which, in my opinion, would be suitable for your business, together with approximate prices of leasehold and freehold.

"The policy of the Toronto Harbor Commission is to either sell outright the rear land and lease the dockage or lease for a period of twenty-one years both the dockage and rear land renewable for a further term of twenty-one years at an agreed or arbitrated value; the lessee paying taxes and a yearly rental of five percent. on the value.

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“You might also let me know whether you desire to buy outright or lease the proposed site.

“I wish to thank you for this inquiry and will send you particulars immediately on receipt of this information.”

And then he replied on the same date:

“I thank you for your letter of January 27th to Mr. Paisley. I will communicate with Mr. McBrien at an early date. I attempted to reach him when in Toronto on Saturday, but unfortunately did not get to him.”

A. I think the correspondence crossed.

Q. Yes, there is a little crossing of correspondence there but apparently it ended with your letter to him? A. To a certain extent, yes. What he really inquired about was dockage in the central area and when I told him that he had to go down to Ashbridge's Bay he wasn't so interested. 10

BY HIS LORDSHIP: Q. What do you mean by the central area? A. Well the central area, sir, what we call the central area would be that portion say between Spadina Avenue and Sherbourne Street, whereas the other is called the Eastern harbor terminals, which is Ashbridge's Bay.

BY MR. TILLEY: Q. He doesn't say central area here. He asks for information with regard to a suitable site for coal dock? A. Yes, but when his man was in to see me it was along the other line that we were discussing. 20

Q. You don't say that in your letter? A. Well I know, but—

Q. However, there is the correspondence. Is it true, or are you in a position to say whether it is, that for some years back the coal business, somewhat like the oil, has been in an uncertain state as to the best method of handling? A. I am not a coal man.

Q. You have never inquired about that? A. No.

Q. Well I mean do you know that the deepening of the Welland Canal, put it that way, and the deepening of the western entrance to the harbor and the deepening of the water in front of docks by the Harbor Commission has presented quite a different problem to those shipping by vessel than it was before? A. Well I would say this, from a general knowledge, that the possibility of using larger boats with a larger tonnage under the deepening of the Welland Canal was certainly a consideration owing to the fact that they could ship in greater quantities on one boat. 30

Q. Yes? A. But as to costs for the difference I don't know.

Q. I am not trying to follow that; I am only trying to get at a sort of comparison with what real estate men have said about these things. That is so, isn't it? A. I would say with the deepening of the Welland Canal we have a bigger oil business and coal business coming into Toronto than we had ten years ago. 40

Q. And, just following along that line, are you aware that the coal boats today, different from the coal boats before, have self-unloading devices that handle the coal very cheaply? A. The only way I can answer that is that I can say that I have seen some coal boats with them on, but whether they all have them on or not I can't tell you.

Q. No. But it is an advance in the art? A. It is an improvement in the equipment

Q. Which might make all the difference between shipping by boat and shipping by rail? A. Of course that is up to the coal companies.

Q. Then would you be familiar with this change, in your opinion, that prior to that improvement in navigation for larger boats the coal people were giving up their waterfront properties? A. No, I am not prepared to state that, because I don't know that.

Q. Do you know whether the Rogers Company did? A. I think they are all back on the waterfront now.

Q. I am not asking what the modern development has been—please?

10 A. I am only telling you the situation as I know it.

Q. Do you know that at the time they left? A. No, I don't know that.

Q. Do you know that for a time while they had waterfront properties these coal people did not bring in by boat at all? A. No, I don't know anything about the coal business.

Q. You don't know anything about that? A. No.

Q. Because these are material facts, I would have thought. Take the Standard Fuel Company? A. They are conditions which the coal people understand themselves before they ever take the price of property up with
20 a real estate man.

Q. I am quite aware of that, quite a great many elements enter into it?
A. Yes.

Q. I am not suggesting anything to the contrary, I want to be fair, but I wanted to know whether you knew about it, that is all. You see there is a great deal to be taken into account, as to whether the coal breaks up in the handling, and all that sort of thing? A. I suppose so. I think, particularly soft coal, I think that is a very important feature.

Q. Now can you tell me at all what kind of business the Standard Fuel was carrying on at this site? A. They were carrying on a coal business.

30 Q. Do you know how they brought their coal in? A. No, I couldn't tell you.

Q. You don't know that? A. No.

Q. It would require a different knowledge of the business than that which you possess—I am not reflecting on you in that connection—to determine whether a dock is really of importance to a coal plant, a coal yard, and when you are considering that you would have to consider what kind of boats could be brought in and that sort of thing, isn't that so? A. Yes. But the fact that the majority of the large coal companies are now located on the water is intimation to me that they do like and require that kind of a site.

40 Q. I am suggesting that this letter written in 1931 rather indicates what I am telling you, that there has been a change in the business since 1926? A. Yes, but of course—

Q. All due to these harbor improvements? A. I am not prepared to say that, owing to the fact that perhaps some—very likely the coal businesses, such as the Standard Fuel, were sufficiently progressive to realize this before other coal companies did.

Q. Well, you say very likely? A. Well, that is the opinion that I have in my mind. Now I am only giving you a general synopsis of it; I don't know what they had in their mind.

Q. I am not objecting to you at all suggesting it but I was wondering whether it was quite pertinent, what you thought of that. But put it this way, do you know whether the coal companies have actually been rather desirous of having temporary accommodation rather than permanent, because of their doubt how coal will ultimately be handled? A. No, I wouldn't say that. I would say—

Q. You don't know that as a matter of fact anyway? A. No, just let me answer that. 10

Q. Yes, quite. A. I would say that the coal companies required permanent locations and desired them but couldn't get them.

Q. Well, that would be very capable of proof if there are any such instances? A. Well, that is the opinion I have.

Q. I am not asking for opinion; that would be a fact? A. Yes. In the conversations that I have had with coal companies that is the conclusion I have come to.

Q. Well, Mr. McBrien, I am only suggesting that if you have had conversations with people of that kind you will be able to tell the counsel for the other side exactly whom to call to prove it, so that we will just leave that at that? A. All right. 20

EXHIBIT 14: Letter Valley Camp Coal Co. to McBrien, January 29th, 1931; copy of reply January 31st, 1931, McBrien to Mathiott. Letter Valley Camp Coal Co. to William McBain dated January 29th, 1931.

Q. Now then was there a site, a possible site, at the National Iron Works? A. There might have been, yes.

Q. How many acres? A. Quite a few acres.

Q. With large dockage possibilities? A. There was a certain part of it improved, a certain part of it unimproved. 30

Q. I am talking about the possibilities? A. Possibilities, yes.

By HIS LORDSHIP: Q. Where is the National Iron Works? That is just to the north, sir, of the coal site that we spoke of yesterday afternoon; it is pretty well—it is the extreme east of the north side of the Toronto bay, where the east of the bay and the north of the bay meet, in that corner.

By MR. TILLEY: Q. Now, supposing we just get it on the plan.

HIS LORDSHIP: About a mile and a half east?

WITNESS: I would say about a mile or mile and a quarter.

By MR. HELLMUTH: Q. A mile or mile and a quarter east of what? A. Of the Yonge Street part. 40

By MR. TILLEY: Q. Mr. McBrien, you are not suggesting that when you come to handle coal today with through thoroughfares like Fleet Street and these along the waterfront a mile makes much difference? A. Oh yes, it is a mile longer haul.

Q. It does? A. Yes.

Q. You think that you would rather haul across the tracks coming out of the Boulton property than a mile on a clear street like Fleet Street? A. Well—

Q. Are you in a position to say that? A. Well, just a moment, Mr. Tilley.

Q. I am asking you? A. The very fact that the supply companies have branch yards all over the City of Toronto is a sufficient answer to that thing, that they are all after locations with a short haul.

Q. Well, tell me who these all were? A. Supply companies like—

10 Q. Because I am questioning that, Mr. McBrien, that since the development of the harbor front with wide clear streets for motor truck deliveries a mile in the haul is negligible as compared with convenience of handling? A. Well, take your coal companies, for instance, the Standard Fuel Company have branches in different parts of the City of Toronto so as to take care of a short haul.

Q. But then isn't that exactly what they have been doing, not keeping to one central place down on the waterfront but putting it in smaller yards around the city? A. Oh, no, but as I see it the central location was to take care of the downtown business.

20 BY HIS LORDSHIP: Q. I suppose coal is all delivered now by truck? A. Largely, sir, yes.

Q. And it would cost more to take coal a mile by truck than it would a short distance over these tracks? A. Well, I suppose these men had this thing down to a basis, they understand how much depreciation there is on a truck per mile just the same as you have got on a street car or anything else, in the consumption of gasoline, the time of the men on it and the time of coming back.

30 BY MR. TILLEY: Q. Mr. McBrien, from the coal business of the Standard and other companies do you know whether they do their own trucking or do they employ a trucker? A. I think they do both.

Q. You think they do both? A. Yes. Well, I think different firms handle it different ways.

Q. Well, do you know how the Standard did it? A. No, I don't.

Q. Do you know what kind of coal it is that the Boulton property would provide the short haul for, anthracite or bituminous? A. Oh, I would say it would be soft coal.

40 Q. Soft coal? A. Mostly, owing to the fact that the soft coal is used in greater quantities in that downtown area than it is in the residential section. In the residential sections they use either anthracite or oil; with the large buildings, which are the large consumers of coal, they use soft coal, in the downtown area.

Q. So that that would be a particularly valuable site for soft coal business, is that what you mean? A. For soft coal and for—

Q. Would you be surprised to know that they didn't handle soft coal there at all? A. I haven't any idea what they handled.

Q. But you are speaking of the great value of this particular site for the handling of coal, short haul—? A. Yes.

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Q. Would it surprise you to know that this was not a soft coal yard?
A. So far as I know they handled both kinds of coal there.

Q. But do you know? A. No. As I told you when I started, I am not in the coal business, Mr. Tilley.

Q. I know, but you are valuing a property for a coal business, or you are professing to? A. No, just a moment now; I didn't say it was only suitable for a coal business.

Q. I don't suggest you said only? A. There are lots of other things this property could be used for.

Q. I know; we can take them only one at a time, and I think you put 10 coal in the front? A. Oh, no. It is just one of the general things that the property could be used for.

Q. I have a plan here that possibly you can identify this National Iron Works property on, and the properties are I think numbered, I don't know whether that is or not; the plan shows the waterfront and it shows in a list below certain transactions by the Harbor Commission. I am not assuming that those are proven until they are proven, but it is confusing not to have the plan to refer to. Would you look at that plan and just show His Lordship where the National Iron Works property is? A. The National Iron Works property is here. (Indicating.) 20

Q. At Berkeley Street? A. No. wait a minute. It is here. (Indicating.)

Q. That is it is marked, is it? A. Yes.

Q. At the corner of Fleet and Cherry? A. At the corner of Fleet and Cherry, yes. Just as I said, at the joining of the north and the easterly sides of the bay.

BY HIS LORDSHIP: Q. It is about a mile and a quarter from the Boulton property? A. An inch to 200 feet.

EXHIBIT 15: Plan above referred to, being a Toronto Harbor Commissioners property plan, central harbor terminals, dated 30 October 18th, 1928; revised March 29th, 1932.

BY MR. TILLEY: Q. Mr. McBrien, let us at the risk of a little noise now fold this at Yonge Street and it will be very convenient to have it folded there? A. Fold it at York Street.

Q. Well, Yonge makes the division between east and west I think.

Now, Mr. McBrien, would you also refer on this plan to the Century Coal Dock? A. Century Coal Dock is what is marked "47."

Q. On the plan? A. Yes.

Q. Now that is a very special piece of property, isn't it? A. It is a good piece of property, yes. 40

Q. Lots of dockage for its area? A. It has good dockage but it is a long way down in the east end.

Q. But, Mr. McBrien, I thought you would agree that that was a very exceptional piece of property? A. No.

Q. You wouldn't? A. I don't think it compares with the property at the foot of Church Street at all.

Q. Well we will return to Church Street; let us assume that nothing really compares with that, but leaving out others—? A. No, that is an exceptional affair!

Q. But leaving out others that would be an exceptional affair, wouldn't it? A. I don't think any along that location there is anything comparable to a location at the foot of Yonge Street, or Church Street.

Q. Otherwise, as compared to other available properties that is a valuable property, that is for coal? A. That is a good property.

10 Q. I mean the Harbor Commission charges on the surface area and that property, in proportion to its surface area has a very very large amount of dockage area at that point? A. Yes, it has. It has a little, I think, over two acres in the whole thing.

Q. So that there is little to pay for but great advantage in making a purchase if you want docks? A. Yes.

Q. I am assuming it is not a bad site. Let us take the next one. What is the depth of water to that site? A. Around thirty feet.

20 Q. That is to say the largest boats that would go through the Welland Canal when improved would come to that dock? A. They would be able to, yes. This dock is on the construction of the Harbor Commission in a general way.

Q. Quite so. It has got the improvement that these works produce? A. Yes.

Q. Now, Mr. McBrien, can you tell me, because I want to follow up His Lordship's question just a little more, really how far is the National Iron Works from Boulton? I am told it is nearer half a mile than it is a mile? A. I think it is a mile, sir; it is pretty hard to tell distances.

30 Q. I know, but when distances are so important we must be accurate right to the foot if we can get it—a long haul? A. (Referring to plan). It is about 4,000 feet. That is, 5,280 feet to a mile, I am speaking of the start of the property—

Q. And you have measured it from Church Street? Where did you measure from? A. From the Boulton property, which is here, just the other side of Church.

BY HIS LORDSHIP: Q. Not quite a mile? A. No.

BY MR. TILLEY: Q. You say 4,000 feet to the near side of it? A. To the start of it, yes. That is pretty close to a mile. You understand me, I am only giving snap figures; I can't tell you exactly.

40 Q. I am not suggesting anything to the contrary Mr. McBrien. Now just a few more questions: Do you know anything at all about the construction of the fill on the Boulton property? A. No. It was just a piling filled in with earth I think.

Q. Do you know anything about its physical condition? A. No.

Q. Its age? A. No. It was quite old.

Q. Quite old? A. I would take it that it was.

Q. That is to say the construction that held back the fill? A. The construction that held back the fill was the old type of pile construction; it

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wasn't modern construction, not as far as I know. I only know in a general way.

Q. I think you spoke of Church being the heart of the shipping district at a certain time? A. No.

Q. I am sorry. Between Church and Yonge? A. I stated that in 1926 or just around that period we looked upon Yonge Street as the heart of the bay area; I didn't say anything about Church Street; but, of course, it flowed both ways from Church Street to Yonge Street, and I mean as the harbor scheme developed it shifted to the west a little.

Q. When you were on the Harbor Commission did you make any study of the way shipping was decreasing along the Church Street area?

A. Well there wasn't any dockage there; there wasn't any dockage to operate from.

Q. Mr. McBrien, I am talking about decreasing. Now decreasing, I suppose there must be some dockage? A. Oh, no, after the—after 1926—

Q. Well, before 1926, say from 1915? A. Yes, there was a decrease, but the reason of that was largely owing to the fact that there was a cloud on all this property by the fact that the Harbor Board had more or less signified their intention of taking that over away back in 1909.

Q. Mr. McBrien, shipping does not cease to come to a port because of a cloud; if the business moved away tell us about it, if it doesn't move away and it is still there I would have thought that shipping would go on just the same, and I am instructed that there was a very sharp decline that you should know about? A. I don't think so.

Q. You don't think so? A. No. I think the shipping as a whole into Toronto Harbor increased during those years.

Q. In what years? A. From 1926 on.

Q. No, not from 1926; I want to get at 1915? A. Well I haven't got the figures on that, Mr. Tilley.

Q. But it is more important to us to get at the condition in 1915? A. You will have to get it from some person who knows those figures; I am giving you the figures from 1926 on; but from 1926 back I couldn't give you those figures.

Q. Well you have given us the different conditions from 1926 on? A. I am only trying to tell you what I know, Mr. Tilley, I am not trying to take you back that far.

Q. And you don't know about that period? A. No, not as far as the tonnage is concerned or anything like that.

Q. Or the trend of shipping, whether it was falling off? A. Of course you would have to know the gross tonnage to know that.

Q. You wouldn't have to know the exact tonnage? A. Oh you would have to have an idea, yes.

Q. If you don't know we will leave it at that. You were to get me some figures? A. You have the plan, sir; you took the plan from me.

Q. Where is it? A. I don't know; you took it.

BY HIS LORDSHIP: Q. From your file? A. No, sir.

BY MR. TILLEY: Q. Haven't you the prices that you put on?

A. They are on there; I will work them out for you at any time you want it.

Q. On this? A. Yes. You asked me for it yesterday and you took it in as an exhibit.

Q. Well you could have got it? A. Well I don't know; I am not prepared to say that. You asked me for it and I said, I have got all that, and you said: Give it to me, and I gave it to you.

Q. It needs some key, I gather? A. Yes.

Q. Will you give us the key? A. Yes.

10 MR. TILLEY: And then might I ask him about it further after I get the key?

HIS LORDSHIP: Yes.

WITNESS: You realize that is my plan that you took.

Q. Yes. Just a moment. Oh, Mr. McBrien, I think you said your value didn't include anything for buildings? A. No, nothing.

Q. Did you know the buildings? A. Just in a general way.

Q. When you put values of that kind on are you in any position to say the buildings added anything to the value of the land? A. No, I am not in a position to say. No, I don't want to comment on that.

20 BY HIS LORDSHIP: Q. I did not quite catch one thing: When you were estimating the value of this land, this Boulton property, did you take into consideration any benefits directly or indirectly enjoyed by the Lake Street, Scott Street and Yonge Street? A. No, I valued the property knowing that there was a possibility of that street going through.

HIS LORDSHIP: All right.

MR. OSLER: I will call Col. Marshall.

No. 4

KENRICK R. MARSHALL, Sworn:

EXAMINED BY MR. OSLER:

30 A. Q. Col. Marshall, you are the president of the Standard Fuel Company? I am.

Q. And how long have you been president? A. Since about November of 1919 when I got back from the war.

Q. And you succeeded your father, the late Col. Noel Marshall, who had been president? A. I did.

Q. And had you been engaged in the Standard Fuel Company's business before that time? A. Yes.

Q. For how long? A. At the present time I have been engaged in business thirty-one years—in that business.

40 Q. And before you became president what was your position with the Company? A. I was Vice-President and Assistant Manager before the war, just prior to the war.

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Q. And then when you came back from the war—? A. I became president and general manager.

Q. And will you give us some idea of the extent of the business of the Standard Fuel Company? A. As at when?

Q. Well during the time that you have been engaged in that? A. The Standard Fuel Company—

HIS LORDSHIP: You don't want to go away back, do you, Mr. Osler?

MR. OSLER: Well I thought it would be of interest; I am not going to go into it in great detail.

HIS LORDSHIP: Very well. 10

WITNESS: It operates a provincially wide wholesale business and a local retail business in Toronto.

Q. And what for instance is the tonnage of coal and coke that it handled last year? A. 300,000 tons.

Q. And what annual turnover would that represent in money? A. Between \$2,600,000 and \$3,000,000.

Q. And has the business been growing or has it remained pretty steady? A. It has remained pretty steady. It has been growing. This winter has been a bit mild but it has been growing up to that quite satisfactorily.

Q. Apart from seasonal fluctuations? A. It has had a steady growth. 20

Q. Then in 1926 when the expropriation notice was served where was the company operating in the City of Toronto. A. The company was operating a dock at the foot of Church Street. It had a large elevator and yard on Greenwood Avenue. One on Macpherson Avenue. One on Merton Street, one on the Weston Road, West Toronto; one on Dufferin Street south of Parkdale.

Q. And when you speak of the dock at the foot of Church Street what was the character of the business that was being done? A. Going back how far, Mr. Osler?

Q. Well take it at three or four years prior to 1926? A. We were doing 30 a very extensive American anthracite coal business which the last year or two had been augmented by a by-product coke tonnage. We also in addition used our water facilities for anthracite, and the storage, and brought in a certain tonnage of bituminous coal by rail. We might just as well have brought in the bituminous by water but we needed all the storage for our anthracite.

Q. Then when you speak of storage, is that an important factor in connection with a dock, because you described it a moment ago as a dock property? A. It is an important factor.

Q. In what way is it? A. You can take advantage of the low summer prices to stock coal. 40

Q. Bringing it in at the dock and storing it there? A. Storing it there.

Q. And can you give me some idea as to what that advantage is worth in money?

MR. TILLEY: That advantage in what? Over what? A. Over an all year round regular delivery to other yards, I take it Mr. Osler means; that is by bringing in a lot of coal during the early summer months, is that what you mean?

Q. That is what I mean; that is storage?

MR. TILLEY: I suggest we are not concerned with that. We are not expropriating the business at all, we are expropriating the property. Whatever value that gives a property it gives a property. We are not here to take over their coal business, and we have had evidence as to what the property is worth and these things, surely, that are reflected in the property are in the value of the property.

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HIS LORDSHIP: I think that that is so, Mr. Tilley. I have rather a wide discretion. It is not going to disturb my mind one way or the other though.
10 I will take the evidence. It may assist me in some way later on. Take it subject to your objection.

MR. TILLEY: The difficulty is it may result, and I only wanted to guard myself against it, in our having to have some examination of their books.

HIS LORDSHIP: I suppose I would have to give you that liberty.

BY HIS LORDSHIP: Q. Then do I understand that because you stored and you had storage facilities large quantities of anthracite were brought in which you purchased at low prices in summer? A. Yes.

Q. And stored it there? A. Got it at April prices.

Q. And that was an advantage? A. That was.

20 Q. And that was of course connected directly with your business?
A. Yes.

BY MR. OSLER: Q. Can you give me any idea in money, Col. Marshall, of what that advantage was? A. I had the figures worked out—ten cents a ton—

HIS LORDSHIP: That would apply even supposing his business was in some other part of the city?

MR. OSLER: Yes.

HIS LORDSHIP: I don't know what value it is. I think there is some merit in what Mr. Tilley says. I don't see, in getting at the value of the land,
30 how this is going to affect it.

MR. OSLER: That is not a question of the value of the land; it is a question of the disturbance of our business. Perhaps Your Lordship will allow me to develop it and as the evidence develops I think I can make that clear to Your Lordship.

HIS LORDSHIP: I will keep it in mind, and also keep Mr. Tilley's objection in mind.

Q. How much did you say, Mr. Marshall?

MR. TILLEY: Is this an opinion the witness is expressing?

WITNESS: No, from our books, Mr. Tilley.

40 MR. TILLEY: Well, Mr. Marshall, I am not trying to bother you about it; I am trying to give my friend a little bother just at the moment.

WITNESS: I am sorry.

MR. OSLER: I might suggest my learned friend bring it out in his cross-examination.

MR. TILLEY: I am asking whether my friend is producing this witness to give an opinion to the court with regard to the benefits. Is this opinion evidence or is it on fact? If it is on fact then we should have the facts.

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HIS LORDSHIP: I am assuming it is on fact.

MR. OSLER: Certainly.

WITNESS: Yes, it is on facts.

MR. TILLEY: Then he has got the witness to express an opinion.

HIS LORDSHIP: He must follow it up in giving facts, if there is anything in this particular kind of evidence that you ask me to place any value on.

MR. TILLEY: The witness said it had been taken out, and shouldn't he produce it as he goes along?

WITNESS: May I get my file?

HIS LORDSHIP: It is not opinion evidence. 10

Q. Yes, you had better get your file? A. May I leave to get my file?

HIS LORDSHIP: Oh yes.

There can be no question that if a merchant purchases goods at a certain time of the year and gets them at a lower price and he has the warehouse to warehouse them in it is of some advantage to him, but you have got to reckon on the loss by business disturbance.

MR. OSLER: Yes. I have to proceed point by point; I can't develop it all at once.

HIS LORDSHIP: I suppose you could sell this stock cheaper by reason of having purchased it and stored it and so on. 20

MR. TILLEY: We all have an interest in this.

Q. Now, Col. Marshall, I don't want the details; my learned friend may have it in cross-examination if he wants it; but I ask you what is the approximate financial measure of the advantage of being able to handle the coal not merely as a direct distribution as it comes in but by storing and then distributing gradually over the season?

MR. TILLEY: Surely we are not concerned with that. If we are to embark on an endless inquiry on the one figure my learned friend has suggested—

HIS LORDSHIP: I think that is all I require; you have a large warehouse 30 or building there in which you stored anthracite coal purchased at a certain concession, a low price, and you say that is an advantage in having that storage there. Isn't that sufficient?

MR. OSLER: Well if my learned friend objects to the figure—

MR. TILLEY: I object to the evidence.

HIS LORDSHIP: I am not going to exclude very much in this Arbitration; I am going to try and only allow the evidence that should be allowed to influence my mind, but I would not like it prolonged if it is really not necessary.

MR. OSLER: Well then I will leave that for the moment.

Q. Col. Marshall, was the area which you were using at Church Street 40 sufficient to allow you substantial storage up till 1926? A. Yes.

Q. And therefore you had that advantage in your business up to that time? A. We had under cover storage for 20,000 tons of anthracite. It was the largest storage dock in Toronto for coal on the harbor.

BY HIS LORDSHIP: Q. That would mean your warehouse filled right up? A. Yes.

Q. 20,000 tons? A. Yes. That is by far the largest.

BY MR. OSLER: Q. What do you say as to the advantages or disadvantages of water transport and rail transport?

HIS LORDSHIP: Where from? From their place of business?

Q. From your sources of supply to your distributing yards in Toronto?

A. It is of great advantage to us.

BY HIS LORDSHIP: Q. Which is of great advantage? A. To bring it in by water.

BY MR. OSLER: Q. In what respects? A. There is very substantial freight saving by water as against rail. That has always existed and has
10 become more marked recently.

Q. Then when did you acquire this Church Street dock? Perhaps I should ask first with regard to the location of the Church Street dock. What do you say as to that location? A. It is a splendid location. It is in the centre of the central or downtown district.

Q. Did you have some substantial customers in that district? A. Yes.

Q. Then when did you acquire this dock? A. In 1912.

MR. OSLER: I have spoken of it as a dock but it is a dock and property.

HIS LORDSHIP: You mean this particular property we are now dealing
with.

20 MR. OSLER: Yes, this particular property.

Q. In 1912 you say. Well then what did your company do after you had acquired it? A. We overhauled it. Put a manager in charge.

BY HIS LORDSHIP: Q. You acquired this property by lease, did you?

A. We assumed a perpetual lease.

MR. TILLEY: Perpetually renewable.

WITNESS: Yes, well it was a perpetual lease.

BY MR. OSLER: Q. There were buildings on it at that time? A. Yes.

Q. In what condition were they? A. They were in reasonably good
working condition.

30 Q. Equipment on it? A. Yes, machinery. But we decided to install a new unloading tower, an electric unloading tower.

Q. And did you do that? A. We did that. That was completed
in 1913.

BY HIS LORDSHIP: Q. An electric what? A. Unloading tower.

BY MR. OSLER: Q. And what do you say as to the character of the machinery after you had made the new installations? A. I considered it a first class modern coal operating dock and machinery; it had overhead storage and everything else that was all more or less modern.

40 Q. A modern up to date equipment. And what did you do in the way of maintaining the equipment and the buildings during the period that you had it? A. We carried out necessary repairs and replacements as we went along and charged them to operation. Something in the neighborhood of \$1200 a year kept it up.

Q. And did you continue that down to 1926? A. Continued that down to 1922 or 1923, we made quite a substantial improvement. And then after that when we got word we were likely to lose the dock we more or less eased up a little on it and after 1926 we did nothing.

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BY HIS LORDSHIP: Q. What did you do in 1922? A. We gave the dock a general overhauling. I think that cost about \$2200 or \$2300.

BY MR. OSLER: Q. When you say the dock—? A. I mean the entire plant.

BY HIS LORDSHIP: Q. How much did you say? A. Between \$2000 and \$2500.

Q. That is in 1922? A. '21 or '22.

BY MR. OSLER: Q. And then after that what did you do? A. We made the necessary repairs, but they were diminishing.

BY HIS LORDSHIP: Q. You gave some reason after 1922 why you 10 didn't do something? A. After 1922, about 1924, we had reason to believe that eventually the dock would be taken away from us and we eased up in repairs and after 1926 did nothing. Between 1923 and 1926 we just did sufficient repairs to keep the dock in operation.

BY MR. OSLER: Q. And what do you say as to the efficiency of the buildings and equipment in 1926 when notice was served? A. They were in good working order, we were operating a large business. If we found we were going to remain there we would have had to have carried out some more repairs that year, straightened the roof up and a few little things

Q. But so far as the actual operations that you were doing were con- 20 cerned, they were—? A. Quite efficient.

Q. Then the notice of expropriation was served in November 1926 and you were allowed to remain in possession until April 1927, April 1st, 1927? A. Yes. Of course we couldn't bring any of our boats in after 1926. We were allowed to remove what coal we had already on the dock during the winter of 1926-27.

Q. And that is what you stayed in possession for until April 1927? A. Yes.

Q. Then what did you do after the 1st April, 1927? A. I arranged with the Toronto Terminals Company to permit us to retain a small parcel 30 on the north of the property which we used as a sort of refilling point, but there was practically no storage there.

Q. The area was not sufficient for storage? A. Very small. Just the northern end of the property.

Q. You said the area wasn't sufficient for storage? A. The area was not sufficient for a substantial storage and we hadn't the unloading facilities, it was all man-handled; we had no water facilities.

Q. And you said you used that for a refilling. What do you mean by that? A. It had a very limited siding space but we could bring in a couple of cars at a time and dump them on the ground and cart that out, or take 40 some off the car and throw the other on the ground, for downtown business.

BY HIS LORDSHIP: Q. That was for coal which came in entirely by rail? A. Yes.

Q. Dumped on the south of the Esplanade? A. Yes. The north of our property.

MR. OSLER: And on the north end of the property.

Q. How long did you retain that? A. Until the first of last July, sir.

BY MR. OSLER: Q. First July, 1931? A. 1931.

BY HIS LORDSHIP: Q. Did you have any particular contract with them or understanding? A. Just a yearly short term lease.

Q. I know, but what were you paying for it? Anything? A. Oh yes. Oh yes.

BY MR. OSLER: Q. And what did you do with regard to getting another site? A. I can recall in 1926 visiting the Toronto Harbor Commission Building and asking Mr. Cousins was there any possibility of our building a dock out in front of our expropriated land.

10 Q. Mr. Cousins was then what? A. Was then the General Manager and Chief Engineer of the Harbor Commission. And Mr. Cousins told me it was the intention to put all fuel on Ashbridge's Bay, that we couldn't build out in front of our former dock.

Q. Then what did you do, when you found that you couldn't get the central location, with regard to going to Ashbridge's Bay? A. Well for the first few months I dismissed it entirely from my mind, I thought it was quite out of the question to go so far away.

Q. And when you found you couldn't get any closer? A. I became interested in looking around.

20 Q. Where did you finally decide to go, to Ashbridge's Bay? A. You mean—?

Q. Yes, when you finally made up your mind you had to look for another property? A. If we hadn't a dock we would have to get out of downtown Toronto business; a large portion of our business would go at once if we hadn't a dock.

Q. Why do you say that? A. Since the opening of the Welland Canal, which has made soft coal so much cheaper to get to Toronto, we couldn't compete with people who had docks if we stood by rail shipments only ourselves.

30 BY HIS LORDSHIP: Q. That is soft coal? A. Yes. I could bring other things into it too; Coke is very much cheaper by water and there is a great deal being brought to Toronto by water, and the same thing applies to anthracite and Welsh coal. We are trying to develop a Welsh coal business and we wouldn't be anywhere without a dock of course.

BY MR. OSLER: Q. Why did you stay on at the rail site at the north end of the property from 1927 to 1931? A. It helped to some extent to take care of our downtown business, particularly the bituminous business—old trade.

40 Q. Did it have an effect on the volume of business that you could handle from that yard? A. Oh yes. Very poor facilities.

Q. Can you tell me approximately in round figures what the amount was?

MR. TILLEY: That is after 1926?

MR. OSLER: Yes.

MR. TILLEY: Well, my Lord, we had expropriated the property in 1926 and then we made an arrangement with them that they should have certain accommodation at a certain price.

HIS LORDSHIP: What has that to do with it?

MR. OSLER: It shows the disadvantage that we were put to by having our business thrown off this property.

HIS LORDSHIP: I can quite conceive that.

MR. OSLER: I wanted to give Your Lordship some idea as to what the extent of that disadvantage was.

HIS LORDSHIP: Just as to the extent.

MR. OSLER: Yes.

HIS LORDSHIP: You mean that is since 1926.

MR. TILLEY: If we hadn't made some other arrangements with them why their business would have had to go off there completely and none would have been handled there I suppose. 10

MR. OSLER: They did make an arrangement with us by which we were able to retain some of the business.

HIS LORDSHIP: And I suppose that would to some extent lessen your damages.

MR. OSLER: If we had lost the whole business ordinarily it would have been greater.

HIS LORDSHIP: I have my mind focussed down to damages in November 1926. 20

MR. OSLER: Yes.

HIS LORDSHIP: There. And it must end there, mustn't it? The damage that your business actually suffered by reason of your being thrown out, as of November 1926.

MR. OSLER: Exactly, but then that damage may not have occurred all in a day; the damage is done by reason of the interference with the business. The damage to the business is shown by what happened after that. Now surely I can give evidence as to what happened after that date.

HIS LORDSHIP: In order to establish what your damage was at November 1926. 30

MR. OSLER: Yes.

HIS LORDSHIP: Very well.

MR. TILLEY: Your Lordship will pardon me I object to any evidence as to the damage to the business. So far as the business gave a value to the property we have to pay but I do want to make my position perfectly clear, that we do not take their property on terms of paying their loss to their business. They have a property under the right to expropriate. We acquire it on terms of paying compensation and we do not take their business and there is no compensation to be paid for it and my submission is we are embarking on a line of inquiry that is quite foreign to anything Your Lordship has to determine. 40

HIS LORDSHIP: Well does this not enter into it to some extent, the damage which would be suffered by business disturbance?

MR. TILLEY: But then we are not compensating for business disturbance I haven't heard of such a thing as business disturbance being compensated in this case.

HIS LORDSHIP: I thought that was one of the things I was going to consider in this Arbitration.

MR. TILLEY: I certainly object to it being considered.

HIS LORDSHIP: I thought we started out with that understanding. You were not here. There were three things I had to determine in this Arbitration, first the damage sustained to the owneres by the land being taken, what is the value of the land to the owners; second the business disturbance; and third the value of the buildings.

MR. TILLEY: That is what my friend says they are going to claim.

10 HIS LORDSHIP: Those are the three things, I understand.

MR. TILLEY: But I am certainly not agreeing that any compensation is payable. I quite understand that sometimes the court allows a percentage because people are turned out of a place where they are doing business and something is sometimes added to the compensation because the party was in possession and in use, but if the cost of acquiring the property is to compensate all people for their business loss as well the thing would be unending, and I do submit we are not here on any such problem. I am prepared whenever the appropriate time is to argue it out fully, but I do submit we are embarking on an inquiry with which we are not concerned, and that is their business loss.

20 Why the business loss would go on and could be figured up forever, that is to say what better business would you have done at this site than on the other site? Well that would be a problem that we are not concerned with. The question is How much more value to you is this property for the purposes of business? But that does not bring in business disturbance. I quite appreciate that turning people out who were in actual occupation generally results in ten percent, but the question we have to consider, whether anything should be added in this case, and that is quite a different thing, we will have to deal with that, and while my learned friend is attempting to prove that I am objecting to the proof.

30 MR. OSLER: My learned friend turns us out while we are in active occupation, when we are conducting business, and I think it would be news to Your Lordship if my learned friend could make good the proposition that he could ignore that damage that we have suffered. Now in order to prove what that damage is I must show what we were doing. I must show what disadvantage we suffered. We can do that only by comparing the business before to the business afterward.

MR. TILLEY: This is business loss.

40 HIS LORDSHIP: Yes, it may be. I will allow the evidence subject to objection. I want to get all the information I can. It may help me in coming to the real value.

MR. TILLEY: Of course I just want the one point: My friend by the last statement he made is now on business loss, not business disturbance.

HIS LORDSHIP: We have nothing to do you say with the business loss.

MR. TILLEY: No.

MR. OSLER: I am not going to ask my friend to pay the loss in business but I am going to ask him to pay the disadvantage we have suffered by reason

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of the conditions under which we had to conduct business afterwards as compared to before. That is a different thing entirely.

MR. TILLEY: My Lord, may I just show what that means to us: My friend comes forward with evidence to show the great advantage (and as soon as he has made his point on it we will have evidence the other way) of this property as a coal site, and he asks Your Lordship to fix the value of this property because of its exceptional benefit for a coal site. After we get a value that he says is \$396,000 on the property because of its possibilities for coal yard or what-not then he says Add to that the loss that we sustained by being taken away from that site in addition to the loss of the value of the site. 10
Now I do submit—

HIS LORDSHIP: I appreciate your point, Mr. Tilley, thoroughly, but I will allow the evidence.

MR. OSLER: My learned friend's remarks are subject to this observance, my Lord, that I think he has not fairly quoted Mr. McBrien. McBrien's evidence was that the value of the property was \$396,000 but it might be used for any one of a number of businesses and it did happen to be used for a coal business.

HIS LORDSHIP: I have that in my mind.

Q. (Last preceding three questions and answers read—p. 182). 20

Can you tell me approximately in round figures what the amount was?

A. Is that in tons?

Q. Yes, put it in tons? A. Approximately 10,000 tons a year.

Q. Of what? A. That is of a decrease.

MR. TILLEY: He is comparing it to what?

WITNESS: As compared with the business prior to the expropriation.

BY HIS LORDSHIP: Q. And at what date? You say you suffered a decrease of 10,000 tons? A. For the years 1927, 1928, 1929 and 1930.

Q. Do your books show that? A. They do.

Q. In 1927 that commenced, that decrease of 10,000 tons? A. Immedia- 30
tely after the expropriation.

BY MR. OSLER: Q. That is handled from the Church Street yard?

MR. TILLEY: Your Lordship sees the difference. The witness says 10,000 tons and my friend says handled from that yard.

MR. OSLER: That is what I was asking I was asking only about the Church Street yard.

WITNESS: Only that yard, sir.

Q. Now, Col. Marshall, into what area was the coal which you brought in through the Church Street yard usually delivered to customers? A. To an area bound by Spadina Avenue, Bloor and Broadview on the east. 40

BY HIS LORDSHIP: Q. From Spadina East to Broadview and from Bloor south to where? A. To the dock. Down near to the lake, the central area.

BY MR. OSLER: Q. Was that a very definite line or were there some parts in and out which you handled from several yards? A. Of course, we made delivery to South Rosedale, south of the second grade.

Q. But substantially the area you have given is the downtown area?
A. Yes. I would say an area south of Carlton Street.

BY MR. TILLEY: Q. Mainly south of Carlton? A. Large buildings.

BY MR. OSLER: Q. Those were the large buildings? A. Yes.

Q. Then did that 10,000 tons mean a general reduction in your business as a whole or was that a reduction in Church Street and handling from other yards?

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HIS LORDSHIP: I understand he said 10,000 tons was confined to the decrease on the Church Street yard.

10 MR. OSLER: Yes.

WITNESS: Yes.

Q. I wanted to know whether that was the net loss of business or whether that was taken care of from other nearby yards? A. That was taken care of by other yards.

Q. But was that handled by waterborne coal? A. No, by rail.

Q. Now you spoke of your commencing negotiations with the Harbor Board with regard to the Ashbridge's Bay. Just give me an account of what you did with regard to getting another site?

MR. TILLEY: My Lord, are we concerned with that? Is that the value
20 of this property?

HIS LORDSHIP: I suppose he can show. He will have to give some evidence; he got another site.

MR. TILLEY: He may have gone out of business so far as we are concerned, but we are not concerned with that.

HIS LORDSHIP: But this is a total taking of the property down there, it isn't a reinstatement, is it?

MR. TILLEY: No, my Lord. But I don't understand any of these cases are affected whether we took the whole of it or part of it; but what is the evidential value of the use they made of another property? We say What is
30 the value of this property?

HIS LORDSHIP: Yes.

MR. TILLEY: And it was for him to say whether he would buy other properties or not. I do submit we are confusing two things, if we commence to value some other property he got and then have to value what that property is worth.

HIS LORDSHIP: Well, they did go to another site. Now then I suppose he is going to compare the advantages of that other site to those of this site.

MR. TILLEY: My Lord, we are not concerned with that here except as to the value of this site.

40 HIS LORDSHIP: Have I the right to compare the one site to the other?

MR. TILLEY: No, my Lord. I submit we would have to go through endless statements as to that.

HIS LORDSHIP: I would think so.

MR. TILLEY: I submit not, my Lord. The question is what is this property worth?

HIS LORDSHIP: That is the main thing.

MR. TILLEY: That is THE thing.

HIS LORDSHIP: I think if they did go into another site that in valuing what they had down there I could take into consideration the other site.

MR. TILLEY: I do submit that is something quite foreign to what Your Lordship has to pass on.

HIS LORDSHIP: I may not pass on it.

MR. TILLEY: We are either valuing it or we are not. We cannot get into one's mind's eye a picture; either that is a thing that determines the value of this property or it does not.

HIS LORDSHIP: Oh, I don't think another site determines the value of the property at all. 10

MR. TILLEY: Well, I do object to the evidence.

HIS LORDSHIP: Well, Mr. Osler, what is the object? You have heard Mr. Tilley's objection.

MR. OSLER: Yes, my Lord.

HIS LORDSHIP: Another site is not going to enhance or depreciate the value of the old site to the owner.

MR. OSLER: I am not giving it for that purpose, but I am saying we would have a prosperous business in this location from which we were ejected, that we are entitled to be paid for the disturbance to the business. Now a number of different things might have happened. It might have been so that we would not have continued that business at all; then I should have had to ask for payment of the whole value of that business. 20

HIS LORDSHIP: That is this evidence is directed again to business disturbance.

MR. OSLER: To business disturbance. We have found while there were some disadvantages we could get another water carried site out at Ashbridge's Bay, and how Your Lordship can see what the business disturbance was without being able to compare what we were on, a water site, close to our main customers downtown, to another location farther out, and difficulty of settling plans and getting it and so on— 30

HIS LORDSHIP: But you are asking for 213 feet on the Esplanade \$396,000. Now what are you asking that for?

MR. OSLER: That is for the value of that land as land apart from the business.

HIS LORDSHIP: Altogether apart from the business?

MR. OSLER: Apart from our business, yes, my Lord; I am asking that as the value of the land as land useful for any of the businesses that a property of that character could be used for.

HIS LORDSHIP: That would make the Esplanade worth billions, wouldn't it? If for 213 feet you would have to pay \$396,000 it would run into billions. 40 I mean it would vary of course. This is an excellent location, there is no doubt about it.

MR. OSLER: It does run into millions.

HIS LORDSHIP: Into millions, but I should have thought that 213 feet at that rate, even allowing for the different locations, would run into billions.

MR. OSLER: I wouldn't think so. There is really when you consider

the prospective growth of the city a rather limited waterfront there; all of it west of Yonge Street taken up now.

MR. TILLEY: Oh, no.

HIS LORDSHIP: Well, Mr. Tilley, I understand the position; I don't want to delay this. You go on with the evidence. I hope that the arbitration is not going to be delayed by the introduction of any evidence that is really not relevant to what I have to determine.

MR. TILLEY: As Your Lordship will understand, I am not objecting to this witness saying that he had to move and what it cost them to move, I am
10 not objecting to that kind of evidence if it were limited to that, but my learned friend is taking a much broader question and that is my objection.

HIS LORDSHIP: What I think is if we are going to value the old site and the new site we will have two arbitrations.

MR. TILLEY: Yes.

HIS LORDSHIP: I will keep that out of my mind.

MR. TILLEY: I don't know about valuing a new site, but embarking upon what the difference is worth. I have heard of properties having a special value because of their adaptability to a particular business. Now I understand my friend says this site has no particular adaptability to the coal
20 business.

MR. OSLER: My friend does not quote me correctly.

MR. TILLEY: Just a moment ago I thought so! Now my learned friend says it has a special adaptability to the coal business. Now let us have the advantages of that site as specially adapted to coal, but I do submit we are not trying other sites as to their special adaptability.

HIS LORDSHIP: Well, I must have in my mind two arbitrations, in a sense, one valuing a site out there and another valuing a site here, but you go on with the examination; I will take it subject to objection.

Q. Now, Col. Marshall, will you tell me shortly the course of your
30 negotiations with the Harbor Board? You mentioned Mr. Cousins said definitely that you couldn't have a location in front of the old Church Street property? A. Yes.

Q. What took place with regard to locations which they were willing to sell or to lease to you? A. That was in 1926.

Q. Yes? A. I mentioned that the first few months I was—I quite dismissed the idea of going so far away as Ashbridge's Bay after Mr. Cousins told me we would have to go down there eventually.

MR. TILLEY: The first few months of 1926 were certainly after you knew about it.

40 WITNESS: After the expropriation. I am speaking of after the expropriation.

Q. And then? A. And then in 1927 I went down and looked over the property and approached the Harbor Commissioners and could get nothing that was suitable as a permanent site. We wanted to either buy or lease for twenty-one year renewable periods in order that we could put permanent fixtures on such a property. I was informed that the plans hadn't quite crystallized, that later on for permanent sites the coal companies would be

put down on Fisherman's Island or south of the main ship channel. I kept in touch with the situation and in 1929 visited Fisherman's Island and in 1930 again. There was no bridge across, we had to punt over, and I looked at a site on the south shore of the ship channel lying west of Cherry Street, that is the site that we eventually have been able to get on yearly leases.

Q. Will you show us the site that you have? A. Have you a plan there showing that?

BY HIS LORDSHIP: Q. On the west of Cherry Street away down below?
A. Away down here. (Indicating.) This must be it here. No, it doesn't show it. 10

BY MR. OSLER: Q. This is a Might Directory map which will show it?
A. In here. (Indicating.)

Q. Put an A on that, will you? A. (Witness marks.) There is a bridge now, but there wasn't then.

EXHIBIT 16 "Might Directory Plan showing relation of Church St. Yard to four outside yards 1931-2," above referred to.

BY HIS LORDSHIP: Q. Now to describe it, where you located at "A" on plan Exhibit No. 16? That is where you are now located? A. Yes.

Q. And that is the south side of the ship channel? A. Ship channel.

Q. Which is at the east of the Toronto Bay? A. And west of Cherry Street. 20

Q. How far distant would that be from Church Street? A. A mile and three-quarters, a little over. Southeast.

BY MR. OSLER: Q. Well, then, what title were you able to get to that?
A. A short term lease for the present only.

Q. When you say a short term, what do you mean? A. One year.

Q. And then you had certain options? A. We had certain options, for a longer lease, or for purchase.

MR. TILLEY: Is that in writing?

MR. OSLER: Yes. 30

MR. TILLEY: Let us have it.

Q. Where are the leases? A. The leases are in the hands at present of the Harbor Commission.

BY HIS LORDSHIP: Q. Didn't you get a copy? A. It was sent back to them for their signature.

BY MR. OSLER: Q. The leases were executed by you and sent to the Harbor Board but not yet returned? A. No. Quite recently. They were behind time coming.

BY HIS LORDSHIP: Q. But you got your first lease when? A. It dates from the 1st of July last. 40

BY MR. OSLER: Q. 1931? A. 1931.

BY HIS LORDSHIP: Q. Then since November 1926 you kept until April 1927 the property excepting the north part which you say you used for loading off the cars there, kept it just for the purpose of getting rid of your coal. A. We just had a small place.

MR. OSLER: The whole property was kept until April 1927.

HIS LORDSHIP: Yes, I understand, to get rid of the coal stock they had on hand, and then after that until when—?

WITNESS: Until July 1931, my Lord.

Q. And then complete possession was given up, you didn't use any part of it? A. Complete possession was given by the 1st of August, 1931. A month overlapped.

Q. And then you continued to use this small point on the south side of the Esplanade? A. Yes.

Q. For dumping from the cars? A. Yes.

10 Q. Until August 1931? A. To help to take care of our downtown business.

BY MR. OSLER: Q. And you have been continuing in negotiation with the Harbor Board with a view to securing permanent quarters there which will justify permanent improvements? A. Yes.

BY HIS LORDSHIP: Q. And you haven't got a permanent site yet? A. Unless this one pans out to be one. I hope it will.

BY MR. OSLER: Q. And is this the last letter you have received on the subject from the Harbor Board, a letter from Mr. Scandrett, a solicitor for the General Manager, dated 27th February, 1932 (showing)? A. Yes.

20 MR. TILLEY: Of course I don't want to be objecting all the time but this is all subject to the objection I raised.

HIS LORDSHIP: Very well.

MR. OSLER: Unless my learned friend wants it I don't want to put in that letter in full. It was a letter forwarding the one year leases for execution by the company. What I wanted to put in I think I might read in the notes.

MR. TILLEY: Just let me see the letter, if I may.

MR. OSLER: Yes. Or, if you prefer we can put that in.

BY HIS LORDSHIP: Q. You haven't put anything on this property? A. We haven't been able to get—

30 Q. You haven't put anything on it? A. Yes, we have an office on it.

Q. That is all you have? A. We have crocodile cranes we are using to handle in the yard.

Q. Then you have used it? A. Since July 1st.

MR. TILLEY: I don't know what my learned friend wants to read out of that letter but it would seem to be getting away from what we are concerned with.

HIS LORDSHIP: I don't know what the matter is at all. Just negotiations.

40 MR. OSLER: What I want to read it for, to show that the plans of the Harbor Board out there are in such a situation we haven't been able to replace this property with a permanent site yet.

HIS LORDSHIP: That is what the witness said, they are just waiting to see whether it is going to come into a real contract, or a permanent location.

MR. TILLEY: Oh, no, I don't think so, it is a real contract.

MR. OSLER: But a contract for a year is very different to a contract which would justify us in having anything permanent established. We have

to make some arrangement to stay there permanently or get some other site to stay there permanently.

HIS LORDSHIP: Well isn't that all you want?

MR. OSLER: I think so. I was going to read this instead of putting the letter in. These documents are the temporary leases for a year.

MR. TILLEY: You are reading from a letter of what date?

MR. OSLER: A letter of the 27th February, 1932: "These documents do not contain any reference to any option or anything of that sort, for, as you are aware, the Commission's plans for the development of the locality in question have not been decided upon and as I understand it from you the plans of your company are also still indefinite." 10

MR. TILLEY: There is a bit of indefiniteness on both sides.

MR. OSLER: We cannot make a plan until we know what we can get. Now I think I should have asked Col. Marshall earlier if he had a photograph of the property taken and approximately when.

HIS LORDSHIP: Of your property?

MR. OSLER: Of the property at the foot of Church Street.

BY MR. OSLER: Q. Can you identify that as a photograph? A. I can. At that time I had all our plants photographed and had them put into a group picture and that was the back. I had it cut out. 20

EXHIBIT 17: Photograph above referred to showing plant of Standard Fuel Co., Church Street Dock.

BY MR. TILLEY: Q. What date was that, Col. Marshall? A. The winter of 1922-23. The spring of 1923. (Witness points out places shown in photograph). The Electric Light Company building is out beyond that point (indicating).

MR. CASSELS: That has been spoken of as the Hydro, my Lord.

BY MR. OSLER: Q. Well then I think you mentioned it, but I am not quite sure, there is no rail accommodation yet on Fisherman's Island, at your present plant? A. No, there are no railway facilities. 30

Q. Then, Col. Marshall, did the work that was done in the harbor interfere with your water access to the dock before the time of actual service of the notice of expropriation? A. I don't think I got the first part of that.

Q. Did the work that was done on the harbor by the Harbor Commission interfere with the access to the dock before the actual service of the notice of expropriation? A. Yes. In the summer of 1926.

HIS LORDSHIP: How does that come up?

MR. OSLER: It may affect the amount of cargo that could have been brought in during that time, and that would account for—

HIS LORDSHIP: There are no pleadings here before me. How does that come in? 40

MR. OSLER: It only comes in in this way, my Lord, that when they came to consider the amount of business that was done there was a falling off of the waterborne traffic during that year.

HIS LORDSHIP: You would have done more business had there not been an interference with the harbor.

MR. TILLEY: By the Harbor Commission.

MR. OSLER: By the Harbor Commission. I am not saying that as a basis of claim but as a fact.

MR. TILLEY: Just to store things up.

HIS LORDSHIP: I have to try to keep all these things out of my mind. There may be a good many of them but I will try and do it.

Q. And the Order-in-Council was put in, Col. Marshall, under which the work was allowed to go on.

MR. TILLEY: My friend is in error about that. The Order-in-Council
10 that was put in does not refer to in front of this property. It had relation to the Ewart, not to this property. There is an Order-in-Council that affects your property. There is another one that does.

MR. OSLER: Will you let me have it?

MR. TILLEY: Yes.

Q. Because I know you did have representations made at Ottawa, Col. Marshall, so as to prevent the blocking of the access? A. Yes.

—Mr. Tilley produces a document.

MR. OSLER: This is after the expropriation.

MR. TILLEY: I know it is after the expropriation, but that is the first
20 time anything affecting your property was passed.

Q. Well at all events you thought, Col. Marshall, that the works that were projected—

MR. TILLEY: I object to what this witness thought.

HIS LORDSHIP: Really I don't see what this has to do with it at all. It has really nothing to do with the property in 1926. If they did do something that prevented you getting coal in or something you may have had an action for damages.

MR. OSLER: That is true, my Lord, so far as actual prevention of deliveries of coal by water are concerned.

30 HIS LORDSHIP: But you say indirectly you suffered some damage.

MR. OSLER: We suffered some damage and it shows why the waterborne traffic dropped off in that year.

Q. What do you say as to that, Col. Marshall? A. Yes.

BY HIS LORDSHIP: Q. That is in 1926? A. In the summer of 1926 prior to expropriation the groyne coming in from the beach caused sand to drift in and gave us less water.

MR. TILLEY: I don't see that it is relevant.

HIS LORDSHIP: I don't see where it is, but—

MR. TILLEY: It is as close as the other things. My friend put in yesterday
40 day an Order-in-Council and this morning asks for this one. I think that the dates of these Orders-in-Council or numbers should be shown.

HIS LORDSHIP: I don't know what Order-in-Council he is referring to yet.

MR. TILLEY: My friend Mr. Hellmuth referred to one yesterday but it affected from Church Street East, and this property is west of Church and therefore it is covered by P.C. 770 of 27th April, 1927.

HIS LORDSHIP: That is when that Order was passed.

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MR. TILLEY: Yes. That does relate to this property.

MR. OSLER: My learned friend I think is wrong in saying that the Order-in-Council that was put in by Mr. Hellmuth does not affect this property, because it permitted the carrying up of the dock wall to the very point of this property, cutting off the access along Church Street that we have had, and the Minister considering it did made the permission conditional upon their filing expropriation plans, which they did.

MR. TILLEY: Not of this property. At any rate this Order-in-Council shows precisely what happened with regard to this property and that s Order-in-Council No. 770, and that will be Exhibit No. 18? 10

HIS LORDSHIP: That will be Exhibit 18. You say that refers to the Boulton property and was passed in 1927 after the expropriation.

If you wish to pursue that you may but I don't see how it is going to affect me in the least.

MR. OSLER: That is as far as I wanted to go. I seem to be having an interruption almost every question, so that it is a little difficult to get it in. My learned friend seems to think every question is going to open an avalanche.

HIS LORDSHIP: I was hoping I would have this Arbitration all over in a couple of days but it looks like a couple of weeks.

EXHIBIT 18: Copy of Order-in Council P.C. 770, April 27th, 1927, 20
above referred to.

Q. Then I think you told me that the cost of freight by rail was considerably greater than the cost of waterborne traffic? A. It was.

Q. And did you have those figures given to Mr. Mitchell? A. I did.

Q. That is Mr. P. H. Mitchell; with a view to asking him to calculate what the damage that you had suffered was in dollars and cents? A. Yes.

HIS LORDSHIP: Who is Mr. Mitchell?

Q. Who is Mr. Mitchell? A. Mr. Mitchell, Mr. P. H. Mitchell, is an engineer who has done considerable work in connection with this.

HIS LORDSHIP: He is going to be called? 30

WITNESS: He will be called in connection with this.

Q. Well then will you tell us how the business developed as between anthracite and coke and bituminous over the period of say four years before the expropriation and the period subsequent to the expropriation?

HIS LORDSHIP: In 1922?

Q. That would be 1922 to 1930?

MR. HELLMUTH: In 1922 to 1926 first. A. You are dealing with the dock only.

Q. No, I want you to deal both with the dock and the general development of the business in the City? A. In 1922-23 American anthracite coal was at quite a good volume. After 1924 by-product coke began to eat into it as household fuel. 40

BY MR. TILLEY: Q. About what year? A. About 1924, Mr. Tilley by-product coke became quite a factor for household and building fuel, and in the downtown area bituminous coal commenced to replace other fuels for the large buildings.

BY HIS LORDSHIP: Q. What do you mean by other fuels? A. Such as anthracite. The tendency of the business was to increase throughout the city.

HIS LORDSHIP: You must speak up so that the reporter and counsel can hear you.

WITNESS: I am sorry, my Lord.

BY MR. TILLEY: Q. That is 1924? A. Yes, that coke commenced.

Q. And has taken the place of anthracite? A. Not entirely, but in a considerable measure.

10 BY HIS LORDSHIP: Q. And the replacement of that anthracite was in 1925, you say that it commenced to show? A. To bituminous coal?

Q. Yes? A. From 1924 on.

BY MR. OSLER: Q. And did you give Mr. Mitchell access to your figures and to your accountants? A. Yes.

Q. And he has prepared a memorandum, which I will prove by him later, but which I understand you have read, dealing with the extra cost of rail transportation and the extra cost of delivery from the outside yards and the extra cost of delivering fuel from Ashbridge's Bay. Have you a copy of that? A. Yes.

20 MR. TILLEY: I don't want to be interrupting all the time but does Your Lordship propose to permit that sort of statement to be filed? It will be endless if it is.

HIS LORDSHIP: I don't see how it can be filed. Mr. Mitchell can be called and we will get the particulars direct from him.

MR. OSLER: Mr. Mitchell has had to depend for some of the facts on some of those who were in the business and on the auditors and I propose to call the auditors and I wanted to ask Col. Marshall if he had read this statement and if the facts in it are correct.

HIS LORDSHIP: That would be all right.

30 MR. TILLEY: Does Your Lordship intend to permit the introduction of evidence as to extra freight by rail rather than by water?

HIS LORDSHIP: Well—

MR. OSLER: We are dealing with a business conducted on the waterfront.

MR. TILLEY: With a property.

MR. OSLER: We are dealing with both; we are dealing with the taking of the property and the disturbance of the business, a business which was conducted by waterborne transportation to a certain extent.

40 HIS LORDSHIP: Haven't I got it clearly stated? I don't think it will be disputed as to the cost of bringing it in by water and by rail, and you have given me an estimate of the coal brought in by water, so what are you going into? Isn't it all I require? And the dock now has been taken away from you, you may go to another place and you may not. Now you are asking me to fix the amount of your compensation because of all those privileges in connection with that business being taken away.

MR. OSLER: And I think I should furnish Your Lordship with some definite and detailed information as to what the differences are.

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HIS LORDSHIP: I will take that information you have in connection with it but I think you are prolonging it.

MR. OSLER: I will endeavor to summarize it and make it as short as I can.

MR. TILLEY: It cannot be taken holus bolus at all.

MR. OSLER: I am going to call Mr. Mitchell; I will go into it in detail.

HIS LORDSHIP: Hadn't you better call Mr. Mitchell and then, if you wish to, ask Col. Marshall any questions afterwards? That might shorten it.

MR. OSLER: All I wanted to ask Col. Marshall was whether the facts as stated here in connection with the tonnages and the freight rates are correct and whether the figures are taken from his books and have been verified by his auditor. 10

HIS LORDSHIP: Then you have a report in your hand which you wish to put in and you wish to ask Col. Marshall whether or not he has read that report or whether he agrees with the correctness of it.

MR. OSLER: Yes.

HIS LORDSHIP: And then you will call Mr. Mitchell afterwards.

MR. OSLER: And then I will call Mr. Mitchell afterwards.

HIS LORDSHIP: The report deals with the difference in the cost of coal by water and coal by rail? 20

MR. OSLER: Coal by rail, yes. And with the business disturbance, and then there are some debits and credits, and then in one or two instances there are advantages which Mr. Mitchell has taken into account.

Q. Have you a copy of that I can put in? A. I have a copy here.

Q. And a copy for Mr. Tilley?

—Mr. Osler hands a document to His Lordship.

MR. TILLEY: I don't know what my learned friend is doing. He has handed something to Your Lordship; I haven't seen it.

HIS LORDSHIP: Yes. I would just like to call it to your attention. It is headed "Standard Fuel Company Limited, Toronto: claim re dock property, 30 item 4. Extra cost of rail transportation to June 30th, 1931." From what date is this? (Reads first page of document subsequently marked Exhibit 19).

MR. OSLER: I might say, my Lord, that was taken to 1938 because that was the expiration of the existing lease and it was too indefinite because you couldn't calculate what rental a renewal of that lease would carry.

HIS LORDSHIP: This is a very lengthy report. What is it?

MR. OSLER: I am only asking him with regard to the verification of these facts and estimates which had to come from him.

MR. TILLEY: I think we should have the witness say what the facts are if it is admissible at all and not ask whether in a certain report so far as it is based on facts are the facts accurate. 40

HIS LORDSHIP: That is the proper way of proving it, of course. I thought possibly we might shorten it this way.

MR. TILLEY: If this sort of evidence goes in, my Lord, as to the extra cost of rail transport of coal and estimated as of 1938 it must of course mean an inquiry all through their books to ascertain what they have been doing.

HIS LORDSHIP: It may mean that.

Q. Well then, Col. Marshall, what do you say as to the increase of business that you might fairly have expected in bituminous coal having regard to conditions as they were in 1926 and as they were developing then? How much bituminous coal business did you actually handle with the restricted facilities that you had in Church Street from 1927 to 1931? A. An average of 20,000 tons per year.

BY HIS LORDSHIP: Q. I do not just quite understand that. 20,000 tons of what? A. Of bituminous coal a year. Of bituminous coal from our limited facilities at the foot of Church Street in 1927 on to 1931.

10 Q. That was the limit of your business? A. Just the bituminous business. There was other fuel.

BY MR. OSLER: Q. What bituminous business had you done before 1926? What was the average tonnage per year? A. It ran around 13,000 tons a year.

BY HIS LORDSHIP: Q. This 20,000 tons was the total from 1927 to 1931? A. No, no, each year.

BY MR. OSLER: Q. The yearly average? A. Each year.

BY HIS LORDSHIP: Q. Before 1926 how much was it each year? A. 13,000 each year bituminous coal.

20 BY MR. OSLER: Q. Then if you had had sufficient facilities to handle the bituminous coal by water what business do you say you could have done? A. Another 15,000 tons a year.

MR. TILLEY: I am objecting.

HIS LORDSHIP: I will let it go in subject to your objection.

WITNESS: An additional 15,000 tons a year on the dock as it stood, that is as we had it, after expropriation.

BY MR. TILLEY: Q. That is an estimate? A. It has been borne out, Mr. Tilley, since, by the facts since we have had our new dock, that is the scale we are going at. There was a great increase in bituminous coal down-

30 town.

BY MR. OSLER: Q. And after the opening of the Welland Canal what did you anticipate, taking into account the growth of the city and the facilities, that you could have done at this Church Street dock? A. In just bituminous coal?

Q. In bituminous? A. Well, I have already added fifteen thousand tons of the anthracite after but with the opening of the Welland Canal we would have projected our dock out to the Hydro dock frontage and that would have doubled our facilities and I would have built the soft coal tonnage up to an additional twenty, making it about 55,000 tons a year bituminous coal.

40 BY HIS LORDSHIP: Q. You may be enthusiastic about that? A. It is being borne out, my Lord, by the development.

Q. All right, 15,000 was the additional and your estimate would be with the opening of the Welland Canal it would be further? A. Yes.

Q. 55,000 tons? A. Yes, of bituminous coal.

MR. OSLER: All right, that is all.

HIS LORDSHIP: Have you gentlemen anything to ask?

MR. HELLMUTH: No, my Lord.

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EXHIBIT 19 Report by Mr. Mitchell above referred to, in support of the claim of the Standard Fuel Company, in three items, 4, 5 and 6.

CROSS-EXAMINED BY MR. TILLEY:

Q. My whole cross-examination is subject to the objection I have taken. I don't know where we will end with regard to it but we may have to go away from some phases of it after the evidence is in.

Col. Marshall, are you in the oil business as well as coal? A. Not the Standard Fuel Company of Toronto Limited.

Q. Not the Standard Fuel Company of Toronto Limited? Have you 10 some other company? A. I am interested in other companies.

Q. What other companies? A. I am interested now in the Milnes Coal Company, the Milnes Fuel Oil Company.

Q. When did you become interested in those? A. 1st of January, 1929.

Q. In what way are you interested? A. The same holding company now controls the various operating companies.

Q. And what is the name of the holding company? A. Standard Fuel Company Limited without the "Toronto."

Q. It is very difficult when one doesn't know exactly what word is used 20 or comma to keep these companies apart. Standard Fuel Company Limited, that is the holding company? A. The holding company since 1929, my Lord.

Q. And that means that your company has amalgamated with the Milnes, does it? A. Since 1929.

HIS LORDSHIP: Surely I haven't got to go into all this.

MR. TILLEY: Well, my Lord, surely this is what we have just been listening to. I certainly must go into it if we are going to have any thought that this business is to be valued.

HIS LORDSHIP: I know, but this is 1929, some Standard Fuel Company 30 he is now in. I can't understand it has a particle to do with what I am valuing, the value of this property in 1926.

MR. TILLEY: I wouldn't think that it had anything to do with it but we are comparing now the hauling of coal and this is a very big scheme we are embarked on if we are to get this witness' costs.

Q. When did these negotiations start? A. October '28.

Q. Was that the first? A. That was the first.

Q. October, 1928. Were Milnes dispossessed too?

A. In what way?

Q. By the Harbor Works? A. I believe they had a very short term 40 lease on a small property on the Esplanade east of Church Street.

Q. Had Milnes other coal properties along the harbor front? A. They had a dock at the Keating Cut for their Welsh coal.

Q. And they bring in Welsh coal there? A. They do.

Q. And the indefiniteness in connection with your setting up a new

location is because your plans are not yet matured as to just what you want in connection with the Milnes? A. The companies, Mr. Tilley, are operated quite separately.

Q. I am not asking how they are operated, their interests are all the same, and your schemes are not yet perfected, isn't that true? A. My scheme, Mr. Tilley, is absolutely perfected provided I knew the layout of the land I could get from the Harbor Commission.

Q. Provided you knew the layout of the land you could get from the Harbor Commission? A. I must know the breadth and depth of land.

10 Q. What depth of water have you at the dock?

HIS LORDSHIP: Where?

Q. The new dock? A. I haven't measured it. Thirty feet I think along the face and sixteen feet on the bay end.

Q. But with thirty feet you can bring in a boat with thirty feet draft? A. Yes, sir, although we haven't yet.

Q. But that is—? A. Possible.

Q. That is the advantage of that site, isn't it? A. We brought in large self-unloaders which came in last summer though, which came in with only eighteen feet draft.

20 Q. But that is the method of handling it now, they bring it in with self-unloaders? A. But so far we haven't gone over eighteen feet.

Q. You couldn't go over eighteen feet at your old site. What draft had you there? A. Without dredging we could bring in to fourteen feet six, but we could bring in twenty-one feet down to rock, sir.

Q. Have you ever dredged down to rock? A. There is no reason why we couldn't.

Q. I am not asking that. Have you tried it? A. We didn't need it at that time.

Q. Would your piling stand up if you dredged down? A. I think so.

30 Q. Do you know? I am told it wouldn't. I am told you couldn't dredge in front of your dock? A. We dredged on several occasions and had no trouble from that standpoint.

Q. How much did you dredge? To what depth?

A. The last time we went along the edge of the dock was to seventeen feet.

Q. Seventeen feet? A. But that wasn't the difficulty; it was because we didn't need to go any further.

40 Q. Well possibly some advice was given you that you had better not go below seventeen feet. You say you got to seventeen feet below the surface of the water at your old dock.? A. Yes.

Q. That would enable you to bring in boats? A. Periodically we had to clam the mud out from the face of the dock.

Q. How often? A. As I recall it every three or four years.

Q. And the shipments you expect are going to be materially increased due to the Welland Canal being deepened? A. Exactly.

Q. That is a development resulting from the deepening of the canal? A. Of the canal.

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Q. And applies for oil and applies for coal both? A. Yes.

Q. And your company handled oil? A. My own particular company that I am managing is not handling oil.

Q. But I mean the amalgamated company? A. The affiliated company is handling oil.

Q. Well amalgamated companies, they are all one, they handle oil? A. They have an affiliated company handling oil.

Q. Now just let us go back a bit: You say that you had in 1926 extensive anthracite business, had you? A. We had.

Q. Was that handled by water prior to 1926? A. The proportion 10 which came into Church Street was all handled by water; very very few exceptions.

Q. Where was the rest which came in? A. To our local yards by rail outside.

Q. How much went to Church Street as compared to your local yards? A. Fifty percent of our total tonnage.

Q. Fifty percent of your total tonnage? A. Of hard coal.

Q. Of which? A. Of anthracite.

Q. Of the anthracite tonnage prior to 1926? A. Yes.

Q. Went to your local yards. How many local yards had you then 20 prior to 1926? A. Five.

Q. Five local yards? A. In addition to the dock.

Q. Outside of the dock; and then how many have you now? A. We have at the present time nine with the dock.

Q. What ones were added since 1926? A. I added one out Danforth Avenue, East Toronto, one at Fairbank, on Dufferin Street, and one at Mimico and one at Leaside.

Q. All with rail facilities? A. With rail facilities.

Q. And then bituminous coal, how much of that came in by water in 1926? A. Prior to expropriation. 30

Q. Yes, prior to 1926? A. We were not bringing in any for ourselves at Church Street; we shipped a considerable quantity into the Electric Light Company later, the Hydro, which was water, to their dock.

Q. I am asking your coal business. That is the Hydro brought in the coal, or did you? A. We shipped the coal in to them; sold it to them.

Q. Sold it to them and it came in over your dock? A. No, over their dock next door.

Q. I am asking about your dock? A. My dock we used entirely for anthracite and later augmented that with coke and brought in our bituminous by rail; we required the space for anthracite. 40

Q. Will you just follow now: You brought in how much? What percentage of your bituminous coal came in to the Church Street?

A. I would say two-thirds of it.

Q. Two-thirds of it for the whole city. A. For the city.

Q. Taking the city over, two-thirds came in there? A. Pardon me, I am not including wholesale car lots that went to the factories.

Q. This is all carted? A. This is all handled stuff.

Q. And did you bring in any of that by boat or by water? A. No. We hadn't room.

Q. Had you at any time done that, brought in the bituminous by water? A. It wouldn't be evidence, I have a vague recollection of one car load some years ago.

Q. But none came in by water. Why not? A. We hadn't the space to keep both anthracite, coke and bituminous by water at the same end of the dock; we would have had to bring less anthracite and added bituminous.

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10 BY HIS LORDSHIP: Q. You had no coke though before 1927? A. We were getting coke, yes, sir.

Q. I thought you said 1927 your coke business commenced? A. 1924 it commenced.

BY MR. TILLEY: Q. How much coke did you bring in? A. Altogether?

Q. By water? A. We brought no coke in by water.

Q. No coke in by water? A. At that time.

Q. So that we can say that the only coal you brought in was the anthracite? A. Yes.

Q. And that was American anthracite? A. American.

20 Q. How much anthracite would you bring in each year? A. Prior to expropriation?

Q. Yes? A. It averages about 23,000 tons a year.

BY HIS LORDSHIP: Q. That is anthracite at the docks? A. Yes sir.

BY MR. TILLEY: Q. And how much bituminous did you bring in by rail prior to 1926, that is at Church Street? A. To the Church Street dock 13,000 or 14,000 tons a year.

Q. And how much coke? A. 5,000 or 6,000 tons by rail.

Q. And the only reason for not bringing the bituminous in by boat or vessel was the space? A. We required the accommodation for anthracite.

30 Q. And you could have increased your accommodation, couldn't you? Or could you, at that site? A. No, I couldn't at that time.

Q. Why not? A. Because we had space for 20,000 tons at one period on the dock under cover.

Q. Well, I know, but you bring in only 20,000 for the whole season? A. More than that I think.

Q. Well you said twenty-two or twenty-three?

HIS LORDSHIP: 20,000 by water.

40 Q. Yes. And I suppose it was going out and coming in? A. Yes, to some extent, but it was brought in during the summer and sold during the winter.

Q. Do you mean to say that you piled up 20,000 tons there and then kept it till the winter? A. No, Mr. Tilley.

Q. Well, then, how do you explain your suggestion that it was just because of the lack of space? A. I have seen 20,000 tons on the dock though.

Q. But you could have put more there if you had chosen to bring it in by water, couldn't you? A. In doing business it was more suitable to keep

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our anthracite under covered storage and reserve it for that while we had that inside place and put our bituminous outdoors at the northern part of the yard.

Q. Then it was just a matter you wanted to put your anthracite under cover and your bituminous out in the yard? A. At that time.

Q. And that is what determined whether it would come in by boat or by rail? A. Yes.

Q. Well, it is not a case then just of space, except space under cover, is that what you mean? A. Yes.

Q. Space under cover. Was that space under cover all occupied so that you couldn't put bituminous there if you wanted to? A. It was all occupied with anthracite up to the time of the expropriation. 10

Q. It would be quite all right to put bituminous under cover? A. Quite. But we needed the space for anthracite.

Q. Take at that same period of time, where was the Rogers Company? A. They had a dock at Parliament Street considerably to the east of us.

Q. Did they bring in coal by water? A. I don't think they were bringing in right along by water.

Q. Do you know? A. I have seen cargoes in front of their dock.

Q. Isn't it a fact that they thought it was better to handle it by rail? A. I don't think so. 20

Q. Did you ever figure up how much your loss is by operating by water as compared to rail? A. In our case there was no difference, our coal was all rescreened at Oswego as it was being loaded into the boat.

Q. With what result? A. With the result that our degradation was not any greater by water than by rail.

Q. And was it, loaded to other shippers, other coal people? A. I couldn't say as to that.

BY HIS LORDSHIP: Q. About fifty per cent of your anthracite that you purchased came in by rail and I suppose that goes to the different local yards? A. The outlying yards. 30

Q. And from there you sold your customers? A. Yes, locally.

Q. The other fifty percent which came in by water to this dock you kept under cover until a favorable season? A. Yes. We had to deliver a certain amount during the summer.

BY MR. TILLEY: Q. Mr. Marshall, are you suggesting when we look at your books, if we think it necessary, that we will not find you were delivering from there all the year round? A. We did make delivery all the year round, but the bulk of the business commenced with the 1st of September.

Q. And you are not suggesting that you piled up 20,000 tons there and kept it till the winter? A. We brought it in all through the season of navigation and sent it out through all the seasons of the year, some considerably smaller quantity in the summer. 40

Q. And you approached the winter with how much there? A. On several occasions, several years, we have approached the winter with 18,000 tons on hand the 1st of September.

Q. Who would bear the loss of the screening which you say takes place at Oswego? A. We were sold the coal F.O.B. the vessel so the shipper must

have taken the screening and sold them to somebody; our price was a circular price.

Q. What do you mean by that? A. That is a given price that all coal companies pay the operators at the mines plus the freight.

Q. You pay at the mines plus the freight, but I understood you to say that certain screenings went on for you? A. They didn't charge us for doing that, nor did we have to pay for that.

Q. They didn't charge at the mine? A. For that service, and we pay the regular mine price for our coal.

10 Q. Did you have a screening plant at your Church Street yard? A. Yes sir, we rescreened, as we do at all our yards.

Q. Well now I thought you said that there was no loss or degradation?
A. Just the regular loss by—

MR. OSLER: All he said was no more loss.

Q. Did you screen the rail deliveries too? A. Yes.

Q. And also by water? A. Exactly the same process.

Q. For both of them? A. For both of them.

Q. Did you ever keep records to show what your loss was in each?
A. We have.

20 Q. And can you say what they are? A. In anthracite it used to run approximately three percent. That is on a hundred tons of anthracite you would have three tons of screenings and perhaps have one ton of buckwheat and perhaps a little pea coal, but we sold the screenings at a loss.

Q. That is the anthracite? A. Yes.

Q. What about bituminous? A. Bituminous we don't screen.

Q. No, that is quite different. And did you ever figure out then what your loss was in dollars and cents per ton? A. Yes.

Q. How much?

MR. OSLER: Loss from what? A. From screening?

30 Q. Yes. This is something to be shown by the books I suppose? A. Yes. I think we would have to go into the books for that, Mr. Tilley. I have forgotten.

Q. I would like you to give it by rail and by water? A. I think they are both the same.

Q. Is that an average or is it because you kept separate records? A. No, it would be shown separately. Each operating yard.

Q. Each operating yard would show that separately? A. Yes.

Q. Now were you told about the National Iron Works property as an available property? A. Yes, I understood it was available.

40 Q. When did you understand that? A. I think in 1929.

Q. Not before? A. I am not positive, but I don't think so, Mr. Tilley.

Q. Well my instructions are that you were, but you are the one who is giving the evidence now. If you can give us something more accurate about it all right. I am suggesting to you that for a time your plans were all quite indefinite as to how you would handle your business and you didn't want to make any definite arrangements? A. I wanted to make definite arrangements, Mr. Tilley, but we couldn't get a definite site.

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Q. Well you could get the National Iron Works site? A. A pretty expensive property.

Q. How much? A. Quite a long way east.

Q. Well how much? What do you mean by expensive? A. As nearly as I can recall it t ran into a matter of rent and taxes totalling \$30,000 a year or \$32,000 a year for about seven acres.

Q. For about seven acres with large taxes? A. The dockage I think was about—this is from memory—I think 400 feet.

Q. 400 feet? A. I think.

Q. And suitable for the deeper Welland Canal? A. No doubt it could 10 be made suitable.

Q. That is on the improved harbor scheme? A. It could be made suitable I think.

Q. That was the plan? A. They said so anyway.

Q. What was wrong with that property if you had all the advantage of the improved depth? A. Well I considered t fairly expensive, and there was a great deal to be done to it, nearly half fill.

Q. Your rent at the old place was how much? A. \$6000 a year.

Q. With a right to renew? A. And taxes. With a right to renew. 20 For twenty-one years.

Q. Who paid the taxes? A. We did.

BY HIS LORDSHIP: Q. How much were they? A. Between five and \$6000 a year.

BY MR. TILLEY: Q. Your taxes, do you mean? A. Yes.

Q. Between five and \$6000? A. Between five and six.

BY HIS LORDSHIP: Q. You mean on that property? A. Yes.

BY MR. TILLEY: Q. That is the taxes were equal to your rent? A. Almost.

Q. Over how many years were you paying those taxes? A. I would have to refer to the books. Certainly the last three or four years before 30 expropriation.

Q. The last—? A. The last two or three years anyway before expropriation.

Q. Now I am told that the National Iron Works would be between eleven and twelve acres? A. Mr. Perry told me they wanted to retain some for themselves; the portion they showed me was approximately seven acres.

Q. Were your negotiations with him? A. I discussed it with Mr. Perry.

Q. Well then when you were expropriated I gather your arrangements were not carried through very promptly as to locating elsewhere, you decided 40 to handle it from your other nearby depots, didn't you? A. I was forced into that position.

Q. Well whether you were forced into it or not? Do you mean that you weren't given every consideration in getting out of the old property? A. Oh we were given every consideration, but I looked on it—

MR. OSLER: Except being allowed to stay.

MR. TILLEY: Of course you cannot stay when you are expropriated. At least you cannot stay usually but you did here.

Q. And the arrangement which was made with you as to what you were paid for compensation was a matter which was not to be disclosed in any Arbitration, as you understood? A. As I understood. We only had a small portion.

Q. That is to say the Arbitrator is not under the arrangement to know whether it was profitable to you or unprofitable to you, what you paid for the accommodation you had? A. I can't see that it will do any harm.

10 Q. I am not asking if it will do any harm. That was the understanding, wasn't it? A. I think it was.

Q. It seems a peculiar thing to be making much point of it now what the benefit was to you and what the detriment was without knowing all the terms, but at any rate that was the understanding.

MR. OSLER: The understanding as a matter of fact was incorporated in an order.

MR. TILLEY: Of course it is.

MR. OSLER: And the order merely refers—

MR. TILLEY: The order is there for whatever it is worth.

20 MR. OSLER: And the order is, neither the cash payment made by the applicant nor the occupation rent which is to be paid under this order shall be used in evidence in any Arbitration. That is the full extent of the order and nothing further.

Q. And you used the siding as a storage? A. Yes; it was a very limited space.

Q. I am not saying how limited it was? A. We did the best we could.

Q. You did the best you could and the cars were parked there for you and you unloaded from your cars largely? A. The space of course would only store enough—

30 Q. But you were allowed to keep cars there and you unloaded from your cars largely? A. Yes. And then threw the balance onto the ground.

Q. And put some on the property? A. Yes.

Q. Did you ever consider any plans for extending your property while you were there? A. Yes.

Q. Extending it south? A. South.

Q. Did you get any reports on the scheme and cost? A. I am not sure as to that, Mr. Tilley. It was during the—you see shortly after we took the property, two years after, the war broke out and there was no development from that.

40 Q. I am not asking you about that; I am asking whether you did? A. Yes. I took up the matter in 1921, or asked costs.

Q. With whom? A. I can't recall. Discussed it with my father and—

Q. Well did you get any engineering advice? A. No, I did not.

Q. As to the possibility? A. I can't recall that.

Q. The property is 213 feet wide and I am asking whether you ever considered any scheme as to how you could adapt that? A. Yes. We had to consider that in conjunction with the Welland Canal, my father and I.

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Q. Not with any engineering advice on the subject? A. I don't think we took any engineering advice; it was all subject to the Welland Canal.

Q. Quite. At that time the Welland Canal was going to be deepened?

A. It was being done.

Q. And at that time did you consider using the street area of Church Street or did you conceive that that might be closed up? A. That came later with the viaduct.

Q. I mean closed up opposite your waterlot? A. You mean Lake Street or Church Street going south.

Q. Church Street going south? A. I don't believe that was considered; 10 it was a question of more accommodation, and we knew we could get it. We knew we could get double the uses of our dock when the Welland Canal was opened.

Q. How do you mean double the uses of your dock? A. By extending it in front.

Q. How would you? You would have only the same distance across the front? A. We could extend twice as far down.

Q. I know, but you are relying on Church Street being kept open for a slip for you? A. Even allowing, as it turns out now, even allowing a cut in there for ships at the side we would have not quite almost double the uses, 20 just about double the uses; we could have gone to the Electric Light line and had a slip to the south and had a dockage over three acres.

Q. Did you ever work out the cost? A. Yes.

Q. At that time? A. No. More recently.

Q. Oh, for the purposes of the Arbitration? A. No, for the purpose of developing our dock.

Q. When was that done then? Let me know when it was done? A. It is all since expropriation.

Q. But before expropriation there was nothing of the kind ever planned? A. We had the plan to extend our dock if we were left alone. Had the 30 viaduct not gone through we would have undoubtedly doubled our dock.

Q. In order to get out and get the benefit of the Welland Canal? A. Get the benefit of the Welland Canal and an advantage over all our competitors in cartage, which we were looking for.

Q. And deeper water? A. Well I have never considered the water. We have never struck the posts yet I know.

Q. This photo, would you let me see it, please? Was this taken before you made your improvements or after the improvements of 1922 and 1923 that you spoke of? A. That would be after.

Q. Have you any other photographs? A. I haven't. That was taken 40 for the purpose of a group of all our plants.

BY HIS LORDSHIP: Q. In what year, did you say? A. 1922, sir. 1922, or it might have been 1923. I am not quite sure.

BY MY. TILLEY: Q. You say that you had possession till the 1st April; was it not July 1st of 1927? A. I think it was 1st of April.

Q. The arrangement was 1st of April, but were you not allowed to stay till the 1st of July? A. It may be so, but I don't think so.

Q. Did you erect any buildings on the property? A. A garage.

Q. Do you know when the buildings were erected? A. I don't know, Mr. Tilley. It was prior to our time.

Q. They were old buildings? A. They may have been. They were in service for some years, but they were kept up with replacements, that is all.

Q. Of course you knew when you went there in 1912 that the viaduct might interfere with your property? A. I didn't, Mr. Tilley.

Q. You didn't? A. I did not.

Q. Did your father? A. He may have. He never mentioned it to me.

10 Q. I think the records show that from 1915 on there was a general decline in shipments by water of anthracite into the docks along the bay. Do you know about that? A. I don't think so. I wasn't here at that time.

Q. Where were you then? A. I was at the war then.

Q. Until 19 what? A. 1919.

Q. So that you cannot speak of that. What about from 1919 on? A. Our shipments kept up until we commenced to be embroiled in the expropriation.

Q. Well your shipments would continue right up till 1926—did they not? A. No.

20 Q. Why not? A. We had two years that we were to some extent restricted by coal strikes and in 1925—

Q. Which year was that in, 1925? A. It was the winter of 1922-23 and '24-5. That is the winters, I am giving the combined dates. I think that is right.

Q. 1922, I think, was the strike year? A. But that was effective in our '23. Our fiscal year opens the 1st of April, 1923.

Q. What year do you say it was? A. The strike was in 1922; it affected our fiscal year of '23. The spring of '23. And the next year was '25, which affected our fiscal year of 1926.

30 Q. Was there a strike in 1925, do you say? A. Yes sir. It was not of a very long duration.

Q. Now can you tell me whether this is reflected—your books would show—? A. Absolutely.

Q. Whether this reflects your shipments to the docks of anthracite coal:

MR. OSLER: What are you reading from?

MR. TILLEY: From my brief.

MR. OSLER: I assume so, but surely I am entitled to the courtesy of an answer.

40 MR. TILLEY: I am reading it from my brief and I am asking if he can confirm it.

HIS LORDSHIP: What is the question?

MR. TILLEY: I haven't put it yet.

HIS LORDSHIP: I know.

Q. In 1915 your shipments to the dock, all the coal you brought in was 38,744 tons of anthracite coal, by water? A. It may be. I cannot confirm that. I don't go back that far.

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MR. OSLER: Surely if my learned friend has a report on that that he is putting to the witness he should let us know what it is.

MR. TILLEY: I am asking if it is right.

HIS LORDSHIP: If it is right he probably can tell.

WITNESS: It doesn't go back that far.

HIS LORDSHIP: What year?

MR. TILLEY: These are the figures I am told are right but I don't know whether they are.

MR. OSLER: Surely I should be told the source of the figures; he is reading a lot of figures to the witness. 10

HIS LORDSHIP: The witness has not answered that question whether he is going to confirm that.

MR. TILLEY: He has said the shipments by water did not fall off.

WITNESS: From 1919 you asked me.

Q. Well have you not looked back to see? A. I haven't gone back that far.

Q. What were they in 1919? A. I haven't got that. I am starting with 1920.

Q. Well what was it in 1920? A. In 1920 we brought in 36,000 tons.

Q. Well you seem to have accommodation for more than twenty there? 20
A. But it is moving out, as I explained, sir.

Q. But I thought the moving out was not so very much. What was it in 1921? A. In 1921 it was practically 30,000 tons.

Q. Well 29,381? A. That is about it.

Q. Well that is it, isn't it? A. Yes sir. It does not quite agree with my figures.

Q. In 1921 29,381, there is a drop of six to 7,000 tons? A. Yes.

Q. What would cause that? A. Incoming coke.

Q. Did you bring in coke then? A. Not by water, but by rail.

Q. How much coke by water? A. It would make up the difference— 30
Not by water; by rail.

Q. We are now talking about the water shipments and I am asking you this: You were suggesting that your shipments ran about the same and we have got now 1920 36,000 tons, we have got 1921, 29,000? A. Yes.

Q. And I am suggesting to you that your shipments, like others', were falling off, that is that came in by water, and I am asking you why it is.

HIS LORDSHIP: We will have to deal with that after the intermission.

—1.00 p.m. Arbitration adjourned until 2.15 p.m.

—2.15 P.M. (TUESDAY, APRIL 5TH, 1932), RESUMED:

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CROSS-EXAMINATION CONTINUED BY MR. TILLEY:

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Q. I am suggesting to you that your shipments, like others', were falling off, that is that came in by water, and I am asking you why it is? A. It is seasonal business of course to some extent, Mr. Tilley.

Q. What do you mean by seasonal? I thought a seasonal business was a business that took place at certain times of the year, but I am asking you to compare one year with another? A. You went back, sir, I think to 1919?

Q. Yes? A. That year was a very severe winter.

10 Q. You brought in more coal? A. Very often after a severe winter—
At that time we may have brought a little more in; of course I wasn't home then.

Q. You may have? Haven't you made any study of this, Mr. Marshall?
A. Not back of 1919.

Q. Well, I would suggest to you, and you ought I should think, be able to check this, that prior to 1919 your imports of anthracite were possibly fifty per cent. more than after 1919? A. I am not prepared to admit that and I don't think it is right, Mr. Tilley.

20 Q. Well my instructions are so, and I will have to ask you whether it is
right for the present, that in 1915 you brought in to the Church Street dock 38,744 tons out of a tonnage that came into Toronto by water of 123,907 tons of anthracite coal? A. I wasn't here at that time, sir.

Q. No. A. What is the next?

Q. 1916, 27,170? A. There was a big fall there.

Q. Yes. I am suggesting while there are fluctuations the fall was fairly pronounced right through? A. I don't think you will see that, sir, if you go on.

30 Q. Then you must know something about these figures, don't you? That total was out of a total of 69,720. That is to say you were about a quarter of the 1915 and between a half and a third of the 1916, and the importance of it is that others who were in the same business seem to find that the degradation or something else might be more than the saving in freight?
A. That was not our experience.

Q. Well you have said that there was screening at Oswego. Where does it take place, before it is brought into the boat? A. It is brought in by car from the mine, put into an elevator on a dock and then through a chute into the boats and there was a screen on the chutes.

Q. Well then the screening is before the coal falls into the boat? A. Into the boat.

40 Q. And it falls some forty feet into the boat, doesn't it? A. No, I wouldn't say that far.

Q. Well how high? A. The first few loads might go down twenty-five or thirty feet to form a cushion, and the rest of the coal is eased down in the meantime.

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Q. Isn't that where the degradation takes place mainly, dropping it into the boat? A. I wouldn't care to say that there was any additional degradation. There must be some degradation but our experience was it was no greater by water than by rail.

Q. If you have any explanation we will be glad to have it. 1917, 38,529 tons? A. Yes sir.

Q. Out of a total of 97,451. And whether you fell off or others, some were falling off distinctly, weren't they, if that is so?

1918, 20,842 for the Standard, out of 57,963; 1919, 33,330 out of 67,418?

A. About 13,000 there up from the year before. 10

Q. Yes, quite. 1920, 36,007 out of 71,280? A. 3,000 up from 1919.

Q. 1921, 29,381 out of 39,318? A. Yes sir.

Q. That is roughly 30,000 tons out of 40,000 tons? A. Yes.

Q. So that others were not bringing in that way at that time.

Then 1922, 9,620 out of a total of 10,398? A. That was the year of the strike.

Q. I have that so marked? A. You couldn't get the coal.

Q. 1923, one would think there would be a jump there, 24,928 out of 24,928; that is you were the only coal people that year who seemed to think it desirable to bring in coal by water? A. We were then working on an allotted tonnage; it was hard to get. 20

Q. Apparently you brought in 100 percent. of all that was brought in by water? A. Yes. Some of them were letting their docks go.

Q. Which ones were? A. I think several leases fell in that way.

Q. Which ones were? A. 1924, the Conger property that time let its lease fall in.

Q. What else? A. I don't know. I know his dock was evacuated.

Q. Did Conger bring in coal by water? A. He did while he operated his dock.

Q. To any extent? A. I cannot say to what extent. 30

Q. Any others than Conger? A. I think Rogers.

Q. Did Rogers give up? A. No, I think he went on until he was bought out by the—

Q. My instructions are that Rogers changed his system because of the loss by bringing coal in by water. You can't say anything about that? A. I can't say.

Q. Let us take the next year. 1923, I have given you. 1924, 25,128 out of a total of 27,168. 1925, 12,355 out of a total of 19,062? A. That was the strike year, Mr. Tilley.

Q. Well but you had twelve out of 19. And then 1926 15,195 out of a total of 15,195? A. A partial year only. That is the year the viaduct became effective. 40

Q. Mr. Marshall, the viaduct had nothing to do with the entrance to your property in 1926 and you were not expropriated till November? A. Yes sir.

Q. How? A. After midsummer we couldn't get deep water entrance to our dock anyway.

Q. Why? A. Because the groynes to the east of us, sand was formed in front so we couldn't get our boats in after the 1st August.

Q. And what do you say was wrong to prevent it? A. The front of our dock was filling in.

Q. Did you bring that to any person's attention? A. I think we did. I am not positive.

Q. To whose? A. I am not positive of that.

Q. Well I would like to know? A. But we didn't know at what moment we would be put off the property.

10 Q. You hadn't been expropriated and you continued there until the following year getting rid of your coal; do you seriously ask the Arbitrator to believe that you did not bring in coal by water that year because you might be expropriated? A. Yes, Mr. Tilley.

Q. Did you bring it in by rail? A. We brought a little in by rail.

Q. Well how much did you bring in to the Church Street site in 1926? A. We brought in by water what you just mentioned, the figure 15,315.

Q. Yes. By rail. A. No, that is by water. I don't believe I have got those figures here.

Q. Well you spoke of a constantly growing business? A. Quite so.

20 Q. And if you had the site there one would think that if you had only 15,000 tons by water you would have a very large amount by rail? A. And we did a certain amount from our other yards. This is very difficult, Mr. Tilley.

Q. I know, it is very difficult for any person to check up why you used your outside yards, but I am pointing out to you that according to this statement you brought in all the coal that came in by water that year and it amounted to only 15,000 tons. I am asking you whether you brought in more by rail that year, into Church Street? A. I couldn't be sure; I don't think I could answer that question. We have the figures but I don't think I could

30 answer that question.

Q. You could get me the figures? A. Yes. In the meantime I wasn't going to bring in a lot of coal by water if we had to move it.

Q. Why? A. Because we would have had to move it by the 1st of September.

Q. Who told you? A. I was in close touch with the situation. I didn't want to be moving a lot of coal.

Q. Do you mean to say you didn't bring in coal with the fear of expropriation? A. Yes.

Q. The fear of expropriation? A. That, together with—

40 Q. Do I gather you did not bring in by rail or water because you feared expropriation? A. That does not apply to rail.

Q. Then if you didn't bring in by water did you by rail? A. As much as we could handle.

Q. You could handle all your yard would keep for you? A. You are referring only to Church Street?

Q. I am referring to Church Street? A. Church Street handled it in very limited quantities by rail

Q. Why? A. We didn't have the facilities.

Q. Well, Mr. Marshall, is that all the explanation you can get of this fifteen thousand? A. I think that is all.

Q. I am suggesting to you there is a real reason and the real reason is that the coal people had decided that it was not desirable to bring in coal by water, and a business that amounted to 123,000 tons in 1915 shrank down so that you were almost the only one bringing it in and you in small quantities? A. I cannot agree with that statement at all.

Q. Well I am putting it to you. When did you bring in your last shipment by boat in 1926 if you say that it was filling up and you were interfered with. A. I think just prior to the 1st of August, but I am not positive. 10

Q. Well I am instructed—? A. Our books will show that.

Q. I am instructed you had a cargo come in at the end of September? A. That may be. It may have waggled in.

Q. Of course, anything may be, but we are trying to find out from you what the facts are? A. Our figures would show that, certainly.

Q. You are willing that we should see them? A. Absolutely. The books are available.

Q. Mr. Marshall, after all when you get away from the value of the land to how your business is affected it is difficult for an outsider to know whether it is beneficial to you to ship from a small subsidiary yard downhill or uphill at the waterfront and it is interminable to follow the things out, but I am pointing out we have these surprising figures? A. I don't think, Mr. Tilley, that is borne out by the present day conditions. 20

Q. I am not talking about present day conditions; there is a great change at the present day, I will agree? A. Which you could see coming, Mr. Tilley.

Q. Possibly you could see it coming but it hadn't come and it had not certainly come to you in 1926? A. We found our dock very profitable.

Q. Well I had some idea your business was profitable; we can't separate the profit from the local yard to the dock you know. By the way you have said that Church Street would take deliveries for what area? A. The area of Broadview, Bloor and Spadina. 30

Q. Spadina being what, approximately a mile and a half to three-quarters? A. I don't want to guess.

Q. I mean how far north then on Spadina? A. To Bloor.

Q. Up to Bloor? Then I should think Spadina and Bloor would be— A. The absolute limit.

Q. The absolute limit, yes? A. At the west end.

Q. Then what is your other nearest delivery point to Spadina and Bloor, in 1926? A. Macpherson Avenue. 40

Q. This is 1926? A. Yes.

Q. And how far would Macpherson Avenue be?

HIS LORDSHIP: From where?

Q. From Spadina and Bloor? A. Roughly I should say about a mile.

Q. And that would be downhill? A. There is not any grade that I know of, sir.

Q. There is no grade from Macpherson Avenue—? A. A very slight one.

Q. From Macpherson Avenue to Bloor and Spadina? A. It would be very slight.

Q. Well at any rate probably you will take this map and tell us whether that plan shows your yards in 1926 (showing)? A. May I show His Lordship?

Q. Yes, I want to. A. That is it.

Q. And you will agree with me that that shows Church Street not as of 1926 but with the waterfront filled in? I mean— A. Yes.

10 Q. The plan is a later plan but it serves the purpose? A. Yes. This is on the water at that time (indicating). Here is the yard down here at Greenwood Avenue. That is Macpherson Avenue. There is Merton Street and there is Dufferin Street (indicating).

BY HIS LORDSHIP: Q. And where is your Spadina? A. It was just being built at that time.

BY MR. TILLEY: Q. Would you just mark the Spadina and Bloor there? A. Yes. (Marks). I have marked it with a cross.

Q. I think you had better put a cross on that just to show that it isn't one of the other matters. That is red and blue? A. Yes. I say that is the
20 extreme limit of the deliveries there.

EXHIBIT 20: Plan "C" Standard Fuel Co., showing locations of coal yards of Standard Fuel Company, 1926.

Q. Well, Mr. Marshall, see how close you are to another delivery point. Col. Marshall, you must agree that it would be an impossible task for a person who was not working on the inside of your business to know why you delivered from one of these spots to a particular place rather than from Church Street. Isn't that so? That is an internal management that involves a great many considerations? A. In that case the distance was a little greater and a much smaller tonnage went there.

30 Q. But uphill? A. But there was quite a pull in the freight rate across the lake.

BY MR. OSLER: Q. A pull? You mean an advantage. A. An advantage.

BY MR. TILLEY: Q. We have got your advantages; they seem to be reflected in a falling off of the tonnage? A. I don't agree with that.

Q. You are an expert in the business and you ought to be able to give us a picture that would convince any reasonable person there is something in the back of it, because there must be a cause for that result, and if you have anything to say I will be glad to have it? A. There was those two strike
40 years, Mr. Tilley. It isn't a steady fall, Mr. Tilley, it starts in with 38,000 and drops next year to 27,000 and comes up to 38,500 in 1917, and drops in 1918 to 20,800; it goes up in 1919 to 33, goes up in '20 to 36,000; drops 1921 to 29,000; that is a going up and down tonnage. Well then latterly the two years were strike years—

Q. But then latterly the bulk of it appears to be pretty generally down? A. I am not interested in the other companies.

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Q. They must have business judgment the same as you, Mr. Marshall?
A. That might be, but they can't have the same arrangement that we had.

Q. In regard to what? A. In regard to their dock.

Q. Whatever the reason was they had the dock there if they wanted to use it? A. They didn't have the facilities that we had.

Q. And isn't it your knowledge that Rogers gave up the dock and gave up the shipment in by water? A. It is not.

Q. Or substantially so? A. I couldn't say that.

Q. Now, Mr. Marshall, was there a falling off in the use of anthracite in Toronto? A. To some extent there has been a falling off and the place of it 10 has been taken by coke, by-product coke.

BY HIS LORDSHIP: Q. And not by oil? A. To some extent.

BY MR. TILLEY: Q. Recently to quite a considerable extent? A. But there is still a very large tonnage used at the present time.

Q. In 1926 you can't tell me what you got out of this and if I have the figure it is not available at the moment but in 1926 the rail shipments of anthracite were 938,000 tons as against 15,000 by water.

HIS LORDSHIP: I did not just get that.

Q. In 1926 the rail shipments of anthracite 938,084 tons as against 15,195 by water? A. I haven't that figure but of course things were very very 20 unsettled on the waterfront.

Q. I don't understand what you mean by that. You had to handle your business and you hadn't been expropriated and any person who expropriated you had to pay the damages as of the date they expropriated; you don't suggest that you didn't use your Church Street property to its full extent that year, do you? A. The year 1926?

Q. Yes? A. I do suggest that we didn't use it to the full extent in 1926.

Q. As a matter of deliberate choice? A. No, sir, as my judgment.

Q. Well I mean judgment? A. Very well, but judgment, and partly 30 the harbor filling in with sand.

Q. But if I am right that you got cargoes there as late as the end of September it couldn't be so very badly filled in? A. Well if you are right, sir, it must mean that they waggled two or three cargoes in, they may have even lightened the boat, but we were certainly having trouble after that date I mentioned with the boats.

Q. But you haven't complained. You had a perfect right to use the facilities there? A. Except that we understood we were being expropriated at any moment and there was no use complaining.

Q. Well now the tonnage of anthracite in the year I see of 1931 had 40 varied a bit: 1931, anthracite 650,000 tons, total 650,533? A. All fuel during that year was down twenty percent.

Q. 1931? A. Twenty percent., due to the mild weather.

Q. 1931? A. 1931.

Q. And the water shipments of 1931 had got down to 2,490 tons out of 650,000 tons? A. There was no facilities— We were bringing in a lot of Welsh coal by water.

Q. This is anthracite. How do you bring in the Welsh coal? A. It comes in by water too.

Q. From where? A. From England.

Q. Right by boat? A. It is lightened in Montreal generally.

Q. And brought up? A. Yes.

BY HIS LORDSHIP: Q. By the St. Lawrence? A. Yes. Lightened.

BY MR. TILLEY: Q. Now do you bring any Welsh anthracite in? A. No sir.

Q. Your company I mean? A. No. Another operating company, 10 the Milnes Coal Company, bring in Welsh anthracite, and the Weaver Coal Company bring in Welsh anthracite.

Q. That is in this new holding company, the Weaver Company, is it?

A. Between the holding company; it is operated entirely separate.

MR. OSLER: Not the Weaver.

Q. Is the Weaver? A. No no, not the Weaver. They are independent.

Q. And how long has the Milnes Company been bringing in Welsh anthracite? A. I think since 1925.

Q. In 1925? And they bring it in to where? A. To the Keating Cut; they have got a dock there.

20 Q. And they had a water depth there of about thirty feet? A. I am not sure of the Keating Cut depth; I don't think it is that much.

Q. Well between twenty-five and thirty? A. I wouldn't be willing to admit that.

Q. I mean you couldn't handle that sort of traffic before at your old dock, could you? A. Yes, sir.

Q. How? A. They are all small boats up the St. Lawrence.

Q. What do they draw? A. They don't draw over fifteen.

Q. Are you sure? A. Yes. Very small boats.

30 BY HIS LORDSHIP: Q. In 1926 how many coal companies were bringing in coal by boat? A. I think, sir, practically they were all out of the business at that date.

Q. Well in 1925 how many companies were bringing in waterborne coal, anthracite? A. I think three, sir.

Q. Rogers and who else? A. Conger and Milne, he had a dock down there at that time. And there was one somewhere in the west end near Bathurst Street, I can't remember the name of it.

40 BY MR. TILLEY: Q. Well the business done by one of you illustrates practically the business of others; I mean to say when you come to waterborne coal handled by you at Oswego it would be handled for other dealers in the same way? A. We were the only agents that Dickson and Eddy shipped to in Toronto.

Q. But no matter how the others got it it would be the same sort of shipment, wouldn't it? A. I don't know as to the other people's arrangements.

Q. I thought you all worked together on these operations, so as to have uniform methods of handling? A. It might be well if we did, but we don't.

Q. Don't you? A. No.

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Q. It is only when you come to deal with us consumers that you get together? A. Well even then I am afraid we are not really in line.

Q. I mean isn't it a uniform price that you pay for the coal? A. We pay a uniform price on your coal.

Q. And you sell at a uniform price? A. Not always sold at a uniform price.

Q. Well now that is an idea. I thought it was pretty well uniform all the way through? A. I wish it was.

Q. Well now one other point from you: The anthracite business is ceasing to be a downtown business, it is an uptown business so far as it remains? 10

A. Not altogether.

Q. Well that is the tendency? A. There is quite a tonnage for anthracite in small sizes for blowers downtown and stokers.

Q. When did that start? A. It started almost with the development of the soft coal business downtown in large buildings.

Q. When did that start? A. Oh it has always been there but it started to develop really around 1924.

Q. Well then prior to 1924—and I am not saying these things just happened in a year, but treat it as if it did—prior to 1924 there was a market for anthracite downtown and from 1924 on, in the way I have described it, 20 it became bituminous, but there was some small coal sold for blowers? A. No sir, I wouldn't go that far. The city was growing very quickly. I think the anthracite tonnage might have been maintained downtown, the extra bituminous and small size anthracite was being taken up in large buildings; new buildings; it was new business.

Q. Did you have business of that kind? A. A considerable amount.

Q. Are you not describing really what is the slack coal from Welsh coal?

A. No. That is used also; not the slack coal, but the screening sizes.

Q. Mr. Marshall, I am going to ask at some stage if I remember it that it be inferred from what you are saying about this business that from a period 30 prior to 1926 anthracite was not a downtown coal as compared to years back, 1917 and 1918. Now will you agree with that? A. By downtown how far up do you go? The boundaries that I have laid out?

Q. Yes, take the boundaries that you have laid out? A. I would say then we had had no difficulty selling the amount of anthracite we have always sold and in addition selling the bituminous and Welsh coal we did; it was all new business.

Q. Well then bring in the boundary limit. Down to what boundary would you say the anthracite ceased to be as important a fuel? College Street?

A. No, I would say up to—I would divide it up with the bituminous area 40 about Dundas Street with a certain amount of anthracite in there too in that area, increasing as you go up, with the houses.

Q. Commencing at Dundas and running north to Bloor some anthracite?

A. A considerable amount. I would like to sell it all.

Q. Oh well, don't interject that, please; we are trying to get at this thing and we are having a good deal of difficulty, either because you don't—? A. I hope I am not unpleasant.

Q. No, but you are not very informative at times. Commencing at Dundas, below Dundas would you say practically no anthracite? A. No, I wouldn't go that far. There was a considerable amount being used in these small sizes.

Q. At any rate Dundas Street seems to present a somewhat negligible quantity, then between Dundas and Bloor something more, and then Bloor north considerably? A. No, there was a considerable amount between Dundas and Bloor; it is quite a large area.

Q. I know it is a large area of householders? A. A great deal.

10 Q. But the bulk is required for these large buildings and institutions and that sort of thing? A. Of hard coal?

Q. That is where your bulk comes from? A. Of hard coal?

Q. Of coal, and that has become bituminous? A. Not altogether. As I say, a lot of small size anthracite is used.

Q. Yes, I know, leave out the small size, but for the fuel that they use in big buildings today it is bituminous and has been since 1924, hasn't it? A. The tendency is that way.

20 Q. And this coal you were bringing in by rail to Church Street? A. Because of course we hadn't space to bring in both hard coal and soft coal in the same place.

Q. Well you were able to bring in at one time 38,000 tons when you wanted to? A. Yes. There was a lot going out while it came in.

Q. Well am I right in that? Possibly I am wrong. Does it mean did you bring in some anthracite by rail? A. After expropriation we brought in.

Q. Before expropriation? A. I think only where some extraordinary size, such as broken coal for a brewery, of one car, or something of that kind, but only in this respect, some extraordinary sizes we didn't have much use for.

BY HIS LORDSHIP: Q. But did you bring in anthracite by rail for some branches of your business? A. Yes.

30 Q. Down to this? A. Yes.

BY MR. TILLEY: Q. Now, Col. Marshall, when you were expropriated at a certain time they took the south part of the property and that was the anthracite coal part? A. The south side?

Q. The south end? A. We did store anthracite in the entire shed up to the time of the expropriation.

Q. And then after the expropriation you were first excluded, and you have given the dates, from the southerly portion, that is where the anthracite coal was stored? A. Well it was stored there as well as the northerly part.

40 A. A little open storage.

Q. Well a little open storage? It gave you substantially what you had for bituminous coal, didn't it? A. Yes.

Q. And I am suggesting that in 1927 and 1928 that was the important part for a downtown yard? A. It would be a great deal more important with dock facilities.

Q. You didn't bring in bituminous by boat? A. We didn't in the early

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days, but as time went on it became an important factor and was developing then.

BY HIS LORDSHIP: Q. The building that you had on this block, did it commence immediately at the southerly limit of the Esplanade? A. There was just enough room to walk around.

Q. And did it extend back as far as Lake Street? A. Extending right back to the track on the Esplanade.

MR. TILLEY: Your Lordship will see the south of the building would be just on the north of Lake Street.

HIS LORDSHIP: From the Esplanade to Lake Street. 10

MR. TILLEY: The buildings were all between the Esplanade and Lake Street.

HIS LORDSHIP: No buildings south of Lake Street.

MR. TILLEY: It was all water. Was it?

WITNESS: It was water.

MR. TILLEY: And Lake Street was water.

HIS LORDSHIP: In 1926.

BY MR. TILLEY: Q. In 1926 was it all? I am not sure as to that. I think the southerly boundary of your dock just diagonally went across Lake Street, but we will have evidence as to that. A. Approximately. 20

Q. So that your whole usable area was north of Lake Street? All that you had south of Lake Street was what any person else had, the use of the water?

MR. OSLER: No no, we had the right to fill it.

WITNESS: We had the right to fill it.

Q. But I am not saying the right; I am saying as to the user?

HIS LORDSHIP: Navigation facilities only.

WITNESS: For our own navigation facilities and the right to fill.

Q. Now you hadn't any right to fill? A. It was my understanding, sir, I had the right to fill. 30

Q. By the lease? A. Yes, sir.

Q. Do you understand that your lease gave you the waterlot south of Lake Street? A. It gave me the right to fill.

BY HIS LORDSHIP: Q. What other buildings did you have? A. We had a brick office, a scale, a set of scales, a garage and bag house and brick engine house, and then the balance of the property was occupied by coal storage inside, storage with overhead pockets.

BY MR. TILLEY: Q. Now your lease, Exhibit No. 10, of August, 1921, I see contains this after a description of the lands and some intervening clauses:

"AND THIS INDENTURE FURTHER WITNESSETH and it is hereby agreed 40 and understood by the parties hereto that these presents are not to be deemed or construed to be a lease of the land covered by water in front of the premises hereby demised, and being part of the added lands referred to in the Windmill Line agreement dated the 15th March, 1888, a copy of which is referred to in Chapter 70, of the Ontario Statutes. . . . ; but the parties are to be left to their rights with regard thereto unaffected by these presents." A. Very good, sir.

Q. So that there was a distinctive provision put in that unless you had the rights as a matter of law they were not to be leased to you? A. We understood under our former lease that we had the rights and they were left in that condition.

Q. Left in that shape? A. That we had the right.

Q. Well, whatever your rights were. I suppose no doubt there was some argument on each side or it would not have been put that way? A. Yes.

10 Q. Now you speak about a garage. When was that built? Or was that of any value, any size, any importance? A. Oh, it wasn't a very enormous matter; it was a frame building, tin roof; frame and tin building.

Q. Just large enough for what? A. I think that had space for about four trucks.

Q. Now you referred to your temporary lease and I notice my friend read the last clause in the letter, but how was the rent there computed? On the basis of what value? A. The rent was computed as of the value of fifty cents a square foot for the frontage.

20 Q. Yes? Anything else? A. And \$20,000 an acre for the rear, but we haven't taken the rear end of it up, this year we are just occupying a strip along the front.

MR. OSLER: I think if Mr. Marshall refers to the letter he will find he is wrong. It was a dollar a foot on the waterfront.

WITNESS: Oh, I am sorry. Was it a dollar?

MR. OSLER: I have a letter before me outlining the transaction.

WITNESS: I expect that is right. I withdraw that.

Q. We can possibly get that correctly from somebody else? A. Oh, yes, there is no doubt about that. It was a dollar.

30 Q. And then what rights had you to get? You have some rights; my friend didn't describe those? A. Well, we never had the riparian rights, we can't get the riparian rights.

Q. As long as the boats come up to the dock and get the coal off for 999 years I think we can get along. What about the right to get other property?

A. You couldn't issue bonds on the dock without riparian rights, though.

Q. You couldn't what? A. You couldn't issue bonds if you wanted to on a dock without riparian rights.

Q. I don't know what you mean. Have you tried? A. No, but I understand.

Q. Whom have you understood that from? A. Well you couldn't mortgage leased land.

40 Q. Well, why can't you mortgage the land with the right that goes with it to have the retaining wall there and use it? A. You would have difficulty mortgaging leased land.

Q. Yes? A. Difficulty mortgaging leased land.

Q. I think possibly if you will go to some other people who have taken this property you will find that they have got some very nice bond mortgages comfortably settled on their properties.

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Well now, Mr. Marshall, it depends upon how this develops; we may have to see your books and I understand that you are willing to let us see your books as to your production and your freight? A. They are all available.

Q. And as to the handling at the substations and also at Church Street?
A. Yes, Mr. Tilley.

RE-EXAMINED BY MR. OSLER:

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Q. Mr. Tilley was asking you about the reduction of anthracite that he suggested in some years and you referred to some things that might account for it. You didn't refer to the question of coke. Had that any bearing on the quantity of anthracite carried by water? A. I mentioned the coke; that was after 1923 or '4 coke had a bearing. 10

BY HIS LORDSHIP: Q. Do I understand from that that more people were using coke and in consequence they would be using less anthracite? A. Yes.

Q. And you didn't bring any coke in, if I recollect correctly, by water?
A. We hadn't up to that time. We are now doing it.

BY MR. TILLEY: Q. You had brought some in by rail? A. Yes sir. The tonnage at that time was not sufficient to ship much by water.

MR. TILLEY: Well, it is pretty hard for us to follow your business.

BY MR. OSLER: Q. I suppose the question of water shipment would depend upon the volume of tonnage available for shipment? A. Yes. That has now developed into a water basis of shipment. 20

BY HIS LORDSHIP: Q. What has? A. Coke.

Q. Where do you get the coke from? A. Detroit and Buffalo and Hamilton.

BY MR. TILLEY: Q. And can't you get a lot of it from Toronto? A. The Gas Company sell a lot of coke but that is not the same kind of coke. Buffalo, Hamilton and Detroit.

BY MR. OSLER: Q. And your anthracite coal comes from ports on the south side of Lake Ontario? A. Yes sir. 30

Q. And the bituminous comes from Lake Erie ports largely, I think you said, so that the development of this would depend to some extent on the bearing of the Welland Canal? A. To a considerable extent.

Q. And until recently the Welland Canal depth was limited? A. I would have to refer to— Mr. Cousins would have it.

MR. OSLER: If you haven't that, all right.

BY MR. HELLMUTH: Q. Fourteen, wasn't it? A. Somewhere around there, fourteen.

No 5

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No. 5
Percival Howard
Mitchell
Examination

PERCIVAL HOWARD MITCHELL, SWORN: 40

EXAMINED BY MR. OSLER:

Q. Now, Mr. Mitchell, what is your occupation? A. Consulting Engineer.

Q. And practising in Toronto? A. In Toronto.

Q. Will you just tell me what has been your experience? A. I have been in practice here as a Consulting Engineer in Toronto since 1908. Commencing in 1909 I was in partnership with my brother, T. H. Mitchell, and we carried on a general engineering practice. I took the mechanical and electrical end of all building construction at that time, and then at the time of the war I took on all the practice, and after the war I took on the civil and the hydraulic and another partner took on mechanical and electrical, and it has been a miscellaneous practice with all sorts of engineering works and hydro

10 power developments throughout Canada.

Q. You are a graduate of Toronto University? A. Toronto University.

Q. In what year? A. 1903.

Q. And then have you been consulted by the Standard Fuel Company, the claimant in this arbitration? A. Yes.

Q. With regard to making a calculation of the additional cost of rail as compared to water transportation? A. Yes.

Q. And that opens up the fourth item in their claim, the first items deal with lands and buildings. And have you made the calculation which was

20 put in in Col. Marshall's evidence as Exhibit 19? A. Item 4 is one?

Q. No, that includes also the additional calculation of the general disturbance including the credits? A. What number is that?

Q. It was 4, 5 and 6? A. What is the Exhibit number?

Q. Exhibit 19.

Then, Mr. Mitchell, you prepared this memorandum which begins with item No. 4? A. Yes.

Q. And will you tell me what sources of information you had? You were not familiar with the property itself in 1926? A. No. I had access to some of the books, but then on my request for certain information their own

30 officials gave me this information. Later the auditors checked the whole thing and gave a certificate on the figures that are used in here.

Q. So that you got some information from the company officials and some from the books and you had the auditors verify the books so far as they were taken from the books? A. Yes.

Q. Now item No. 4 begins:

"Extra cost of rail transportation to June 30th, 1931 and extra cost of delivery from yards.

"The basis for this item in the claim is that from April 1st, 1927, the beginning of the season immediately subsequent to expropriation, the company could not bring in anthracite coal by water for supplying the market of the downtown area normally supplied from the Church Street dock; all fuel had to come in by rail and as the dock yard was being dismantled and all facilities for unloading and loading anthracite were removed the company handled as much anthracite as possible in the limited space available for all fuel" . . .

40

MR. TILLEY: Your witnesses can say that but this witness cannot say that and no witness can check it.

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HIS LORDSHIP: Absolutely.

MR. OSLER: Your Lordship will remember I asked Col. Marshall if he had read this and he stated the facts were correct.

MR. TILLEY: That is what I was objecting to, the witness being asked to say something—

HIS LORDSHIP: No, I know this witness cannot say that.

MR. TILLEY: Then Your Lordship appreciates I was trying to get from Col. Marshall exactly that very kind of information.

HIS LORDSHIP: And Mr. Marshall said that the contents of this report so far as facts were concerned were correct. 10

MR. TILLEY: Is that a fact? That is a deduction I should say.

HIS LORDSHIP: No, he said that. It is very objectionable, I agree with you.

MR. TILLEY: And then I examined him and he was not able to tell me anything about it.

MR. OSLER: I think so. That is wrong.

MR. TILLEY: Except to say that is true, that is all.

MR. OSLER: I thought I would be saving time by asking Mr. Mitchell question by question through this; I understood my learned friend was cross-examining on these things. 20

HIS LORDSHIP: I don't see how this witness can speak of this as a fact.

MR. OSLER: No, I am not suggesting that.

HIS LORDSHIP: But he is stating it.

However if you wish to put Col. Marshall back to give any evidence that may be done. It is easily seen that this witness could not.

MR. OSLER: No, this witness does not pretend to do that and that was the reason I asked Col. Marshall if he had given the information to Mr. Mitchell and if this information as stated here was correct. It was a short way of doing it and I thought the most convenient way.

MR. TILLEY: I don't think Mr. Marshall was allowed to answer that 30 question in that way and certainly not assuming it was covering this whole exhibit; in fact, I didn't examine the witness on that exhibit.

MR. OSLER: If my learned friend so desires I will recall Mr. Marshall and that will get over the technical objection.

HIS LORDSHIP: Yes.

MR. TILLEY: If that is the evidence why should it be put in an exhibit in this way?

HIS LORDSHIP: This is in as an exhibit.

MR. TILLEY: It shouldn't be.

MR. OSLER: Perhaps it will be more satisfactory, my Lord, if the objec- 40 tion is taken, to put Mr. Marshall back now and go over this in detail. I thought it would have saved time to have done it as I did.

HIS LORDSHIP: Very well, call him.

You may just step down.

KENRICK R. MARSHALL Recalled:

EXAMINED BY MR. OSLER:

Q. Now I am going to ask you point by point as to these facts which Mr. Mitchell got from you?

MR. TILLEY: Then I desire to renew my objection that if my friend wants to ask this witness what tonnage they had and what space they had at any time let us have the figures. I do object to my friend preparing an exhibit in which the whole conclusion is stated in that way and then asking
10 the witness if that is true. It is the most leading and most objectionable way to prove anything of the kind. If this witness has the figures let him produce them as to what the coal was, how much they had and all that.

MR. OSLER: If my learned friend will exercise a little patience he will see the figures in this—

MR. TILLEY: That is a conclusion.

HIS LORDSHIP: Mr. Tilley means these figures are all here prepared by Mr. Mitchell and if you are going to ask me to believe them they should be produced and the books showing them should be produced.

MR. OSLER: We have no objection to having the books examined.

20 MR. TILLEY: But Your Lordship sees. I just heard my friend reading this statement and he says, about four lines down, "all fuel had to come in by rail and as the dock yard was being dismantled and all facilities for unloading and loading anthracite were removed the company handled as much anthracite as possible in the limited space available for all fuel and the balance was supplied to downtown customers from the company's other yards at Parkdale, Macpherson Avenue, Merton Street and Greenwood Avenue."

Now I object to a statement being put in in that form and the witness just asked if that is true.

30 HIS LORDSHIP: It is a very quick way of getting at it but it is not the proper way of doing it of course.

You will have to examine in the ordinary way, Mr. Osler, if Mr. Tilley objects.

MR. OSLER: Well, my Lord, that will take a little longer but I will do it.

HIS LORDSHIP: Well, we cannot help that.

Q. Mr. Marshall, after the expropriation and when you gave up possession on the 1st April, 1927, could you bring in anthracite coal by water for the purpose of supplying the market of the downtown area that you had been formerly supplying from Church Street? A. After what date?

40 Q. After April 1st, 1927? A. No, not by water.

Q. How had you to get your fuel in? A. By rail.

Q. What was the condition of the equipment in to the dock, the loading and unloading facilities? A. In 1926?

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Q. In 1927. After the 1st of April, 1927? A. It was standing in the same condition I presume it was in in 1926. We were not using the unloading equipment.

Q. Was it in working order then in 1927? A. Yes.

Q. And 1928 and 1929? A. I wouldn't say after the spring of 1927.

Q. What ultimately became of it? A. I can't answer as to that; the Terminal Company took possession.

Q. And then did you handle as much anthracite as you could in the space you had available? A. We did.

Q. And how was the balance supplied to your downtown customers? 10

HIS LORDSHIP: Now this is after April 1927.

MR. OSLER: After April 1st, 1927.

A. From these other four yards.

Q. Which were what? A. Greenwood, Macpherson, Dufferin Street and Merton.

Q. When you say Dufferin, is that what you refer to as Parkdale sometimes? A. Yes, Parkdale; Dufferin at King.

Q. You call that sometimes Dufferin and sometimes Parkdale? A. Parkdale.

Q. Then did that involve any increased expense? A. It did. 20

Q. In what respect? A. Cartage, and rail coal of course the additional freight rate.

Q. The additional freight rate by rail as compared to water? A. As compared with water, and the additional cartage.

Q. How long did that condition continue? A. Well that condition continued until we got upon a new dock.

Q. And that I think you said was—? A. 1st of July last year.

Q. 1st July, 1931. Then at that time was your business in anthracite being taken care of or supplanted to some extent by business in coke? A. To some extent. 30

Q. And we can come to those figures a little later.

HIS LORDSHIP: That has nothing to do with the loss of their property.

Q. Then where did you move on the 1st July, 1931? A. The south side of the ship channel on Cherry Street.

Q. And did you then reestablish water transport? A. We did.

Q. And does that get rid of all your difficulties? A. It wouldn't permanently settle them; it does for the present moment.

Q. What about the distances? A. The distances are greater.

Q. Does that involve additional cost? A. It does.

BY HIS LORDSHIP: Q. Additional cost of what? Of the delivery? 40
A. Of the delivery, sir. A mile and three-quarters—a little over a mile and three-quarters from Church Street.

Q. Isn't there a population out there that you would serve that would make up for the other? A. No sir.

BY MR. OSLER: Q. Apart from this have you any other location from which you could serve your downtown customers? A. No, not profitably.

Q. Which are the most important class of customers having regard to volume? A. The large buildings. Bituminous business.

Q. And they are situated in the downtown area? A. Yes.

Q. And then did you furnish Mr. Mitchell with the particulars of the cargoes that were handled at Church Street for the years 1921 to 1928? A. I furnished all the figures; Mr. Mitchell has had access to our books right along.

Q. And you got those figures from your—? A. From our books and records.

10 HIS LORDSHIP: No, he says he gave Mr. Mitchell these figures and in addition to that Mr. Mitchell had access to the books.

WITNESS: To verify the figures.

MR. TILLEY: I think the second statement was in amendment of the first.

BY HIS LORDSHIP: Q. Am I right in that? A. No, I gave him the information and he also checked it back with our books. I obtained the information from the books as well, of course.

Q. That is the way I understood, that you got the information from the books, you gave that to Mr. Mitchell and Mr. Mitchell had access to the books for the purpose of verifying what you gave him. Is that correct?

20 A. Yes.

BY MR. OSLER: Q. And you asked your auditor also to give him his certificates as to the verification of the figures? A. Yes.

Q. Who are your auditors? A. Vigeon & Company. Have been for a great many years.

Q. Then the cargoes that were imported for those years and the number of tons reported by Mr. Mitchell on those figures for the year ended March 31st, 1921, thirty-five cargoes.

HIS LORDSHIP: '21?

MR. OSLER: For the year ended March 31st, 1921.

30 HIS LORDSHIP: I thought you said commencing from April, 1927, to July, 1931.

MR. OSLER: That is from April, 1927, they couldn't bring in any by water, my Lord.

HIS LORDSHIP: That is what you mean. Now then you are going back.

MR. OSLER: Now then I am going back to show the cargoes which were brought in up till this time, from 1921 up till the end of 1927.

HIS LORDSHIP: Very well.

Q. The year ended March 31st, 1921, that is the end of your fiscal year, I understand, on the 31st March? A. Yes.

40 Q. Thirty-five cargoes, totalling 36,117 tons? A. Correct.

Q. 1922, thirty-two cargoes—?

HIS LORDSHIP: Just a moment. Are those set out in the report?

MR. OSLER: On page 3, my Lord.

Q. And then you have thirty-two cargoes in the year ending March 31st, 1922, totalling 29,339 tons? A. Yes.

Q. And so on, a total of 144 cargoes, as set out on page 3 of the Exhibit, and 152,000 tons?

HIS LORDSHIP: That is down to March 31st, 1928?

MR. OSLER: That is down to March 31st—well it is the years 1928 to 1930 are put in with nothing opposite.

HIS LORDSHIP: Well 1927, 152,000 in that time.

Q. And the average was 21,829 tons and yearly average of twenty cargoes? A. Yes. Of course that year marked 1927 is really the season of navigation of 1926; it might be well to note that.

Q. Yes, in each case the year includes the season of navigation for the previous calendar year? A. That is it.

MR. TILLEY: What do you mean by that, Mr. Osler? 10

MR. OSLER: The year ending on the 31st March, March, 1927, really covers the navigation season of the calendar year 1926.

BY HIS LORDSHIP: Q. You got no coal in after the end of September, 1926? A. Correct.

BY MR. OSLER: Q. Then the cost of bringing anthracite by water to Toronto during the year ended March 31st, 1927, that is the calendar year 1926, is given in detail: The freight from the mines to the port of shipment \$39,783; cargo freight, that is the water shipment, I suppose.

BY HIS LORDSHIP: Q. Wait a moment. "The cost of bringing anthracite coal by water to Toronto".....? A. This is it, Your Lordship 20 (Indicating).

Q. You had to get the coal of course at the mines? A. Yes.

Q. The mines to port of shipment, which cost you—? A. \$2.59.

HIS LORDSHIP: I am commencing to understand it.

BY MR. OSLER: Q. Then those figures as shown on page 3 of Exhibit 19 show the amount of freight from the mines to the port of shipment on the south side of the lake, the cargo freights which you paid for crossing the lake? A. Yes.

Q. The insurance, the handling at the port of transfer, the harbor dues in Toronto, and the total cost of delivery F.O.B. dock Toronto? A. Yes. 30

Q. That amounted for that season to \$52,245.88, and the amount per ton handled are set out in the other column, showing a cost of \$3.40 per ton? A. Per ton is really what you are interested in. Those amounts will be that.

Q. And during that period what were the prevailing freight rates as obtained from the payments that you actually made? A. From the mines to Black Rock it is \$2.93 a net ton and from there to Toronto \$1.15.

Q. Are we speaking of net tons throughout? A. Yes, we will, at 2,000 pounds.

Q. Making a delivery cost at the siding in Toronto of \$4.08? A. Yes.

Q. The difference being sixty-eight cents per ton in favor of water transportation? A. Yes. 40

Q. Well then I will deal with the calculations when we come to Mr. Mitchell's evidence. Now on the amount of tonnage delivered we have on page 6 a statement of the number of tons of anthracite and coke respectively in the years 1924 to 1927 inclusive and it appears that those averages are 17,418 tons for anthracite and 4,383 tons for coke. Now what tonnage is

that? Is that the actual tonnage as shown in your books? A. The actual tons as shown in our books.

Q. Computed from what? Do you keep an incoming record? A. Oh yes.

Q. Or is that a record of actual sales? A. We have stock books that show our income and also our sales.

Q. I see at the bottom of page 5 these tonnages are taken from the actual records of sales and deliveries from the Church Street yard? A. Yes.

10 Q. Then I think you have already covered that first paragraph explaining about the increase of sales. Did you find that the sales from the outside yards after allowing for normal growth picked up the shortage that you delivered from Church Street? A. Yes. I think so.

BY HIS LORDSHIP: Q. Your business continued to be as large? A. Our business, yes.

BY MR. OSLER: Q. Your business as a whole? The whole business? A. The whole business has increased.

Q. Then in addition to the imports of fuel by water, anthracite and coke, were there any by rail? I gather by the bottom of page 5—? A. Yes, that is so.

20 Q. And did you transfer fuel between yards? A. Well when one yard runs short we sometimes augment it from the other.

Q. So that there might have been some receipts at Church Street which are not shown as sales from Church Street? A. There no doubt were considerable receipts at Church Street.

Q. Well now then the difference between receipts and sales at Church Street would represent transfers to other yards? A. Yes, which are not included.

Q. Then on page 6, the last part of the page, the yearly averages of sales of anthracite and coke after the expropriation are shown? A. Yes.

30 Q. And the particulars of those come from your books? A. Yes.

Q. And they show an average of 4,943 tons of anthracite and 6,566 tons of coke? A. Yes.

Q. That is a yearly average of both of about 11,509 tons? A. Quite.

Q. Then on page 7, I think you told me in your former examination, that the difference of about 10,000 tons by which the Church Street tonnage was reduced was taken care of by deliveries from other yards? A. Yes, in anthracite.

Q. In anthracite. Now was there an additional cost involved in delivering that? A. Yes.

40 Q. That tonnage from the other yards? A. The additional freight rate by rail instead of by water plus the extra cartage to the downtown district.

Q. Well then I will let Mr. Mitchell speak about the calculation of the distances and we come down to the working costs? A. Page 8.

HIS LORDSHIP: Working costs start at page 7.

MR. OSLER: Yes, they do, my Lord, but Mr. Mitchell has dealt with the question of mileages from these yards himself.

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Q. Now what wages do you pay your truck drivers? A. We are paying fifty cents to the driver and forty-five to the helpers.

Q. Fifty cents to the drivers and forty-five cents to the helpers? A. That has recently been reduced to forty-five and forty.

Q. How recently? A. Last fall.

Q. Well then I think Mr. Mitchell got the particulars of the gasoline and oil and the tire repairs from the office? A. Yes, he did.

Q. Now then we come to page 10, the extra cost of delivery of all fuel from Ashbridge's Bay to the downtown area from July 1st, 1931, on to August 1st, 1938, and we have already dealt with the tonnage of anthracite and coke. 10
Now the bituminous tonnages, averaged from sales from April 1st, 1923, to March 1st, 1927, are these figures which you gave Mr. Mitchell? A. Yes.

Q. They appear yearly by years on page 10, a total in the four years of 54,202 tons, an average of 13,550 tons a year? A. Yes.

Q. Then the average of all fuel during this period is merely a summary of those tonnages, or those averages added to the coke and anthracite? A. Yes.

Q. And that makes a total annual tonnage during those years of 35,353 tons? A. Yes.

Q. And then Mr. Mitchell has made his calculations on the basis of the mileage and the labor costs, and he can, the rest of it, I think, deal with. 20

Now what do you say as to whether your business would have been increased after the date of expropriation if you had been left in possession? A. I think unquestionably the bituminous coal would have increased.

Q. Yes? A. It did increase under the conditions we were suffering. It would have increased a great deal more if we had had water facilities as some of our competitors.

Q. Did you suffer from competition from those who did get their bituminous in by water? A. To some extent. To a considerable extent from the Century Coal Company, who was the nearest competitor.

Q. Were they able to offer a lower price? A. They were. 30

Q. And did they? A. They did.

BY HIS LORDSHIP: Q. When did they get located out there? A. They weren't there; they were on Cherry Street, on the Keating Cut.

Q. How long had they been there? A. I think they have been there about eight or ten years.

BY MR. OSLER: Q. And up to the time that you were put out by the expropriation you were able to compete with them, with your water competition?

MR. TILLEY: That is rather suggestive to your witness. The witness hesitates on that. A. No, I am not hesitating, because we weren't bringing 40
in any bituminous by water at that time.

MR. OSLER: You see my learned friend's suspicion might better have been left unexpressed.

WITNESS: We were able to compete up to that time because they hadn't become the virulent competition they did after.

BY MR. TILLEY: Q. As long as you brought in by rail you competed? A. No.

MR. OSLER: My learned friend is an excellent witness if he knew anything about it.

BY MR. OSLER: Q. Then on page 2 of the memorandum under item No. 5 we have the tonnages year by year for 1928, 1929 and 1930. That is the tonnage I take it on bituminous coal? What tonnages are those, Mr. Marshall? A. Those are the tonnages from 1928 to 1931 handled from the Church Street dock with only rail facilities—bituminous coal.

Q. You are looking at page 1: I am asking you now with reference to the tonnages in 1928, 1929 and 1930, for the years ending then? A. That is what I am referring to. The average 20,000 tons.

Q. But those were handled not from Church Street dock, because you had lost the Church Street dock in 1927? A. No, they were handled from Church Street.

Q. Oh, they were handled by rail from Church Street? A. By rail. Even with the competition it showed an increase.

Q. And that showed an average of 20,000 tons as compared to the four years previous average of 13,550 tons? A. Yes. That showed the trend.

Q. Then page 2 of item 5; what do you say you might have—

MR. TILLEY: I don't know whether Your Lordship appreciates, you made your ruling that this sort of evidence is being introduced as to the difference of the cost between the two places long after expropriation.

HIS LORDSHIP: Yes. But this is touching on figures of business disturbance.

Q. Then how much more business do you say that you could have done if you had been left undisturbed at Church Street, of that bituminous business? A. I estimated that we would have brought in a certain amount by water and built up a business to an additional 15,000 tons for those years.

Q. And is that a fair estimate? A. I think it is fair. The business was there for us to get if we got after it.

Q. Then what do you say as to the period after the construction of the Welland Canal?

HIS LORDSHIP: After the opening.

Q. After the opening of the Welland Canal?

HIS LORDSHIP: When was the opening again?

Q. When did the Welland Canal open? A. Last summer.

Q. What effect do you say that would have had? A. Well, with the opening of the Welland Canal we would have gone on—

MR. TILLEY: Do you think this should go on? Surely we are not paying them at any time for the Welland Canal? We didn't expropriate it from them.

HIS LORDSHIP: Oh, no, I know that. It is getting a little beyond the limit, I think, Mr. Osler, but in this matter I wish to get all the evidence that I can, and it will go in subject to your objection, Mr. Tilley.

WITNESS: With the opening of the Welland Canal and left where we were on Church Street I would have built the dock on out at least as far as the Electric Light Company's wall and operated a larger business in the bituminous.

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BY HIS LORDSHIP: Q. That is almost problematical, isn't it? A. Well, it has been borne out now, sir, by what has happened, what actually happened on our new dock.

HIS LORDSHIP: It would be rather thin to place any value upon that, Mr. Osler.

MR. OSLER: I wouldn't think so, my Lord, because of course the completion of the Welland Canal was in sight in a relatively short time in 1926.

MR. TILLEY: The St. Lawrence is also in the same position now.

MR. OSLER: Oh no.

MR. TILLEY: You have included that water route.

MR. OSLER: Well, if I had somebody who had the figure he probably would have said it.

BY MR. OSLER: Q. What do you say, Mr. Marshall, as to what additional business subsequent to the period of the opening of the Welland Canal you might have fairly expected? A. By increasing our dock accommodation I would have said an additional 20,000 tons of bituminous on top of what I had, and perhaps allowing a little less bituminous because of the coke; we are bringing in a lot of coke by water now. There is a saving on the coke by water, Mr. Osler, of \$1.25 a ton over rail.

Q. Over rail on coke? A. Yes.

Q. Then in item No. 6 there are a number of items pro and con, following item No. 5. I think so far as the rent is concerned you already dealt with that this morning? A. I might say that— Yes, quite, Mr. Osler.

Q. I think you spoke about the rent and taxes? A. I did.

Q. And then light and power, Mr. Mitchell calculated that there was a saving on the new plant? A. We would have to buy a new motor.

MR. TILLEY: It will have to stand as rent.

MR. OSLER: Mr. Mitchell will probably explain that.

MR. TILLEY: Does this include the rent paid up?

MR. OSLER: I am not sure.

WITNESS: What is that, sir?

MR. TILLEY: This witness is the one supposed to give the facts. Does this statement at page 1 of item 6 with regard to rent bring in the rent that you paid under the order of the court which was not to be referred to at all?

WITNESS: Paid on the Church Street northern part of the property?

MR. TILLEY: Yes.

WITNESS: It includes that.

BY MR. TILLEY: Q. So that although the order said it was not to come into the thing at all we have it in? A. Well, it is not shown separately; it would be pretty hard to find out how much it was.

MR. TILLEY: This shows the objection to going outside the items mentioned, the land.

WITNESS: It does.

MR. OSLER: I didn't observe that in the interest item as a credit but you will find some small amounts the details of which do give some of this rental, so that I think perhaps we had better delete that. I will perhaps have to substitute a page for that.

BY MR. OSLER: Q. Then I think you already gave us the effect of being able to store in reducing the price and enabled you to take advantage of the cheaper summer price? A. I think I covered that.

Q. That was twenty cents a ton? A. Yes.

Q. Then after the loss of the Church Street dock—

MR. TILLEY: Where is that twenty cents a ton?

MR. OSLER: At the top of page 3. I am going to ask Mr. Mitchell to vary that item No. 4 crediting you with a certain amount of savings which would have been effected, but the details do take into account some of that
10 rent.

MR. TILLEY: My friend takes this item twenty cents, the witness said he had referred to it before; I don't recollect him referring to it before. This is some gentleman called Mr. Fielden of Vigeon & Company has prepared a statement that shows that the storage facilities at the Church Street dock permitted purchase of coal stocks during the summer season with a net saving of twenty cents per ton.

WITNESS: Mr. Osler mentioned that in examining me this morning.

Q. Have you made an estimate of twenty cents? A. I did, yes.

HIS LORDSHIP: I don't remember that, I confess.

20 MR. OSLER: I am not sure; I think I did.

WITNESS: I think I did.

MR. CASSELS: He said there was a saving and was going to mention a figure and was, I think, interrupted.

WITNESS: I certainly thought I did.

Q. At all events you did mention this morning there was a saving?
A. Yes.

MR. TILLEY: Of what?

MR. OSLER: On the cost, by being able to buy earlier and store during the summer season instead of dealing from hand to mouth as the coal was
30 required.

Q. That is you could get a better price to a certain extent? A. The circular advanced ten cents a month from April till September inclusive—the price went up at the mine.

BY HIS LORDSHIP: Q. This storage for the coal purchased in the summer netted you about twenty cents a ton? A. Yes. That would be an average, sir.

Q. You get that? A. It actually figures fifty cents between April and September at the mine.

40 Q. You estimated you would have an advantage of about twenty cents a ton? A. Our figures show that we have an advantage of twenty cents.

Q. Because of the storage of the coal which you brought in by water?
A. Yes, sir.

MR. TILLEY: The question that Your Lordship asked was responded to by the witness? I understand Your Lordship to be asking the witness whether he estimated a saving of twenty cents a ton by being able to store this coal, bringing it in by water.

HIS LORDSHIP: (To witness) You explain that now in your own way.

MR. TILLEY: I think it is just a saving in the price owing to the fact that in April you get a less price than if you bought in July or August.

WITNESS: Yes, quite.

MR. TILLEY: And that is all. And then you handle that as best you can, you store it or bring it in by boat or do what you like with it.

MR. OSLER: But we can't store it now you have cut us down to the small strip.

MR. TILLEY: I don't say whether you can or not, I am just wanting to know what the witness is saying, and that is it, that is a difference in the price of the coal depending on when you bought it at the time. 10

WITNESS: Yes, at the mine.

BY MR. OSLER: Q. And your ability to take advantage of that depends on whether you have a sufficient area in which to store it? A. Yes.

BY MR. TILLEY: Q. But the price was the same whether you took it in by water or by rail? A. At the mine.

BY MR. OSLER: Q. And after 1927 did you have sufficient area to do that at Church Street? A. We did not.

BY MR. TILLEY: Q. What took place you didn't have the area?

MR. OSLER: My learned friend can ask you that in cross-examination.

MR. TILLEY: I don't know what that has to do with the storage. 20

MR. OSLER: I am bringing it in because it was objected to in general terms before and you insisted on putting it in in detail.

MR. TILLEY: Why did you insist on bringing it in in detail?

MR. OSLER: You seemed to be asking for it.

BY MR. OSLER: Q. Then what about the handling facilities at Church Street after you were confined to the small piece at the north end? A. Well we man-handled it then. We did use a small portable conveyor and that helped to unload coal from the cars but didn't pick it up, and it was practically all man-handled.

Q. As compared to machinery handled on the docks? A. Machinery 30 and overhead loading.

Q. And what do you say the additional expense of that was per ton? A. I put in ten cents per ton.

Q. Is that a fair estimate of it? A. It is very conservative.

MR. TILLEY: Do you think this arises out of our letting them stay there under an order of the court under which a certain rental was to be paid and nothing was to be referred to in the Arbitration about it, and now we have all the evidence about it?

MR. OSLER: Not when the order said this morning, which I read to you, that the amount of rent paid for that was not to be mentioned. 40

MR. TILLEY: Therefore all the deficits are heaped up and the advantages cannot be brought in; it is a picture that should not be painted at all.

MR. OSLER: I disagree entirely with my learned friend. How can he expect us to say we are going to move out of this property and never breathe a word? It is the kind of thing one would hardly expect outside the railway company.

HIS LORDSHIP: I understand both your contentions about it.

Q. Then at the Church Street yard, Mr. Marshall, you had direct current for your machinery operation I understand? A. Yes.

Q. Could you get direct current out at Ashbridge's Bay? A. No.

HIS LORDSHIP: Direct current, what was this for?

MR. OSLER: For the operation of the machinery.

Q. That is your loading and unloading machinery. A. Yes.

Q. And does that involve you in any expense? A. The expense of buying motors.

10 Q. For what purpose? A. Which we haven't done yet. To make that power direct—to create alternating current into direct current.

Q. In other words, you cannot use the alternating current directly on your machinery? A. No.

MR. OSLER: Now I think that covers what Mr. Mitchell will have to say.

CROSS-EXAMINED BY MR. TILLEY:

Q. Now, subject to my objection let me ask you a few questions: Where is this motor which you speak of that had to be obtained so as to change from direct to alternating, or vice versa? A. We have not bought one, Mr. Tilley, we haven't got that form of machinery yet.

20 Q. I see. And when you get that form of machinery where, may I inquire, will the article be, please? A. On the new dock.

Q. So this is something in the future? A. Yes.

Q. That is to say at that dock the current supplied is alternating, is it? A. Alternating.

Q. And at the old dock was direct? A. Yes.

Q. And therefore you will need a new motor? A. Yes.

Q. And which is the more expensive power, direct or alternating? A. I am afraid I cannot answer that without referring to the books.

30 Q. It seems quite a claim we have to meet here where you are bringing in a motor with a different kind of current and I am suggesting to you that if you figured that out there would be a real saving. I don't think we are concerned with how much you can save some place else, but I am putting that to you? A. Well, there would not be a saving having to buy this motor at over \$6,000, Mr. Tilley. We would have the interest on that anyway.

Q. Do you know which is the more expensive, direct current or alternating current? A. I don't think there is very much difference.

Q. Do you know? A. I don't know that point. I do know that we have to go to the expense of buying a motor. Quite an expensive motor.

Q. For use at the new property? A. For use at the new property.

40 Q. And the new property is going to be used for what? What will you use that motor for? A. Loading principally.

Q. Loading what? A. Coal.

Q. On what? A. Into trucks, or into perhaps overhead pockets.

Q. And do you do your own trucking? A. We do a good—most of it.

Q. Do you do it all? A. We do not do it all.

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Q. Whom do you make your arrangements with? A. Various truck contractors who help us through our peak load condition.

Q. Well, do you not have some hauling for you all the time? A. I wouldn't say that. Through the winter season we have.

Q. And on what basis do they charge you? A. We have been paying \$1 a ton.

Q. Is that a flat rate per ton regardless of distance? A. We have been paying a dollar a ton.

Q. Flat rate? A. Yes.

Q. How long have you been paying that? A. We have been paying 10 that rate right along for ten or twelve years.

Q. The same at the new site as at the Church Street site? A. The same at the new site, with the exception of the last two or three months I have cut that down to seventy-five cents per ton.

Q. Are you giving us credit for that? A. I think Mr. Mitchell has that. I think that has been included.

Q. So that you could have your trucking done all the time at a flat rate? A. It wouldn't be practicable to run a business of our size on that basis.

Q. What proportion is trucked at a flat rate? A. Not over fifteen percent I wouldn't say. 20

Q. Of the whole business? A. Of the whole business.

Q. And then what about horses and wagons? Do you include that? A. We have no horses and wagons working there at the new dock. We had at the old dock because it was such a short haul to the downtown district. We found the new dock was too far for horses and wagons.

Q. So you changed. Is your statement built up on the longer distance for the horse to haul? A. No, it is built up entirely on the truck basis.

Q. And when you had the horses where were they kept? A. They were kept for a time on the Ewart dock, at a stable that was formerly Conger's, and later on across the road at another place. 30

Q. And at other times? A. That ended there.

Q. It ended there? What, 1926? A. 1926. Well, we kept two horses right up till 1931. They were transferred from Esplanade and Scott Street, a stable there, down to the Lake Simcoe Ice Company, a couple of blocks down.

Q. Were there horses kept at the other plants? A. Yes.

Q. All your plants? A. Not all of them. We have five of the other plants.

Q. Five of the other plants have them? A. We have added some plants the last five years. 40

Q. You said you had four or five plants? A. Yes.

Q. Are those the ones where the trucks are or where the horses are? A. No, they have both horses and trucks; the horses for short hauls.

Q. And then Church Street was the same? A. Yes.

Q. Both horses and trucks? A. Yes.

Q. And your practice was all through your business horses and trucks? A. Horses and trucks.

Q. Both? Is that right? A. Both, that is right, but not at the new dock.

Q. Well I suppose not; everything will be done in a better shape down there I suppose? A. Too far for a horse; take him half a day to go down there.

Q. It is a good thing then we have the trucks. What is the capacity of this new motor to be at \$6000, do you know? A. It would have to have power to handle a load—to furnish power to machinery which would load 75,000 to 100,000 tons a year.

10 Q. Why? Do you purpose taking that amount of coal in at that dock?

A. We anticipate that tonnage.

Q. As compared to what at the old? How much tonnage at the old? A. 41,000 I would think.

Q. Double the tonnage? A. Double the tonnage.

Q. How is that? A. We would have increased at the old dock with the opening of the Welland Canal.

Q. Then may we take it that some substantial change was needed in your accommodation in order to provide for the business from the new Welland Canal? A. With the opening of the new Welland Canal we would have
20 constructed our dock out to the Electric Light Line, doubling the capacity.

Q. Some substantial change had to be made to accommodate that even if you remained? A. We intended to do that with the opening of the Welland Canal.

BY HIS LORDSHIP: Q. Had that become a necessity? A. Not a necessity, sir, but very advisable.

BY MR. TILLEY: Q. You couldn't double your business without doing it, could you? A. No. We could have increased it to some extent, we could have added fifteen or twenty thousand tons without doing anything, which would bring it up to fifty-five.

30 Q. How much was your business last year at the new dock? A. We rented the new dock on the 1st of July. We are just closing our books now, our year ended last week. Our tonnage to the 1st of July runs something over 50,000 tons.

Q. Something over 50,000 tons in the first year? A. Yes.

Q. Well the first of July took in the whole season for that year? I mean—? A. Navigation opens the 1st of May anyway.

Q. Well I know, but when did you bring in your first coal? A. Well we didn't take possession of the dock until the 1st of July; I think we had cargoes in by the middle, 15th or 20th.

40 Q. You were able to make your arrangements in advance? A. Not much in advance.

Q. Well you could have got it in when you got possession? A. Well there was a doubt. There was a bridge had to be completed across the main channel, we couldn't get access.

Q. But at any rate we have been able to show how your business was distributed. Now I gather from something that is in one of these papers

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that you transferred coal from one of your yards to another at times? A. At times.

Q. That would be two handlings. That would be unnecessary if you knew where to put it in the first instance? A. No, only in the case where a smaller yard runs out of fuel and we would—it is an advantage to us to have storage to draw from to furnish those small yards.

Q. Where was the storage. Church Street? A. Church Street.

Q. Was that then transferred from any other yard except Church Street? A. We have made transfers where we have been short.

Q. To any extent? A. Not to any great extent. 10

Q. But you made substantial transfers at Church Street? A. At the time, although we have eliminated it in all our figures.

Q. Can you tell how much you have eliminated, in order to get at your figures then? A. Yes, I can.

Q. You could give us over a period of years how many tons each year you had to take up at Church Street after you had once had it there and take it to another yard and put it in the other yard? A. Yes, our figures, we can produce that.

Q. Was that going on every year, can you answer that? A. To some extent. 20

Q. To what extent? A. And it would pay for the new dock today to do some of it.

Q. I am not suggesting that it would not? A. There is \$1.25 difference you see of the freight rate on coke between water and rail.

Q. Mr. Marshall, you carry us all around with these figures. Does coke enter into it before 1926 to any extent, or does it not? Now you have said it didn't; now you raise—?

MR. OSLER: No, he didn't say that. A. '24, sir.

Q. Before 1926 you said not enough to bring up any by water? A. That 30 is quite so.

Q. And I assume it wasn't to any extent? A. Well it is quite a factor now.

Q. I know it is a factor now and you have a very excellent property today to handle it? A. Except for the additional cartage.

Q. Well you have additional cartage and you have trucks for that purpose and you have depth of water and you handle it right off the boat and you didn't handle it that way before and you have really a modern up to date plant now and you had nothing of that when you were at Church Street? A. We haven't anything, Mr. Tilley, except a vacant lot at the present time, and 40 our dock.

Q. Well you have water and so on?

MR. OSLER: That is Mr. Tilley's idea of a modern plant.

MR. TILLEY: Yes, it is, exactly.

Q. Well, Mr. Marshall, let us go back to this: The transfer of the coal from Church Street to your other properties was an expensive matter if you had to transfer. Can you tell me that per ton in money? A. Of course it

didn't have to be bagged; it was merely a matter of pulling the handle and loading the truck and taking it up in the yard and dumping the truck.

Q. Quite a simple proposition when you don't want it to mean much; it seems to be a different thing when you want it to mean a lot. I am asking how much it did cost to load a truck, truck it to another yard and unload it there? A. Mr. Tilley, there wasn't a great deal of it done.

Q. You say you don't know, is that it? A. I wouldn't go so far as to say that; it is a difference as to the yard you put it in, the distance.

10 Q. Can you give us any figure on it? A. Cost on the basis of about ten cents per ton mile.

Q. The labor of handling it wouldn't be very well spread out on a mile or two haul? A. Well you take the average.

Q. Well. Your page 3 of item 4, Exhibit 19, gives the number of cargoes and the total net tons and you tell us twenty cargoes and twenty-one thousand odd tons? A. Nearly twenty-two, yes.

Q. Just slightly over a thousand tons to a cargo. Now how is that? Isn't it usual to have about 2000 to 2500 tons to a cargo? A. We invariably employ one or two boats that work in with us.

20 Q. What boats? A. We had a boat named the Veronica which used to bring in about twelve or 1300 tons; it has brought as much as sixteen or 1700 tons on one or two occasions.

Q. What was the other boat? A. The old St. Joseph.

Q. And what was it capable of taking? A. It was a small boat only capable of taking eight or 900 tons odd of fuel, but the Veronica was the main one.

Q. Did you own them? A. We owned the Veronica, and the Joseph, but the Joseph sank when I was away, I think in 1915 or 1916. The Veronica was sold in 1919.

30 Q. Well then none of this coal came on either of those two boats? A. No, not our two boats.

Q. Now then we must find some other reason of there being a thousand tons to a cargo? A. Well we employed such boats as the Colfax and other boats that operate on the lakes.

Q. Do those boats draw fourteen feet or did you have to have them shallow? A. Thirteen to fourteen.

Q. Did you ever have other boats than the smaller boats you used? A. But before the opening of the Welland Canal there weren't the big boats on the lakes.

40 Q. I know, but I thought a boat drawing fourteen feet of water would take along 2000 to 2500 tons. A. It would depend on the beam of the boat.

Q. Of course it would; I am just asking if that is not so. If that is so how is it they were taking smaller ones? Has that relation to the depth of water at your dock? A. I think we have had boats in up to 2000.

Q. Did you have to bring boats that drew less water than you otherwise would, because of the depth of water? A. We had to bring a boat in that drew less than fifteen feet without scooping out more mud.

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Q. And were you controlled as to the boats you actually used? A. Just to that extent.

Q. Just to the extent of bringing boats that would carry a thousand tons instead of 2500? A. We have gone up to 2000 tons, Mr. Tilley.

Q. You may have gone up on occasions but I am pointing out for some reason or other your facilities seem to have controlled the cargo you could carry? A. Our dock was looked on as a very good one to bring coal in, we gave a very good discharge.

Q. I see; that is the answer. In order to accommodate the larger boats of course you have said you would have to rearrange your property. Can you tell me what amount of dockage you would require and what area you would require to take care of the doubling of your business that you forecast? A. I figured on going out in the first instance as far as the Hydro or what I call the Toronto Electric Light. 10

Q. Yes, surely? A. And leaving a slip at the side.

Q. On which side? A. I think on the east side.

Q. The Church Street side? A. Yes.

Q. How wide a slip? A. I think if I recall somewhere around fifty feet.

Q. Fifty feet width for the slip? A. Which left an area of about 42,000 square feet south of Lake Street and the old 83,000 square feet north of Lake Street with conveyors across. 20

Q. And then you would have to build your property so as to hold in your fill and fill it and so on? A. We had to of course.

Q. And you never got any estimate of cost as to that? A. I have since expropriation.

Q. I am not talking about what you have done for this Arbitration? I mean at the time you were carrying on business? A. I didn't at that time. I didn't figure it would be very great to do it on the basis of our old dock, the filling. 30

Q. You say in this at page 5: "In addition to imports of fuel by water, anthracite and coke were brought in by rail and while between all yards there was a bulk transfer of fuel to accommodate individual yards due to temporary deficiencies in stocks the large stock in storage at the Church Street yard particularly was used for transferring to other yards, these transfer tonnages do not appear as sales for Church Street yard."

MR. OSLER: They will appear as sales from Church Street.

Q. Now that you are going to let me have? A. I can let you have those transfers, yes.

Q. I understood you to say, so that there will be no doubt about it, that the increase of business you contemplated at the old site was bituminous and not anthracite? A. Bituminous and coke. 40

Q. Coke possibly taking the place of some anthracite? A. A little anthracite. But in addition to that too.

Q. But substantially bituminous? A. I reckoned on holding the same—

Q. Pardon me. Substantially bituminous? A. Substantially bituminous, but I counted on maintaining our anthracite tonnage; the city was

growing; and to increase the coke and greatly increase the bituminous coal.
 Q. And taking care of 15,000 additional tons at the same site? A. At the same site.

Q. That is what I understood you to say. That is all by water I suppose you mean, do you? A. Yes.

Q. Not by rail? A. Oh there might have been some brought in by rail, but I doubt it.

Q. I understood you were speaking of the advantage of the water?

HIS LORDSHIP: So did I.

10 A. But there was some at the time brought in by rail, sir.

Q. I appreciate that, there has always been some brought in by rail, and we are going to find out about that, but I think you were giving how important it was to you to have the water? A. Very important.

Q. And that you would increase by 15,000 tons by water. Now is that right? 15,000 without the Welland Canal and 20,000 with the Welland Canal? A. Yes.

Q. 15,000 with the old accommodation by water, as I understand it? A. Yes, that is quite correct.

20 Q. Are we clear there? A. That was by water that that increased; in addition to that we were already bringing in a certain tonnage by rail, so that this 15,000 was an increase over our water tonnage.

Q. Yes, I thought so. You came nearly slipping off that, didn't you? A. (No answer).

—His Lordship then made arrangements with Mr. Dempsey and Mr. Fleming to have an inspection of the property in question, etc., upon the following morning.

—4.30 p.m. Arbitration adjourned until 10.30 a.m. Wednesday, April 6th, 1932.

—10.30 A.M. WEDNESDAY, APRIL 6th, 1932,

30 RESUMED:

KENRICK R. MARSHALL—(Continued):

CROSS-EXAMINATION CONTINUED BY MR. TILLEY:

Q. Mr. Marshall, you made some reference yesterday that I did not quite follow to machinery. You said there was some machinery you left on the premises. What was that? A. We left all the equipment on the premises, the unloading and loading equipment, and that includes conveyors and everything else.

Q. Why didn't you take it away? A. We had no place to put it; I understood it was purchased from us.

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Q. Depending on whether you wanted a purchaser or not, but you were free to take away anything you wanted there? A. I didn't understand it so.

Q. Well did you ask about it? A. I am not sure whether I asked about it; I would have had no place to put it at the time.

BY HIS LORDSHIP: Q. Why did you think it was purchased? By whom? A. By the Toronto Terminals which expropriated the property as it stood there.

BY MR. TILLEY: Q. Well they expropriated the land. What was it you specially referred to, some unloading device? A. We understood, Mr. Tilley, they expropriated land, buildings, machinery of all sorts, fixtures. 10

Q. I suppose you know very well, Mr. Marshall, that anything that was of any value to you they would have been glad to get rid of? You would know that, wouldn't you, or would you not? A. I assumed nothing on it; it was purchased from us.

Q. Well then let us test it in another way: Was there any of it any use for a modern coal dock? A. Yes. The tower and conveying machinery and screens were all quite modern.

Q. You couldn't take away the tower? A. No.

Q. But the unloading devices would not be suitable at all, would they? A. Yes. 20

Q. Why? A. The unloading tower conveyed the coal into conveyors which ran the full length of our shed and unloaded the coal into overhead pockets and then a wagon came in and they just pulled a handle and filled and went away.

Q. Could that have been used? A. It could have in a similar layout.

Q. And that would have been suitable for you in your new place when you got it? A. Yes.

Q. Well why not take it? A. Now.

Q. Yes? A. Because I don't know what sort of place we are going to have yet. 30

Q. You don't even know yet? A. No sir.

Q. So that for that reason you wouldn't want to take it, is that it? A. Well I would have been carrying it for the last six years without using it likely.

Q. 1927 you went out, didn't you? A. And this is 1932, six years.

HIS LORDSHIP: Where is that now, that machinery.

Q. Do you know where it is? A. No, I don't know.

Q. You don't know yourself? A. No.

Q. Well what method of unloading had you there? A. We had a main electric tower, a clam, a capacity of a ton a minute. 40

Q. The clam, do you mean? A. The clam, which dropped the coal into a hopper over the top of the shed; it came down through the hopper and into conveying cars that ran along the full length of the shed and into the overhead pockets.

Q. Mr. Marshall, will you make it clear to a person who doesn't understand anything about the business? What I understand, your clam would dip down into the boat? A. Exactly.

Q. Into hatches? A. Yes.

Q. It would first empty one hatch and then empty another hatch?
A. Yes.

Q. And this was a thing which would grab coal, is that it? A. Yes.

Q. And then lift it up and put it in a hopper and then into conveying machinery to be taken where you wanted it in the building? A. The various pockets.

HIS LORDSHIP: Very much the same method as excavating.

Q. The same method as excavating I assume in a way accommodated
10 to a different purpose? A. Except that it took it out and put it into pockets.

Q. And then the conveyors carried it along. Now then that method of unloading boats is a thing of the past, isn't it? A. I wouldn't say so. Not where you want overhead loading.

Q. Well what changed it, more modern methods? A. I would like to have it.

Q. What do you mean by that? I thought the boats had their unloading devices themselves? A. Some of them have.

Q. Well isn't that the current thing? A. It may be coming in; so far we could use our old plant very successfully.

Q. Now I was asking you yesterday about that sort of thing and we were
20 referring, or your counsel produced a letter from which he read an extract, and I have just asked that the other letters should be obtained. I am handed a letter from you, K. R. Marshall, that is you? A. That is me.

Q. To General Langton, the General Manager of the Harbor Commission
A. Yes.

Q. March 11th, 1932:

"Adverting to your letter of June 11th, 1931. It now becomes necessary for us to consider our dock facilities on the Main Channel, as our
30 present short term lease expires June 30th next.

"As you know, the introduction of the modern self-unloader boats has entirely altered the method of handling and storing waterborne coal and coke. In fact conditions are altering so rapidly that one naturally hesitates to draw up definite dock plans for the next year or so. At the same time I think it may be stated that we are well satisfied with our position on the Main Channel as a general location.

"In view of the above, our Board has authorized me to request an extension of our present short term leases on the Main Channel for a further period of one year commencing on the expiration of the present
40 agreements.

"If this is satisfactory to your Associates, the leases referred to might be combined into one.

"Hoping this application may receive consideration at the next meeting of the Commissioners. Yours very truly.

(Sgd.) K. R. Marshall."

Now the application for a temporary arrangement was yours, wasn't it?

A. I also— There is another letter under the same date asking for an option.

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Q. Well pardon me, let us deal with the application first that we have before us, and that was your suggestion for a short term lease? A. Well only because I understand that I can't get a long term lease of that land until they decide how they are going to fix the form of land.

Q. In view of the wording in this letter you say the only reason was you couldn't tell their layout. I would take that by the letter itself it was clear that the method of handling coal was changing so rapidly that you preferred to be in a temporary position until you could decide how to erect your plant?

A. You mean as to the shape of the land.

Q. Well shape of the land, the shape of everything, the way you handled the coal. I suppose the shape of the land has relation to how you handle the coal? A. We would handle it both ways, we would have to have overhead storage as well. 10

Q. I am not asking that. But does the shape of the land depend in part at any rate on how you would proceed to handle your coal at the dock? A. To some extent.

Q. To some extent? A. And we will handle it both ways.

Q. I am not saying that you won't handle it both ways, I am only pointing out to you that it seems if ever there was a person who was fortunate enough to have a disturbance of his business about 1926 the Standard Coal Company ought to be put in that class? A. I don't agree with you. 20

Q. Well now let us take the other letter you referred to: "Re Option Ship Channel." From yourself to Mr. Langton. This is another letter, the same date (March 11th, 1932). This is a letter you referred to I suppose?

A. Yes, quite.

Q. It reads:

"The option granted to our company to enter into the 21 years renewable lease with a purchase clause of the 750 feet frontage on the south side of the ship channel and running west from Cherry Street, by a depth of 800 feet, together with a condition that during the life of the option it could be exchanged for an option on the dock property adjoining to the west by the same depth and running to the end of the dock, expires April 1st next. 30

"We now request an option, with a purchase clause, on the property commencing at Cherry Street, and extending to the westerly end of the dock by a depth of 300 feet or 400 if consistent with the plans of your Commissioners. The dock frontage of this property is at present being occupied by us on the authority of two short term leases. The rental to be at the rate of five percent. per annum on valuation of \$1 per square foot on the area adjoining the ship channel and extending back an additional 150 feet therefrom, and \$20,000 an acre for the balance of the property. The purchase clause to be exercisable at any time during the first five years of the term of the lease. 40

"We feel sure the Commissioners appreciate the substantial expense that we are being put to in pioneering the property in question, and that we will be treated with every consideration."

Now was that agreed to? A. I haven't received any acknowledgment yet of the letter.

Q. But you understand that this is in harmony with their views? A. Nobody does. We haven't heard yet.

Q. Wasn't that discussed before you sent it in? A. I discussed it but not to a finality; I decided to write and put it in writing.

Q. But, Mr. Marshall, \$20,000 an acre would be about fifty cents a square foot, wouldn't it? A. That is for the inside property.

Q. I quite agree, inside property? A. That is back 150 feet.

10 Q. Still you have got the dock frontage at a rental of five percent. on the basis of a dollar a square foot? A. Yes. That is back 150 feet.

Q. That runs 150 feet back from the dock? A. Yes.

Q. And then you have got all the rear of that land that you suggest in this option the rental shall be five percent. on fifty cents a square foot? A. And which we will have to convey fuel too.

Q. Please. I am on the question of value? A. That is right, sir.

Q. That is right? A. That is my application; it has not been accepted yet.

20 Q. Well you have discussed it with them and I presume when you have made a lease—? A. I haven't discussed this application, Mr. Tilley; I haven't discussed it for a year as to the terms of the letter.

Q. At the same time you put in the application did you execute the new lease? A. I sent it down, it is in the hands of the Harbor Commission—No, not the new lease I am offering them now; the lease that expires the 1st of July has been executed.

Q. Has been executed by you? A. This is an application for a further lease.

Q. After negotiations? A. Yes.

30 Q. Whom did you negotiate with? A. General Langton. The reason I cut the depth down to 400 feet, if they can give it, is simply because the Harbor Commissioners have told me—I don't know whether I should mention this or not, whether it is private—that they altered the property by another slip down behind.

Q. I quite appreciate you are getting to buy property that is being brought into use as part of this large harbor development and that it takes a little time to work out precisely the best way to arrange it so that it will be proper from a public standpoint and beneficial to their lessee—that is the plan, that is the thing to be done? A. Would you like me to describe my interpretation of the intention there?

40 Q. Yes? A. A year ago our option ran back 800 feet; this was because at that time they expected to be able to give us a property in that manner; now there is a possibility of running another slip down, three or four hundred feet back from the front wall, which is creating more water frontage; that would consequently reduce the depth of our property.

Q. But I still come back to it—? A. But a self-unloader can't unload more than 150 feet from the dock wall, you must have conveying machinery to get back.

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Q. I am not suggesting you don't have to have conveying machinery, but I am trying to visualize a property that we are suggesting is one that in the circumstances in which you are placed you would like to have at fifty cents a square foot for the rear, a dollar a square foot for the front with thirty feet depth of water—? A. And no riparian rights.

Q. Well, Mr. Marshall, I think we will have to leave that to the judge whether all this scheme is going to fall down and the people cannot get to the dock when they have a dock. I am not saying that if you wanted to sell you would sell riparian rights in the ordinary sense, but this venture that is running into millions and millions of dollars is not there just to be looked at or to deprive people of access to the water when it is done? A. Well riparian rights on the Great Lakes must be worth something. 10

Q. Well they must amount to something; they certainly do in Arbitrations at any rate; but we will have to see whether they do otherwise. Now, Mr. Marshall, would you purchase that or lease it? A. That would be subject to the decision of my directors; I would like to purchase it in time to come.

Q. It would be a matter of dealing as to which you would do? A. Yes, for consideration.

Q. And your suggestion here is a lease? A. My suggestion is a lease with an option. 20

Q. An option to purchase? A. Yes.

Q. And then you would have a lease, if that is done, for five years with an option to purchase good for five years? Or a lease for how long? A lease for twenty-one years? A. The present lease if renewed would only be for one year.

Q. I know, this is a temporary matter you put in the letter? A. A twenty-one year lease with an option for five years.

Q. Renewable? A. Renewable on adjustment of course.

Q. Of course, and revaluation. And this is an option to get the fee for five years, is that right? A. Yes, to get the fee except the riparian rights, we don't get them. 30

Q. Well you have land that has thirty feet of water on one boundary of it generally? A. On one boundary.

Q. We will have a plan of it later in order to show it to His Lordship? A. I think it is too bad I have got to bring this Harbor Commissioners' information—

Q. I beg your pardon? A. I don't like bringing all this more or less confidential dealings with the Harbor Commission out in court.

Q. Well I didn't put it forward, you know, Mr. Marshall? A. There is no great reason for secrecy. 40

Q. Well I have got to deal with the case that is being presented and it is taking a little different turn from what I thought it might, but I have to deal with it and therefore I think I will take up one more question? A. Yes?

Q. What is the arrangement between you and the Boulton Estate or Mr. Boulton, whoever is interested, as to the division of the compensation to be paid for the land?

MR. HELLMUTH: I submit, my Lord, that is not necessary to be stated, what division is being made between the two parties. The proportions in which we will divide afterwards are surely not a matter Your Lordship is interested in. Your Lordship has to value the land as land, quite by itself. The additional arrangements they choose to make between themselves as to any compensation, I submit that is not a matter that is necessary to go into at all.

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MR. TILLEY: I am dealing now—my friends have put in—

MR. OSLER: I think that question is objectionable, my Lord.

10 MR. TILLEY: In view of this evidence that is being put in I have to ask that it be answered and I have to put it as a definite case for a ruling, because my friends have now put in evidence to show business disturbance of a kind they indicate by the exhibit that they have filed, and that is the disturbance of this business of the Standard Coal Company. Now then if that is to be considered, and they are putting it forward I assume quite seriously, we cannot deal with the disturbance of that business except knowing what benefit that business gets from the removal.

HIS LORDSHIP: I would doubt that. Why is it necessary for you to know what the arrangement is between the tenant and the owner?

20 MR. TILLEY: Because how am I to know what money this witness has in his pocket when he is complaining of this little extra haul?

HIS LORDSHIP: Well would that make any difference?

MR. TILLEY: Why the business is on that site and he is giving up the site.

HIS LORDSHIP: That is a private arrangement between the tenant and the landlord.

MR. TILLEY: No, it is a little more.

HIS LORDSHIP: How does that enter into it?

30 MR. TILLEY: Because we are asked for damages for disturbing the business that is on this land.

HIS LORDSHIP: He may have them too.

MR. TILLEY: Then how can I ascertain what the damage is unless I know what he has got for moving off the land?

HIS LORDSHIP: Well, does that enter into it?

MR. TILLEY: In the plainest possible way I would submit. If a man gets \$100,000 and it is put in the bank and he draws six percent on it and he doesn't have to pay rent any longer surely that has to be taken into account when we are estimating what it is costing to haul some coal from some other site.

40 HIS LORDSHIP: He might make any kind of arrangement with his landlord. How does that affect the damage that he is asking you to pay because of business disturbance? I don't see how it really enters into it, Mr. Tilley. However, if it is important to you to have that I will give my ruling on it after lunch. I have to think about it. At the present time I would rule it out.

MR. HELLMUTH: I would like to say a word, my Lord, on that.

HIS LORDSHIP: Yes.

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MR TILLEY: Well, I would like to have the point really argued; I am not complaining of that. My friend wants to be heard and I don't want to in any way prevent it, because I am saying that it is not evidence. In the way that I thought the case had to be presented, I wasn't bothering about that, but when we have a tenant saying "My business is disturbed so that for a time I have to haul farther" I want to know "Well what money is in your pocket as a result of that disturbance on which you are getting interest (I suppose in bonds), do what you like with it?" How can a man say "I want you to pay me for the extra haul from the other site" without telling me how much money he has got out of moving from the old site? 10

HIS LORDSHIP: From the owner.

MR. TILLEY: No, from us, I beg Your Lordship's pardon.

HIS LORDSHIP: He has made an arrangement what he was to get.

MR. TILLEY: Then because they have made an arrangement how they will divide between themselves the compensation we have to pay, if that is done I have to go into it and inquire as to what was the value of the tenant's rights in that land and if I call expert witnesses to prove it or cross-examine a witness as to that it seems a very idle thing when I know they have agreed upon the division.

HIS LORDSHIP: It seems to me that is a private matter between them- 20
selves.

MR. TILLEY: Then does Your Lordship think I should follow it up to find out what the value of his leasehold rights was?

HIS LORDSHIP: I am not going to say what you should do in the matter, but on that particular question you have put I think it is an arrangement between the landlord and the tenant as a private matter and really does not enter into what I am called upon to decide here.

MR. TILLEY: My Lord, supposing I were able to show that this tenant has sold his leasehold interest to the landlord for \$50,000 and he had that in his pocket, wouldn't that be proof material if the question of disturbance is going to be considered? Now then if I show them in an agreement that when Your Lordship comes to make the award you can say "Well, there is the amount being allowed; of that the tenant gets so much, the landlord gets so much, there is the division according to their interests that they have agreed on," surely that is the best possible proof. I am suggesting that this witness, representing his company, has a document that when Your Lordship applies it to the amount you award you can tell exactly what he is getting from the landlord for his tenancy, for his interest in the land, and if he is asking for damages because he is disturbed from that land surely I am entitled to find out what money he gets for the interest he is giving up. 30
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HIS LORDSHIP: I understand your point. Have you anything more to say on that, Mr. Tilley?

MR. TILLEY: Well, not in the meantime, until I have heard my friend, if he wants to speak on it.

MR. HELLMUTH: The two parties who are interested in the value of this land, either before or after the result of the arbitration, let us assume that they said "We will have this land valued, that is the land itself apart from

anything else, for whatever purposes that land could be used, and when the arbitrator, Your Lordship, has decided on what the land is worth then we will agree upon what proportion our interests in the land itself, not in any disturbance, but in the land itself are worth," how would that affect the other? This land as land is practically before Your Lordship as though it were held by one person. They say, "We don't want to go into any question, we can agree perfectly well when the sale value of the land is decided what proportions we each will take out of it, whether it be four-fifths and one-fifth or nine-tenths and one-tenth, that is not a material matter at all in deciding
10 the value of the land."

Now apart from that altogether, the tenant says "I have been disturbed in my occupation, I am not taking from the landlord anything for my disturbance, I am only taking for what my interest in a perpetually renewable lease was worth and it cannot be of the slightest interest to the expropriator to know in what proportions it is divided." Even if the parties had no relationship whatever, assume that they were two joint tenants but that one man had done a great deal more than the other—tenants I mean individually—why surely what proportion they brought themselves to agree to take from one another could not be material to the value when perhaps a third person
20 was there as tenant, leasehold tenant, of the two joint tenants, and I submit that whatever arrangement he may have made,—of course my friend knows we notified him that it would not be necessary to go into that—can have no bearing on what either the buildings on the land are worth, which are solely the property of the tenant under the terms of the lease, or what he is entitled to for being disturbed. The owner is making no claim for disturbance, the owner simply says, "I want the value of this land and when I have got the value of this land I will settle with my tenant for what his interest in that renewable lease was, that is all," and I submit, my Lord, it is utterly im-
30 material. If we were to say to Mr. Marshall's company "We will give you all that comes out of it" how would that touch in any way the question of his being disturbed?

Let us assume that we as owners had been there and had been carrying on that coal business, that is to say, that Mr. Boulton had been carrying on that coal business, he would be entitled to the value of the land, no matter what it was, whether it was \$400,000 or less, and he would also be entitled to disturbance value, he would be entitled to his buildings. It is no different at all because there happens to be a tenant there; the two are entirely distinct, value of land and disturbance value, whether it is value to a tenant or an owner, and I submit that that, my Lord, is not a matter that should be in-
40 quired into or that we are called upon to disclose to the expropriator.

HIS LORDSHIP: Have you anything to add to that?

MR. OSLER: I suggest only, my Lord, that if for instance the lease were for 999 years at a nominal rent, the amount that we may prove, that Your Lordship may find as the value of the business disturbance, would not be affected one dollar either way by the amount found as the value of the land, the two things are quite distinct and separate, and my submission is that there is no justification for asking to extend the inquiry into a matter of private

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arrangements which can have no bearing on any of the values which Your Lordship is asked to find.

MR. TILLEY: Your Lordship, let us just understand what the situation is. My friend says business disturbance. If business disturbance had consisted in what it cost to take the coal from the old site and carry it over and then put it on a new site because they had to give up possession, one would say there is a cost incurred at the moment of dispossession that could be put before an arbitrator and ask for him to pass upon its validity and then it will be as to this amount. That is not this case. What this tenant is now seeking is to get compensation, one of the elements being a tabulation that carries it down to 1938, being as I understand the end of his lease, and he said "I want the arbitrator to consider what extra expense it has been to me and will be to me in a period of several years to carry on business at a different site." Now the compensation that he is entitled to receive is compensation for being dispossessed and if he brings forward and attention is given to a claim for some loss because he has had to haul farther that cannot be considered, in my submission, without knowing further as to one of the conditions that brings about the hauling farther: He has in his pocket as part of his compensation, as would have to be proved by him if he were giving evidence here without this agreement between himself and the owner, money on which he is getting interest, because I don't understand my friends are saying that interest does not run from the time we took possession, that the money that is paid does not bear interest, nor is the payment a matter of a present from the landlord to this tenant, it is merely an arrangement between themselves that properly appraises what the tenancy is worth, and if he gets paid for that tenancy he cannot get paid for business disturbance except in any event on the theory that you consider what benefit he gets as well as what detriment he gets. Now that is my submission. 10 20

HIS LORDSHIP. I understand. My present opinion is that the evidence is not admissible. 30

MR. TILLEY: Then Your Lordship rules it out.

HIS LORDSHIP: I rule it out.

Q. Then, Mr. Marshall, when was the rental fixed for your leasehold interest? A. The next time?

Q. No, the last, from the Boultons? A. As I understand it it was back about 1917, the expiration of the previous twenty-one years.

Q. The previous lease expired in 19 what? A. '17. I wasn't here at the time, I might say.

Q. Well, you were here you said in 1919? A. Yes. I was here in 1919, the summer of 1919. 40

Q. But the renewal lease was given in 1921, you were here then? A. Yes.

Q. And that is when the rent was fixed, wasn't it? A. Yes.

Q. Was it fixed by you? A. My father.

Q. By your father? A. Yes.

Q. By agreement? A. By an arrangement with both parties.

Q. And you were at that time renewing and fixing a value under a lease that called for a rental on the value of the property at the date of the renewal, that was your right to have a new lease? A. I am not sure of that. We were so to speak buying a horse.

Q. You were what? A. In a sense we were buying a horse and getting it as cheap as we could.

Q. Well, you were fixing it on the basis of the value, weren't you? There were two parties, the landlord and the tenant? A. We didn't fix that on the basis of the value, we got that as cheap as we could.

10 Q. You mean to say—? Was there any bargaining about it, or do you know? A. I have an idea that my father did considerable bargaining.

Q. And how long did it extend over? A. I am not sure but I think that bargaining extended over from 1919 to the date of the lease. After the conclusion of the war it was fixed up.

Q. In 1926 what value do you say there was in that lease as a lease? A. At what time, sir?

Q. 1926, at the date of expropriation? A. With the expropriation in view?

20 HIS LORDSHIP: No, if it had been expropriated. Q. Well, it was expropriated, your leasehold interest was expropriated in 1926, wasn't it? A. Our interests were expropriated but not extinguished in the sense—

Q. I am not asking you about extinguishing your leasehold interest. I don't know what you mean by not extinguished. A. Well, we still retained our rights in the property.

Q. In the buildings? A. Yes, the buildings; everything was expropriated.

Q. And your lease and the buildings were expropriated in 1926? A. In '26.

30 Q. Now then, what was the lease worth to you then at the date of expropriation? What do you say it was worth? A. Had we been able to continue in our present state and carry out all of our ideas.

Q. Yes, as a lease? A. And carry out all our ideas?

Q. Yes? A. Well, it ran until 1938. Even if we had extended it out—

Q. And a right of renewal? A. And a right of renewal, but we had no increase in rent, even if we doubled the size of our dock, after 1938, and then no additional rent for the extended and filled in land, we had no addition in rent, we only paid rent on the original site.

40 Q. Well, that would involve a determination of your rights under the lease, because the lease says it is not to be taken to be a document conferring a right on you? A. We were left to our rights under the first lease.

Q. Well leave it that way, what was the lease worth in 1926? A. Just the amount we claim.

Q. But the leasehold interest apart from your business? Apart from business disturbance, supposing you hadn't been disturbed and you continued there, what was the lease worth at that date? A. Well it will, if I answer that I would be only divulging the other question.

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Q. Well, I am not asking what you have to divulge, I am asking you to answer the question.

A. I couldn't answer the question without exposing this, what has been ruled out by His Lordship.

Q. That has been ruled out, but the question I am putting to you now is different?

MR. OSLER: My objection is this is merely an attempt to evade Your Lordship's ruling.

HIS LORDSHIP: Oh, I think it is hardly. He can place a value if he wants to place it, but it may not be the value set out in the arrangement. 10
It may not be the arrangement between them. He might say that he valued that lease at \$200,000 or he may have valued it at \$50,000 and under the arrangement with the owner he may have got twenty or whatever it may be.

MR. OSLER: Of course it is quite obvious any arrangement of that kind must have been a bargaining, a compromise arrangement.

HIS LORDSHIP: Yes. I think that is a question he should answer, what value did he place upon his lease in November 1926, but what was agreed between him and the owner is another story.

MR. TILLEY: Well, my Lord, I would like to have just one step at the present, because I am entitled to cross-examine him as to what he sold it for. 20

MR. OSLER: He hasn't sold it.

WITNESS: We haven't sold it.

MR. TILLEY: He has agreed on it and I certainly should be allowed to test his evidence.

WITNESS: Only agreed on the land we had.

MR. TILLEY: That is what I am talking to you about, the loss of the land.

HIS LORDSHIP: I think that is a question he should be called upon to answer, what value he placed upon this lease in November, 1926.

WITNESS: May I have my file, sir? 30

HIS LORDSHIP: Certainly.

Mr. Tilley, I suppose you are putting in those two letters?

MR. TILLEY: If you please.

EXHIBIT 21: Copies of two letters K. R. Marshall to General Langton March 11th, 1932, previously quoted.

Q. Yes? A. My answer to that?

Q. Yes? A. \$250,000, land and waterlot.

Q. On the basis of the whole fee simple, land and waterlot, being worth how much? A. In the neighborhood of \$400,000.

Q. That is about half, do you mean? A. More than half. 40

Q. Well I didn't get that—? A. \$250,000 out of \$400,000.

Q. Assuming the land, fee simple, including the waterlot, to be worth \$400,000, your tenant interest would be worth—? A. \$250,000, our perpetual lease to us, and the land and waterlot and lease of the riparian rights we figured \$250,000.

Q. Out of \$400,000 total value? A. Yes.

Q. Is that the relationship that you have agreed to?

MR. HELLMUTH: I object to that. A. I would rather not answer that.

HIS LORDSHIP: As far as the relationship, his apportionment of that, that is the arrangement between them, the final arrangement between them; I rule that is inadmissible.

MR. TILLEY: I put the question, and I am cross-examining a witness in this matter, whether that is the relationship, that is \$250,000 to \$400,000, that he has agreed to.

MR. HELLMUTH: Well I object to that, my Lord. What he has agreed to is a matter entirely distinct from what he claimed as his right.

HIS LORDSHIP: Mr. Tilley, as I understand it he is now giving what he valued his interest at, \$250,000 out of a value of \$400,000. Now as to what they were agreed on, the share he was to get from Boulton, I don't know that I should take that.

MR. TILLEY: And I cannot test his answer by asking whether—?

HIS LORDSHIP: That is as far as I think you should go. I may be all wrong, but you have your remedy elsewhere, and I hope I am right.

MR. TILLEY: This is a serious matter, my Lord.

HIS LORDSHIP: I know it is a serious matter.

MR. TILLEY: And it is a matter which cannot do any harm. Your Lordship has admitted evidence already on the lease and Your Lordship was going to have it very wide. Now I am at a question that I submit is vital to this phase of my friend's case. If my friend came here with a case of Boulton being in possession and carrying on that business then no question of landlord and tenant would arise, and if Boulton said "There is disturbance to me and I have got to haul something farther," one could at once say that "Oh well, the hauling will be pleasant if you have a couple of hundred thousand dollars in the bank, receiving interest on it," but the circumstance that there is a division in the amount Your Lordship must award in the end as between the two makes it necessary for me, to be able to present my argument to you at the end, that we should know something about the relative positions of the landlord and the tenant, because it is only the tenant who is disturbed, and therefore I do press it, that I am entitled to test the witness' estimate.

HIS LORDSHIP: He has given that to you.

MR. TILLEY: I am entitled to test his estimate, I submit.

HIS LORDSHIP: He has said he puts his estimate of value at \$250,000 as against \$400,000.

MR. TILLEY: I submit I am not bound to accept his estimate; I am entitled to test it.

HIS LORDSHIP: You may not test it out as to what he agreed upon.

MR. TILLEY: That is the best test.

HIS LORDSHIP: I don't think that is admissible and I so rule. I may be all wrong.

MR. TILLEY: Well it leaves me in a very difficult position on this branch of the case. I don't think that it is evidence myself, and I didn't propose to go into it as fully as I am, but here is a man who has made an agreement between himself and the other man that is the equivalent of an adjustment, so

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to speak, a sale; whatever is awarded they know and they can tell Your Lordship in a minute how much of it, by way of percentage is all I am asking for, goes to one and by way of percentage goes to the other, because I assume it must be on some basis of percentage.

HIS LORDSHIP: I understand your contention, Mr. Tilley, and that is the ruling I make.

Q. Now, Mr. Marshall, that was your view at any rate, \$250,000 out of \$400,000, and of course that would be for your leasehold interests apart from buildings and apart from anything connected with business disturbance?

A. Yes.

Q. That is what you mean? A. Yes.

Q. I mean I want to be clear? A. Purely land and land covered by water and riparian rights.

Q. And you would agree I suppose that if the compensation were less your interest would be proportionately less? You would agree with that?

MR. OSLER: I object to that, my Lord.

HIS LORDSHIP: I don't think it is, if it does not go any further than that, objectionable. It might turn out that although Mr. Marshall may have agreed to take \$10,000 that I am convinced he should have got \$60,000 or \$70,000, and so on, and that might apply the other way.

MR. TILLEY: My Lord, I will put this question then:

Q. Mr. Marshall, your agreement is not an agreement for a lump sum, it is an agreement between yourselves on a proportion basis, isn't it?

MR. OSLER: Well, my Lord, surely—

WITNESS: That is just answering the question that is ruled out, Mr. Tilley.

MR. TILLEY: Mr. Osler is taking care of that.

MR. OSLER: My learned friend is seeking to evade Your Lordship's ruling I think.

MR. TILLEY: I do submit I am not.

HIS LORDSHIP: You are getting pretty close to it, Mr. Tilley.

MR. TILLEY: I am trying to get as far as I can notwithstanding the ruling, I do admit that, and many times one has to do that. I am asking this witness whether as between themselves it is on a proportion basis.

MR. HELLMUTH: Well, my Lord, I want to object to that. Surely, whatever our agreement, supposing we said it should be up to a certain amount on a proportion and after that it should be on such a division, my friend has no right to go into that.

MR. TILLEY: That is just where the difficulty comes in.

MR. HELLMUTH: And can it touch, again I ask, the question of disturbance? If we were alone there we would have a right to disturbance value.

MR. TILLEY: If my learned friend will put it that disturbance is to be based just on the view that the disturbance was to landlord and tenant without regard to one being a tenant and that that business was just a going business on the property I will deal with it that way, then I am not embarrassed, but I don't want to be told when I come to the end of this thing that I am dealing with a tenant with disturbance only. If the claim is put forward that the

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disturbance to be considered is merely as a disturbance to the business on the property and the landlord and tenant's interests are not to be taken into account in that connection I can deal with it.

MR. HELLMUTH: Of course I cannot speak for my learned friend but I do understand that there is nothing being asked for the value that the tenant might have as a lessee under his lease in this beyond the disturbance—

MR. TILLEY: I want that to be noted carefully, just what you are saying.

MR. HELLMUTH: I am not making any more claim for my client than
10 anything for the bare value of the land. Now it is immaterial, I submit, in principle whether the landlord or the tenant was carrying on the business. It would be a disturbance to whoever was carrying on the business. If the landlord had been carrying on this business, as I endeavored to say before, he would have been entitled to value of his land as land, or land covered with water as well, and if he had been carrying on the business he would be entitled to come before Your Lordship and ask in addition for such disturbance to that business as the law allows. Now I don't understand that my friend Mr. Osler, who will speak for himself, is making any claim for disturbance than would have been made by the landlord if he had been disturbed.

20 HIS LORDSHIP: That is what I understood.

MR. OSLER: That is of course the position, Your Lordship.

MR. HELLMUTH: If the landlord had been carrying on there and he had been disturbed he would have made that claim.

HIS LORDSHIP: That is the idea I had from the first.

MR. TILLEY: I didn't know it was being put that way; I thought we were dealing with quite a different proposition. So that when I come to the end I will be able to argue the only business disturbance, as to the principle of it and as to the effect of it, is just the same in this Arbitration as though the business were carried on by Mr. Boulton as owner.

30 HIS LORDSHIP: I think so.

MR. HELLMUTH: I have never had any other view of it.

MR. TILLEY: If that is correct then I am asking—

HIS LORDSHIP: You weren't in here at the time when that came up, but I understood that.

MR. TILLEY: But, my Lord, I don't understand that anything has been agreed.

HIS LORDSHIP: Well that was the understanding. I think the reporter has that in the notes.

MR. TILLEY: I would like to have the reporter read it, because Your
40 Lordship has mentioned that and I have spoken to Mr. Spence and he told me there is no agreement about anything.

HIS LORDSHIP: I think I spoke to Counsel about what I was called upon here to determine and I said three things, the landlord was practically limited so far as the value of the land was concerned, and then I said in addition to that I was to determine the value of business disturbance and the value of the buildings, those were the three things, and I understand that went down in the notes.

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MR. TILLEY: Not that we were agreeing to it.

HIS LORDSHIP: There was no objection by Mr. Spence to it. If there was I will be glad to hear it.

MR. TILLEY: We will have the notes.

MR. HELLMUTH: I was pointing out the whole thing was they were not conceding anything in regard to the business disturbance—

MR. TILLEY: Let us have the notes.

—After the proceedings appearing on page 5 hereof having been read:

HIS LORDSHIP: I did not hear any dissent.

MR. TILLEY: Well then Your Lordship does not understand my argument at present. I am quite agreeing as to the land; I would not be raising this argument dealing with the land only. Now when we come to another thing, business disturbance, Your Lordship did not state as to business disturbance there was to be no question as to disturbance between landlord and tenant, Your Lordship didn't state at that time that the question was not concerned with the interests of the landlord and tenant separately if it came up. In fact as I heard it read it referred to the interest of the tenant separately as business disturbance. 10

HIS LORDSHIP: That is what I understand, so far as the business disturbance is concerned it is still confined to the tenant. 20

MR. TILLEY: Well then we haven't any agreement, because I understand it has to be dealt with just as though that were the landlord's claim.

HIS LORDSHIP: No no, that was the interest in the land.

MR. TILLEY: No, my Lord.

HIS LORDSHIP: That is the way I understood it.

MR. TILLEY: Then we haven't any understanding now at all, because my learned friend has stated it perfectly plainly that on the question of the disturbance to the business the situation was treated just the same as though Mr. Boulton were carrying on the business as owner.

MR. HELLMUTH: And in assent to that I say it doesn't make a particle of difference. 30

MR. TILLEY: It doesn't make any difference, you have agreed to that.

MR. HELLMUTH: Yes. I don't want to go back on any of my agreements; my friend ought to give me credit for that.

MR. TILLEY: Certainly.

MR. HELLMUTH: I say it is immaterial whether Mr. Boulton was carrying on the business or the Standard Fuel, that if some credit should be given to the tenant then it can be given. If Mr. Boulton were here making the entire claim for business disturbance and value of the land I don't see any distinction, and I am not trying to make any, that the tenant is entitled to more because he is tenant than Mr. Boulton would have been entitled to if as owner he had been carrying on the business. I don't know whether I have made myself clear to Your Lordship. 40

MR. TILLEY: You have made it very clear to me; you said exactly as you said before, and I understand Mr. Osler agrees to that too.

MR. OSLER: Why certainly. I have not been attempting to dispute that from the beginning, that is exactly as it was put.

Q. Now, Col. Marshall, the company took the property over in 1912?

A. Yes.

Q. Under a lease then existing? A. Under a lease then existing.

Q. Whom did you take it from? A. Messrs. Dickson & Eddy were the owners, of New York.

Q. And what were they? A. They were anthracite coal miners, operators, they own the mines.

Q. And had they been carrying on there at that site? A. Yes. I think—I know for a number of years.

10 Q. Under what name? A. I think "Dickson & Eddy." It may possibly have been the Ontario Coal Company, I am not sure which, I don't know the name.

Q. And was it a going concern when you bought it? A. It was a going concern.

Q. And did you buy their business? A. Their business was a purely wholesale business.

Q. Well did you buy it? A. We took their lease over.

Q. And did you take over the stock in trade—coal? A. I think it was taken over, but it was taken over I think in the spring when there was not
20 very much stock on hand.

Q. Are you able from your books to say what was on hand? A. I am not sure. It was back in 1912.

Q. That is not so long ago, just twenty years ago? A. Possibly.

Q. What did you pay for it? A. \$26,000 and other considerations.

Q. What other considerations? A. We had been handling, selling other hard coal from other companies and Dickson & Eddy were anxious for us to become their sale agents in this territory, to sell us their coal, and we agreed to that.

Q. Well the price you paid them was the same as you paid any other
30 dealer? A. We don't pay them any more for coal than we pay anybody else, but it was an advantage for them to get our—

Q. Well they made a customer? A. They made a customer.

Q. Have you that agreement? A. I am not sure.

BY HIS LORDSHIP: Q. It was sort of tying you up. You had to purchase your anthracite from them? A. Well we had been purchasing from somebody else.

Q. But you ceased? A. Yes.

BY MR. TILLEY: Q. You mean you entered into an agreement? A. Yes, we entered into an agreement.

40 Q. For a number of years? A. I am not sure, but we were their agents until the dock was expropriated.

BY HIS LORDSHIP: Q. Down to November, 1926? A. Yes, sir.

BY MR. TILLEY: Q. Were you agents for any person else before? A. Before we were their agents we were purchasing coal from the Susquehanna Coal Company, prior to that time.

Q. Is it a fact that each company becomes the agent for some person

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selling in the States? A. I think some of the larger companies do, such as Rogers and ourselves.

MR. OSLER: Is "agent" the correct term?

MR. TILLEY: He says agent. I don't know.

MR. OSLER: I rather doubt it.

WITNESS: No, we were their customers, that is a better word, we weren't being paid by them to be agent; we bought coal from them and sold it. (Produces a document).

Q. "This indenture made the 21st day of May, A.D. 1912, between Joseph B. Dickson and Jesse L. Eddy, both of the City of New York in the State of New York, one of the United States of America, carrying on business under the firm name of Dickson & Eddy, hereinafter called the Assignors, of the first part, and The Standard Fuel Company of Toronto, Limited, hereinafter called the Assignee, of the second part;

"WHEREAS by an Indenture of Lease bearing date the first day of September one thousand eight hundred and ninety-six made between Martha Rowan Boulton, widow and devisee of the late John Boulton, and Christopher Robinson Boulton and others, being residuary devisees under the will of the late John Boulton, deceased, the said lessors therein named did demise and lease unto the said lessees therein named (the parties hereto of the first part) their executors, administrators and assigns inter alia ALL AND SINGULAR that certain parcel or tract of land and premises and land partly covered by the waters of the Bay, situate, lying and being in the City of Toronto" . . . (and then they are described; I needn't read that) "and containing by admeasurement One hundred and two thousand five hundred and fifteen square feet be the same more or less, save and except the part acquired by the Ontario and Quebec Railway Company having a frontage on the Esplanade of two hundred and thirteen feet by a depth of twenty-eight feet together with the appurtenances." (That is the railway no doubt).

"TO HOLD the same with the appurtenances unto the said Lessees from the first day of August one thousand eight hundred and ninety-six for and during the term of twenty-one years from thence next ensuing and fully to be complete and ended, at the yearly rent of Two thousand five hundred and eighty dollars and under and subject to the Lessees covenants and agreements in the said Indenture of Lease reserved and contained.

"AND WHEREAS by Indenture by way of sublease bearing date the 10th day of June A.D. 1910 and made between the herein named Assignors and The Canadian Pacific Railway Company, they the said herein named Assignors did demise and lease unto the said The Canadian Pacific Railway Company that portion of the hereinbefore described lands and premises particularly described as "a strip of land, part of said Water Lot Number Thirty-one, the northerly boundary of which is a line drawn parallel to the southerly limit of the Esplanade and distant twenty-eight feet southerly at right angles therefrom and the southerly limit of which is a line drawn parallel to the said southerly limit of the

Esplanade and distant fifty-two feet and six inches at right angles therefrom and extending across the full width of said water lot number Thirty-One, TO HOLD the said demised premises unto the said The Canadian Pacific Railway Company its successors and assigns for a term to be complete and ended on the 30th day of July A.D. 1917 and subject to the covenants, provisoes and conditions particularly set forth and contained in said sub-lease.

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10 "NOW THIS INDENTURE WITNESSETH that in consideration of the sum of TWENTY SIX THOUSAND DOLLARS of lawful money of Canada now paid by the Assignee to the Assignors (the receipt whereof is hereby acknowledged) they the said Assignors do hereby grant, bargain, sell, assign, transfer and set over unto the Assignee ALL AND SINGULAR the said parcel or tract of land, and all other the premises com-
20 promised in, and demised by the said hereinbefore in part recited Indenture of Lease TOGETHER with the said Indenture of Lease, and all benefit and advantage to be had or derived therefrom and together with all benefits and advantages to the said Assignors under or by virtue of said herein in part recited sub-lease; TO HAVE AND TO HOLD the same together with all houses and other buildings, easements, privileges and appurtenances thereunto belonging, or in any wise appertaining unto the said Assignee from henceforth for and during all the residue of the said term granted by the said Indenture of Lease, and for all other the estate, term, right of renewal (if any) and other the interests of the Assignor therein. SUBJECT to the payment of the rent and the observance and performance of the lessees covenants and agreements in the said Indenture of Lease contained.

30 "AND the said Assignors do hereby for themselves, their and each of their heirs, executors and administrators covenant, promise and agree, to and with the said Assignee its successors and assigns, in manner following, that is to say:

"THAT notwithstanding any Act of the Assignors the said hereinbefore in part recited Indenture of Lease, is at the time of the sealing and delivery of these presents, a good valid and subsisting Lease in the Law, and not surrendered forfeited or become void or voidable, and that the rent and covenants therein reserved and contained have been duly paid and performed by the Assignors up to the day of the date hereof."

And they have the right to assign.

40 "AND THAT subject to the said rent, and the Lessees covenants and agreements to the said Lessee contained, it shall be lawful for the Assignee to enter into and upon and hold and enjoy the said premises for the residue of the term granted" . . . (I needn't read that).

"AND THAT the said Assignors their and each of their heirs, executors, administrators and assigns and all other persons" . . . will execute further assignments.

Well, Mr. Marshall, there is nothing here about any agreement? A.
This is merely the lease, taking over the lease—

Q. Is there another document? A. Only by letter. Really all our agencies are all by letters.

Q. Well, does it mean in this that they sold you their premises for this amount of money—? A. They were anxious to have our patronage, you can put it that way, had been for some time, they wanted our business.

Q. And they sold it to you for \$26,000? A. To get our business.

Q. Well, to get your business? A. That was a matter—that sale was arranged by my father in New York with nothing more perhaps than a lunch between them.

BY HIS LORDSHIP: Q. A lunch? A. I say he possibly had lunch 10 with Dickson & Eddy and settled it over the table; he did things that way, he was a good poker player.

MR. TILLEY: Q. His son seems to be following along pretty well, making a bid, for a \$26,000 property in 1912, of \$250,000 now? A. I think this is only the way that business has grown in Toronto.

Q. Then you mean to say that the leasehold which at that time had a rental of \$2,580, ground rental, that property has increased so that with a ground rental of \$6,000 a year the property is now worth some—?

A. I don't mean to say that at all, I say there were other considerations.

Q. The lease is now worth some \$250,000 out of \$400,000? A. They 20 were buying our coal business, Mr. Tilley.

Q. They were buying your coal business? A. They were buying our patronage in the coal business.

Q. And you were getting your coal at just the same terms you could get it from anybody else? A. Getting the water facilities and dock, but they were getting our business.

Q. Now was there any coal entered into this price or not? A. You mean an inventory at that time?

Q. Yes? A. I don't just recall. Wasn't it the spring of the year?

Q. Yes, May 1921? A. No, it would be practically cleaned up. 30

Q. And when do you start to bring in in the spring? When does it actually arrive? A. As soon as navigation was opened, just according to when the ice went out of the bay.

EXHIBIT 22: Assignment of Lease, May 21st, 1912, Dickson and Eddy to Standard Fuel Co.

Q. Now, Mr. Marshall, I noticed in the lease that you have signed and sent to the Toronto Harbor Commissioners,—this is a lease of the 1st March, 1932, this is the new temporary lease that you were getting and is there waiting signature—? A. Well, I haven't heard that it is accepted yet. I hope it is.

Q. Well it is in that state. This is the lease you are asking, the tem- 40 porary lease? A. We have a temporary lease which expires on the 1st July next; I have now written the letters you read asking a renewal of that lease until the Harbor Commissioners fix just what form they are going to put that property in.

Q. It doesn't help matters to kind of misstate the letters in that way, because you didn't ask a temporary lease until they decided; you asked for a

temporary lease until you yourself decided? A. If they know the layout they want on it there we know exactly what we want now.

Q. I am not saying anything more than it is in black and white why you wanted the temporary arrangement and it doesn't do any good to misstate it as you put it to them.

MR. OSLER: My friend shouldn't put it that way, because my learned friend has not been stating it correctly.

A. I was informed, Mr. Tilley, that they weren't prepared, before I wrote them, to let me know what layout of land is agreeable.

10 Q. But you weren't prepared somewhat later? A. I am prepared if they gave me that to form a conclusion on that.

Q. I daresay you do put it this way now but you didn't in the letter? A. No, I didn't, perhaps.

Q. Now, Mr. Marshall, can we just skip the letter. The lease is one to the Standard Fuel Company of Toronto Limited. Is that "Of Toronto" the old one? What is the name of the—? A. The first lease was in the name of the Standard Fuel Company of Toronto Limited.

Q. That is the party this arbitration is with? A. Yes. But our leases are all made out in the name of the holding company, the Standard
20 Fuel Co. Limited.

Q. And there were two documents of the same date covering different portions of the property? That is right, isn't it? A. We took one portion first and then another.

MR. TILLEY: Then I would ask to put in these, but as these are the originals I would like to have copies put in if I may.

EXHIBIT 23a: Copy of lease dated March 1, 1932, Toronto Harbour Commissioners, to Standard Fuel Co.

EXHIBIT 23b: Copy of lease dated March 1, 1932, Toronto Harbor Commissioners, to Standard Fuel Co.

30 WITNESS: Mr. Tilley, are these leases mentioning 1st of July next?

Q. I will just tell you: One year from 1st July, 1931, and from thenceforth fully to be completed and ended—

HIS LORDSHIP: That is the one that expires next July.

MR. TILLEY: Yes.

MR. OSLER: Has that been executed by the Harbor Board yet?

MR. TILLEY: It has not been executed as I have it here. It is dated the 1st day of March, 1932.

WITNESS: That is the renewal applied for, Mr. Tilley.

MR. TILLEY: And runs till next July according to this.

40 MR. OSLER: May I see it?

WITNESS: Our lease became operative on the 1st July, 1931, and expired on the 1st July, 1932, and I have since asked by these letters you read for an extension of those two leases or the one lease for another year until matters were more settled with the Harbor Commissioners; I can't make my plan up until I know what they are going to do.

Q. These are the leases that expire on the 1st July and the letters show the application for a renewal for another year from that date? A. Exactly.

Q. Do you know how long your vendors, this firm that sold to you, had owned the property, Dickson & Eddy? A. I can't tell you that.

HIS LORDSHIP: From the evidence, I think it was Mr. Boulton gave that.

Q. Now, Mr. Marshall, the amount you paid to Dickson & Eddy covered all the buildings that are there now except the garage, or were there in 1926?

MR. HELLMUTH: 1896.

HIS LORDSHIP: No, when they took over from Dickson & Eddy Mr. Tilley is asking whether it covered all the buildings that were there in November 1926 apart from the garage. 10

WITNESS: I think it did.

Q. And then it also included a strip that you sold to the C.P.R. afterwards? A. I think that was sold before. I am not sure.

Q. Well there is a reference in this to a lease; was it existing? A. It may be a siding taken off. I am not sure of that.

HIS LORDSHIP: A siding was taken off in '85 if I recollect correctly.

MR. HELLMUTH: 1887.

Q. But it is not on lease to the C.P.R. now, is it? Wasn't it sold to the C.P.R.? A. I am not sure of that. I think it was before that. 20

MR. HELLMUTH: There were two strips, Mr. Tilley.

MR. TILLEY: I am told that the deed to the C.P.R. is in 1919.

MR. HELLMUTH: That is the second strip. There were two strips, one along in 1887 and the other in 1901 or 1902, but they were not paid for for a long time. I don't mean that we didn't get interest, because we did.

MR. CASSELS: Mr. Boulton covered that in his evidence.

MR. HELLMUTH: Yes. I think that was all given by Mr. Boulton.

Q. Well that would seem to be so, Mr. Marshall, wouldn't it, that there was a first strip taken off before you acquired the property and the second strip after you acquired it? A. I am not positive. I didn't get back to my office until October 1919, so whatever date that would be— 30

MR. HELLMUTH: Yes, that is correct, Mr. Tilley, the second strip was taken off after they had acquired, December 1919.

Q. Now, Mr. Marshall, have you a plan which just shows the location of your building? Have you one, or does ours show?

Have you filed anything to show?

MR. CASSELS: No, we haven't filed anything. I have a plan; I don't know whether it is correct or not. (Produces).

Q. Now, Mr. Marshall, this is something bearing on it; it is Exhibit No. 1; there is a waterlot below the street and then there is Lake Street and then—? 40
A. Which was water at that time.

Q. And then your building stood back a little, did it? A. The unloading tower was right on the water's edge.

Q. Then is that what we see there where the figures "206 feet 4¼ inches" are? A. Yes, Mr. Tilley.

Q. Showing the width of the lot, but that happens to be an elevator?
A. The water tower was out to the edge.

Q. The water tower was out to the edge? A. I mean the unloading tower.

Q. And then at the rear of the unloading tower the building commenced?
A. Yes.

Q. And the building went in across your property? A. It left a drive down this side.

Q. Probably the drive was a little larger than it looked? A. I think the strip was about 10 feet on the east side. I think it was about a ten-foot strip.

10 Q. Was Church Street filled in down to the Old Windmill Line? A. At what date?

Q. 1926? A. I am not positive. I think that was the year they commenced filling Church Street.

Q. Well then, prior to that filling you had a piling along the east side of your property, had you? A. Yes.

Q. Running right from the southeast corner right back to the rear?
A. Yes.

Q. Back from that point to the Esplanade, I mean. And then does that irregular line show the building? A. Yes. I can trace these out.
20 That was a screening house. (Indicating.)

Q. Your finger is now on a projection at the east side alongside Church Street just below a building marked "Brick." That was what? A. The "brick" part was the engine part and power plant.

Q. Then the next building. A. The next building contained what we call a squirrel screen, a circular screen, ran around; and then the storage commenced there.

Q. Then the storage commenced a little north of that where the dock was? A. Yes.

Q. And the storage came around the front and right around the rear
30 towards the Esplanade where the word "lot 31" is? A. Yes, that was all covered storage.

Q. Well then between the building and this—what is that? A. That means metal and frame garage.

Q. Is that the garage you spoke of? A. That was the one.

Q. And then this other building? A. Metal and frame office. I think there was some brick, I am not sure.

Q. Now then was there any coal piled between the metal-frame office and the large building where you did the screening below the word "brick?"

A. No, we had to use this to get access to the hoppers we loaded at; that
40 was all open.

Q. Open how far back? A. We had two or three little supplies of some more or less seldom used fuel such as cannel coal along here. (Indicating).

Q. Pardon me, we have to get it on the notes. When you say "along iu here" you mean to the south of the metal and frame office? A. Yes.

And then we had two or three little bins in there of odds and ends of fuel (Indicating).

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Q. Anything that you would need to bother about commercially in this?
A. I don't think we are putting much value on these little bins.

Q. I am not talking about bins; I mean the use of the land? A. Well we used the land.

Q. Well how much of it did you use there? A. We used that right throughout; we had to have this to have access to that, we had these little coal pockets.

Q. I know, but I am asking you the use of the land for coal. I assume you used all your land? A. We did use it all.

Q. For some purpose or other, but not for piling coal? A. Wherever 10 we had room to move around and didn't need it.

Q. I am trying to find out where you had room to move around and had room to put coal. Now then was there any coal piled to the south of the metal-frame office? A. There was.

Q. Except some small lots of coal of a special kind and size that you had to carry? A. That we had to carry.

Q. And how much area did that coal cover? A. All the available space we could get.

Q. We don't get anything by that because we don't know how much you used for other purposes? A. Well we had room for our scale and we had to 20 leave room to go in and turn around.

Q. Where did you put the bituminous coal? A. Just north of the shed and office, leaving a drive in both sides.

Q. Did you have the drive going in the center? A. No, it came more opposite the scales and office.

Q. Were the scales connected with the office? A. Yes.

Q. Outside the office. Now then if you follow a line north from the metal-frame office—? A. Yes sir.

Q. And the west of it you would be in about the right location, would that be right? A. I think that bore a little to the east. Over towards 30 Church.

Q. That was the only entrance to the front that you had? A. There was a two horse driveway but we had no side drive. It bore over towards Church Street.

Q. Was there any entrance than the one beside the office? A. We had a double drive in opposite the scale.

Q. Where? Would you have two driveways? A. No.

Q. Were there two gates or double width gates? A. Double width gate about where your pencil is.

Q. That would be northwest from the office? A. Yes. 40

Q. And then was there another between there and Church? A. I can't recall that. There may have been.

Q. There may have been another between there and Church. Now then that is the only room you had for bituminous? A. At that time, unless we had appropriated some of the hard coal space.

Q. When you say the hard coal space—? A. The covered sheds.

Q. Did you ever put the bituminous in the covered sheds? A. I am not sure of that. We have put coke in.

Q. No now, please, you have only had coke two years; I want to really keep you on bituminous. I think you told me yesterday that you didn't put the bituminous in the sheds? A. I think that is right. There was nothing to stop us.

Q. I wasn't trying to stop you, was I? I don't want you to put it in today though if you didn't put it in before.

HIS LORDSHIP: Just answer and don't add to it.

10 Q. What space have you for bituminous? What was the space you had?

A. I think, I am pretty certain that on the outside the scale, that is the west end of the space, the westerly space, I think held 800 tons and that other part, the little part in front of the office held I think about 200.

Q. Now when was that area taken away from you? A. That area we made use of—that was the area that we had under the short term lease under the expropriation.

Q. And how far down did your short term lease go on the property from the Esplanade front? Did it cover part of the building, part of the office?

A. Yes.

20 Q. Just mark about where it really started and we will describe it?

A. I think just about that line (indicating), but we had no conveyors into the shed.

Q. I am not asking that.

HIS LORDSHIP: You are volunteering something he did not ask you for.

Q. It extended back to the line that goes east and west just adjacent to the brick building marked here? A. Yes.

Q. So that you had after the expropriation so long as the temporary arrangement lasted all the ground area that you ever had for piling coal?

A. Not for piling coal. For piling soft coal you mean?

30 Q. For piling coal? A. No, we had all this.

Q. I mean outside area, all that outside area? A. Aside from the shed we did. Aside from the covered building.

Q. And you had a substantial section of the covered building? A. Which had to be treated as outdoors, because we had to haul it.

Q. But you did use it? A. Oh, yes, we put coke in it.

Q. And therefore the only coal that you didn't have room for would be such coal as you would put in the front part of the building? A. No, you see that is two-thirds of the building.

40 Q. And that was anthracite coal; you never had used that part for anything but anthracite, had you? A. We hadn't up to the date of expropriation.

Q. Up to the date of expropriation you had never used that nor had you to the date of expropriation used the rear end of the building running up to the Esplanade, you had used no part of the building except for anthracite and—? A. And coke.

Q. And if you used that for coke that was a negligible quantity in 1924 and 1925? A. Yes.

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Q. Now then does this give a picture of your buildings? Do you recognize them? First the Standard Fuel Company main coal shed, from the legend at the top? A. Taken after expropriation I suppose.

Q. Well did you take any at that time? A. No.

Q. Didn't you take any? A. No, I took no photographs.

Q. You mean when the expropriation came along you didn't think it wise to have a photograph? A. No.

Q. Well you will be glad to have them? A. It would add to the gallery. But that is after expropriation.

Q. When you say after you mean immediately after, don't you? A. 10 Well it is immediately after.

Q. February 2nd, 1927? A. Which is about six months after.

Q. Well the conditions would be the same?

HIS LORDSHIP: What difference does it make if the actual buildings were there?

WITNESS: Yes.

Q. That is right? A. That is the remains of the old dismantled tower that we replaced.

Q. Are you telling me something now that indicates that this is not a correct representation of the buildings as they stood when you gave them up? 20 A. I would say they were perfectly correct.

Q. And had been in that condition for years before? A. I couldn't go that far, no. When we knew we were going to lose the place we didn't want to add any.

BY HIS LORDSHIP: Q. You see that photograph? A. Yes.

Q. How long had they existed before the expropriation just as they are, from what we see there? A. Oh the actual building it existed in that order but from this time we put up the new tower we left the old tower.

Q. When did you put up the new tower? A. In 1913.

BY MR. TILLEY: Q. Well from 1913 it was like that? A. Yes. We 30 did necessary repairs on it.

Q. Did you put up that tower in 1913? A. In 1913.

Q. Well then it wasn't quite fair, what I put to you before, that the buildings when you took over the property were the same as when you were expropriated, you had added this tower? A. We had added, yes.

Q. In 1913? A. Yes.

Q. And at what expense? A. It cost us approximately \$40,000, machinery and tower.

Q. The whole thing? A. Yes.

Q. That would be in your books I suppose? A. Yes. It was around 40 \$40,000, 1926, as near as I can recall. Mind you I am only giving that from memory, Mr. Tilley.

Q. Quite right, I cannot expect more than that? A. It is a long time ago.

Q. Mr. Marshall, that is looking at it from the south—? A. The southwest; south and slightly west.

Q. Well pretty well south? A. Got onto the end of the Electric Light Dock.

Q. Got onto the end of the Electric Light Dock? A. In front of you.

Q. And then 2 is looking at it from what angle? A. From the south-east.

Q. And that is a fair representation of it? A. As at that date I should think so.

Q. Well as it had been? A. Oh no. We used to do repairs right along.

Q. What do you mean? A. We have added boards and put new flooring, completely floored the dock time and again.

Q. A person cannot see the floor there.

MR. OSLER: The floor would be covered by all that sand that would be in there, wouldn't it?

WITNESS: We let it go after 1924, Mr. Tilley, and '25.

Q. Well which was it, 1924 or 1925? A. I don't think we did any repairs after 1925.

Q. Did you do anything in 1924? A. Only what was necessary to keep on doing business.

Q. Well? A. There was no use of putting expense to the place at that time.

Q. It had had pretty good attention each year, had it not, to keep it in repair? Your repairs were pretty substantial? A. The repairs were from a thousand to \$1,500 a year.

Q. Now then photograph 3—?

MR. OSLER: Are you proving these by somebody?

MR. TILLEY: The witness is identifying them as we go along.

WITNESS: As at that date I am identifying them.

MR. OSLER: If my learned friend is using those as a matter of convenience to show to the witness well and good, but surely he may not use photographs except they are proved in the ordinary way.

HIS LORDSHIP: Surely there is no call to prove them in this Arbitration, is there?

MR. OSLER: I would like to, my Lord, because on No. 1 we can see that the work of filling in the harbor has been already commenced. There is a long pipe which I take to be the pipe through which the sand was pumped in there.

WITNESS: That is so.

MR. OSLER: That is evidently not the condition they were in at the time of expropriation. All I want is to have my learned friend's assurance as to that, that he is going to have the witness who took them say that so that I can ask him the conditions under which they were taken.

MR. TILLEY: I am just asking if this fairly represents your site.

HIS LORDSHIP: I quite understand. You must prove them in the usual way.

MR. OSLER: I don't care whether it was a photographer who was there or somebody directing the photographer, but surely my learned friend should call somebody.

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Q. If you are able to, describe anything my friend wants to ask you about the photographs. You had been excluded from the south side of the property by February? A. Of course, I don't know what happened to the shed after we moved out.

Q. I am asking you whether these fairly represent your buildings at the time you moved out? A. I would say they were in probably a little better state of repair at the time we got out.

Q. What is this picture of, the roof? A. It looks like the roof of the south building.

Q. And that shows the condition there? A. As I tell you, we weren't 10 responsible after we got out.

Q. No, quite. And then No. 4, what is that, Mr. Marshall? A. It looks like the interior of the northern shed.

Q. What was the condition it was in? A. It is pretty well represented.

Q. Well why all these props and so on? A. Those had always been in there, because we had a great expanse of room. We had to replace those from time to time.

Q. Does this show the entrance to your property, No. 5, fairly?. A. Fairly well.

Q. And this represents cars that are here parked. Are those cars that 20 would be there for you to handle the coal? A. It looks like it, Mr. Tilley. That photograph there shows the shed part of it.

Q. I am only getting at the entrance? A. My photograph was taken in 1923—

Q. Mr. Marshall, please keep to this: The entrance and location of the building as compared with the boundary line? A. Yes.

Q. And while you were in this temporary occupation that was practically the continuous condition, that you had your cars there and kept them and unloaded them when you wanted the coal, is that right? Would you admit that? A. They all had to be man-handled. 30

HIS LORDSHIP: Oh, please answer.

WITNESS: Oh yes, that is right.

Q. And then No. 6, I don't think we need bother about that.

HIS LORDSHIP: You are putting in the five photographs?

MR. TILLEY: Yes.

EXHIBIT 24: Five photographs showing Standard Fuel Company's buildings.

- (1) "Main coal shed. February 2nd, 1927. (Camera pointed north)."
- (2) "Main coal shed. February 2nd, 1927. (Camera pointed north-west)."
- (3) "West side of roof of main coal shed. February 2, 1927."
- (4) "Interior of coal shed looking N.E., 19th July, 1927."
- (5) "Standard Fuel Co. Ltd., view from Canadian Wool Co.'s warehouse. 19th July, 1927. 5.00 p.m."

40

Q. Now, Mr. Marshall, if you had remained there and everything had continued as you had hoped you said you thought of building out? A. Yes.

Q. How soon would you have had to do that? A. I think with the opening of the canal we would have been out as far as the Electric Light front.

Q. Would that be 19—? When was that? A. Last year I think.

Q. 1930 or 1931? A. 1931.

Q. Then you would have been carrying on under old conditions till 1931? A. Yes. Until the summer of 1931.

Q. And then you would have had to build out and you would have built out you say to the Hydro dock? A. Yes.

Q. Would you have moved those buildings out? A. No.

10 Q. What would you have done to the buildings? A. Left them for anthracite and coke and conveyed over Lake Street into these buildings.

Q. Conveyed over Lake Street into these buildings? A. Over or under. I think over.

Q. You would have had to get the consent of the city? A. Yes. I think that is so.

Q. There is no doubt about that. And do you know of any person ever getting consent to haul coal over a street such as Lake Street? A. In other cities I think they have done it.

20 Q. Do you know what the practice is in Toronto of handling things of that kind? A. It seems to me the William Davies Company have overhead.

Q. How long has it been there? A. I am not sure about that.

Q. Well at any rate you say that you would have had overhead, you would have continued to use the whole property for coal? A. Coal and coke.

Q. Were you late getting into the coke business as compared to your rivals? A. No, I don't think so.

Q. Well it didn't develop with you as rapidly as it did with the others, did it? A. Yes.

30 Q. I am speaking to you of the Standard, I am not speaking of the affiliates? A. They developed themselves. We were really the pioneers in coke.

Q. And then how far were you from the next coal depot on the waterfront? A. Until their lease expired Conger were next door to us.

Q. And next beyond Conger? There was no coal west of you, no coal yard, on the harbor front, or was there? A. After expropriation there was one.

Q. Where? A. Somewhere not far from Bathurst Street. This side of Bathurst Street.

40 BY HIS LORDSHIP: Q. That is a mile and a half away? A. It was a long way off. It isn't adjacent.

BY MR. TILLEY: Q. That is a long way, we needn't consider that. Then what was the next one? A. I think the next one was Rogers, who was down on Parliament Street.

Q. And east of Rogers? A. The next one would be on the new development, that would be Keating Cut, would be the Century Coal Company.

Q. Has Rogers a waterfront property now? A. I don't know. I heard he was trying to get one. I couldn't answer whether he had one or not.

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Q. He is not operating any coal yard at the waterfront? A. I don't think so.

Q. All Rogers' coal comes in by rail? A. Yes.

Q. And are they the largest dealers in Toronto? A. No.

Q. Who are the largest? A. You are asking one there, sir!

Q. I only want to know. If there is any difficulty about it give me those who are about the same? A. I would say they were about the same.

Q. You and Rogers about the same, do you think? A. I think we are larger, that is my opinion.

Q. You are larger or about the same, but I mean do you two stand in 10 the front then as to size? A. I think we do, and I think we are larger.

Q. And possibly you are larger? A. Yes.

Q. You may have it either way on that. And then now where are the Conger? A. I understand their lease fell in or expired and they retired from the waterfront altogether.

Q. They retired from the waterfront? A. When their lease ran out, to await developments.

Q. And I am suggesting to you that they stopped bringing in by water before then but you don't believe so? A. I couldn't say. I have an idea they were still bringing in. 20

Q. And so Rogers and Conger both gave up bringing in coal by water, at any rate when their lease ran out? A. I think so.

Q. And Congers, are they a large concern too? A. I would think not quite so large.

Q. But a big substantial company? A. A substantial company.

Q. And both those companies are aggressive and well managed companies? A. I couldn't say as to that.

Q. You don't know? A. I don't.

BY HIS LORDSHIP: Q. From appearances I suppose you can say that? A. I suppose. 30

BY MR. TILLEY: Q. And where was the Milne Company before 1924, before the disturbance? A. I am quoting from memory on this. I think when Conger's lease expired they took over a portion of the old Conger dock and operated it until expropriation.

Q. And how long were Milnes there? A. I couldn't say. I would think from about 1924 to 1926, something like that. That is only from memory.

Q. And were they only on the waterfront a couple of years? A. No, it might have been longer, but I recall two or three years.

Q. And except for that period the Milne Company didn't bring any 40 coal in by water? A. No, I think they had gone into the water business about that time.

Q. And then I think you have already told us they are down near you? A. After being put out of there they went down to the Keating Cut; they have a dock there now.

Q. Are you prepared to say what the Milnes paid for the lease of 1924

or 1926? A. I don't know. It is available no doubt. They were competitors.

Q. They are, but I thought with the happier days that now exist you had found that out, but you don't know? A. No.

Q. When you speak of your company being about the same size as the Rogers, and I am not caring which way it is, do you mean the Standard Fuel Company of Toronto Limited or do you mean the Standard Fuel Company Limited which includes Milnes? A. I think the Standard Fuel Company of Toronto is the same size; I think by adding the other company you increase

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10 it.

Q. Wouldn't Milnes just about double your business? A. No. As at today perhaps yes, but not at that time.

Q. What do you mean by—? A. At 1926.

Q. As at today? A. I think as at today the tonnage is pretty well divided. We handle about 650,000 tons.

Q. Each? A. No, no.

Q. Between you? A. Yes.

Q. And have they been serving some of the customers that your company had? A. No, we are operating as individual companies.

20 Q. But did they take over some of your customers? A. I don't think so.

Q. I mean by arrangement with you? A. No.

Q. For ease of management? A. No.

Q. Now, of course in 1926 Milnes—1924 to 1926—were down at the waterfront but they had some seven or eight coal yards around the city? A. Yes. And then they went into the water business when Conger's lease expired. Now it might have been 1923 and I think that is the time they went into the water business.

30 Q. And do you recall that they had some seven or eight yards around Toronto? A. Yes, but I don't think prior to that they had any water facilities.

Q. I am asking you they had some seven or eight yards around Toronto? A. I think five.

Q. And Rogers the same? A. Several. I think he had six.

Q. That is to say all the companies had? A. The bigger companies.

Q. The companies we are dealing with and those you mention. And these yards had railway facilities, railway sidings? A. Yes.

40 Q. And mostly in areas where property is relatively cheap? A. No, I wouldn't say that, Mr. Tilley. We have one on Macpherson Avenue right near Avenue Road.

Q. And what is that worth? A. We paid \$25,000 for the land and put up a \$30,000 plant on it.

Q. The \$25,000 for the land would be how much land? A. It is not very much. I have got it in the office. I know it isn't very much, it is a small place.

Q. I mean when you come to get land for coal purposes you don't

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choose the expensive land? A. Not if you can help it, but if you want to get in good localities you have got to pay the price.

Q. You don't want the best locality, and you don't want the residential localities so much, and I would have thought it was a sort of business that, speaking broadly, was carried on at cheap sites? A. I don't know what makes you think that, Mr. Tilley. It is a big business.

Q. Oh, it is a big business, to be sure. Now, Mr. Marshall, I am instructed you are in error about Milne taking over the Conger property? A. Well they certainly had the dock next to us.

Q. Next? A. That is east of us. That may not have been the Conger's, but they were certainly on the east end of it. 10

Q. You mean that they were on either Conger's or immediately east of it? A. Yes.

Q. When you say the next dock to you,—that was in use? A. That was in use. There were boats there—

MR. TILLEY: Well that is what you mean. That is all, thank you.

RE-EXAMINED BY MR. OSLER:

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Q. When you bought the Dickson & Eddy lease, Mr. Marshall, had it only a few years to run before the expiration of the lease when the rent would be put up again? A. Five years. 20

Q. And then you have told us—though I think afterwards you slipped into admitting to Mr. Tilley that the buildings were the same in 1926 as when you took them over but you corrected yourself and explained that you had put on the unloading tower and machinery—? A. Yes.

Q. Had they been maintained by just ordinary repairs or by replacements? A. In some cases replacements up to 1924.

MR. TILLEY: Replaced with what?

Q. What do you mean by replacement, Mr. Tilley wants to know? A. In some cases those upright timbers that you pointed out to me, Mr. Tilley; and we had paved the dock with, as I remember it, three inch planks 30 as often as it needed it.

Q. Now you wanted to explain something about these trestles that appear on photograph No. 1 of Exhibit 24. What were those? A. Well, when we erected in 1913 the new tower we didn't dismantle the old or the remains of the old tower, they were twin towers, and they sort of give the impression that it was a decided wreck at the south end of the shed, but that is the remains of the old dismantled tower.

Q. Which hadn't been used since 1913? A. No.

Q. And did you see the kind of work that they had in hand since you gave up possession of the south end of the property? For instance this 40 photograph No. 1 shows a pipe stretching across and the front of it looks as though there had been some pouring material? A. I didn't visit the south end after the expropriation. The sand pipe I noticed.

Q. That is where I understand they discharged the material with which

they were filling it up? A. I don't recall visiting that south end after expropriation.

Q. Well, now will you look at No. 5 and look at the part of the building immediately under the unloading tower and around to the right until it goes up towards the gable on the shed? A. Of course this is dismantled there.

Q. That part I refer to was dismantled? A. That part.

Q. Then that wasn't in the shape in which it was at the time of expropriation? A. Oh no.

10 Q. And then photograph No. 5 is dated 19th July, 1927, so that they must have proceeded pretty promptly after expropriation with the dismantling? A. Yes.

Q. And then on the same date my friend mentions, but didn't actually put in his photograph No. 6. Then this is photograph No. 6 and the date is 19th July, 1927? A. This looks like the devastated area in the war.

MR. TILLEY: What is the point?

MR. OSLER: The point is that the photograph should be explained in order to show that the dismantling had been done promptly.

MR. TILLEY: Well why wouldn't we dismantle promptly when we got possession?

20 Q. And this property that you see in No. 6 with the boiler in the center is the remains of the unloading tower and your building? A. It shows the dismantling.

Q. But leaving apparently the shed at the north end? A. At the north end.

MR. OSLER: And that will be Exhibit 25?

HIS LORDSHIP: They are all put in as Exhibit 24. If you want to put that one in you may. There is no object in No. 6 going in.

EXHIBIT 25: Photograph "Standard Fuel Co. Ltd. view looking east. 20th July, 1927, 9.30 a.m." (Photograph numbered 6.)

30 EXHIBIT 26: Statement showing "Dock transfers to yards."

Q. Then you told my learned friend that the coke was negligible although the exhibit that we had yesterday showed something like an average of three or four thousand tons of coke? A. That was prior to 1924.

Q. You mean negligible prior to the year 1924? A. Prior to the year 1924.

40 Q. Then, Mr. Marshall, yesterday you were being asked with reference to the cartage cost and delivery to customers and you said that you had paid a dollar a ton I think. Was that answer complete, with regard to your whole business? A. I said that—I corrected myself and said that we had reduced that to seventy-five cents. Of course I wasn't asked, as I understand, and didn't bring in anything about bulk coal at all with automatic loading and unloading, delivery loose, to buildings such as the Bank of Commerce and that.

Q. That would be on another basis? A. Yes, on a competitive basis.

BY MR. TILLEY: Q. Bituminous? A. A competitive basis to the downtown business, and it is all handled with one man on a truck and he dumps at one end.

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BY MR. OSLER: Q. Then I think you were asked to produce the amount of transfers from the docks to the other yards and you have given me here a list ending March 31st, 1930, except 1922? A. 1922 I found no records of; naturally the transfers were particularly heavy in that year, but the accountant we had at that time has been retired for some time, Mr. Glover, and I can't find that.

BY MR. TILLEY: Q. This says anthracite but no bituminous? A. We didn't transfer any bituminous at that time.

Q. Did you get the transfers from other yards or just this one? A. We only transferred from the dock to the other yards. I told you yesterday, Mr. Tilley, we made a few transfers when the yard ran out from the adjacent yard but it was absolutely negligible. 10

BY HIS LORDSHIP: Q. Do I understand correctly to March 30th, 1921, anthracite coal from the dock to different yards which you had in the city 18,485 tons? A. Yes, my Lord.

BY MR. TILLEY: Q. Mr. Marshall, could you let us have the yard that coal went to? A. I am not sure that I can, Mr. Tilley.

Q. You couldn't get for the earlier years? A. May I ask the accountant who is here?

Can that be done, Mr. Fielden? 20

We have that. That is all right, Mr. Tilley.

MR. OSLER: Do you want it?

MR. TILLEY: Yes.

HIS LORDSHIP: Is the other witness going to be called?

MR. OSLER: Not as I am advised at present.

HIS LORDSHIP: The accountant I think has a memorandum.

Q. Mr. Marshall, just while that is being got, I notice that the March 1921 year resulted in thirty-five cargoes being received and 36,117 tons coming in? A. Yes.

Q. And the statement you now file would show that you transferred about half of that? A. About fifty percent that year. 30

Q. In 1922 you have no record but I assume there were transfers because 29,000 would be a large amount of anthracite for that one yard to distribute? Isn't that right? A. There may have been, yes. I cannot say, because unfortunately I cannot find the figures.

Q. And 1923 was the strike. And then 1924 you transferred 8,000 out of 24,000 or 25,000 tons? A. Yes sir.

Q. 1925 8,000 out of 25,000 tons. 1926 about 4,000 tons out of twelve and one-half thousand. And that transfer, how would you handle that? It would be taken in ordinary trucks just as you delivered to the houses? A. No, no, sir. We used for that dump trucks; at the dock pulled the handle and filled the truck and took it into the yard and dumped it into a hopper. It is all done mechanically. 40

Q. Did you use that sort of thing with anthracite coal? A. Yes.

Q. I thought you used that for your bituminous? A. This is only in drawing from the dock to the yards.

Q. Well then wouldn't the handling of it be the same as if you were taking it to a house except that you would take more in the conveyance?

A. No, it would cost considerably less than it would have on the house deliveries in Toronto; ninety-five percent. of them are done in bags and carried in and put in the cellar.

Q. And this wouldn't be done that way? A. The charge for that in other cities is about sixty cents a ton for that bagging and carrying in.

Q. And you get the whole thing for seventy-five cents now. No, you bag it. What does that seventy-five cents cover? A. That covers delivery,
10 a man going into the yard—we give him some assistance—and drawing it to the house and putting it in the cellar.

Q. You fill the bags? A. No. In practice I believe we help fill the bags.

BY HIS LORDSHIP: Q. So that in 1921 you were bringing in about fifty percent. of your anthracite by rail and fifty percent. by water? A. I think so.

Q. Well then if you have 36,000 tons in 1921 you certainly have been filling the yards pretty liberally from the dock, in addition to the fifty percent. that came in by rail, because the rail went direct to these different yards,
20 didn't it? A. Yes, my Lord. I think our total was about 75,000 tons of hard coal all over the city.

BY MR. TILLEY: Q. Why did you start in 1921? A. I believe we transferred before 1921; my records only go back to the year of 1920 but I believe there were transfers before.

No. 7.

PERCIVAL HOWARD MITCHELL, Recalled:

EXAMINED BY MR. OSLER:

Q. Then, Mr. Mitchell, did you make the calculation that appears in Exhibit No. 19, item 4, based on the information which you got from Mr.
30 Marshall and which he has been discussing since you were called before?
A. Yes sir.

Q. Now the first paragraph, before we come to the calculation, perhaps I will read it, because otherwise it is a little difficult to follow: "The basis for this item in the claim is that from April 1st, 1927"—

HIS LORDSHIP: You refer to the item of the \$64,000?

MR. OSLER: Yes, my Lord, it is headed "Item 4—extra cost of rail transportation to June 30th, 1931, and extra cost of delivery from yards."

"The basis for this item in the claim is that from April 1st, 1927, the
40 beginning of the season immediately subsequent to expropriation, the company could not bring in anthracite coal by water for supplying the market of the downtown area normally supplied from the Church Street dock; all fuel had to come in by rail and as the dock yard was being

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dismantled and all facilities for unloading and loading anthracite were removed the company handled as much anthracite as possible in the limited space available for all fuel and the balance was supplied to downtown customers from the company's other yards at Parkdale, Macpherson Avenue, Merton Street and Greenwood Avenue.

"The Company was then compelled to pay the extra cost of rail hauled anthracite and in addition the extra cartage from outside yards for a considerable portion of its anthracite tonnage. This condition continued until June 30th, 1931, when the Ashbridge's Bay yard was established.

10

"Anthracite must be taken as a measure only as at this time coke was being used"—

HIS LORDSHIP: You are reading this. Is this supposed to be the evidence which Mr. Mitchell is going to give?

MR. OSLER: This is Mr. Mitchell's summary of his instructions and of course I have had to call Mr. Marshall to give the facts.

HIS LORDSHIP: Mr. Marshall gave the facts about all this. Now are you going to ask this witness as to the figures?

MR. OSLER: As to his figures and calculations.

HIS LORDSHIP: But this going over is merely Mr. Marshall's evidence.

20

MR. OSLER: That is true, but I thought perhaps it was quicker and we could follow it in the document. (Continues reading):

"Anthracite must be taken as a measure only as at this time coke was being used to replace anthracite to a considerable extent as a domestic fuel and the total tonnage herein as projected for the period since expropriation anticipates that coke to a large extent replaces anthracite.

"On July 1st, 1931, the company moved the yard to Ashbridge's Bay on Cherry Street, south of the ship channel, and thus reestablished water transport but are now confronted with the greater cost of delivery from the more remote dock to customers in the downtown area.

30

"This item is composed of the following:

(a) The extra cost due to rail transport on anthracite or equivalent tonnage as anthracite and coke, from April 1st, 1927, to June 30th, 1931.

(b) The extra cost of delivery from outside yards to the downtown area on anthracite and coke from April 1st, 1927, to June 30th, 1931.

(c) Extra cost of delivery of fuel from Ashbridge's Bay to downtown area from July 1st, 1931, to August 1st, 1938, based on average of tonnage previous to expropriation."

40

And as we deal with these we will come to the calculations.

Dealing first with (a):

"The extra cost due to rail transport on anthracite or equivalent tonnage as anthracite and coke from April 1st, 1927, to June 30th, 1931.

"This is computed from the extra cost per ton for rail transported coal multiplied by the yearly tonnage. The yearly tonnage is taken as

the average of the water transported anthracite tonnage for the seven years preceding expropriation.

"The following is the tabulation of cargoes and tonnages for the respective years."

Q. Then you got them from the company's books and accounts? A. Yes.

Q. And you ascertained in that way that the total number of cargoes year by year for the years ending March 31st, 1921 to 1927 inclusive represented a total of 144 cargoes and 152,801 tons? A. Yes sir.

Q. And from that you deduced the average of 21,829 tons per annum?

10 A. Yes.

Q. And this is the average you use as the basis of your calculations?

A. Yes. That is the basis of that computation.

Q. Then the extra cost of rail transportation:

"The cost of bringing anthracite coal by water to Toronto during the year ended March 31st, 1927, was as follows:"

And then you have the amount paid and the per tonnage prices.

BY HIS LORDSHIP: Q. Where did you get that item? A. Those are from the books. The auditors finally went over all those items and certified that that was their cost as from the books.

20 Q. You put those figures down from the figures the auditors gave you?

A. Yes.

MR. TILLEY: Are the auditors going to be called?

MR. OSLER: Yes.

MR. TILLEY: Of course Your Lordship appreciates this is subject to my objection.

HIS LORDSHIP: Yes. The objection was made a long time ago but I remember it.

MR. OSLER: And repeated several times.

30 BY MR. OSLER: Q. This gives the freight from the mines to the port of shipment. That is on the south side of the lake of course. And the cargo freight and the handling cost at the port of transfer and the harbor dues in Toronto. They are a total of what, Mr. Mitchell? A. \$3.40 per ton.

Q. And that was during the year ended March 31st, 1927? A. March 31st, 1927.

Q. "The prevailing freight rates during this period (and as at today) as obtained from the cost of rail shipments were as follows:"

BY HIS LORDSHIP: Q. Today? What date is that? A. The rate today, I believe that that was as in December of last year.

40 Q. Were the freight rates the same then, all these rates the same? A. I beg your pardon. During this period, pardon me, that is the period up until the time of expropriating and it was prevailing during that whole period from 1921 until 1927, on years ending March 31st.

Q. Have there been reductions in the railway freight rates since then?

MR. TILLEY: Does he know the freight rates?

WITNESS: Yes, I do.

Q. Did you make inquiries from the railways to find out if there was any change? A. Yes, I did, and there was no change.

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HIS LORDSHIP: The freight rates change from time to time.

MR. OSLER: They don't put them down unless they have to and most of the changes have been upwards.

BY MR. OSLER: Q. Then the freight from the mines to Black Rock; That is that junction point near Buffalo, I think? A. Yes.

Q. \$2.93 per ton, and Black Rock to Toronto \$1.15? A. \$1.15.

Q. And delivery cost on the siding, Toronto, \$4.08. Did you actually see the freight bills, Mr. Mitchell? A. No, I did not, the auditors gave me that finally.

Q. And based on that the difference between the water transported coal 10 and the rail transported coal came to sixty-eight cents per ton in favor of water? A. Yes.

Q. Then your calculation proceeds: "Extra yearly cost due to bringing in anthracite by rail:"

HIS LORDSHIP: Just a moment, Mr. Osler: The difference between bringing in anthracite coal by water and rail is sixty-eight cents more by rail than by water?

MR. OSLER: By rail, than by water.

HIS LORDSHIP: Now then you are applying that sixty-eight cents more to what year? 20

MR. OSLER: I am applying that to the years 1928, 1929, 1930 and 1931.

HIS LORDSHIP: 1928?

MR. OSLER: That is the years ended March 31st; really in effect, my Lord, the year 1927.

—1.00 p.m. Arbitration adjourned until 2.15 p.m.

—2.15 P.M. (WEDNESDAY, APRIL 6TH, 1932).

RESUMED:

PERCIVAL HOWARD MITCHELL—continued:

EXAMINATION IN CHIEF CONTINUED BY MR. OSLER:

Q. Mr. Mitchell, we were just at the top of page 4 of Exhibit 19. You 30 have shown how you had arrived at the average on anthracite and applying the same average to the years 1928, 1929 and 1930 you found that the average of 21,829 tons in the year at an extra cost of sixty-eight cents per ton would mean a yearly total of the cost showing the difference in favor of water transportation as against rail of \$14,843.72? A. Yes.

Q. Then you say:

"The Company claims for the extra cost paid for anthracite coal or

equivalent in anthracite and coke, during the four years from April 1st, 1927, to March 31st, 1931, including four navigation seasons, and for the months of April, May and June, 1931, as one-third of a year being approximately one-half of the navigation season for the year."

HIS LORDSHIP: This \$14,843.72 difference between rail and water at sixty-eight cents per ton, that is for what year?

MR. OSLER: That is an average based on the same year as the preceding and, taking those four years ending on the 31st March, 1928, to 1931 inclusive, and the calendar year 1931, from the 1st of April to the end of June at a third of a year, you get these figures: Four years at \$14,843.72 and the third of a year at \$4,947.91, or a total extra cost of rail transportation of \$64,322.79? A. Yes.

Q. Then the extra cost of delivery from outside yards to the downtown area on anthracite and coke from April 1st, 1927, to June 30th, 1931, and you say this is computed by tonnage multiplied by the extra cost of delivery per ton. For the tonnage you say you have taken the actual tonnage to downtown customers delivered from outside yards instead of from Church Street and the difference in average yearly tonnage of sales of anthracite and coke before and after expropriation shows the larger tonnage delivered from Church Street after expropriation? A. Yes, the lower tonnage.

Q. I should have said lower tonnage; it is lower? A. Yes.

Q. "The increase in sales from the four outside yards after allowing for normal growth indicates that the tonnage not delivered by Church Street yard was delivered to the downtown area from the 4 outside yards.

"The following figures for sales of Church Street yard and the 4 outside yards are shown on a diagram."

Have you that diagram before you? A. Yes. I might explain that the figures on these pages do not include those four city yards, that is taken from the tonnages in the company's records. That one with the red lines on; these extra ones I didn't have with the red lines; it is easier to follow the averages.

Q. Now you say that this diagram shows (a) that the average for the four years after expropriation exceeds the average of the four preceding years, (b) that the tonnages normally delivered from Church Street yard were delivered subsequent to expropriation from outside yards and (c) that annual decreases in Church Street yard deliveries had complementary increases in deliveries from the outside yards.

Now will you just explain that in a little more detail from your diagram?

A. We take the Church Street yard first, the one at the bottom is Church Street yard, on the copies that are marked in red; those horizontal lines are the averages for the four years before expropriation and the four years after expropriation. On the Church Street yard, figuring for the year 1924, on page 6 of this report there is anthracite and coke before expropriation; those added together make the total of 21,480 tons— if you follow on page 6—that is the average for all those years. In choosing out the anthracite for 1924 and the coke for 1924, and while that comes to 21,480 tons it somehow corresponds to that 21,000, but it is a different figure, and that is shown from 1924.

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In the same way the figures for anthracite and coke for 1925 on page 6 of the report added together there show around 25,000 tons. 1926 somewhat less. In 1927 it is 16,600 about. Then after expropriation, the year 1928, these are the fiscal years 1927—

Q. Just a moment. You have projected on this diagram the average for the four years which I take it is the combination of the average of anthracite tonnage 17,418 and the average of coke 4,385? A. Yes, and that average is 21,803 tons and is shown by the horizontal line marked "average of 4 years for Church Street yard."

BY HIS LORDSHIP: Q. That is before of course? A. That is before. 10
Then after expropriation the tonnages are shown for 1928, 1929, 1930 and 1931, using the figures at the bottom of page 6, and that yearly average is 11,509 tons shown as the horizontal line marked the average of four years for Church Street yard.

The four city yards shown above the diagram for Church Street yard are the same combinations of coke and anthracite for each year from the sales record and they show an average of somewhat below 40,000 tons for those four years for the period before expropriation and some 51,000 odd tons for the average of these yards after expropriation.

Now I have taken those figures and combined them in four city yards and 20
the Church Street yard which shows in the diagram increases above the four city yards and the averages shown slightly higher after expropriation. These are actual sales.

Then I have taken all city yards.

BY MR. OSLER: Q. Just a moment. That shows four city yards and Church Street, that is in combination? A. Yes.

Q. That is about 61,000 tons? A. About 61,000 tons.

Q. For the four years before expropriation. And that went up by how much? A. About 2,000 tons.

Q. 2,000 tons is the average for four years after? A. After expro- 30
priation. Then to find whether this growth that is shown in the four city yards and Church Street happened generally, happened throughout all the city or not, I have shown the average for all city yards in the diagram at the back and the same increase is shown there.

Q. That is the same increase when you compare the four years before expropriation and the four years after expropriation? A. Yes.

Now the averages of the Church Street yard and the four city yards before expropriation when compared with the averages after expropriation show that the four city yards had an increase in their business which corresponded to the drop in the Church Street yard. And after the years are compared 40
it is seen that the loss on the Church Street yard is taken up by the four outside city yards, and it will fairly well indicate that that business was done by the four outside city yards which was lost by the Church Street yard after expropriation.

Q. Yes. Then you say:

"In addition to imports of fuel by water, anthracite and coke were brought in by rail and while between all yards there was a bulk transfer

of fuel to accommodate individual yards due to temporary deficiencies in stocks the large stock in storage at the Church Street yard particularly was used for transferring to other yards, these transfer tonnages do not appear as sales for Church Street yard. The difference between imports and sales is taken as transfers."

I think we put in this morning a memorandum of the transfers from the Church Street yard? A. Yes. That is approximate to a great extent, it is very hard to compare them exactly because there was always some coal left in storage at the end of the season, a small amount, which interfered with

10 comparing transfers with the imports and sales from Church Street yard.

Q. I think we have dealt, in explaining the diagram, with the figures on page 6. Coming to the top of page 7, it says the yearly average of anthracite and coke delivered after expropriation was 11,509 tons, and the difference between the average deliveries from Church Street yard to the downtown area before and after expropriation, 21,803 tons average per year before and 11,509 average per year after, amounting to 10,294 tons per year delivered from outside yards to downtown area after expropriation? A. Yes.

Q. You have explained why you think that wasn't business that was lost to us, taken care of by the other yards? A. Yes.

20 Q. Now you say this tonnage was delivered from outside yards at an extra cost per ton and is for the period from April 1st, 1927, to June 30th, 1931. The extra cost of delivery per ton is computed as the extra distance multiplied by cost of delivery per ton mile. And then you proceed to calculate what the cost of delivery per ton mile is in the following pages of your report? A. Yes.

Q. The distances (on page 7) from the outlying yards to Church Street: Parkdale was 3.1 miles, Macpherson Avenue is 3.1 miles, Merton Street 3.8 miles, Greenwood Avenue 3.8 miles.

30 Where did you get those mileages? A. Those mileages, it so happens were taken off a Might Directory map but they were checked later from the official city map in the Roadways Department.

By His Lordship: Q. By you?

A. By me. And I would explain that there will be about two percent added to those owing to the fact that the Might Directory map has shrunk a little bit, but I didn't change the figures.

By Mr. Osler: Q. You might have made them a little larger if you had done the checking on the city map first? A. Yes.

40 I. "It is .85 miles from the Church Street yard to the center of distribution of the area bounded by Spadina, Bloor and Broadview and includes South Rosedale. This center is just below the intersection of Dundas and Yonge Streets. The average distance from the four yards to the Church Street yard is 3.5 miles and approximately 2.85 miles average from the four outside yards to the center of distribution. It is impracticable to arrive at a precise estimate of extra distance involved and as a fair figure for extra distance I have adopted .75 miles," (three-quarters of a mile) "or approximately one-quarter of the above 2.85 miles

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as the extra distance or for the round trip 1.5 miles extra distance as an average."

A. Yes.

Q. What do you say as to that being a fair basis of calculation? A. I think it is the fairest that can be had. I have taken one-quarter of the difference in distance.

Q. Then the delivery trucking includes the three items of labor, truck costs and overhead.

As to labor, the average speed of trucks is taken at sixteen miles per hour. Wages for the driver fifty cents per hour. One and one-half miles' travel 10 requires 5.63 minutes. The labor cost is then 4.7 cents. You say this is for two tons for one and one-half miles. Why do you take two tons? Because most of the trucks were two ton trucks.

Q. The labor cost is then 1.566 cents per ton mile.

"Truck costs are based on 7,500 miles' service per year per truck and are itemized as follows:"

What do you say as to that being a fair basis of estimate? A. Of mileage?

Q. Yes?

A. By checking back on the figures—there were no speedometers used 20 for checking the mileage—and checking back on the figures, the only way I had that I could do that was to take the total cost of gasoline and oil and working from that to find a mileage which would show the proper mileage on each of the number of trucks that were used of the whole fleet, that is the only way I could get at it.

Q. In other words then the calculation of mileage based on the calculation of gasoline and oil is shown from the company's figures? A. Yes.

BY HIS LORDSHIP: Q. Do you know whether that consumption of oil and gas was confined to this particular work? A. Yes, detailed, my Lord. I have the detailed figures for 1930 and 1931 of gasoline and oil. 30

BY MR. OSLER: Q. Then taking interest at three percent and depreciation fourteen percent on the trucks you get an average of seventeen percent per year on \$1,750, the cost of a two ton truck in 1928.

Where did you get the cost of the two ton truck? A. They were given to me by the office of Standard Fuel in detail. They had several trucks, International two ton trucks, bought in 1928, and that was the price that they paid.

Q. And then had they other trucks? A. Yes, they had quite a number of other trucks.

I might explain there were thirty-one trucks in the fleet, they were various 40 capacities, from one ton up to I think there was one at seven tons, but I took it as the average a two ton truck as an example. I suppose in their fleet was the equivalent of carrying twenty-nine two ton trucks instead of thirty-one miscellaneous trucks, and I have worked it out on that basis.

Q. You have really tried to reduce it to the basis of a two ton truck?

A. Yes.

Q. Then you calculate the interest and depreciation at four cents per mile, the gasoline and oil 2.62 cents per mile? A. Yes.

Q. This is taken from the figures in the books? A. Yes.

Q. Tires and repairs you have calculated at three cents per mile, \$225 per year. Is that \$225 per truck per year? A. Per truck per year.

Q. How did you arrive at that? A. That is the average of 1930 and 1931 costs of the Standard Fuel trucks.

BY HIS LORDSHIP: Q. You gained that information from what was paid out? A. Yes.

10 Q. In their books? A. Yes.

BY MR. OSLER: Q. And then in that way you have arrived at a cost for two tons of 9.62 cents per mile, or a ton mile cost of 4.81 cents? A. 4.81 cents per ton mile.

Q. Then you have calculated the overhead inclusive of truck license, insurance, Workmen's Compensation, garage and one truck's share of five per cent of total yard wages and expense, \$350 per year, or 4.66 cents per truck mile.

What do you say as to that? A. I can give that in detail.

20 Q. And that, I should complete it, brings you to 2.33 cents per ton mile, because the 4.66 is of course applied to the two ton truck mile? A. A truck license, I am giving this from memory, it is \$40, the insurance is \$64.75; the Workmen's Compensation, that is a small item, it is somewhere in the neighborhood of \$25 or \$26; the garage is taken at \$60 a year, that is \$5 a month; and one truck's share of 5% of the total yard wages and expense is \$170; a total of \$350 per year.

30 Q. And applying these you get the total cost per ton mile, 1.566 cents per ton mile for labor, 4.81 cents per ton mile for trucks, 2.33 cents per ton mile for overhead, and the extra cost of delivery on that basis is 8.706 cents, that is the total of those working costs per ton mile, by the one and one-half miles that you estimate from the round trip, 1.5 in the round trip—? A. Yes.

Q. And that is equal to 13.06 cents per ton? A. Yes.

Q. Then the extra yearly cost of delivery from outside yards of the 10,294 tons per year which you found to be the average yearly shortage at Church Street yard comes to a total yearly cost of additional distance of \$1,345.32? A. Per year, yes.

40 Q. Then applying that to the period from the 1st April, 1927, to the 1st July, 1931, when the facilities were established at Ashbridge's Bay gives you a total, taking the yearly cost for the years ending March 31st, 1928, to 1931 inclusive, and the third of the year to the 30th June, 1931, a total of \$5,717.61? A. Yes.

Q. Then with regard to the extra cost of delivery of all fuel, (so far we have been dealing with anthracite and coke I understand) from Ashbridge's Bay to the downtown area from July 1st, 1931, onward to August 1st, 1938, based on the average of tonnage previous to expropriation—I understand you take the 1938 date as being the expiration of the current twenty-one year lease, that was current at the time of the expropriation? A. Yes.

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Q. "The average tonnages of fuel for the period previous to expropriation are taken as the basis for the computation of future extra costs of delivery from Ashbridge's Bay. The extra cost is determined from tonnage multiplied by extra cost per ton for delivery.

"Anthracite and coke average yearly tonnages have been previously determined herein as follows: "

(Those were the figures we referred to before): Anthracite 17,418 tons, coke 4,385 tons.

"Bituminous coal tonnages are averaged from sales from April 1st, 1923, to March 31st, 1927 as follows:"

Then you give us the annual sales of the bituminous. Where did you take those from? A. Those are from the books of the company.

Q. And the year ending March 31st, 1924, 13,062 tons, the year ending March 31st, 1925, 12,217 tons, March 31st, 1926, 15,055 tons, and March 31st, 1927, 13,868 tons, a total of 54,202 tons or a yearly average of 13,550 tons? A. Yes.

Q. And adding that to the anthracite and coke gives you a total average annual tonnage during that period for the years ending March 31st, 1924, to 1927 inclusive of 35,353 tons? A. Yes.

MR. TILLEY: Is that from business at the new site?

HIS LORDSHIP: Ashbridge's Bay.

MR. TILLEY: The expected business at the new site?

MR. OSLER: No, this was the business at the old site up to the time of the expropriation.

BY HIS LORDSHIP: Q. But you are showing that as extra expense occasioned by their being at Ashbridge's Bay? A. Yes.

BY MR. OSLER: Q. On a similar amount of business first and then applying Col. Marshall's estimate of the additional business that would have been done, but we first reach the figure of an extra cost of delivery based on 34,353 tons which was the average of the actual tonnages for the four years preceding expropriation.

Then the extra cost of delivery per ton you say has been computed by extra distance multiplied by the cost of delivery per ton mile? A. Yes.

Q. That is the same basis which you calculated and explained before? A. Yes.

Q. Now so far as extra distance is concerned:

"The Ashbridge's Bay site is 9,250 feet from Church Street dock. Seventy-five percent of the downtown business is west of Church Street. This distance is 1.75 miles or 3.5 miles extra for the round trip.

"The remainder of the business, 25 percent, centers on Parliament Street which is 3,680 feet greater in distance from Ashbridge's Bay than from Church Street. This is .7 miles or 1.4 miles for the round trip.

"The resultant extra distance based on 75 percent being 3.5 miles extra and 25 percent being 1.4 miles extra is an average of three miles (2.975 miles)."

A. Yes.

Q. Then the cost per ton mile:

"This is computed as for cost per ton mile in determining extra cost of delivery from outside yards excepting that labor costs per ton mile is different. Labor costs for summer of 1931 onward are on the basis of 45 cents per hour for driver and 40 cents for a helper. On this service one-half the deliveries require a helper so that the average cost for labor on trucks is 65 cents per hour, instead of 50 cents as previously used. Or instead of 1.56 cents per ton mile the labor cost is 2.03 cents per ton mile. With truck costs at 4.81 cents and overhead at 2.33 cents the total is 9.17 cents per ton mile and for three miles 27.51 cents per ton."

10

That you find to be the extra cost of delivery per ton, 27.51 cents, twenty-seven and one-half cents? A. Yes, 27.51.

Q. Now applying that figure to the annual average of 35,353 tons per year you get a total extra cost of \$9,725.61, and that was only on the basis of the actual tonnages on the average up to expropriation? A. On the basis of tonnage sold annually, the average tonnage previous to expropriation.

Q. Then:

20

"The company claims for the extra cost of delivery from Ashbridge's Bay on tonnage of the amount handled previous to expropriation from Church Street dock to the downtown area for a period of seven years and one month from July 1st, 1931, to August 1st, 1938, on which date the present 21 year period of lease would be complete.

"The following are the costs for future years computed as at August 1st, 1931:

"One month, July 1st to July 31st, 1931, \$810.47; 7 years from August 1st, 1931, to August 1st, 1938, present worth of 7 equal annual amounts of \$9,725.61 at five percent (multiplier is 5.7864) as at August 1st, 1931, \$56,276.27; total \$57,086.74.

30

"Total for extra cost of delivery from Ashbridge's Bay on tonnages as previous to expropriation is \$57,086.74."

A. Yes.

HIS LORDSHIP: I don't think you have missed anything, Mr. Osler.

MR. TILLEY: Well there was wear and tear on the telephone, telephoning around. Mr. Osler ought to be interested in that, acting for the telephone company.

Q. Now then coming to item No. 5, Mr. Mitchell. So far we have dealt with actual tonnages.

40

"The company claims that had they been left in possession of the dock and rights out to the New Windmill Line their business would have increased in the period subsequent to expropriation.

"The company claims for the extra cost of delivery of fuel from Ashbridge's Bay on further tonnages which would be due to normal growth and which they would have been handling since 1926.

"Coke and anthracite tonnages from April 1st, 1927, to June 30th, 1931, are considered to have continued only at the pre-expropriation rate but bituminous coal had an increased tonnage."

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That is you haven't taken into account any increase in anthracite and coke tonnage? A. No.

Q. "Bituminous coal sales at the Church Street yard since expropriation while showing a considerable growth were limited by competition from other dealers who brought in bituminous coal to their docks by water and thus were able to offer coal of similar quality at a lower price."

HIS LORDSHIP: How do you know that?

MR. OSLER: Col. Marshall gave that evidence, my Lord.

HIS LORDSHIP: That is his evidence which you have read there.

MR. OSLER: Yes. I don't understand Mr. Mitchell is purporting to 10 say that.

HIS LORDSHIP: That is just explanatory.

MR. OSLER: Just explanatory.

MR. TILLEY: Rather a dangerous way to put it in.

HIS LORDSHIP: Well I will keep that separate.

Q. "Bituminous sales from Church Street yard previous to expropriation were:" The same as you gave on the figures we have already gone over? A. Yes.

Q. For the four years ending March 31st, 1924, to 1927, inclusive, a total of 54,202 tons. That was the same figure that we had? A. Yes. 20

Q. Or an average of 13,550 tons.

Bituminous sales from Church Street yard after expropriation, given year by year for the four years March 31st, 1928 to 1931 inclusive, amounted to a total of 80,346 tons or an average of 20,086 tons? A. Yes.

Q. Showing a gain in the period of expropriation, since expropriation, represented by an average of 6,534 tons per year. A. Yes.

Q. "The company claims that had they been left in possession of their dock and existing facilities which were available for bringing in bituminous coal both by rail and vessel that the average yearly tonnage from July 1st, 1931, to August 1st, 1938, would be 15,000 tons above the 30 average used." A. Yes.

Q. That you get from Col. Marshall. Then the company claims for the extra cost of delivery of this fuel from Ashbridge's Bay at the rate of 27.51 cents per ton? A. Per ton.

Q. As follows:

"15,000 tons per year at 27.51 cents per ton extra cost of delivery from July 1st, 1931, to August 1st, 1938, seven years and one month at \$4,126.50 per year."

And you have calculated the present value of that as at August 1st, 1931, \$24,221.45? A. Yes, that is the present value. 40

Q. "The company claims that had they been left in possession of their dock and rights on the waterlot that they would have extended their dock and facilities out towards the New Windmill Line by 1931 and thus would have handled a further business of bituminous coal and coke to the extent of 20,000 tons average for the period from July 1st, 1931, to August 1st, 1938."

The former calculations are on the basis of handling it at their site as at the time of expropriation? A. Yes.

Q. This would require an extended site? A. An extended dock, yes.

Q. "This tonnage at 27.51 cents per ton extra delivery cost from Ashbridge's Bay would total (B) \$32,295.27 as at August 1st, 1931."

A. Yes.

Q. "After August 1st, 1938, the Company will be still faced with the extra cost of delivery from Ashbridge's Bay and to the expense computed as:

10 "Yearly tonnage before expropriation 41,245 tons.

"Yearly tonnage bituminous growth on dock as existed 15,000 tons.

"Yearly tonnage bituminous and coke on extended dock 20,000 tons."

A. Yes.

Q. Making a total estimated tonnage of 76,243 tons annually? A. Yes.

Q. "This at 27.51 cents totals an extra yearly cost of delivery from Ashbridge's Bay of (C) \$20,974.45." A. Yes.

Q. Then you summarize the claims under the above items. The claim in respect of the tonnage without allowance for growth \$24,221.45 as at August 1st, 1931: under item (B) \$32,295.27 as at August 1st, 1931; and then on the
20 basis of the 76,243 annual tonnage at the rate of 27.51 cents \$20,974.45 per year; making a total of \$56,000 for the period up to 1938, besides the annual cost afterwards.

MR. TILLEY: After that would be 77.

MR. OSLER: No, after that it would be \$20,975, additional.

MR. TILLEY: But that additional does not wipe out the 56, does it?

MR. OSLER: No.

MR. TILLEY: So that it would be \$77,000 a year.

WITNESS: No, no. \$56,516 is up to 1938 and after that there would be a yearly extra cost of \$20,974.

30 BY MR. TILLEY: Q. What causes the drop? A. Because one is a period of years and the other is per year.

MR. OSLER: The 56 is not in one year.

MR. TILLEY: I thought that was annual.

MR. OSLER: No.

MR. TILLEY: That is my mistake.

MR. OSLER: I think so.

BY MR. OSLER: Q. Now then, Mr. Mitchell, in applying these figures there are some other matters which will have to be taken into account in connection with the further business:

40 MR. TILLEY: The last sentence: "The Company in presenting this claim shows the above as \$50,000"—

HIS LORDSHIP: That is \$56,516.72 but you have put it in at \$50,000.

MR. OSLER: Yes.

WITNESS: It was fifty-six thousand plus a yearly amount after 1938.

MR. TILLEY: And we get all of that for \$50,000, that is as I read it.

MR. OSLER: Yes.

Q. Then in determining the greater or less cost of doing business from the date of expropriation onward certain items of rent, taxes, interest and maintenance costs would affect the totals? A. Yes.

Q. And you have made some calculations; I haven't had time to have these revised, but my learned friend made some objection to using some of the figures which had included, although they don't state the exact amount, rental. I think I will ask leave to omit any items that deal with that in the meantime and substitute pages which don't include any that are objectionable to my learned friend.

MR. TILLEY: It is part of the scheme as I understand. 10

MR. OSLER: It is put in round figures.

MR. TILLEY: Well whether they are round or angular it is the same result.

Q. Well then, Mr. Mitchell, going to item No. 2, in this item No. 6, debits and credits you have: "The Company shows the true value of buildings and equipment as \$92,951.25? A. Yes.

HIS LORDSHIP: Just a moment, Mr. Osler: "The Company shows the true value of buildings and equipment as \$92,951.25." I don't remember any evidence being given of that.

MR. OSLER: Not yet, my Lord. Mr. Mitchell is going to deal with the 20 value of buildings presently.

MR. TILLEY: I see, this is the company.

Q. "The buildings and equipment were for the most part removed and the remaining portions included in the rent paid to Terminals Railway."

MR. TILLEY: What does that mean, Mr. Osler?

MR. OSLER: Most of the buildings were removed but they did have the use of the small building at the north end for some period.

MR. TILLEY: Oh, I see, a part of the building was left there.

MR. OSLER: Yes. 30

Q. "On a basis of five per cent. annual charges or \$4,647.56, plus maintenance of buildings and equipment at \$1,500 per year, there is a saving of \$6,147.56 per year or for the period November 24th, 1926, to June 30th, 1931, or say 4 years and 7.2 months, there is a saving of \$28,278.66." A. Yes, which was a less cost of doing business.

Q. "Light and power for the four years up to March 31st, 1927, averaged \$1,065.84 per year. For the four and one-third years from April 1st, 1927, to July 31st, 1931, the cost of power and light was \$301.43. At the previous rate it would have been \$4,618.63; there was thus a saving in the period of \$4,317.20." A. Yes. \$301 was for the whole time, not 40 for a year, and there was a saving there of \$4,317.

Q. That was I suppose because they didn't operate the unloading plant?
A. Didn't operate the tower.

Q. Then we will omit item No. 4 and, coming to 5 we have cost variations.

MR. TILLEY: Is that the one dealing with rents?

MR. OSLER: Rent and taxes after August 1st, 1931.

MR. TILLEY: On the scheme how can you omit it?

MR. OSLER: I think Mr. Mitchell can say that there is a further general deduction which will have to be made to cover items of that kind.

Q. Then you obtained from Mr. Fielden of Vigeon & Company—they are the company's auditors? A. Yes.

Q. A statement showing the storage facilities at Church Street dock permitted purchase of coal stocks during the summer season with a net saving of twenty cents per ton; you applied that to the average of 19,431 tons brought in by boat in the four seasons previous to expropriation? A. Yes.

10 Q. With a yearly saving of \$3,886.20? A. Yes.

Q. That would apply to four and one-half navigation seasons, so that the saving would have been \$17,487.90? A. Yes.

Q. Then we have the loss of all facilities at the Church Street dock entailing an estimated extra expense of a nominal ten cents per ton on all tonnage as actually handled? A. I think that was covered by Col. Marshall.

Q. "Sales of all fuel at Church Street from April 1st, 1927, to August 1st, 1931, totalled 130,699 tons, making an extra cost of handling of \$13,069.90." A. Yes.

20 Q. Then you had the direct current. At Ashbridge's Bay there was no direct current available? A. No.

Q. That is the Hydro sells entirely alternating current? A. Alternating current.

Q. And the direct current you say is necessary for unloading equipment? A. It is necessary for unloading equipment; all modern equipment just like this tower requires direct current.

Q. Then when only alternating current is available how do you get over that? A. You put in a motor generator set to produce direct current.

Q. And you say that requires twenty percent more power? A. Twenty percent more power, yes.

30 Q. That is your own knowledge? A. Yes. That is my own.

Q. "Former power bills show 102 horsepower and approximately 1,400 kilowatt hours per month. Direct current would cost \$126.45 per month. Alternating current plus twenty percent more will cost \$135.18 or \$8.73 more per month or say \$100 more per year"—

That is it would cost more by a hundred dollars a year to buy the alternating current. But that requires equipment for converting. Now what do you say as to the cost of the equipment necessary for that conversion? A. You would have to put in a motor generator set which is two drops down in efficiency, which amount to about twenty percent, and you have to put in this
40 twenty percent more power for that purpose and the twenty percent more of alternating current power as compared with direct cost here about \$9.00 more per month. The alternating current is cheaper than direct current, so that is twenty percent more of it, which just makes that—

Q. Practically offsets that? A. Practically offsets your hundred dollars more per year, but you have to buy equipment for converting, a motor generator set and switchboard and so on, and that costs \$6,000. I have bought many

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equipments of this kind at the capacity and I know that that is, what I have estimated, the price for it.

Q. Well then summarizing those things that you have been dealing with including the omitted items there would be a general average saving of \$20,843.40? A. That is what this shows based on the original items that I had.

Q. What do you say as to that representing a fair estimate? A. That is a fair estimate, yes. That is it cost us \$20,843 less to do business during this period, and in working out the extra cost we have to say well there are certain items that in the total are less cost and we offset those, and we find 10 we have to credit the items totalling some \$20,843.40.

Q. And that is a matter which you think they are entitled to credit for on these items? A. Yes.

BY MR. TILLEY: Q. That is a credit on your part? A. Yes. We deduct that from our claim.

BY MR. OSLER: Q. Then, Mr. Mitchell, did you do anything towards the valuation of the buildings? A. Yes, I did. I will have to get, if you go into that matter now, my statement on that.

HIS LORDSHIP: Is he qualified to give evidence as to the value of build- 20 ings?

MR. OSLER: I think so, my Lord.

HIS LORDSHIP: Is he a builder? Does he know anything about them?

Q. Well are you familiar with the cost? A. Yes, I am familiar with all buildings of all kinds. I was asked however to make a valuation with Mr. Hole.

MR. TILLEY: My friend is introducing this witness as a witness to give evidence of value of buildings. The evidence will have to come from him.

WITNESS: I will get my file, if you don't mind.

MR. OSLER: Yes.

I understand that this witness was appointed to value the buildings and 30 your Mr. Hole was appointed.

MR. TILLEY: And they never valued them.

MR. OSLER: They got together so far as replacement cost is concerned.

MR. TILLEY: Well replacement is not valuing anything.

Q. Now, Mr. Mitchell, I understand that you were appointed by the Standard Fuel Company to value the buildings and you met Mr. Hole, who was appointed by the Terminals Company? A. Yes.

Q. And how far did you get with Mr. Hole on reaching a conclusion as to value? A. We determined the replacement value of the buildings and the replacement value of the machinery and arrived at the conclusion as to 40 replacement value in 1926, as at November 1926.

Q. And did you make any record of that? A. And I have here the signed copy, signed by Mr. Hole and myself.

MR. TILLEY: My Lord, I don't think any evidence as to replacement value is admissible. My submission is that does not show value at all. If there was any instruction to make a value it was not done by agreement. My submission is it is not evidence at all.

HIS LORDSHIP: It may not be any evidence but I will allow it to go in.
Q. What value do you place on the replacement basis? A. On the buildings \$61,074.83.

BY HIS LORDSHIP: Q. That includes the sheds, the garage, the office and the tower? A. The tower. That is the structural part of the tower not the machinery. And the boiler house, the yard equipment.

BY MR. OSLER: Q. Well then you recorded that, Mr. Mitchell, in this memorandum signed by Mr. Hole and by you? A. Yes.

Q. That is signed by both of you? A. The first shown on this is all
10 the buildings including office, scales and pits, garage, storehouse, etc., boiler house, and then all the sheds, hoppers, tower building and miscellaneous buildings and structures and yard services.

BY HIS LORDSHIP: Q. Is that the value, do I understand, as they stood there at that time, or the cost of placing buildings of that sort there? A. The cost of placing the same type of building.

Q. But then these buildings were thirty years old or more? A. It was replacing the buildings in the same way as they stood with new equipment.

Q. With new buildings? A. With new buildings of exactly the same type.

20 MR. TILLEY: I think Your Lordship will appreciate now why the negotiations stopped.

HIS LORDSHIP: Yes, I can quite understand. I could appreciate long before I reached this limit of the arbitration.

MR. OSLER: This is "Toronto Terminals Railway Company, property commission."

BY HIS LORDSHIP: I just want to get something in my mind before you go on:

Q. I have had described the character of the buildings, their age and so and so, and I have had a view of them through the photographs; do I understand you to say that in your opinion they were worth, those buildings as they
30 stood there, without the machinery, \$61,074? A. As they stood?

Q. Yes? A. No my Lord, that is the replacement value.

Q. In other words do you place any value as to what they were as they stood there? A. No, I did not.

Q. So that you could replace those same buildings, which of course would be all new, at \$61,000? A. That is all.

BY MR. OSLER: Q. Then I am going to go on and get some further information as to what allowance should be made for depreciation from these. This is: "Toronto Terminals Railway Company, property commission—
40 Valuation of buildings, permanent improvements and other issues of the Standard Fuel Company premises upon lot 31, registered plan 5A, County of York, situated at south west corner of Esplanade East and Church Streets Toronto. Agreed replacement values of buildings, etc., as listed hereunder, as of November 24, 1926. Values checked up and agreed upon December 27, 1930."

HIS LORDSHIP: What are you reading from?

MR. OSLER: I am reading from the memorandum signed by Mr. Mitchell

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for the Standard Fuel and Mr. Hole for the Terminal, which I will put in as Exhibit 27.

HIS LORDSHIP: Very well.

MR. OSLER: (Reading) "Building A, office, \$3,070; scales and pits \$1,990; building B, garage, storehouse, etc., \$2,112.70."

HIS LORDSHIP: You mean where they stored all this anthracite.

MR. OSLER: No, my Lord. Storehouse, I take it, is a house for storing supplies and that kind of thing. Then the next is: "Building C, boiler house \$2,117; buildings D and E: Large sheds \$34,509.50, hoppers or pockets \$10,460, tower \$1,722.25, dynamo house, \$268.52, car house, \$612.50." 10

BY HIS LORDSHIP: Q. Is that for automobiles? A. No.

BY MR. OSLER: Q. "Controller house \$115, unloading hopper \$635.50, outside trestles \$899.36, outside trestles (unused) \$470."

What were those trestles now? A. Those were the old trestles, I think Col. Marshall showed those in the photograph this morning, they had never been taken down and they were still there and they were included as the material was there, but that amount, \$470, is not a replacement value; I just at the moment don't recall the percentage that would apply to that. They weren't used—they weren't part of the work at all.

Q. Then the open bins in yard \$580, gasoline tank and pit \$200, making 20 a total of those items there and inclusive of the large shed of \$50,472.63.

"Yard services: Water supply \$312.50."

BY HIS LORDSHIP: Q. What is that? A. Piping and so on around the plant for the water supply—for fire and water supply.

Q. I don't quite understand it yet? A. It is the water supply you refer to?

Q. Yes? A. The water supply system, just the piping that went underground and supplying different buildings with water.

Q. And you valued that at what? A. \$312.50.

BY MR. OSLER: Q. And the yard lighting (fixtures only) \$50, the yard 30 drains \$250, the drainage system I suppose.

HIS LORDSHIP: Well isn't that part of the land?

MR. OSLER: It has not been so regarded. I suppose all the buildings were in a sense part of the land.

HIS LORDSHIP: No no, I understand what I am to do about the land, but the drainage, isn't drainage under the land, some tile or whatever it was? Surely it must be part of the land.

MR. OSLER: I would have thought not under the lease, my Lord.

HIS LORDSHIP: You could not surely take the drain away with you when you left the land. 40

MR. OSLER: No, but on the other hand we could not very well have taken the buildings away.

HIS LORDSHIP: How much is it?

MR. OSLER: \$250. In other words it was a superstructure put on by the tenant and belonging to him. "Road surfaces \$700."

HIS LORDSHIP: What is that?

MR. OSLER: That is, I take, planking.

MR. TILLEY: Or macadam or whatever it may be.

WITNESS: Yes, a road surface.

BY HIS LORDSHIP: Q. You mean that this land had a cement surface?

A. Well there was a surface put on of some material, put on so that wagons could go over it.

Q. And are you valuing that? A. Yes.

Q. How much? A. \$700.

MR. OSLER: That gives total replacement at \$61,074.83; signed by Mr. John Hole and Mr. P. H. Mitchell.

10 HIS LORDSHIP: Do I understand that Mr. Hole is the representative of the Terminals?

MR. OSLER: He is the representative of the Terminals.

Then we have a document with a similar heading specifying in detail the items of machinery. There are some five pages altogether.

MR. TILLEY: How does it commence?

MR. OSLER: In exactly the same way as the other. I will read it:

20 "Toronto Terminals Railway Co., Property Commission—Valuation of fixed mechanical equipment (as separate from tools and small portable equipment which are not taken) of the Standard Fuel Company premises upon Lot 31, Reg. plan 5A, County of York," and so on.

"Agreed replacement values of this equipment as listed hereunder, as of November 24, 1926. Values checked and agreed upon, January 30, 1931."

And then follows:

"Item 1, 2 boilers," and then a considerable amount of technical description, and then the values carried out, and it deals altogether with some thirty-five items besides at the end one or two unnumbered items with an addition of eight percent to cover engineering costs, Workmen's Compensation, sundries, etc., and it concludes:

30 "Estimated replacement cost of mechanical equipment in 1926 \$41,876.-42."

HIS LORDSHIP: Is that signed by Mr. Hole?

MR. OSLER: That is signed by Mr. Hole.

HIS LORDSHIP: Those two will go in as Exhibit 27.

WITNESS: Those two are the same, the buildings and the mechanical.

EXHIBIT 27: Statement of six pages signed by Mr. Hole and Mr. Mitchell, showing agreed replacement values of buildings and mechanical equipment, above referred to.

40 BY MR. OSLER: Q. Mr. Mitchell, when did you make these valuations with Mr. Hole? A. In December and January. December of 1930 and January of 1931.

Q. And what buildings did you actually see when you were making it?

A. I saw the north shed and the hoppers that were included in the north shed. I saw the office building, the scales and one or two smaller buildings and bins.

Q. Then did you see the machinery itself? A. I didn't see the machinery.

Q. On what basis did you deal with the machinery? How did you arrive at replacement values of the machinery that you hadn't seen? A. An inventory had been made in 1926 by the firm of James, Proctor & Redfern which listed all equipment.

HIS LORDSHIP: You don't know that.

Q. Where did you get the inventory? A. I got the inventory from the Standard Fuel Company.

HIS LORDSHIP: That evidence would not be much value, would it?

MR. OSLER: No, except I understand, my Lord, this was the inventory that they both used. 10

Q. You did get a document purporting to be an inventory from the Standard Fuel? A. Yes.

Q. And what did you do with it? A. Mr. Hole and I met several days in succession and Mr. Hole checked this inventory and was prepared to use it as the basis. He had seen the buildings and equipment. I had not. He was prepared to accept this as the basis of our valuation.

Q. Well then, having that inventory before you and having shown it to Mr. Hole how did you proceed to check the replacement costs? A. We took each item, the inventory was very completely prepared, all materials which went in the timbered structures, and roofing in square feet, everything was there, so that all we had to do to find the cost of such material as in 1926, find the labor cost of small material such as bolts and so on which went into it, and arrive at a conclusion as to the cost of replacing such a building as in 1926. 20

Q. Well then you made an inspection of the north shed? A. I saw the north shed, yes.

Q. What condition did you find that? A. In excellent condition.

Q. Any rot in the timbers? A. No, there wasn't. It was a building that had not been affected by rotting at all and there was obviously a reason for it: You could find in a good many buildings and so on a certain rotting of wood, but not in that building. I claim that it was because of the sulphur in the coal acting as a fungicide and had kept down all the rot. 30

HIS LORDSHIP: That would be a good thing for a lot of people to know.

A. Cont'd.: Well it is a well-known fact, it is the standard way of keeping down fungus, by putting sulphur on.

HIS LORDSHIP: All right.

Q. Did you test that in any way, Mr. Mitchell, the fact that there were no indications of rot? A. Yes. I examined such of the buildings I could, I went over it very carefully. Of course that building had been standing there for several years. 40

BY HIS LORDSHIP: Q. How many?

A. Oh I am saying since expropriation.

Q. Do you know how many years? A. No.

Q. Didn't make inquiry when you were there to value it? A. I understood that the general contractor—

Q. No no, didn't you make inquiry from the time you started to examine and value it? A. No, my Lord, I didn't.

Q. Well, wouldn't you think that would be a proper thing for you to do? However, that is all right. Go on, Mr. Osler.

BY MR. OSLER: Q. I was asking you if you had checked in any way to see indications of rot in the interior of the timbers? A. Yes, I looked them all over and in one or two places I examined it very carefully, in out of the way places. I was looking for rot, I couldn't find any sign of rot throughout the whole building.

Q. And did you saw any of the timbers? A. Did I saw any of them?

Q. Yes? A. As distinct from see. When they were demolishing the building down there in 1931—there is a photograph in the exhibits where the main posts are shown—I went and examined it at that time and the wood was in perfect condition.

BY HIS LORDSHIP: Q. You mean the pieces of wood that you examined, that you saw? A. Those are not the ones, there is a later one than that. (Referring to photographs.)

MR. CASSELS: The '31's didn't go in.

A. Cont'd: I was there on two occasions while that building was being dismantled and I looked at these timbers particularly where they had all been cut off and there was no sign of rot in them.

Q. You mean where they had been cut off at the stump? A. Yes. Just two or three inches above the ground. And there was perfectly clean wood throughout, it was remarkable how clear they were from any defects from rotting at all. It is a well-known fact that sulphur of course is the best fungicide you can get.

BY MR. OSLER: Q. Well then, Mr. Mitchell, what do you say as to buildings of that character which had been up for some years, assuming that they had been properly maintained with any necessary replacements, being useful for the purpose for which they were being used, as a coal plant? A. With annual maintenance and repairs they should last almost indefinitely.

Q. Could you tell from your examination of the buildings that were there and which you did see whether replacement had been done from time to time? A. Yes, you could see differences in the appearance of the wood. Of course in that building, the portion remaining, there were some parts that were just the same as new. There was a lot of fir timber and structure in connection with these hoppers or pockets that were as good as new—practically new structures throughout.

BY HIS LORDSHIP: Q. A building of this kind with the material used is usually of very rough timber, isn't it, rough boards? A. Yes.

Q. Almost the cheapest kind you could put in, in a coal shed and buildings of that kind? A. Excepting this in the north building it was practically all white pine and it was in excellent shape; I didn't see the south building at all, but the north building was in excellent shape. As a structure this structure there, it is made of rough material and the replacement value is based on the same kind of rough material.

BY MR. OSLER: Q. Well then from the point of view of the use of this building and machinery for a coal company, what allowance do you think should be made from replacement value to represent its fair value to the com-

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pany that was using it, basing that on your observation of the building, what part of the building you saw? A. I would say if that was maintained and replacement made on the main structure, more from wear and tear than anything else, such as rotting—ordinarily you look for rotting in an old building, but this building, so far as rot was concerned rotting didn't come into the picture at all—but in making replacement I am quite of the opinion that \$1,500 a year spent on that year after year, wisely spent, would keep that building in excellent condition, in complete condition, indefinitely.

BY HIS LORDSHIP: Q. Indefinitely? A. Indefinitely.

Q. You surprise me? A. Col. Marshall says those buildings were there 10 before he went and nobody seems to know how long they were there and here is this north building standing there in an excellent condition, no sign of rotting, the structure in excellent shape, and I say that by spending \$1,500 a year you could keep the buildings in first-class condition indefinitely.

Q. Fifty or seventy-five or one hundred years? A. Yes, I would.

Q. Then you shock me, that is all I have to say? A. Well it is an exceptional condition—

Q. Yes, you shock me by that evidence? A. That rotting doesn't come into the picture.

BY MR. OSLER: Q. May I ask this question: Your \$1,500 included 20 what? Was it merely what you would ordinarily call repairs or replacement of parts as they were found to require replacement? A. Replacement of parts. I mean to say one thing that could affect that building, if a board ripped off you would replace the board; every few years you would probably have to put a new roof on, the roof would be that ready roofing type put on there as it was.

BY HIS LORDSHIP: Q. Do you mean shingling? A. No, it is a prepared roofing, Your Lordship, it is in rolls and laid on with mastic cement.

Q. And how often would you have to put a new roof on? A. Probably 30 every ten years on a building of that kind.

BY MR. OSLER: Q. And is that included in your estimate of spending an average of \$1,500 a year. A. Yes.

Q. And with a building of that kind I suppose the replacement of boards or even the replacement of posts if necessary could be done from time to time? A. Oh yes. It was an open structure, it was quite easy to do.

Q. So that the difference between the old building and the new building with regard to replacement would be really what? A. Would be \$1,500 a year.

Q. Then it would probably not be necessary to spend as much as that year by year on a totally new building? A. No, I would say this: If you had to go into that building—if it burnt down you have to replace it, you do 40 have to build a new building, there is no question about it, you can't reerect the old building but you must have a new building, but now over a fifteen year period of time you will have a difference in the upkeep; in the one building, the old building, you would spend \$1,500 a year; in the new building I would say that in the first year you would have some adjustments to make and so on and so forth of tuning the building up and it would cost \$500; in the second year you would have nothing to spend on the new building; on the third year

you would probably have something to replace, \$250, and in the fourth year \$250; in the fifth year \$500; I mean to say \$500 would be a fair estimate of what you would have to spend on a new building in the fifth year or sixth or seventh; and eighth, ninth and tenth years \$750,—then the eleventh, twelfth and thirteenth years, \$1,000.

10 BY HIS LORDSHIP: Q. Are these just guesses you are making? A. No, this is a very careful calculation. I have had quite a lot to do with buildings and upkeep and that is a fair estimate of what would be required in keeping those buildings up, and a new building I claim in the sixteenth year would have the same amount of upkeep as an old building, and I find there is a difference in the upkeep each year.

I have worked this out year by year and I find at the end of the second year there is \$1,500 difference in the upkeep. There was no upkeep on a new building; on the old building there was \$1,500. So that there is \$1,500. Taking the tenth year there was \$750 had to be spent on the new and \$1,500 on the old or a difference of \$750 there, and so on. And I have tabulated these differences and then capitalized them back all as to one year to find the difference and I may say that this \$1,500 is in reference to \$100,000 to buildings and equipment, not to \$102,000 or \$103,000 approximately.

20 Q. What do you mean by the \$103,000? A. The replacement value, if we had to replace those buildings and equipment—

Q. Worth \$61,074.83? A. Yes, and the machinery.

Q. Yes. But you are not stating machinery now, are you? A. Yes, grouping the whole thing together, \$61,074.83 as to building and \$41,876.42 as to machinery; that is, added together, \$102,951.25, and on that I say that the difference in upkeep is \$1,500 a year, the old and new buildings.

Q. And that applies to old wooden buildings as well as to new buildings?

30 A. Yes. I am not taking the \$1,500 as applying in that way, I have taken that type of plant and I say \$1,500 spent on the combination of buildings and equipment would keep them in first-class condition.

BY MR. OSLER: Q. For instance, Mr. Mitchell, part of the equipment would consist of concrete pits I think? A. Yes.

Q. For what was that? A. Those were for the scales, they have a concrete pit. There was only one set of scales there.

Q. And would there be much depreciation or wear and tear on that?

A. Practically not. The scales had to be kept up in condition all the time.

Q. The scales had to be tested every year so that they had to be kept up 100 percent? A. Yes.

40 BY HIS LORDSHIP: Q. They are tested by inspectors? A. Yes, and you had to keep them in condition.

BY MR. OSLER: Q. They could not be allowed to run down? A. No, they can't run down.

Q. And you are dealing with the whole plant as a whole including some items that would have to be replaced more frequently than others? A. Yes.

Q. And including others that would need very little replacement over a long period? A. Yes.

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CROSS-EXAMINED BY MR. TILLEY:

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Q. Mr. Mitchell, I am not sure whether I understand that you put a final figure on buildings and machinery and if so whether \$102,000 is the final figure or some other amount? A. No. The figure which I have put, the value that I put on that to the Standard Fuel is less \$10,000, the \$10,000 being made up by these differences in the yearly upkeep between old and new buildings and the differences then are all brought back to the one year.

Q. And that brings then a total value of \$92,000? A. \$92,000, yes.

Q. Roughly? A. Yes.

Q. I just wanted to understand the principle. Now just putting that 10 by itself for a moment, I understand that you and Mr. Hole started in to make a valuation of the buildings? A. Yes.

Q. And there were no special instructions to the two of you working together as to how you would make the valuation? A. His instructions appeared to be different from mine.

Q. I am not asking anything except the one question I put to you, addressed to the both of you? A. No, there was nothing addressed to the both of us.

Q. And you had your view and he had his? A. Yes.

Q. Whether those views were by instructions or your own matters not 20 but there was a difference between you? A. There was a difference.

Q. And when you reached the point of going through and computing all the materials that were in the buildings, in the building structures and all the plant that was there, everything, listed it all, I am not sure that you did it all before you commenced valuing but at any rate you listed it all, and then the next thing would be to put a unit basis of cost on the basis that it was being done in 1926 new? A. Yes.

Q. And that then would produce a perfectly new building of the same materials and same dimensions? A. Yes.

Q. And same structure, new units of plant? A. Yes. 30

Q. Duplicating those that were there? A. Yes.

Q. And then you say that you proceeded on the assumption that once erected it lasts indefinitely with proper maintenance? A. Yes.

Q. And that the maintenance cost is a little more or more for an old building than a new? A. Yes.

Q. And you have ascertained the difference in maintenance between an old building and a new and you put a present value on that of \$10,000? A. The difference, yes.

Q. So that you say that any sane owner acting reasonably if he were offered the buildings that are there with the equipment that is there, no 40 matter how old it may be, he would just as soon have that old building and the old equipment with \$10,000 as he would have a perfectly new building and a new equipment? That is your view? A. I say that— I couldn't answer that.

Q. You couldn't answer that question? Is that the view you are expounding at all, that with \$10,000 in the bank the old buildings that are there

ought to be treated as valuable to the owner as perfectly new buildings and perfectly new equipment? A. I think as a general rule, yes. They were the buildings, yes.

Q. We are talking about that particular plant? A. Yes.

Q. When do you say in your progressive table of expense for annual upkeep you reach the normal level of \$1,500 a year? A. Sixteen years.

Q. That applies to any buildings then whether they be eighteen years old or eighty? A. I say in that particular case where rotting didn't come into the main structures that it is a difference there that all you had was upkeep
10 against wear and tear.

Q. Well then the answer to that question is "yes," that just the same—?
A. In that building, yes.

Q. Eighteen years or eighty in that building, yes. And in that you are taking care of renewal of plant, obsolescence of equipment and all that sort of thing, that \$1,500 takes care of everything in the nature of equipment getting obsolete and getting worn out and the renewal of the physical structure of the building, takes care of everything? A. Yes, it will.

Q. Even though it be sixteen years old at the start? A. Yes.

20 Q. Well what is your occupation? A. I am an engineer.

Q. Well I know. What kind of? A maintenance engineer? A. No.

Q. Because if you can work on that basis I should think you would have a most profitable source of income? A. Well the difference, what appealed to me there—

Q. What is your occupation? An engineer means nothing these days. What are you? A. I am a—I do various kinds of engineering, civil engineering and so on.

Q. Apparently you do, but what is it? A. Structural, mechanical, electrical.

30 Q. What do you do? Do you erect buildings? A. I have designed a great many buildings and do for people, under my instructions, yes.

Q. And supervision? A. Yes.

Q. That is to say you are superintending architect for buildings? A. Yes, in a way.

Q. What kind of buildings? A. I have built a great many power plants.

Q. Where? A. Throughout Canada.

Q. Well where? Name them, the larger ones, so that we will get some idea of the kind of work you do? A. Nova Scotia Government, the Hydro Electric Power Commission of Nova Scotia.

40 Q. Hydro Electric plant in Nova Scotia? A. Yes. The same in New Brunswick.

Q. Yes? A. Various plants throughout Ontario.

Q. For instance? A. Well the Ontario Hydro Electric, the Big Chute plant on the Severn River.

Q. Were you the engineer there? A. I designed the building and was the supervising engineer on the building.

Q. These seem to be Hydro Electric plants? A. Yes, those are.

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Q. Is that really what you are, a hydro electric engineer, so to speak?
A. Well I have done quite a lot of hydro electric engineering, yes.

Q. And have you ever had anything to do with the superintendence of coal buildings? A. I have had to have certain buildings remodelled in plants that I have been around and so on.

Q. I mean superintending them from year to year to keep them in condition? A. Yes.

Q. And repair? A. Yes, I have.

Q. What buildings? A. I am vice-president of the Toronto Housing Company here. 10

Q. Are those houses? A. Yes, houses. We erected those and we maintained those for years.

Q. How long has that been going on? A. Since 1914.

Q. Let us have something that amounts to eighty years old that you have been talking about. Have you had anything antique, like the Boulton?

A. I don't think I have had anything eighty years old.

Q. You haven't had any? A. No.

Q. Have you had any structure of that kind to superintend at any time?

A. No, I have not.

Q. And when you come to the repairs the first year and a certain amount for tuning up and nothing at all for the second year and so on, that is theory, you have never had that in practice? A. It is based on my general knowledge of buildings of various kinds. 20

Q. Without any experience in ever maintaining such buildings, that is what I am asking you? A. I have had experience in maintaining exactly the same type of buildings as that.

Q. Was there anything like this? If you have let us have it? A. No, I haven't of just that type.

Q. No. I don't know if you are supposed to be agreeing with me when you say "no, I have not" and then you say "of just that type," but we will let it go at that. Now Mr. Hole wanted to at any rate go this far, to get at what was the fair wear and tear and depreciation that existed in these structures after getting the reproduction cost, he at least wanted to do that, didn't he? A. Yes. 30

Q. And was it your contention that there was no such depreciation to take off in order to get at their value? A. No. Mr. Hole said that it was customary from his experience to find the replacement value and then add an extra item for the extra cost, that is the value would have to be put up in a case like this to arrive at that, and my contention was that it eventually got back to the same thing, what is the value to the Standard Fuel Company. 40

Q. I am not asking you that at all. I am asking if that was his view, that he wanted to go on and look at this building and say: Is that depreciated fifty percent and worn out fifty, and another one seventy-five percent, or as may be? Is that what he wanted to do? A. He wanted to find the value on some other basis.

Q. That was as against doing what you had already done; that

first get what it cost and secondly take off what had been worn out? That was his theory? A. My instructions were—

Q. I am not asking you your instructions, I am asking if that is what you split on? A. Yes. Why I went back and asked for new instructions.

Q. And you took the position that the value of these buildings stood at replacement cost, there was nothing to be taken off? That is what you stood on? A. No, I said that my claim was for the—I was instructed to get that as to the value to the Standard Fuel Company.

Q. Well then your position was the value to the Standard Fuel Company was what it would cost to put them there new, that is your point? A. No, not the value to the Standard Fuel Company; this is my idea of the value to the Standard Fuel Company.

Q. That is what I am asking. And when you were talking to Mr. Hole you were not then talking of \$10,000, were you—this is something subsequent?

A. No, I said that mine was first to find the replacement value. I wouldn't admit that—

Q. This \$10,000 came off? A. I wasn't going into the matter of depreciation. I wasn't instructed. I was instructed to get the value to the Standard Fuel Company.

Q. And your position was the value to the Standard Fuel Company was the value based on what it would cost to reproduce them new in 1926 without any deduction, wasn't it? A. No, I don't think I ever took that definite stand, Mr. Tilley. I was saying that the value to the Standard Fuel Company required a replacement value, because the buildings did have to be replaced new.

Q. Well I am asking you that? A. And I wasn't prepared to go any further than that.

Q. So that you got as far as you wanted and then you stopped? A. No.

Q. At reproduction cost? A. No. I was instructed by—

Q. But subject to any instructions you got, which didn't alter it, that is where you did stand ultimately? A. Yes, that is where I stood, yes.

Q. Now I suppose that in valuing these buildings you proceed on the assumption that this property is a coal yard property and nothing else? You give it no value for any purpose except a coal yard, because these buildings are coal yard buildings, as I understand? A. I have not valued the property at all. This is the value of buildings. I have not valued the property.

Q. That is the value of the buildings then for a coal yard property? A. Yes.

Q. If the property is valued on the basis of some other value than coal yard these buildings would not have that value in your opinion? A. Oh that is the value to the Standard Fuel Company for their purpose.

Q. For the purpose of a coal business? A. Yes.

Q. What their value to them would be as merely addition in value to the land itself in the market, in the open market, you are not prepared to say? A. I am not prepared to determine that, no.

Q. Well then you have prepared this Exhibit No. 19 which has caused me so much worry, vexation and annoyance? A. Yes.

Q. Were you the one who caused me all that? Were you the one who

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computed it or were you instructed to do it that way? A. No, I had these figures and the general basis was how much extra it was going to cost and had cost to do business.

Q. To do business? A. And this is the result as I see it on that exhibit.

Q. The extra cost to do business due to two things I suppose, if I understand your exhibit aright, first location and second water facilities? A. In general, yes.

Q. Well don't say "in general." I don't know of anything else? A. Yes, I think that is the whole thing.

Q. And I suppose to consider it from the angle that you have been con- 10
sidering it is merely to go through and make a computation, more or less a matter of judgment as to what financial benefit there is in having the location where it is and secondly having water adjacent to the property? A. Yes.

Q. So that if a valuator of the experience of Mr. McBrien goes in the witness box and values that property because of its location and because of its water facilities the two of you are doing the same thing? A. I don't know. I didn't hear all of Mr. McBrien's evidence.

Q. Didn't you hear it all? A. I didn't hear it all, no.

Q. Well, that was a pity; you shouldn't have been away; Mr. McBrien 20
is giving that courtesy to your evidence at any rate. But wouldn't that be so? You have been working with Mr. McBrien on this I suppose? A. Not very much on this, no.

Q. How long have you been working on it? A. I believe 1929.

Q. 1929 you commenced, and fairly continuously since? A. Oh no, just in—

Q. Just on rainy days and that sort of thing? A. Something like that.

Q. The way we do? A. Something like that.

Q. You have been working with Mr. Ponton? A. Yes, I was with Mr. Ponton on this case I think for nearly a year.

Q. Even before that I think, weren't you, because—? A. I don't know 30
how long ago that was.

Q. We will say a year or more. Will that be right? A. That is about right.

Q. Probably a couple of years; you see we are in 1932 now and you started in 1929, and didn't you come in touch with him when you first started? A. No.

Q. How long afterwards? A. I don't just recall when Mr. Ponton came in.

Q. Well you knew him before, did you? A. Yes, I knew Mr. Ponton 40
before, yes.

Q. At any rate it would be within a year of when you started? A. It might be about a year.

Q. And I suppose you can appreciate, you could go this far with me, that no person buying a property or acquiring it voluntarily or compulsorily wants to pay for it or any of it twice? You can appreciate that of course? A. Yes.

Q. Now then I want to put to you, if you add what you are computing

to what a valuer fixed as the value, taking into account its location plus its water facilities, you are not asking us to pay twice for the same feature of the property? A. No, I don't think so.

Q. You don't think so? A. No.

Q. That is to say imagine yourself the proposed purchaser of this property, don't regard yourself as a very fortunate man because you are the purchaser, but just put yourself in that position for a while, and you have one man come to you and say "Well I think the value of that property is, oh, we will say \$400,000." You say "Why?" "Well it is very central, it is a
10 short haul for a business that wants a short haul, it has got water for any person who wants to bring in goods by water; there is a cheaper way of getting goods in than by rail, an advantage to some people." And then you say "Well that being so let us consider \$400,000 as a fair figure for the property." And then you come to another man and you ask him about it and he says "I don't know anything about the value of land, don't ask me about the land, but I want to tell you that if you are bringing in coal there you will save ten cents a ton on it coming in and you will save ten cents a ton hauling on it, that is twenty cents a ton, and imagine you are going to handle 10,000 tons there a year, there are so many thousand dollars, whatever it may be, and
20 then capitalize that or approach it in any way you like to look at anything that way, take part of it or the whole of it, add that to the \$400,000 and there you have got the value of the property." Aren't you duplicating the same feature? A. No, I think after—I heard some of your references in the same way, I think you were speaking to Col. Marshall about Mr. McBrien's evidence, and you were saying that his value was given as established for a coal dock—

Q. I am asking that you assume my case now; we got away from Mr. McBrien, because you didn't hear all of his evidence, and I am taking my hypothetical case and you are the proposed purchaser, you see, I want to get
30 you in that position, and you are the proposed purchaser and the man tells you "We have got water, which gives it a value of probably a dollar a square foot more than if it hadn't the water, it has got access to downtown, so that probably it is worth a dollar a square foot more on that account, it has got rail facilities, that would be another fifty cents; on the whole I think the property could well be put at say \$3 a square foot." And you figure that it comes to say \$400,000, that is the way the first man tells you, and you are the man who is buying; another man comes to you and says "Well I happen to know that if you haul coal in there and haul it out again in the centre of Toronto you will save twenty-six cents a ton." And then you take the tonnage and multiply
40 by the twenty cents and you get an annual saving on the coal and you capitalize that wholly or partly over a period of years or just for a year, whatever you want to do, and you add that to the first man's valuation in order to get at the valuation of the property if you are the purchaser? A. I may be—I can't follow the—

Q. I can't either, but I am trying to show that it really shocks a man who is trying to think about it as a purchaser. You can't follow that at all, can

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you, the idea of taking a capital value for the land that groups up the special features of that property which you must consider when valuing it—? A. Yes.

Q. And then add to that another capital sum or an allowance for one year or ten years that represents actual benefit from the very feature you have been emphasizing in getting at the capital value? A. If you say the property is worth \$400,000 and then it has certain advantages which will work out so much a ton then your property is worth all your original value plus all these advantages capitalized.

Q. Well is it? Has it a value of \$400,000 in respect of this business and then do you capitalize the benefit to the business and add that in to the value of the property? A. No, I think the \$400,000 is the value of the property 10
regardless of its use.

MR. HELLMUTH: Well surely this witness cannot answer legal questions, whether it is the value.

HIS LORDSHIP: I don't think it is a legal question at all, Mr. Hellmuth; I think it is a perfectly proper question for a witness who has given the evidence he has.

BY HIS LORDSHIP: Q. When you are putting down for instance a property at \$400,000 you must consider I suppose the location of it and water, otherwise you would have never put that price upon it, isn't that so? A. Yes. 20

Q. It is for you to say, not for me? A. Yes.

Q. Then you put that large price upon it we will say because of location and water, whatever those two words imply? A. I think that that is the basis on which Mr. McBrien has given his valuation.

Q. Now you have heard what Mr. Tilley has been asking you, you are adding to that all these extra costs of rail transportation against water transportation, from yard to office and office to yard and so on and so on, and he says Is that the proper basis? He is using you here as an engineer, you have given a lot of evidence, and I want to hear the answer to that question. I am very much interested and have been from the start. A. I would like to— 30
Here was a company—

HIS LORDSHIP: No, no, let us get down to that; this is a simple question. It may be difficult for you to answer but I would like to have that answered. Mr. Tilley will put it to you again if you are uncertain as to what he means.

BY MR. TILLEY: Q. You understand the problem, when you have once valued this property from the standpoint of the advantage of water and the basis of its nearness to the central business portion of Toronto and you have taken into account the value that is reflected in the property because of the cheaper haulage of things to it by water and the shorter distance to haul it, haven't you? A. I have. Of course I want to get back to comparisons— 40

Q. You want what? A. To get back to comparisons of other sites, but I would choose that property, yes, instead of Ashbridge's Bay, because it cost so much more money—

Q. Well please, I am not asking that. If you were off at Ashbridge's Bay you would value it because it is away from the center of the city, wouldn't you, value it less, but you have other advantages, you have that thirty feet of water that might make up for everything and more in the coal business, but

you have got distances more pronounced. You may have other benefits as a matter of distance and of haul. That is reflected in the value of the property at Ashbridge's Bay, isn't it? A. The closer to the centre of the city the more it costs, yes.

Q. And I don't like Mr. McBrien's figures. I don't say I don't like Mr. McBrien, but I don't like his figures, but he has attempted to give us that and now I suggest that you are giving it to us over again, or at least you are just illustrating one feature of the property. A. No, I am saying that they have to move out to there, that it costs so much more money to do business and we

10 say that, true, the rent is less—

Q. But, Mr. Mitchell, and I am speaking now of Mr. Boulton and Mr. Marshall as one man, the owner, call him the owner; the owner has got the cash equivalent of the water advantages and the nearness to the centre of the city in his pocket, he has pocketed that when he gets out, he has got it in his pocket.

MR. OSLER: It is in your pocket.

MR. TILLEY: Don't let us turn it into a joke; it is a serious matter.

Q. It is in your pocket, the owner's pocket, when the property is taken. You appreciate. I suppose, Mr. Mitchell, that in these arbitrations when the
20 value is fixed it includes interest from the date of possession, you would assume that, wouldn't you? A. Yes.

Q. Five percent. Then whenever that money is paid you have the value of the water and the short haul in your pocket or owing to you with interest from the very day you lose your property, and then I am suggesting to you that you are proceeding for one year or seven years or indefinitely to add something to it because he has lost the thing for which he has been paid? A. Yes.

Q. Yes? A. Well now I am looking at this entirely from the Standard Fuel Company's interests. It costs them so much more money annually to
30 do the business which they did.

Q. More than it did before? A. More than it did before.

Q. Now we are going to assume that, and they have got in their pocket the value of the property they had before which value reflects the value that the property had. A simple proposition, I am not going to labor with you any longer, because I just wanted to bring the point out and give you a chance to talk about it? A. Yes. I am doing this aside from any interest of the Standard Fuel in the property at all, I am doing it on how much does it cost extra to do business from the time of expropriation. Some things have cost less to do business but some things have cost them more, and I am taking it
40 on that basis and taking it over a period of years, how much does it cost in dollars and cents to the Standard Fuel Company.

Q. Why take it a period of years? Why not take it forever and capitalize it? A. Well there must be some reasonable limit I presume to this.

Q. I don't know why, in the way we are proceeding here, why there should be any limit, on your theory. I am serious, I don't know why, if Mr. Boulton is to be treated as the owner and your theory prevails, and the business was disturbed, adopting your theory I can't see why it shouldn't be capi-

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talized forever if it is a correct theory, because he had the business there and if he is entitled to be paid the value of his land having regard to its features and then have his business run as though he were still in the old place, so far as haul was concerned, and if he has been paid to get out I can't see why it shouldn't last forever. Can you? A. I think that this should last, all right, let us say forever.

Q. Yes? A. But there is a limit to the thing.

Q. And why choose 1928? I am coming to your details, but one class of figures or one group you have used 1928 as the stopping point? A. 1938.

Q. That is one reason why I was persistent this morning, possibly more than I should have been, to get at the tenant's interest, because you were stopping at the end of his tenancy, but if Mr. Boulton is to be regarded as the one who is carrying on the business, so far as principle is concerned, why do you stop at 1928? A. 1938 you mean. 10

Q. 1938, I am sorry; thank you very much. Why do you stop at 1938 if there is no difference between landlord and tenant in this case? A. In my opinion this should keep on for a very long period but there is a terminating period at which rentals may change and so on, the picture may change.

Q. And what difference does it make if the rentals change? I am putting it to you that you took 1938 because you would be faced with this, that at 1938 the Standard Fuel Company would have their rent changed and be expected to pay on a basis of, if there is any foundation at all for what McBrien says, the figures, interest on approximately \$400,000, and therefore you took 1938 as the stopping point for the tenant, because on the wording of his lease you would be faced with the argument "Well he would have to pay a rental on the full value of the property at that time," and therefore you considered it from the standpoint of the tenant only? Isn't that so? A. No. 20

Q. Well? A. Yes, the 1938 is practically the end and there would be twenty-one years— 30

Q. "Therefore I base that on 1938 when he would have his lease renewed and have his rent fixed on the basis of the full value of the property?" A. No, I didn't consider it that way. I was wanting, on my own basis, approaching somewhat your idea of it lasting forever; I had worked it out on a twenty-one year period and it was suggested that we would bring it down to the lease basis.

Q. On Mr. Cassels' suggestion? I would like to give him credit for that. A. Well I don't know about Mr. Cassels.

Q. Some person suggested "Don't let them try to put that over us?" A. No, I don't know; I think the twenty-one years is right myself, because if they come down to twenty-one years they are tied up there with a twenty-one year lease and they will have to face this for twenty-one years. 40

Q. Well, then let us put it this way: You would take the probable lease, so that I won't get into any dispute about whether it is actually a lease or not, at Ashbridge's Bay as the basis, and so let us take a twenty-one year period? A. Yes.

Q. Well, then will you just do me this honor before we adjourn; will

you answer me this: Assuming that Mr. Boulton was the owner and carried on this coal business and was being expropriated, would it be your view as an expert that his compensation would be the value of his land taking into account its water possibilities and its proximity to downtown, all that in the value of the land, and then give him twenty-one years' compensation for any loss he would sustain by reason of having to do business at Ashbridge's Bay? A. Yes.

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MR. OSLER: As a matter of fact my learned friend has been putting to the witness questions as though he were an expert on values.

10 MR. TILLEY: All I am getting at is his theory.

HIS LORDSHIP: His evidence is expert.

MR. OSLER: But it is expert on costs, my Lord.

HIS LORDSHIP: On costs and expert on the buildings and machinery and so on.

MR. OSLER: But not expert on the value of land.

HIS LORDSHIP: Not land itself, no.

MR. OSLER: And my learned friend is putting it as though there were no question of the right to compensation for disturbance of business or as if that was all included in land, which of course, it isn't.

20 HIS LORDSHIP: If this witness cannot answer that why it is all right.

MR. HELLMUTH: Or if he does answer it it isn't a question that could be of any weight whatever.

HIS LORDSHIP: It may not.

MR. TILLEY: I am going to ask in the end that not a thing he says be given any weight.

MR. HELLMUTH: Oh that may be.

MR. TILLEY: So that my friend and I will be in perfect agreement about that.

MR. HELLMUTH: Yes, we will, perfect disagreement.

30 MR. TILLEY: No, we won't; perfect agreement.

—4.30 p.m. arbitration adjourned until 10.30 a.m. Thursday, April 7th, 1932.

—10.30 A.M. THURSDAY, APRIL 7th, 1932,

RESUMED:

PERCIVAL HOWARD MITCHELL CONTINUED:

CROSS-EXAMINATION CONTINUED BY MR. TILLEY:

Q. Mr. Mitchell, referring to your Exhibit No. 19, you first deal with item 4 of the claim and you indicate its character at the beginning. You say

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the basis of the claim is that from April 1927 the company could not bring in anthracite coal by water for supplying the market of the downtown area normally supplied by the Church Street dock, it came in by rail, and you say the company handled as much anthracite as possible in the limited space available for all fuel and the balance was supplied to the downtown from the other yards. Of course the latter statement is something you must rely on others for? A. Yes.

Q. That is not a thing you would be able to speak of personally? A. No, mine was merely an analysis; they supplied figures.

Q. Quite, yes. Did you make any examination of the deliveries as to 10 where they did deliver from Church Street? A. No, not in detail.

Q. Well in detail. I was thinking more did you in any way check up their large customers and find out exactly where they were located? A. No.

Q. And how much of the bulk sold in the year went to them; did you do anything of that kind? A. Not in the anthracite; the anthracite was mostly small sales, anthracite and coke.

Q. Then did you examine as to anthracite, taking it first, where their customers were mainly located who dealt with them from Church Street? A. No. I just took that the center of the district was just below Dundas.

Q. Yes, but the center of the district is the center, so far as you are 20 concerned, of a geographical area, it has nothing to do with actual customers except you assume customers would be in that area? A. No, Mr. Tilley, the general understanding that I had of it and the statements which they made, was that the sales per tonnage were distributed over the whole area with the center of the sales at Yonge Street below Dundas.

Q. What do you mean by center of sales? If you will, just follow me while I elaborate my view and you may correct me in a moment: I understand that you may have such a thing as the center of the sales having regard to the quantity of sales in different districts and then you get a certain place which has an average of the weighted deliveries? A. Yes. 30

Q. That would be one thing; the other thing would be to get the area in which your customers are regardless of whether they are small or large customers and then take the central point of that geographical area, and which did you do? A. No, it is a weighted center. That is the tonnage distributed all over the area would be this area so far as tonnage is concerned of Yonge Street below Dundas.

Q. Well then did you compute that or was it done for you? A. No, it was done for me. Col. Marshall has stated—

Q. I wasn't asking you to review the evidence for us, I was asking what you did from your own knowledge first. Would the figures from which you 40 made that computation get at the weighted center so to speak? A. No.

Q. Then you didn't compute it? A. I didn't compute that.

Q. Then you didn't ascertain the center? A. I didn't ascertain the center.

Q. That was given to you by whom? A. By Col. Marshall.

Q. That would involve quite a study, wouldn't it? A. Yes, you would have to live with the business quite a long time.

Q. Well I don't think you would be able to live very much with the business, I think you would be able to live with the problem of accounting if you worked out the weighted center of all the deliveries from Church Street yard. Quite a problem to tell the tonnage going to the various houses around the whole area and then get at where the weighted center was. At least that is my idea, it might be wrong. I should think he would be keeping the accounts of that character and working them out rather than staying with the business; that would be a problem of notice? A. Yes—

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10 Q. Or do you mean it was an estimate? A. No. The information was given to me as a positive statement.

Q. As a computation, as an actual computation? A. Well they had had the experience of years I presume and they based it on that; I don't know how they arrive at that.

Q. Mr. Mitchell, either the experience of years enabled some person to make a fair estimate on which he or you acted or else it had to be computed, one or the other, now which was it? A. I don't know.

20 Q. Well that is a frank answer. And then you say the company was then compelled to pay the extra cost of rail hauled anthracite (now we are on the water as against rail) and in addition the extra cartage from outside yards for a considerable portion of its anthracite tonnage. This condition continued until June 30th, 1931, when the Ashbridge's Bay yard was established. And then coke is brought into the problem, we needn't bother with that for the moment. And then you say on July 1st, 1931, the yard was moved and re-established water transport but now there is the extra cost of delivery, and then you divide it into the increased cost due to rail instead of water coming in, the increased cost of delivery from sub yards rather than from Church Street and the increased cost of delivery from Ashbridge's Bay when the transfer was made there? A. Yes.

Q. That is the scheme? A. Yes.

30 Q. Now on rail versus water: You compute the extra cost per ton for rail transported coal multiplied by the yearly tonnage and then you get the yearly tonnage from going back to 1921. Did you select that period? A. No, I didn't. The figures were there; we had the figures only available from 1921 to 1927.

40 Q. And in 1921, just taking that as an instance, 36,117 tons came in by water, but by the other exhibit, which I think is 26,—I don't know that you have a copy of that; would you just keep that before you—in that year 1921, 18,485 tons were transferred from Church Street to a yard, some other yard? That is right, isn't it? A. It was apparently—this is "Dock transfers to yards"—I presume several yards.

Q. Did you make any study of that situation? A. No, I have never seen this item till now, this 18,000.

Q. Really? A. No.

Q. Will you go down the same exhibit and see that in 1922 there is no record; I would have thought it was possible to take it off but Mr. Marshall told us it wasn't, at any rate not conveniently possible; and then in 1924 8,105 tons transferred. Now that comes into your period? A. Yes, it does.

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Q. Did you know that? A. No, I didn't know it was as high as that. As I understood it was in the neighborhood of a little over 3,000 tons, but I think that there is something special in that that I am not capable of—

Q. I am just concerned with your side? A. No. That is higher.

Q. Did you make any study at all of what you had to add to your water carried to pick the coal up again and haul it to a sub station, I am calling it, I don't know that there are any differences in their sizes, and then lay it down there? A. Yes, I did. I checked it to see what the cost would be per mile per ton and the mileage involved, an average mileage, and it checks out—

Q. To transfer it from Church Street? A. To transfer it from Church Street by truck to the other yards, yes.

Q. Have you your working sheets? A. No. I could give you that information from this particular sheet.

Q. How? A. There is three and one-half miles is the average distance between yards, that is seven miles round trip. This was all bulk, they simply dumped it in the truck, carried it to their other yard and dumped it there. There is three and one-half miles each way on the average, that is seven miles, and the cost per mile is 8.7 cents per ton mile.

Q. That does not involve anything for loading or unloading? A. No, 20 that is the carriage only, yes.

Q. There is no terminal movement there? A. Which is approximately sixty cents in itself.

Q. I am just suggesting to you there is no terminal movement there, loading and unloading, and the delays to the business by one having to come in and draw when one wants to come in for other deliveries? A. Yes. Of course the convenience of having it there, there was a large storage yard there,—

Q. Do you know anything about the size? A. I have seen most of them and I have knowledge of their yearly business.

Q. Well at any rate your computation doesn't allow anything for transferring from Church to the suburban areas? A. No. I am talking of sales only in this figure.

Q. Yes. Did you check, and I will want your figures for this if you did, the degradation in anthracite brought in by water? A. No. I took their general statement that the anthracite—

Q. I am not asking you any more than the one question? A. No, I didn't check it.

Q. Because you as an engineer would hardly believe a general statement that there was no more degradation hauling by water than by rail, would 40 you? A. In water transport of course you are handling in large bulk.

Q. In water transport you are letting it run into a boat and in the other you take it up with a clam, don't you, and put it in the car? A. Yes.

Q. And you wouldn't, would you, think,—I am not asking whether you know, but in your opinion as an expert you would not expect to find coal could be let drop into the hold of a boat in a hatch from a spout high enough to accommodate various boats without more degradation than picking it up

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30

by a clam and putting it in a car? A. Well, you draw a picture like the falls at Niagara Falls, of coal—

Q. I didn't say Niagara Falls now, Mr. Mitchell? A. I am saying the picture is quite along the line of Niagara Falls.

Q. Is it to you, really, when I am talking about—? A. When you speak of dropping it a high distance.

Q. What distance do they drop it? A. They have a spout put underneath, adjustable spouts.

Q. Please. Do you know how high the spout is in ordinary cases above
10 the bottom of the boat where it strikes when it first starts to load? A. I don't know in this case at all.

Q. Do you know in any case? A. Yes, I have seen a great many cases where adjustable spouts are used.

Q. Tell me any case, we will have some evidence about that and I want to know what you have to say about it. If you know of any place let us hear it? A. I haven't seen this, but—

Q. I am asking you what you know now, please. I understood you to say that you knew about these things? A. Yes.

Q. I am not asking you what some person has told you; I am asking you
20 what you know about it? A. Quite a long time ago.

Q. How long ago? A. I am saying that I read an article before in connection with some—

Q. Yes, what? A. The object was to have adjustable spouts.

Q. Where was the article? A. The article was in the International Engineering Congress, 1915, Panama Pacific, which I attended, and I attended these particular talks on the handling of coal in 1915 and that was one of the special features.

Q. What? A. Keeping degradation down by proper spouting.

Q. And then how did they accomplish it? A. They had adjustable
30 telescoping spouts.

Q. And how did they work? A. They had chains on them that would telescope them and they would lower these down.

Q. That is to say instead of letting the coal spread out as it came through a spout high up they carried the telescoping spout down so that it was more contained? A. Yes.

Q. But it had to get the drop? A. It would follow the top of the pile.

Q. And if you get it, even within a cylinder, coming down I would think you would get more degradation on the way down; that would be my suggestion, do you say that is not so? A. It is not so in practice as I heard it.

Q. Isn't this just a thought of yours that occurred to you when I am
40 asking you these questions? A. Yes.

Q. That that would be a very desirable scheme, and when you come to look at it it wouldn't help at all? A. No, that is the practice.

Q. How far then would it fall in the ordinary case, if you know anything about it? A. Probably thirty feet.

Q. Probably thirty feet? A. Yes, to the bottom.

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Q. Now do you suggest as an engineer, let us assume it is thirty, that when you have a drop of thirty feet to the bottom of a boat and then commencing to pile up and striking the pile, running down over the pile, that the degradation is not a great deal more than if you handle the coal by a clam and just lift it into a car? A. Yes, you are—

Q. Yes? A. No, what I am saying is this: With a clam you are handling in small quantities and you have to bite on your coal, you have to press a certain amount of your coal to clam it, which you don't with chuting it.

Q. Then will we put it this way, in your opinion there would be no more degradation by the letting of coal drop into a boat than by lifting it with a clam into a car? A. Carefully dropped into a boat and chuting it, it would have no more degradation in my opinion if it were properly done. 10

Q. And that "properly done" consists of having a collapsible spout so as to keep it—? A. Yes.

Q. How far down would you leave the spout from the coal heap in the boat? A. Well you would follow it pretty closely.

Q. About a foot? A. Oh it might be more than that.

Q. It might be more than that? A. Yes.

Q. How high? Isn't this a scheme you are working out now, Mr. Mitchell? A. No. It was in connection with bituminous coal handling that 20 they had the talk.

Q. Well now we are on anthracite? A. Yes, we are on anthracite.

Q. You see bituminous coal would present its own problem? A. Yes, oh it does.

Q. And we have not any water carriage of bituminous coal in this case at all? A. No.

Q. Except the imaginary transportation of it that you computed in this exhibit; I see you provide transportation by water for bituminous? A. Yes.

Q. In this exhibit? A. Yes.

Q. Well without your device the degradation would be much greater, 30 would it? A. If you chute it a high distance it is greater than if you spout it properly.

Q. You don't know of your own knowledge whether one or the other with the long spout you have described as collapsible or without that, which is the commoner practice, do you? A. I don't know what the practice is at this dock. I have built spouts for bituminous coal.

Q. Where? A. At Goderich.

Q. How long ago? A. Three years ago.

Q. Now then we come to your other problem, I don't want to go through all your exhibit, but you take freight and you have insurance. Where did 40 you get these figures, from some person else? A. These are the figures from the books as given to me by the auditor.

Q. And then you have a certain amount claimed and you get 21,829 tons per annum at an extra cost of sixty-eight cents per ton and that produces \$14,843, and you treat that then as an annual extra cost? A. Yes.

Q. And that is a loss, is it, in your opinion, to the operator of this

Standard Fuel? A. If they had held their dock they could have brought in their coal and saved this money, yes.

Q. As to what comparison there is between the two we come to that later on, as to whether that is a real saving in the end, because you have to bring in rent? A. Yes.

Q. We will leave that just for the present. Then you have that, bringing it in by boat, and then you have delivery, and you take the extra charge for delivery and you work that out and you say that you get the average excess delivery from these other points and you deduct the transfers.

10 Now would you look at your page 6, my figures are not very clear, but you have at the top anthracite before expropriation 1924, 18,000 odd tons and 1925, 22,000 odd tons, and in 1926 what is the figure? A. Eighteen I think it is.

Q. Well which is it? A. It is 8.

Q. Well I know by adding 8 is right, but how do we know that 8 is right?

HIS LORDSHIP: That 10,063 should be 8?

MR. TILLEY: I was adding up just by way of amusement and I came to the idea it should be 8.

Q. Now will you find out which is right? A. 18,063.

20 HIS LORDSHIP: That is what it is as added here.

WITNESS: Yes.

Q. The addition then is right and the figure is wrong? A. Yes.

MR. OSLER: On my copy it was 8.

WITNESS: It has been typed over; it is blurred there.

Q. Now in 1924 do you know whether that is the first that any quantity of coke came in? A. My sheets are here. I know this, that it was a result of the first strike year and the big strike year; my data doesn't go beyond that.

30 Q. Well now why do you say that 1924, to get at the amount that came in by water, you would have to add 8,105 tons to it, because you say that you have eliminated the transfers—? A. No, 6,000, 1924.

Q. Please, I want you to keep to your exhibit; look at Exhibit 26, and you will find that the transfer was 8,105? A. 3,973 here.

Q. 1924? A. I beg your pardon. I thought you said 1926.

Q. Well let us take 1926, 3,973? A. Yes.

Q. And that would have to be added to the 1926 figure at page 6, wouldn't it, to get the amount that came in by water? A. You are taking 1926?

Q. 1926, if you will? A. 18,063 and 3,973.

Q. Yes. Now those two added together? A. 22,036.

40 Q. Well then will you look at your page 3? A. Yes.

Q. Is that anthracite coal? A. Yes.

Q. And the number of cargoes given there and the total cargoes coming in, which included both that transferred and that delivered locally, 12,355? A. Yes.

Q. How is that? A. In the first place there is some of this is brought in by rail to that yard. There is a certain amount of anthracite comes in by rail, just odd loads; I can give you that for that year.

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- Q. Yes? A. 2,252 comes in by rail, 2,252 tons, 12 hundredweight.
- Q. Came in by rail? A. Yes.
- Q. Well that doesn't—? A. No, there is 6,000 tons, no, about 7,500 tons. We had some of that because it was left over in storage.
- Q. Well why? If it is such a desirable site to be used where you get the water, a lower rate, why not bring up all that you can, keep it moving out of there? A. I don't know exactly if that is the case, I am just assuming that.
- Q. Well let us get our figures right, just to be sure we are right: To get at the amount of anthracite at the Church Street dock that year you must first take the item at page 6, 18,063, musn't you? A. Yes. 10
- Q. That is 1926? That is deliveries out of that yard, isn't it? A. Yes, yes.
- Q. To that you must add 3,973, musn't you? A. Yes.
- Q. Because that is transferred to other yards; that is 22,036 tons? A. Yes.
- Q. And the amount that came in by water was 12,355, was it? A. Yes.
- Q. And the amount that came in by rail was 2,252? A. Yes.
- Q. Making altogether 14,607 tons. So we have 7,000 or so tons unaccounted for there? A. Yes. Now in that particular year, that is 1926, I would like to know definitely about this, but the strike years come in there, 20 I think that that was one of the—
- Q. Well let us do it another year; let us take 1924: The amount that was sold out in 1924 was 18,475? A. 18,475 tons was sold of anthracite. 18,475 tons, 5 hundred-weight, is my record here.
- Q. Yes, and there was delivered to other yards 8,105? A. Yes.
- Q. Making 26,580 tons, isn't that right? A. Yes, that is right.
- Q. Now then in 1924 there came in by water 24,926? A. Yes.
- Q. Did any come in by rail? A. Yes, 2,814 tons, 11 hundred-weight.
- Q. We will leave out the hundred-weight? A. Yes. That is the total then. 30
- Q. That makes 27,740? A. Yes.
- Q. 27,740, and you have 26,580 going out? A. Yes.
- Q. So that there seems to be in some years, take 1926, the amount that went out 22,036 must have been brought in, because it is 7,000 more than came in that year, it must have been lying there for a year or over the season? A. That was a strike year. I just don't see how that figure comes.
- Q. No? A. No, just a minute: That is 1926, the year ending March, 1926, which means that the vessel year of 1925, that was the strike year, and—
- Q. Well if 1925 was the strike year it is hard to understand how there is more going out of the yard than there is coming in? A. All right. We are 40 skipping the year 1925; I would like to look at that.
- Q. Well you seem to have it. Will you give me the amount of anthracite that came in by rail to the Church Street yard year by year? If you have it on a piece of paper well and good? A. Yes, I can give it to you here. Starting with what year?
- Q. Well I would like to start from 1921 if you can? A. I don't know

whether I have got it back that far. No, I haven't. I start at April 1st, 1923, is the start of this.

Q. Now that is rail shipment, that can be added on page 3 to the water shipments to show the amount coming in? A. Yes.

Q. Now then the rail, will you just give us those? A. 1923, starting in 1924, their year of 1924, there was 2,814 tons; then the next year, 1925, 1,263; 1926 is 2,252; 1927 is 1,508.

Q. Yes. Can you tell me why that was coming in by rail? Anything to indicate? If this water route was such an excellent rate, in 1926 there was about twenty percent came in by rail—why? A. That is the strike year. There was a peculiar condition there in the strike year; the last boat came in in August of that year, on August 29th.

Q. Take 1924, 2,814, about ten percent of the coal came in by rail although they had this excellent rate by water. Can you account for that or did you inquire into that? A. The largest items there are April, 535 tons, and January, 568, February 192, March 472; seasonal conditions; I presume that for the business they didn't have coal—

Q. But according to the claimants they had this excellent storage accommodation, this large building; why wouldn't it be brought in and put there if the theory is sound? A. Well I don't know the classifications of this coal and I am not competent to give that, but it is, a great deal of it, out of season, out of the navigation season. At the start of that year there was a large tonnage came in and then in January, February and March of that year there was a lot came in by rail. I presume that they had to have the coal.

Q. Well then after the expropriation they brought in the anthracite shown at page 6 by water, did they, not by rail? A. By rail.

Q. And that is 4,943 tons on the average, but they were devoting their energies to using the yard for bituminous at that time, weren't they? A. They had nothing of their anthracite end left, the whole anthracite end was gone.

Q. Well there you have it for whatever it may be worth, we can discuss it later. Now I think we can follow the others quite well in discussing the matter after the evidence is in; let us pass on to item 5. Whose word is this "nominal" compensation? Who ever heard of \$50,000 being a nominal amount? Is that your word? A. I might say it is my word and I was corrected; it should have been "moderate."

Q. Should have been what? A. It should have been "moderate." That was my own word and it was misused on my part.

Q. Who changed it to moderate? A. Well they asked me what my idea of the word was, I think that was Mr. Cassels, in criticising me, said what did I mean by nominal? I said a moderate amount.

Q. I had an instinct yesterday, you remember, that Mr. Cassels had been holding you back a bit, but you forgot to change "nominal" to Mr. Cassels' word "moderate"? A. Yes, on the cover sheet. It was my misuse of the word; it was "moderate" that was intended.

Q. At the end? A. No, I will state that I had nominal, meaning moderate, at the end.

Q. Even at the end? A. At the end, but this has been changed.

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Q. It is all right; that just shows, you see, that it must be moderate if Mr. Cassels selected the word "moderate." One wouldn't dare criticise it after that.

MR. CASSELS: I am not saying I agree with the witness, but—

MR. TILLEY: I am not saying you do either.

WITNESS: The question came up what did I mean by the word "nominal" and that is what I meant and they said: Why don't you say "moderate" then? I said All right, that is what I do mean, and I will put it in as "moderate," but the cover sheet was not changed.

Q. Well then we have the idea and we won't labor with it. Well then 10
on page 1: You say bituminous coal sales at the Church Street yard since expropriation while showing a considerable growth were limited by competi-
tion from other dealers who brought in bituminous coal to their docks by water and thus were able to offer coal of similar quality at a lower price. Who were the other dealers? A. The Canada people out at Cherry Street.

Q. The Century? A. The Century, is it?

Q. The Century, is that right? The Century, Mr. Marshall referred to yesterday; was it the Century Coal Company that you understand? A. I don't know who had that dock. Was it the Century out there? Yes.

Q. Mr. Marshall agrees with that, does he? A. It was the Century 20
Coal, wasn't it?

MR. MARSHALL: May I answer that?

MR. TILLEY: Yes.

MR. MARSHALL: Yes.

MR. TILLEY: Any others than Century, or just one?

MR. MARSHALL: At that time the Century, Mr. Tilley.

Q. They sort of broke through on the price, I gather. Do you know how much they broke through? A. No.

Q. It seems to me a marvellous thing that a company away down at Ashbridge's Bay would be able to handle things so cheaply that they could cut 30
cost on a company with the magnificent yard that they had at the foot of Church Street; it seems turning the whole cart and putting it in front of the horse, according to the evidence we have heard here, to say that people who had the great advantage of the short haul from Church Street would be undercut by the people down at Ashbridge's Bay who had the haul of that long distance. Can you explain that? A. Of course they had water transportation, which made a big difference on it.

Q. And of course they had water transportation with the great advantage of thirty feet depth? A. Well, there were no boats asked thirty
feet depth at that time. 40

Q. Well they hadn't boats that asked thirty feet depth at that time but they have boats that are unloading themselves now; have you seen them? A. Yes, I have seen lots of them.

Q. And what depth do they take? A. A great many of them don't draw over 18 feet.

Q. You couldn't get any of them into this dock you had at Church Street? A. Yes, we could.

BY HIS LORDSHIP: Q. Eighteen feet? A. Not eighteen feet, no; I know two boats that were working on Lake Huron, the Wyandotte boats, that draw fourteen feet, they load to that, they bring in about 3,500 tons at fourteen feet.

BY MR. TILLEY: Q. Those are working on Lake Huron? A. Yes.

Q. There were not on Lake Ontario that you know of and can say their names? A. No, not on Lake Ontario.

Q. Isn't it rather ridiculous to talk about boats that are built to unload their own cargo drawing only fourteen feet of water? You may have a freak, 10 but the ordinary boat of that class draws a little more water? A. No, I don't think; the busiest boats on Lake Huron are probably the Wyandotte boats.

Q. I am not asking about which boats are busiest, I am asking if there are any except the two you mentioned, and I don't know anything about those two except what you say? A. Oh, there are quite a number, there is one had to ground coming into the—

Where? A. Ground coming into Standard Fuel last summer.

Q. What does that draw? A. The W. E. Fitzgerald, which drew eighteen feet, and grounded going into the ship channel.

Q. What does that show? I am talking of getting into Church Street 20 dock. Could it get into Church Street dock, that is what I am asking? A. It couldn't get into Church Street dock. That boat was carrying 5,400 tons when she grounded.

Q. And that is the benefit of having a boat of that kind rather than a boat with separate hatches which you have to unload each hatch separately, isn't that so? A. No, the largest tonnage will always be handled in smaller boats on the Great Lakes.

Q. Have you had anything to do with the shipping, because if you haven't I am not going to ask you to argue about it? Have you any knowledge? A. I know quite a bit about it, yes, I do.

Q. Why? A. Because the main boats carrying coal in large tonnages 30 are the ore boats bringing ore from Duluth and going back loaded with coal and they are all hatch boats.

Q. But we are talking about the coal delivered to Toronto? A. Yes.

Q. Couldn't you really deal with that problem? We are not delivering ore away up on Lake Huron? A. But you were saying—

Q. I am asking you about the coal boats. I am told by the witnesses here that there is a change with regard to these boats and they have larger boats and they unload themselves coming into Toronto, with coal? A. Yes.

Q. Now you are aware of that? A. Yes, I am aware of it.

Q. Could any one of them have got into a dock at the foot of Church? 40 A. Not the dock that was there, only an extended dock.

Q. And then the Century Coal, they could get in that and if one of them grounds it needs a little dredging and that is all but the dock is able to have them, or do you know? A. The dock is able to, I presume it will be dredged to suit these boats when they come in.

Q. And the dock is able to, because you must have the dock properly built to be able to dredge beside the dock? A. Yes, perfectly true.

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Q. Do you say that the Century Coal competed merely because it had waterborne coal? A. I know that they competed, they were able to give low prices.

Q. Were they cutting rates? Is that in your experience? A. I don't know. I don't know that.

Q. Usually these coal companies sell at a uniform rate, do they not? A. No, I have found in buying coal, and I have had to buy quite a lot of it, that there are many things that have come in, especially bituminous coal, there is the B.T.U. content and the analysis of the coal, that all comes into the story. Of course I know there is no uniform rate for bituminous coal. 10

Q. Do you know that there is a cutting of rates by the Century then? A. For coal of the same quality.

BY HIS LORDSHIP: Q. Do you know anything about it or are you just picking up something that has been told to you?

MR. TILLEY: And if you do, tell us how much they threw off.

Q. You are speaking now of your own knowledge, are you? A. That is the statement given by Col. Marshall which shows at once that. I know in my own experience we have cases where other people were able to undersell elsewhere because they had a dock.

BY MR. TILLEY: Q. Undersell whom? A. Undersell Standard Fuel. 20

Q. Now what other ones had a dock who undersold? A. I believe Rogers had a dock.

Q. Where? A. I don't know where it was.

Q. Well surely you can tell us where it was?

HIS LORDSHIP: Surely. Isn't this retailing gossip, or what? A. No, I am speaking of a company that had a quotation from Rogers on coal.

Q. Where was their dock? A. I don't know, because I wasn't interested in the price at that time.

Q. Do you know whether Rogers have been operating a dock for some years back? A. I don't know. 30

Q. Do you know whether the Conger has? A. I don't know when Conger gave up their dock. I know that they had a dock there and I don't know why they gave it up or when.

Q. Well, then you say, on page 2, just to clear up some of these points, because the argument is made in the exhibit itself: "The company claims that had they been left in possession of their dock and existing facilities which were available for bringing in bituminous coal both by rail and vessel that the average yearly tonnage from July 1st, 1931, to August 1st, 1938, would be 15,000 tons above the average used."

That is to say there would be an increase between July 1931 and August 1938? A. Yes. 40

Q. Of 15,000 tons? A. Yes.

Q. With their existing facilities? A. Yes.

Q. Well why didn't they bring it in by water then before 1926? Why didn't they bring that 15,000 tons in by water instead of bringing it in by rail?

A. Because it required an additional equipment to bring it in.

Q. I thought you said with their present equipment? A. It meant

carrying their transporting equipment through the inside yard and there would have to be some other yard for that purpose.

Q. Just let me ask you what that means; I thought it was the same thing. They would have to extend their carriage facilities, is that what you mean? A. No, not the carriage facilities, simply extending their tracks; they have carriages on tracks.

Q. Just mean extending the track? A. Yes.

Q. Why in the world wasn't it done instead of bringing it in by rail and dumping it off at the front of the property? A. I presume because they weren't spending any money there at all. They knew that the expropriation was coming on.

Q. Yes, but then they had been there for years; why not extend it? They have been using the front part of the property for coal piles for years, haven't they? A. The front parcel?

Q. Yes? A. Not very much in coal piles, just in small piles, not large; just simply carloads as I understand it.

Q. Which, prior to expropriation? A. Prior to expropriation.

Q. Prior to expropriation they merely used the front part for a sort of carload business the same as they did after expropriation? A. No. Insofar as bituminous was concerned. I didn't see the operation there and I know very little about it.

Q. No, but Mr. Mitchell, let us have what you have to say about this. I understood there was a serious interference due to having to carry on business for a year or two with some limited facilities? A. Yes.

Q. But I am understanding you now to say that they didn't store much coal brought in by rail, that they handled it out of the cars, is that right? A. Bituminous coal I understand was more handled with small piles at the front.

Q. At the front? A. Yes.

Q. And that is handled from the cars? A. Well they had car unloaders there, I understand.

Q. But I mean take it from the car to the trucks? A. In some cases, I believe.

Q. Well is that the practice as you understand? A. No, I don't know. I know they did unload some, but they had portable conveyors there.

Q. It really would be nice to know why if they could handle 15,000 more tons they weren't doing it and why they didn't handle their bituminous by water if it was the saving you are talking about. Do you know?

A. Yes, I do know. There are boats available for water transportation that suited their dock, Lake Erie boats that come down there would suit that dock, small boats.

Q. Did Lake Erie boats come there? A. Bituminous boats pretty well come from Lake Erie.

Q. They had to take suitable boats and the transport was farther by water for the bituminous? A. Well this is—From 1931 onward when the Welland Canal was—

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Q. I mean from 1931 backwards just for a moment, I want to know if there was all of this benefit after 1931 why did it come up like a mushroom in that year? I want to know why it wasn't being used other years? A. The Welland Canal situation changed it all.

Q. But they have a dock there that the Welland Canal doesn't affect at all, because their boats could come into that dock? A. Yes. Time is the element; they could come through the New Welland Canal much faster than they could the old, and that brings in an element, the boats were cut down.

Q. Now, Mr. Mitchell, are you just putting up arguments or talking about anything you know about? A. No, that is the basis of this, that the Welland Canal—July 1st, 1931, is the Welland Canal time when they would allow boats through there; last year. 10

Q. Then we will put it this way, that the effect on handling bituminous by boat is all due to the Welland Canal? A. To a great extent, yes, for the largest boats.

Q. Well that is the dominating factor, so that if they weren't equipped for it they couldn't handle bituminous by water, is that it? A. Oh yes, they could; they could handle these boats into that dock; they had some 206 feet of dock there and smaller boats could come down, the hatch boats, and there are lots of them on the market wanting to carry coal. 20

Q. Yes, I follow all that, but I am asking you now that the reason why bituminous was not brought in by water was the delay coming through the Welland Canal, as you understand it? A. I wouldn't say it involved a delay, but it does change the picture, the Welland Canal situation does.

Q. I think an expropriation changes the picture more than anything else that one knows about. Well you have that 15,000 tons without I think any change, but you must wait for the Welland Canal to change? A. Yes, that is pretty much a Welland Canal situation.

Q. Well, then when the Welland Canal change comes about we have a complete change then, haven't we? I mean to say that means getting properly equipped not only to get the benefit of the speed of going through the Welland Canal but if you are going through you will take larger tonnage? A. Yes. 30

Q. And that changes the whole picture, doesn't it? A. That changes the whole picture and that is—

Q. And that is the other 20,000? A. Yes. And this 15,000 is coupled with the Welland Canal, but the Welland Canal is the other situation.

Q. But you say 1931 to 1938 would be an additional fifteen thousand and then after 1931 you would have an additional twenty thousand due to the larger boats? A. Yes. 40

Q. Yes? A. And that required a dock being built out.

Q. Now you estimated the cost of that dock, I suppose? A. Yes, I have made an estimate.

Q. Are you filing it? A. I had so far just made it simply for general information on this to find out what it cost.

Q. But you went for the Standard Fuel and prepared I suppose some design of a new dock? A. Yes, I have.

Q. For the purpose of this arbitration? A. Yes.

Q. And was it decided not to put it in? A. I don't know.

Q. Was that discussed with you whether it was advisable to use it?
A. No, they asked me to find the cost of a dock, which I did.

Q. And then it wasn't discussed whether it was wise to file that or not?
A. No, they haven't told me whether it was to be used or not.

Q. Will you let us see it? A. I haven't got it here.

Q. Well why not? Surely if we have a claim that depends upon a new
dock we are entitled to something by way of a picture of the dock? A. Well
10 I haven't got it here at the moment.

Q. Where is it? A. It is at my office.

Q. Well we will have to ask you to bring it. Have you the figures of
cost here? A. No. I can give them to you.

Q. I mean to say that in fairness to you, because you are a man whose
reputation must be considered in these matters, and in perfect fairness I want
to give you every chance to produce it and give your figures. You designed
how it would be laid out? A. Yes.

Q. And the walls could be built? A. Yes.

Q. And structure and all? A. Yes, structure and all.

20 BY MR. OSLER: Q. How long would it take you to get it, Mr. Mitchell?
A. I can get it in twenty minutes or half an hour.

Q. Can't you telephone somebody for it? A. The drawings are easy
to find but I would have to have them go through the file for the other. I can
bring it here at noon though.

BY MR. TILLEY: Q. Mr. Marshall probably could telephone for you?
A. Well the trouble is to find among all my varied papers there—

Q. Supposing we bring the whole of them up, get a taxi and bring
everything—or bring them all up by water transport? A. I can get the
plans quite readily; it is simply looking through the papers. I can get them

30 at noon though.

Q. Well, it would be very nice to have it now because it makes it so that
we know we are getting it right fresh rather than under further consideration
and so on?

HIS LORDSHIP: I suppose he would really have to go for it himself and
if you wish—

MR. TILLEY: He has to go for it?

WITNESS: I really should. Probably they could pick out the file, it is
marked "dock" on the file, but the thing is too—

40 MR. TILLEY: We can go on with something else; I will just finish this
and then we can leave that part of it, if Your Lordship wishes. Would that
be convenient?

HIS LORDSHIP: Yes.

Q. Well then after all this 1938 the company will still be faced with the
extra cost of delivery from Ashbridge's Bay and to the extent computed, and
you get the yearly tonnage. Now is that 41,245 the tonnage handled at
Church Street? A. Yes. That is the anthracite, coke and bituminous
coal.

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Q. And there is an increase of fifteen and the increase of twenty, 76,245. Well that would increase in time too, wouldn't it? A. Oh yes.

Q. If we can picture everything going as it ought to go there will be that growth? A. Oh yes.

Q. And then you have these figures. And that \$50,000 is moderate on the whole of this.

I just want to go back to it now, Mr. Mitchell, in view of your answers, to just one or two questions on this, because I thought the picture was a little different: Now we exclude from consideration the possibility of handling more bituminous or any bituminous by water because of the delay of the Welland Canal and so on. Now we exclude that. Then will you tell me why in say 1927 they did not bring in more than some 10,000 tons by water? I am taking the figure on page 6 that they handled there 10,640 tons? A. The anthracite coal? 10

Q. Yes? A. In 1927, do you mean, or—?

Q. 1927; I am just taking that last figure. You see you go back to earlier years and pick out higher figures and make an average and I am wanting to know whether this is not a gradual decline. In 1924 they had to transfer coal to other stations as much as 8,000 tons, in 1925 they had to transfer 8,000 tons and in 1926 they had to transfer 4,000 tons and in 1927 3,500; that is, bringing in 10,600 they had to transfer 3,400 to some other place, so that there were only 7,000 tons of coal came in there to be used at Church Street in that year? A. Might I point out two or three things in connection with that? 20

Q. Yes? A. These 1924 and 1925 transfers are on a different basis to the ordinary transfer. It may be that the 4,000 and 3,500 tons are representative of the real transfers on these previous years. I think that there is some information on that I didn't have, it is sales under certain conditions. Then in 1927 it was 15,315 tons came in, not the 10,000 of sales.

Q. 15,000 came in? A. Yes, 15,000 came in. 30

Q. How did the 15,000 come in if only 10,000 were sold and 3,000 diverted? How did fifteen come in? A. Well, there might be some left.

Q. No, if there were some left over from the other previous times it would increase the amount, because they went out in 1927 didn't they? A. No, they had the yard until the 1st of April and I think it was just cleaning up at that time; I don't know the situation.

Q. Anyway it is down around seven to 10,000 tons that was sold out of there in that year. Now why do you suggest that that wasn't a normal condition at that time, a gradual shrinkage and gradual change of the methods of doing business, Rogers going to depots and Congers and others doing the same? I am suggesting to you that by reason of degradation or convenience of handling this company had come to the conclusion that they would cut off anthracite coming in and they couldn't bring in bituminous? A. I think there is some coal history there that I don't know that I am the proper one to develop, but I do know that the general history— 40

Q. If you are in doubt whether you are the proper one to develop it, so far as I am concerned I am perfectly satisfied you are not, so that we will ust

leave it there; I am not asking you about it if you are in doubt whether you are the right man; I think I will say that I am quite sure that you are not, so we will just leave it at that. And you will get the plans.

HIS LORDSHIP: Well you get the plans then; you had better go and get those, and your costs.

MR. OSLER: Get your whole file. I thought you had it with you.

WITNESS: I have my whole file on dock costs.

HIS LORDSHIP: Shall we just remain doing nothing until he comes back?

MR. OSLER: No, I wanted to ask Col. Marshall one or two additional 10 questions.

No. 8.

KENRICK R. MARSHALL RECALLED:

EXAMINED BY MR. OSLER:

Q. Col. Marshall, Mr. Tilley was asking Mr. Mitchell, about the comparative degradation of coal brought in by water and coal brought in by rail. Will you describe the method of handling the coal brought in by rail, that is the anthracite coal? A. The anthracite coal brought in by rail is placed, spotted on sidings opposite our elevators and convenient to the top of an elevator.

20 Q. That is it comes in in cars that are dumped—? A. Into hoppers.

BY MR. TILLEY: Q. That is anthracite which comes into your place by rail? A. I am now, Mr. Tilley, on just the rail coal.

Q. Rail anthracite? A. Rail anthracite.

That is spotted at our siding opposite the elevators, dropped into a hopper through the bottom of the railway car, conveyed to the top of a building or elevator, it is tripped up at that point and falls anywhere from twenty-five to thirty feet to the bottom of the pockets to start with, and of course as the bottom of the pocket fills up, as in the filling of a boat, the depth becomes less.

30 BY MR. OSLER: Q. So that so far as that is concerned you have even in handling the rail anthracite a drop such as you have described? A. Exactly.

Q. What companies were handling coal by water to Toronto? I think Mr. Mitchell wasn't able to answer as to what companies were bringing in coal by water from 1921 on to the time of the expropriation? A. The Century Coal Company.

HIS LORDSHIP: 1921 on to 1926.

MR. OSLER: Yes.

WITNESS: And the Canada Coal Company.

40 Q. And what companies are now bringing in coal by water? A. In addition to those there are the Weaver Coal Company—

BY MR. TILLEY: Q. That is now? A. That is now. In addition the Weaver Coal Company, the Toronto Fuels, the Milnes Company bringing

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in Welsh coal, at their dock for that purpose, and the Standard Fuels Company; there is one more, Mr. Osler, the Fish Coal Company.

BY MR. OSLER: Q. And they are all out in the Ashbridge's Bay section? A. With the exception of the Century Coal Company and the Canada Coal Company; the two earlier established ones are just slightly south of the Keating Channel on Cherry Street.

Q. Well then Mr. Tilley was asking Mr. Mitchell as to why you didn't handle bituminous coal by water during the years prior to expropriation?

A. We were using our Church Street plant, the water end of it, for anthracite, and in some measure coke, the coke coming in by rail; anthracite occupied the season of navigation and it was all stored under cover in that portion of the property. 10

HIS LORDSHIP: We have had all that before.

WITNESS: I thought that was in before.

Q. Oh yes. Then you were asked to get the particulars of the transfers. A. I have them.

Q. And you have got the particulars showing the transfers year by year from 1921 to 1930 inclusive, with the exception of the year 1922? A. I have.

Q. And the year 1923 you hadn't? A. The year of the strike, when we had no transfers that year. 20

Q. And showing how much was transferred to the different yards. Then the two yards on the bottom, the east yard and the west yard, the first I have heard of that; will you just explain that? A. The yard marked "east yard" was a rail yard only, standing at the corner of Mill and Cherry Streets just across the road from the Gooderham & Worts distillery.

BY HIS LORDSHIP: Q. What do you mean by a rail yard? A. Well it didn't have access to water, my Lord. It was sold in 1921, that is the office and storage pockets, and was expropriated a year or two later by the Canadian National Railways for sidings.

I can follow the explanation on the west yard; it was one of our earliest established yards, standing at the foot of Spadina Avenue, just at the foot of the old bridge, without water facilities; it was expropriated in 1925 by the Canadian National Railways. Those two yards were close enough to Church Street to haul direct instead of sending coal by truck to those yards and carting it out; I mean they acted as you might say cartage agents and gave the teamsters or truck drivers their tickets, they would proceed to the dock, load their vehicle and go direct to the customer. 30

Q. So that those items for those yards don't really represent coal transferred to the yard physically and then by the other yard delivered to the customers? A. They do not. They were eliminated from Mr. Mitchell's figures because we didn't want to have the sales entered twice. 40

EXHIBIT 28: Statement of transfers of anthracite coal from dock to other yards during financial years ended March 31st.

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Q. Now, Mr. Marshall, just a word or two on this last exhibit first. This exhibit shows certain figures that agree with your exhibit 26; that is to say, 18,485 for 1921; that is the figure you gave us before; and is what you are now explaining this, that while for this statement these were treated as transfers to east and west yard, that in your statement showing deliveries of coal from Church Street they were treated as deliveries? A. They were not included in Church Street sales.

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Q. They were not included in Church Street sales? A. No, they were
10 eliminated.

Q. That is to say if they got an order at the east yard for coal would they send down to your place for it? A. To Church Street dock. Send the wagon down.

Q. Send the wagon down? A. Or truck.

Q. And why was it charged against the east yard? A. Because the east yard got credit for the sale. We haven't given the dock credit for these sales in any of our figures.

Q. That is to say there are 9,000 tons in the two. Now how far then was that haul from Church Street? The east yard was where? A. The
20 east yard was the corner of Mill and Cherry Street.

Q. Where is that? Have we it on any of these maps? A. I would say it was about—well the distance can be shown on the map— I should say three-quarters of a mile.

Q. How far is it from your present site? A. Mill and Cherry Street?

Q. Yes? A. From the present dock site.

Q. Yes? A. Approximately a mile; a trifle over.

BY HIS LORDSHIP: Q. That is the east yard you are speaking of? A. The old east yard, sir. If you have a map I can show you perhaps.

Q. Would this help you? A. There is Mill Street, there is Cherry
30 Street. (Indicating.)

Q. The yard was there and your present site is here (indicating)? A. Yes.

Q. Your east yard was about the same distance from Church Street dock as from the present site? A. Yes. Only there wasn't any bridge over there.

BY MR. TILLEY: Q. Not at the time that was drawn. Let me follow this then a little further: That is 5,000 tons in 1921, and had that been going on for some time? Had that been your practice for some years? A. I think it was.

Q. And would that reflect your anthracite tonnage there or did it
40 fluctuate? A. These figures?

Q. Yes? A. I was away, Mr. Tilley, you see, for four or five years; it is pretty hard for me to say.

Q. Well, then the foot of Spadina, will you just show where that is on the map? A. Yes. (Indicating) Here.

BY HIS LORDSHIP: Q. Spadina yard was right down then at the front?

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A. Down at the front, about the same distance from the dock as the east yard.

BY MR. TILLEY: Q. Is there a yard there? A. No. There was a yard established about the time—

Q. Parkdale? A. Yes, Parkdale.

Q. Where did you deliver to Parkdale from before you established that yard? A. From there.

Q. I know, where did you deliver from to get to Parkdale before you had the yard there? A. This yard took care of it. (Indicating.)

Q. By this yard you mean Spadina? A. Yes. 10

Q. That is you would be delivering from Church Street out to Parkdale? A. No.

Q. I thought you said you would be delivering from Church Street out to Spadina. When did you establish your yard at Parkdale? A. I think in 1922. In 1921, Mr. Tilley, I will correct myself.

Q. Prior to that Church Street would be serving right out? A. No, Spadina Avenue, sir.

Q. Well only Spadina? The haulage would come from Church? A. No, not necessarily, because they brought in quite a lot of rail coal. That only took care of their central yards. 20

Q. So that that coal at Spadina was rail coal for the most part? A. For the most part.

Q. And then that yard got some from Church Street? A. Where it was delivered.

Q. And that is where management comes in to serve one area, because I was just noticing you have so many yards in 1926 that they overlap? A. There is no overlapping.

Q. Well now, see: Here is where you had your Church Street and a mile and a quarter would meet this one at Macpherson, I think it is, is it? A. I guess that is the nearest one. 30

Q. And if you take it a mile and a half they would both overlap; a mile and three-quarters they overlap considerably; and there at No. 2; you are exceedingly well placed for your yards, aren't you, better than the others? Better than your competitors? A. I don't think so. I think they are just as well distributed.

Q. Who? A. Congers and Milnes, they have all got yards.

Q. Milnes, Conger and Rogers? A. Yes, but the dock served a different purpose.

Q. Yes, quite. Do you bring any coal in at Simcoe Street? A. And unload direct from cars? 40

Q. Yes? A. No, we don't do that.

Q. When did you stop it? A. I don't think we have done any since 1921 or 1922, and very little before that. That is done by some dealers though, I know. We don't do that.

Q. It is a matter of judgment? A. No, there are no scales there.

Q. Now then you spoke of the companies getting coal by water and, Mr. Marshall, I asked you about some companies, whether they handled

coal by water, and you didn't respond to me when I was asking you; you didn't seem to know even whether Rogers handled coal by water? A. May I have the question repeated that you are referring to, Mr. Tilley?

Q. Well, don't you remember that I asked you if Rogers handled coal by water and they stopped handling it by water and you professed not to know? Don't you remember that? A. I would like to just hear the way that question was put.

Q. I am not asking about the way the question was put. Do you remember that I put a question of that kind to you? A. As at the present
10 time or as at 1926?

Q. Well, Mr. Marshall, really I put some questions to you that I think any intelligent, and I put you down as that, coal man in the business in Toronto would have been able to answer and would have answered quite readily? A. I think I can answer if I know what it is.

Q. When did Rogers cease bringing in coal by water? A. I think when he was bought out of his present dock.

Q. When was that? A. I again think 1924.

Q. And you know, do you not, that he has not since brought in—?

A. I know that he has had no dock since.

20 Q. And so far as you know no method of bringing coal in by water?

A. I don't think he has.

Q. And the same applies to Conger? A. Since Conger's lease expired.

Q. When was that? A. Shall we say 1924? At least 1925.

Q. 1924? A. I am not sure of that date, but after his lease expired he went out of the water business.

Q. They served their customers from their yards scattered about the city? A. I believe so.

Q. Is the Weaver a large company? A. They are.

30 Q. I mean comparable to yours? A. I wouldn't go as far as to say that but they are a large company.

Q. Toronto Fuel? A. A growing company.

Q. Well—? A. It is not as large, no.

Q. And Milnes about the same? A. Approximately that.

Q. And they brought in coal only by water for a short time as you have described? A. They had a dock next to us.

Q. Well in 1924 and 1926 or something like that you said. Is that right?

A. Yes, 1924, around 1926, they went into some of the dock business; some of the others were bought out.

40 Q. My recollection is the Congers were on the Ewart property? A. That they were.

Q. My recollection is that their lease terminated in 1919 and they stopped bringing in coal by water in 1919. Can you tell me whether I am right or not? A. If my memory serves me correctly they were still operating when I got back to Toronto and I think for a year or two after, but they did stop when their lease ran out.

Q. Then the only companies except the Standard handling coal by water were the Canada and the Century? A. Since the other leases expired.

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Q. You said 1921 to 1926 and those years on when they had terminated their leases? A. Their leases were terminated as they couldn't make further arrangements and they went out of the water business.

Q. What did Century and Canada handle? A. All classes of fuel, anthracite and bituminous and coke.

Q. And when evidence was given here about the Century competing in price did they bring in bituminous by water? A. Yes.

Q. But you couldn't or didn't bring it in by water? A. We could have by reducing our anthracite, using our storage partly for that.

Q. Why didn't you do that, because your anthracite was reduced, you didn't begin to have your shed full of coal? A. Oh we had to consider various things such as those strikes and expropriation came into the picture. 10

Q. Well then that is years ago that the strikes took place? A. No, that was the time.

Q. Well anyway where was the Canada located? A. Next to the Century, close to the Keating Cut.

Q. And where was the Canada? A. I just answered, just next to the Century.

Q. They are both down in that locality? A. Close to the Keating Cut. 20

Q. And the change that has come up is that instead of some coal companies having docks along Church Street East and yours on the west, they are now assembled down at the Ashbridge's Bay district? A. Yes.

Q. Now then you say that your rail coal comes in and is spotted on the siding, the anthracite, and then it is taken up and dropped into a hopper and the fall there is twenty-five to thirty feet? A. Yes, Mr. Tilley.

Q. And the same thing happens when it is brought in by water, it is carried up at the other end of the plant, carried along and dropped into a hopper? A. The only difference being that the pocket cars which ran over our overhead pockets would not drop it more than ten or twelve feet into those pockets; they were elevated pockets, overhead pockets, which were elevated there for storage. We had internal machinery that could convey coal to any part of the shed into those pockets as well as from the boat pockets. All done by machinery. 30

Q. But my instructions are that handling your coal coming in by rail and coming in by water, comparing one to the other at Church Street, would amount at that point to the same amount of degradation, or at any rate if there was a difference a little against your waterborne coal. Now will you tell me if that is right or wrong? A. No, I don't think there is any difference in the degradation. We reclaim in our yards and elevate— 40

Q. Will you say when it comes to Toronto no difference in the coal in degradation between water and rail? A. I don't think so.

Q. They can treat them both the same when they get to Toronto? A. Yes.

Q. Now then at the point of shipment there is a distinct difference, is there not, one is dropped into the boat and the other is put in with a clam?

A. Mr. Tilley, you asked me when they come to Toronto. This one is on the boat and the other is still on the car.

Q. Yes, that is what I mean, from the time one is on the boat in Toronto and the other on the car you say that the degradation in each case would be about the same? A. Yes.

Q. Now then I want to know getting it into the boat and getting it onto the car, there is a distinct difference in degradation, is there not? A. Not very much.

Q. In the one case it is dropped into the boat? A. From a spout.

10 Q. From a spout? A. Which is lowered or lifted as they go along.

Q. I presume that is the usual way? A. Yes.

Q. But it falls about forty feet, doesn't it? A. No, sir.

Q. How many feet? A. Depending on the depth of the boat; the spout is lowered down below the—

Q. I know, but from the top of the fall to the bottom of the boat how far is it, coming down the spout? A. Thirty feet.

Q. Thirty feet? A. But it is not a fall, it is a run down a spout.

Q. And is it put onto the car by a clam? A. No, also out of a spout.

20 Q. How is that done? A. It comes up from the mine pit, is put onto piles, runs out on a trestle affair with cars, down through a sort of hopper, through a spout, onto the car; a man pulls the handle, fills the car, the car moves on and another car moves in.

Q. And how far does that average? A. The spout to the bottom of the car I would say fifteen feet possibly.

Q. What is that? A. Twelve or fifteen feet from the spout to the bottom of the railway car. As the car fills it becomes less.

Q. Is it the same at Oswego? Have you seen them operating that at either place, that is yourself? A. I have seen ours and the Charlotte-Rochester ones, the equipment is pretty much the same.

30 Q. Pretty much the same at Charlotte? And at what two places do you mean, Oswego and Charlotte? A. Yes. The other thing I mentioned was, in my previous evidence, Dickson & Eddy had agreed to rescreen the coal which came out of these pockets.

Q. Before it was spouted down to the boat? A. Before it was spouted down to the boat.

Q. I think you all paid the same price for coal, you said that before? A. Yes.

40 Q. And do you mean to say then that one of you gets the screening that the other doesn't get? A. I think we did. That is my memory on it, but I think we did get that extra screening at the point of loading the boat.

Q. Do you know you did? A. Yes, I know we did.

Q. You know that you got an extra screening? A. I know that I got.

Q. And do you know whether the others got it? A. I wouldn't go so far as to say that the others didn't get it but I don't think they did.

Q. The coal that you bring by boat, and you say the degradation you think is about the same as when it was brought in by rail, you referred to certain pockets in connection with it; it is a very small part which is put into

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the pockets, the bulk of it just goes in and falls in the storage, that is just the same whether it is rail coal or boat coal, doesn't it? A. Into the coal dock at Church Street—?

Q. Yes? A. Or into the trestles and elevators?

Q. I wish you would explain what you are driving at? A. I am trying to make myself clear, but I think it was of about equal distance whether the coal is brought in by rail or brought in by water.

MR. TILLEY: Well we will leave it at that. That is all, thank you.

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CROSS-EXAMINATION RESUMED BY MR. TILLEY:

Q. Now have you the plan? A. Yes.

Q. It is a plan of waterlot foot of Church Street, dock walls and fill "General arrangement of dock walls." Now is this the whole of the plan, or have you something else to add to it? A. I have the estimate with that.

Q. Well is this the whole of the plan? A. That is the whole of the plan, yes. This has the details on and the general arrangement.

Q. Well now then which is the north, Mr. Mitchell, and which is the south? A. The north is at the right hand end.

Q. Then this is looking north from the harbor (indicating)? A. Yes. 20

Q. And this would be the property coming down? A. Yes.

Q. And Lake Street, and then it goes on down to this line. Is that the line of the Hydro dock? A. Yes.

Q. That carries it down to a distance of 326 feet below Lake, is that it? A. Yes, 325 is the distance.

Q. And then you have what? "Unfilled waterlot." That is out in front you have it unfilled and at the side you have a slip? A. Yes.

Q. How wide is the slip? A. The slip is 54 feet 5 inches wide.

Q. And the dock is how long on that side? A. 325 feet.

Q. And in this face (indicating)? A. 150 plus the diagonal; 150 across 30 the straight; at right angles it is 150 and it is about two percent more on the diagonal.

Q. Now then what have we back here? "Front elevation," what is that? A. That is the general detail of the dock. There are concrete caissons and that intermediate.

Q. Cribbing? A. Cribbing and fill.

Q. Is this on the same principle as the dock wall of the Harbor Commission? A. Somewhat the same, only the dock wall of the Harbor Commission is built of timber and reinforced, broken stone to sink them; these are built, they are merely caissons built on shore and launched and floated out 40 into place and filled with an ordinary filling material.

Q. Well that is described, is it, in some of your literature on this subject? A. Yes. It is described thoroughly, only the plan is there, and this is the estimate.

Q. I know the estimate, but I just want to know what is involved in it first. What is this on the extreme north end of the plan? A. That is a side elevation of the caisson. The caisson goes up to 245, which is zero, water level, and then a coping on top and filled to elevation 252.

Q. The type of construction you say brings about the same result as the Harbor Commission plan? A. No, I think for a superimposed load it is a better constructed, I think. It is designed especially for a superimposed load of coal.

Q. And about the same expense, the same cost? A. Approximately
10 the same cost.

Q. Of doing the work? A. Of doing the work, yes.

EXHIBIT 29: Plan produced by Mr. Mitchell, "Waterlot foot of Church Street, dock walls and fill" showing "General arrangement of dock walls," March 30th, 1932.

Q. Now then you were going to show me something else? A. This is an estimate of the cost.

Q. Of what? Doing this work? A. Of doing that work, yes.

Q. "20 caissons in place, \$1,200 each, \$24,000; 225 feet intermediate cribbing at \$30, \$6,750; dredging, sixty cents per cubic yard, \$1,400; diagonal
20 tie rods in intermediate cribs, \$1,000; concrete coping 477 feet at \$14.25, \$6,797; waling, two strips for 450 feet length at \$1, \$900; a total of 477 feet of wall at \$85.65 per foot, \$40,847."

Well Mr. McBrien stated that the Harbor Commissioners' wall ran about \$200 per lineal foot and you have got this at \$85.65. There seems to be quite a difference? A. Did Mr. McBrien say where that wall was and when it was built?

Q. Well I asked him the cost and he said the figure he carried in his mind, he didn't say it wasn't more some places and wasn't less at others, but he said \$200 a lineal foot measure, take it in place, and you have it \$85 a foot. A. I
30 think that Mr. McBrien, you ought to ask him to say exactly what that was for, and depth, and the general condition of construction and the time it was built.

Q. The distance you go down? A. Yes. This is an estimate of construction for last year or this year for a dock.

Q. Last year or this year? A. Yes.

Q. This would not be 1924 construction then? A. No, it would not. This is built as they would build it if they were extending the dock to meet the general Welland Canal conditions.

Q. In 1931? A. Yes.

Q. Well I thought the Harbor Commission's was built to meet Welland
40 Canal conditions. If you wait till the Welland Canal is open before you build you are a little behind the canal, aren't you? A. Well it wouldn't take long to build this.

Q. How long would it take? A. Oh you could build that in three or four months probably.

Q. Now then there is some other remark here: "The above items include twenty-five percent added for engineering, overhead, profit and contingencies.

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“Fill, dock south of Lake Street, 40,400 cubic yards at thirty cents, \$12,120,” making a grand total of \$52,967 or \$1.08½ per square foot of dock.

That is the surface area of the dock? A. That is the surface area of the dock up to the coping.

Q. That would include all south of Lake? A. South of Lake, yes.

Q. And does that fill include Lake Street? A. No, Lake Street is not included in that.

Q. Lake Street is not included in that? A. No.

Q. Now then just let me know where the 477 feet comes. Where is it on this plan? 477 starts here, does it, at Lake Street? A. Starts at Lake Street, 150 feet from the west boundary.

BY MR. OSLER: Q. Have you another copy of that plan? A. Yes. (Produced).

BY MR. TILLEY: Q. 150 feet from the west boundary? A. Extends out parallel with Church Street to a distance of 325 feet.

Q. And stops short of Church and then the measurement is around this way, is it? A. For the dock wall. There is 325 feet plus 152 feet.

Q. That together makes what? A. 477 I think. I haven't a copy of that estimate here.

Q. And then you apply that to the area from Lake Street down to the 20 end and make it \$1.08½, is that your plan? A. Yes.

Q. And then we may take it that, subject to times and seasons and so on, subject to changes in rates of pay and so on, this method of construction is about the same expense as the Harbor Commission's method? A. Timber cribs can be built a little more cheaply but it requires more expensive filling, the balance, that way. The fill would cost approximately the same.

Q. You have a little different method but the result would be about the same in expense? A. It was in view of the superimposed coal loading, and then I wanted to find a suitable foundation for an elevator inside of that.

Q. And then how far does that go down? A. It goes down—rock is 30 twenty feet at Lake Street and twenty-three at the 325 foot line.

Q. Rock is twenty feet? How do you know? A. That is below 245, zero, from the Harbor Commission's plans. I went to the Harbor Commission's Engineering Office and I got that from their plans.

Q. So that their plans will govern for that? A. Yes.

Q. And then you carry it out and of course when you get to that point you are on actual rock? A. Yes, that is on rock.

Q. There is no allowance for silt or anything below you there? A. No, I am on rock.

Q. If you touch anything you hit the solid rock? A. Yes. Those 40 all go down and rest on rock.

Q. Will you tell me what the depth is then, because I am sure it is my fault but I don't carry it? A. Lake Street twenty feet to rock, which is elevation 225. Excuse me, it is marked on here (indicating); this elevation 225 is rock, top of rock elevation 225, and at the outside of the waterlot it is elevation 220. I take it as 222 at the 325 foot line. That is twenty-three feet below zero, water level, is rock.

Q. That is twenty-three feet below zero water level is rock at this line?
A. Yes.

Q. You don't get the full Welland Canal depth then by any plan you have here? A. No. Twenty-three feet.

Q. As I understand, the rock under the water in Toronto Bay slopes up fairly rapidly? A. No—

Q. Does it not? A. It is approximately one foot per hundred.

Q. It is approximately one foot per hundred? A. In that neighborhood.

10 Q. But it is rising towards the shore? A. It is rising towards the shore, yes. It rises approximately five feet in the 577.

Q. And to get the Welland Canal depth you have got to carry this out considerably farther. How much farther? Twenty-five feet of the Welland Canal working depth you get only at the end of the dock; you would have to dredge down in the rock. You can't dredge very well in that rock, can you?

A. Oh yes, they are dredging out there in the rock now.

Q. In the rock? A. Yes. They have taken off the mud in the main channel and I believe they are dredging rock there now.

20 Q. Well they can tell us about that. But at any rate you took the Harbor Commission's plan for depth of rock? A. Yes.

Q. And you take the Harbor Commission's cost, if it is providently done, as being about the same for their work as for yours? A. Yes.

Q. And so that it isn't necessary to consider any detailed scheme about the thing, you can treat theirs as being a fair representation of what the cost would be? A. Yes, I think it could be worked out that way, but I would prefer this construction; it is better for the superimposed load, because you have a better grip on the bottom. It is designed for coal loading.

Q. Those rest on rock? A. All rest on rock.

Q. And how do you lay them there? A. You float them into place.

30 Q. And how do you get the contours? A. You scribe the bottom. It would have to be built on launching ways and you have at the bottom a form which could be tilted to correspond approximately to the rock; it is dependent on crushing into the rock to some extent, but the bottom will be approximately tilted to suit the rock.

Q. And according to your scheme you have to manufacture your crib so that the bottom of the crib fits the top of the rock? A. You have to do that.

Q. Or do you rely on straightening the rock to get it into place? A. No. It is only an inch or so; there are four points on it at the end.

40 Q. I wonder if you would be good enough to let me have your detailed working sheets to show this? A. Yes. I am afraid that they are in rather crude form enough but they are all available, I brought them all along.

MR. TILLEY: Oh well. Thank you. Then this sheet you have handed me showing estimate of cost will be Exhibit 30.

EXHIBIT 30: Estimated cost of dock prepared by Mr. Mitchell, above referred to.

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EXHIBIT 31: Bundle of twenty-two working sheets produced by Mr. Mitchell.

WITNESS: Those working figures are the development of the design from the beginning.

Q. What are, the working sheets? A. The working sheets, the whole thing shown, leading up eventually to this development.

Q. Well now we have that, and you haven't considered any scheme for carrying it out farther? A. Yes, I have. This is it here, for the covering the whole waterlot. (Producing.)

Q. What do you mean by covering the whole waterlot? Do you mean 10 the fifty foot slip? A. No, that covers the whole area, but it could be worked out for any area.

Q. When you say cover the whole area then you have no back slip at all? A. No back slip except the street and the outside.

Q. Then, Mr. Mitchell, you don't suggest that you are going to depend upon the street being left open for you if you raise up your property, do you?

A. Excuse me.

Q. The city is entitled to fill in the street? A. Yes, presumably.

Q. Were you depending on the use of the street for a berthing place? A. No, that is the cost of fill of the whole property, and that on this sheet— 20

Q. Now, please, now? A. Excuse me.

Q. And that would give you a dock wall of about 204 feet then in the front? A. In the front, yes.

Q. So that by following this scheme you would have a long stretch of dock carried out and you would have a berthing place of 200 feet at the end of the slip? A. Yes, what you could use, if you could use it.

Q. And it proceeds in that way and it is made up on the same basis, I suppose—? A. Yes.

Q. It means ninety-seven cents or \$1 a square foot? A. Yes.

Q. And provide caissons in the same way? A. There were forty 30 caissons.

Q. Well you would have to have more, wouldn't you, because you have got to support? Which are you going to do, depend on the city to fill Church Street for you, or are you going to have a caisson and wall all along Church?

A. That calls for a caisson all along there. This is a twenty caisson scheme; the other is a forty caisson. They are on twenty-six foot centers.

Q. And how is it that this comes to ninety-seven cents, less than the other? A. This is ninety-seven cents.

Q. Per square foot. Oh, I see you bring in the added area, you bring in the 150 feet and you bring in the end? A. Yes. 40

Q. That will be Exhibit No. 32.

BY HIS LORDSHIP: Q. And working sheets? A. No. It is all the same unit.

MR. TILLEY: It will be the same unit of cost, 32.

EXHIBIT 32: Statement showing cost of dock for full area, above referred to by Mr. Mitchell, totalling \$115,512.

BY MR. TILLEY: Q. Now you had something in pencil there? A. This is only a pencil copy; I didn't know that I had this. I just saw that in the file there and I thought it was the—another way it was figured out; leaving fifty-four feet, that is the same as you have there.

Q. Well, then we don't need it. A. No, you don't need it.

Q. Mr. Mitchell, there are one or two questions with regard to the power: Why is direct current power necessary for unloading? A. Because of the refinement in the control of direct current power.

Q. You have never known of alternating current to be used for unloading? A. Oh, yes, it is, but you haven't got the refinement at all in handling. This tower was an up to date tower of that type, modern switches and so on.

Q. Which tower? A. The tower which was on Church Street; had two direct current motors each of a hundred horsepower.

Q. Mr. Mitchell, let us pause for a moment; when you get this scheme which is Exhibit No. 29 worked out and in effect, your tower on the north, on Lake Street, ceases to be useful for your operation? A. Yes. You move that out to the new dock line.

Q. Then you would transfer that, would you? A. Yes, oh yes. Oh yes, that is a very fine tower.

Q. Very fine tower and machinery and modern? A. Yes, everything was modern equipment in that tower.

Q. You saw that? A. No, I didn't. We have the full description of it.

Q. From whom, Mr. Marshall? A. No, I have it in that inventory and then I have a description of the hoist manufacturing people.

Q. How do you know the condition of it from seeing an inventory please? A. Not the condition of it. I know the equipment that went into it.

Q. You are now undertaking to say that it was a modern and good equipment? A. Yes.

Q. Now I am suggesting to you that it was far from that. Now then did you ever see it, I will put it to you again? A. No, I didn't see it.

Q. Well we have to leave that. And it is an apparatus that in its present location or in its location of 1926 would be no use to the company remaining there, by 1931? A. No; it would be moved out to the new dock line.

Q. So that whatever was north of Lake Street by way of equipment really had, no matter what its physical life might be, a useful life of only four or five years? A. No, no. The tower only would be moved out and you would convey back from the tower.

Q. And you mean to say you would convey off a dock and take the coal across Lake Street? A. Yes.

Q. Supposing you couldn't do that, would that be a serious matter to the company? A. Yes, it would make it more costly if you had to run trucks backwards and forwards.

Q. This scheme of yours wouldn't work at all? A. Oh, yes, it would

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work. You could make a shipment by running trucks just that short haul if you had to do it.

Q. Mr. Mitchell, are you seriously saying that in unloading at a place of this kind coal, that you could have a useful service by conveying it part way and then trucking it across the street and then conveying it again? Do you mean that? A. It could be done and I think it should be done economically, but the proper way to do is overhead conveyors of course.

Q. And your buildings are the full width of this property? A. Yes.

Q. I suppose you have got to change them, you have got to have some roadways around them if you are going to have a dock running away down 10 like this dock is? A. Yes.

Q. You have to change the buildings? A. If Lake Street goes in as a city street then of course you have the advantage of Lake Street.

Q. What is the advantage of Lake Street to a coal operating place such as this? A. Access to get in both sides.

Q. And pile your coal both sides? A. Yes.

Q. And you say that from a coal operating standpoint? Do you mean to tell the arbitrator that from a coal operating standpoint Lake Street is an advantage to that plant? A. If Lake Street were built, yes, it would be an 20 advantage.

Q. That would be a good thing to a coal operation, to have a street running through the middle of your property? A. Oh yes, that could be worked out all right.

Q. I am not saying that. It would be an advantage you say? A. I think it would be an advantage.

Q. You think it would be an advantage, that the coal company would rather welcome a highway through its property. The advantage being what, would you mind just indicating? A. You have access to what is there for—

Q. Why do you want access? I should think the thing would be to prevent people having access to a working yard? A. If Lake Street went 30 through the two sections of the yard, one would be handling a certain type of fuel, you could keep your bituminous piled on the outside here, you could keep all the old dock for anthracite.

Q. That is to keep the north of Lake Street for anthracite? A. Yes.

Q. And of course you would have it all come by water? A. Bring them in by water, yes.

Q. I mean there would be no more rail, it would be all water? A. Oh yes, they would get back to the water, yes.

Q. And with the larger depth of the Welland Canal scheme going on of course it would be all water? A. It would be all water. 40

Q. And store it? A. Yes, and store it.

Q. And then you use it in the winter? A. Yes.

Q. That is your scheme. And you say that operating that way it would be a nice thing to have Lake Street running through the center? A. It would be all right.

Q. Then what is the cost of a motor generator set? A. \$6,000.

Q. Well, I am told that that is 100 per cent advance on what they do cost? A. I would like to find where I could buy one cheaper.

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Q. Yes. How many have you bought? A. In the last few years I suppose I have bought three or four, the largest being three or four hundred capacity and the smallest being about twenty-five. I am quite familiar with electrical things, I buy a lot of that equipment, and \$6,000 is the right price. The thing is this, it depends on what capacity to work it out for. The Hydro charge them on the basis of 102 horsepower. Now that gives a momentary peak on a hoisting load—there were two motors of approximately 100 horse-
10 power each, you would have to have at least 120 kilowatts in your generator, that is 160 horsepower capacity in your generator, and then you had the motor behind that which makes a 200 horsepower motor, they work it out on a 200 horsepower basis, and a 120 kilowatt generator if they work it out on a 100 horsepower basis they would probably find it would be somewhere around half.

Q. Well, then will you tell me how you computed the rates to be paid for direct current? Take a monthly bill on direct current, taking service charge and power rate? A. Yes, I will give you the details.

Q. Yes, just give us the details, will you? If you let me have your
20 sheets we can comment on it and it won't be necessary to read it? A. That is all right. If you want to do it that way here are two bills in which they showed 102 horsepower as the maximum demand.

Q. If there is anything to explain about it please do so, but if there is not it requires some person with a greater knowledge than I have to be able to criticise anything you are saying about it, and I think I would just show it to my advisers and see what they have to say about it? A. Here are the Toronto power rates, I just wrote this out this morning, for direct current power and alternating current power.

Q. If you put whatever you have together—? A. There are the light
30 and power bills for the last few years. Do you want those?

Q. Very well, please put them together and let us have the bundle?
A. Yes.

EXHIBIT 33: Bundle containing four sheets of working figures re electric power and two power bills of Toronto Hydro Electric System to Standard Fuel Co., referred to.

Q. Now there is nothing you want to explain about it, they explain themselves? A. Those are notes.

Q. But an expert will know all about them? A. Yes.

Q. If there is anything they don't understand I will ask you about that
40 again. Mr. Mitchell, did you ever build a dock? A. Not of that type. I built lots of structures similar and docks and tide water walls and retaining walls and, of course, lots of dams, but similar structures to that.

Q. Similar structures to this? A. Similar structures to this, but not as a dock.

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Q. And, of course, these plans were prepared in connection with this arbitration? A. Yes. It is a design of dock suitable for a coal dock on that particular site, yes.

Q. And got up for the purpose of the arbitration? A. Oh, yes.

MR. TILLEY: That is all, thank you.

RE-EXAMINED BY MR. OSLER:

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Q. Have you the working sheets of the cost of the dock? Where has your experience in connection with building dams and such walls been, Mr. Mitchell? A. Throughout Canada, in the Maritime Provinces and Ontario and Alberta. 10

BY MR. TILLEY: Q. I overlooked one question I wanted to ask: You say this is built up on 1931 cost basis? A. On 1931, yes.

Q. What would be the difference between 1931 and 1926 for instance? A. Oh, there might be thirty percent added to that.

Q. Thirty per cent. added? A. Yes.

Q. And 1928? A. From year to year on the—

Q. Well approximately? A. Almost in a straight line.

Q. A straight line from 1926 to 1931? A. Yes. Pretty well.

Q. And it takes up about thirty percent? A. Yes.

BY MR. HELLMUTH: Q. That is a line down? A. Yes, coming down. 20

BY MR. OSLER: Q. In other words you have calculated that the filling would have been done so as to produce a capacity for the boats that would use the new Welland Canal? A. Yes.

MR. TILLEY: He didn't say that. The new Welland Canal would want more depth according to him.

WITNESS: No, take the large boat which came in last year to Standard Fuel, the Richardson, is it? Or the Fitzgerald. It was drawing here eighteen feet and she brought in 5,400 tons. That is a very good size boat; that would easily go into this dock.

Q. Was that a Welland Canal boat? A. Yes. 30

Q. Not the full capacity of the Welland Canal? A. It is a good economic type. Any boat that will carry around 5,000 or 6,000 tons is a good economic type.

Q. Now what walls for instance have you built in the Maritime Provinces comparable to this? A. Well I have built sea walls in connection with our own plant down there, Hydro Electric plant, in salt water, near Halifax. For instance one is right in the ocean. And in New Brunswick somewhat similar in tide water, in a tidal basin.

Q. At what place? A. And then on various Hydro Electric Works of course you are building walls that are comparable to docks all the time. 40 Figuring it out, it is quite similar on the rating of the loading.

Q. Then you calculated twenty caissons in this at \$1,200 each? A. Yes.

Q. Do your working sheets show that in detail? A. Those working sheets are practically through a period of three or four months. The first one

is away back in December and then I was working on it again two or three weeks ago. It shows the development of the whole plan there; I don't know whether you can make much of it but those are all the figures.

Q. Well now can you give me in a little more detail (I will ask you to take the working sheets) how you arrive at \$1,200 as the cost of each caisson?
A. I would have to pick it out here but there are sixty cubic yards of concrete in the caissons; there are 4,000 pounds of reinforcing. The forms in that scheme, there are twenty of them, would be made very substantially and used several times.

10 Q. That is you pour the concrete into a frame? A. Yes. And the caissons would be built on a platform on sliding ways and they would be launched and they will float in seventeen feet of water. You work it that you launch them in through the channel which you have dredged into the trench in which you eventually locate them.

Q. And when you get them to the site which they would eventually occupy you would sink them? A. Yes, you would sink them by letting the water come in. Then you would sink them and the intermediate cribbing is put in place and filling is proceeded it. The cribbing sections, there are diagonal tie rods that stiffen the whole thing up, only it stiffens through the filling
20 operations, they are absolutely stable after they are filled of course.

And then when the walls are filled you are proceeding at the same time with the filling of the interior.

Q. And I suppose that is the explanation of your item of dredging sixty cents a cubic yard? A. That is dredging for the location along the dock wall down to rock through the mud.

Q. In other words that dredges out the site which would be occupied by the caissons? A. Yes.

Q. And what do you say as to the prices that you have attributed to that? A. Oh that is quite ample, sixty cents a cubic yard, we are just dealing
30 with the silt.

HIS LORDSHIP: Is it necessary to go into that on this? He has put in his estimate and so on and he swears that that \$52,967 is a fair estimate. You may go on if you wish.

MR. OSLER: My friend put in the working sheets and said he might call somebody to criticise them. Perhaps I can answer that with reply.

HIS LORDSHIP: I was just going to suggest that.

MR. OSLER: That is all then, thank you, Mr. Mitchell.

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—1.00 p.m. Arbitration adjourned until 2.15 p.m.

—2.15 P.M. (THURSDAY, APRIL 7TH, 1932).

RESUMED:

NORMAN D. WILSON, Sworn.

EXAMINED BY MR. OSLER:

Q. What is your occupation? A. Consulting Engineer.

Q. Practising in Toronto? A. Yes, sir.

Q. And will you give us shortly your experience having particular regard to such a work as the idea of reclaiming the additional land at the foot of Church Street south of the Standard Fuel Company's dock? A. Well after 10 several years in railway experience in the west and in also municipal engineering in Ontario here I joined the Harbor Commission in 1912 and for the next eleven years I had charge of reclamation and of all surveys, exchanges of land and laid on construction and generally indirectly the supervision of development under the Chief Executive.

Q. Well then have you considered the plan which was prepared by Mr. Mitchell and put in this morning as Exhibit No. 29? A. Yes, I was over the plan with Mr. Mitchell and discussed it at some length and made one or two minor suggestions to him which I think were incorporated in the plan, and I am in agreement that the work can be done in the manner he suggests very 20 effectively.

Q. Well then have you made an estimate yourself independently of any estimate of Mr. Mitchell's as to what the cost of doing the work referred to in that plan would be? That is leaving approximately 54 feet and a few inches beside Church Street for navigation and for docking facilities and carrying the dock southerly to the point shown on the plan today? A. Yes, sir. I have made an independent estimate of the cost of the work generally in this plan and to complete the work entirely \$70,000.

Q. In your estimate, Mr. Wilson, do you include the filling of Lake Street? A. I include the filling and retention of Lake Street in that total 30 cost.

Q. Well then what would the cost be if you were to reclaim the entire waterlot out to the New Windmill Line? If you were to include the cost of filling the entire lot out to the New Windmill Line? A. I estimated that at \$135,000.

Q. And does that include the filling up the fifty-four foot strip alongside Church Street? A. That would include filling the slip.

Q. Then if you did not fill the slip but filled out to the New Windmill Line? A. Very slightly less. My estimate would be about \$133,000.

Q. Why do you make so small a difference in that respect? A. There 40 is the identical amount of cribbing to be done, except that about fifty-four feet of it is in shallower water at Lake Street than it would be on the New

Windmill Line; so far as the filling is concerned why there is lesser filling, leaving the slip there; and the filling I put in at very little actual value.

Q. When you say actual value—? A. Actual cost.

Q. Then have you the square foot areas of those three? What would the square foot area of the fill be as shown on the plan? A. That would total 62,370 square feet, that is reclaiming Lake Street and the waterlot as far south as the T.E.L. dock leaving a fifty-four foot slip on the east side.

Q. And what does that work out at per square foot? A. \$1.12 $\frac{1}{4}$ cents per square foot.

10 Q. And what would be the total area in square feet filling the whole property including the slip out to the New Windmill Line? A. 131,642 square feet.

Q. And what does your estimate work out at in that case. A. \$1.02 $\frac{55}{100}$ —\$1.02 $\frac{1}{2}$ cents.

Q. And what would it work out at per square foot if you filled it out to the Windmill Line but left the slip for use as a dock? A. On the basis of the entire waterlot of 131,642 square feet it would be \$1.01.

Q. And in all of these estimates you have included the filling of Lake Street? A. In all of them yes.

20 BY HIS LORDSHIP: Q. Have you a written statement of how it is made up? A. Yes. (Produced).

EXHIBIT 34: Statement produced by Mr. Wilson above referred to, giving estimate for construction of dock, etc.

BY MR. OSLER: Q. Did you make a separate calculation as to what the cost of filling Lake Street would be, Mr. Wilson? A. I figure that the cost of filling Lake Street must be prorated over the cost of filling the large area there. On that basis of filling down to the end of the T.E.L. dock I figure the cost of filling Lake Street is \$15,300.

30 Q. And that you arrive at by taking a pro rata proportion of that part of the work? A. Yes, sir.

Q. And on the same basis what would be the cost if you filled out to the New Windmill Line and filled the whole area including the slip? A. For Lake Street \$13,970.

Q. And on the basis of filling out to the Windmill Line leaving the slip unfilled what would it work out at? A. \$13,760.

CROSS-EXAMINED BY MR. TILLEY:

Q. I gather, Mr. Wilson, that means that where you have a larger operation in filling you reduce the costs per cubic yard or per square foot or as may be? A. It would work out that, it would tend to work out that.

40 Q. Well that is what it means, isn't it? The answer is "yes, that is so?" That is what it indicates, because Lake Street is cheaper depending upon the amount you do? A. No. It would to a certain extent depend upon the depth to be filled as well, the depth of water.

Q. If you take the average cost of filling per cubic yard and then the more you do at that site the less the average cost? A. The less the average cost.

Q. That was the question I put to you? A. Yes.

Q. Now how are you estimating the cost, according to schemes adopted by the Harbor Commission or according to the scheme a private owner would have to adopt to fill his docks? A. My estimate would make no difference either way whether it was on the basis of the Harbor Commission development or a private owner's development.

Q. How would a private owner go about getting his material for his fill?
A. The same way as I think almost anyone, without any question, he would open it up as a free dump and expect to have material given to him.

Q. That is you put up a sign "People may dump here"? A. Yes. 10

Q. And I suppose you would let them go on dumping till they filled it?
A. Yes.

Q. Coming into this property where? Off the Esplanade? A. Off the Esplanade, yes.

Q. And out through the coal yard? A. Yes, I think so.

Q. And there is no roadway down through, I mean to the side of the building? A. I assume there is access to the back of the building.

Q. Do you know is there a roadway around it, or is there not? A. Frankly that isn't within my knowledge.

Q. You don't know? A. No. 20

Q. Well then the fill would be taken all the way from the Esplanade down to the front part of this property on the Bay front? A. Yes, if you like.

Q. And where would it be got from? A. From building foundations or anything like that.

Q. Such as? A. Such as any of the—

Q. Illustrate. We have plenty of cases around if you want to illustrate provided they are illustrations? A. Well nearly all— Take for example the Royal York, I know, for example, that that was put on the harbor front.

Q. Yes? Where? A. Almost directly south and east of this property.

Q. East of Church? A. Between Yonge and Church I believe. 30

Q. Well where was it put on, between Yonge and Church or east of Church or where? A. It was put on, the line was east of Yonge Street, I wouldn't be certain as to the absolute location.

Q. Any other? A. I know this, sir, that from 1912 until 1923 when my actual connection with the Harbor Commission ceased that there was continuous demand for free dumping area taking right from Bathurst Street right to Yonge Street, and also since from Yonge Street easterly there has been continuous dumping put in. The only limitation to it being the opportunity to have a place to dump.

Q. I know then, just keep to the question and answer and we will get along quicker. You had at that time a large area west of Yonge Street and I am suggesting that west of Yonge Street was a much more convenient area for any excavating that was done for buildings in Toronto in those days of any substantial size? A. The development has been west of Yonge Street.

Q. And you have several tracks to cross to get into this property and you then go through the yard, the operating yard of the Company, is that what

you mean, with your trucks or wagons and drive down to Lake Street and beyond? A. Yes.

Q. And find a dumping place. There are much more convenient places to dump earth than that, are there not, along the waterfront? A. No, I don't think there would be, sir.

Q. You don't think there would be? A. Not under the conditions we are assuming.

Q. So that you don't allow anything for the cost of the fill? You don't pay anything for the fill? A. Yes, I do, to a certain extent. I allow a small amount to spread it and to look after the dump.

Q. But nothing for the material? A. Nothing for the material.

Q. How much do you allow to spread it and looking after the dump? A. About \$3,000 for that purpose.

Q. How many persons employed? A. Well that is figured on the basis of about thirty weeks, about four men.

Q. Let us visualize that. That would be what period? Summer time I suppose you would be looking for it, you wouldn't look for it in winter, for that job? A. Yes, there is a certain amount of material dumped in winter too.

Q. But it is a pretty slow operation to get people down there in the winter with any fill? A. No, I wouldn't think so. I think most of it would come in the summer weather but I wouldn't close it for the winter.

Q. Now what fill would you get? Are you taking 1931 prices or 1926 prices, or what prices? A. I am figuring this at 1931 prices.

Q. What fill did you get for 1931? Where would you get fill in 1931? From what operations in Toronto? A. I couldn't point to any specific operation. There is always a general amount of material drifting down.

Q. Of course you get drifting material, but I assume that when you are launching an expedition of this character or an undertaking of this character I should say that you must have it so that it moves along and you get rid of the wagons and carts and the men who are spreading and get into a position to use your property as soon as you can. I suppose while this operation is going on they cannot come into the dock? A. It wouldn't affect the then dockage of the fuel company.

Q. How do you work that out, if Lake Street is filled and is facing the old unloading tower? A. I beg your pardon in such case.

Q. Didn't you know that? A. I didn't know that to be the case.

Q. Really you seem to have worked without knowing the local situation, which is sometimes important, isn't it? A. Yes.

Q. So that from the time your operation started, your filling, you cease using the dock? A. Absolutely.

Q. So that you are then out of business on the dock for the whole year? A. You are out of business for a slightly longer time than if you probably subsidized material to come in there.

Q. You are out of business for a whole year at the dock even on your estimate of thirty weeks, because that is the shipping season; it must be on

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the water? A. That isn't very much longer than the construction of the dock would take in any event.

Q. Well we have to build the dock after we have this done, you see?

A. Oh not at all.

Q. You would put your dock first, would you? A. Almost together, the dock slightly ahead of the filling.

Q. Well, I am suggesting to you that in the years you were taking for your low cost of building you couldn't have got the material. Now if that is unfair say why? A. It is true that foundation filling and such like why 1930 was probably a very slack year. 10

Q. 1931 and 1930 both? A. On the other hand—

Q. Both 1930 and 1931? A. On the other hand there is the—

Q. Are you agreeing with that? A. Yes, I am agreeing, surely.

Q. And 1929? A. Yes, 1929.

Q. And 1928? A. No, 1928 was—

Q. Tell us anything in 1928 that would supply you with material for this fill? A. There is 48,000 yards of fill here. I think I figured I would get a certain amount from the dredging and entrance way into the slip; I will get a certain amount then from team dumping supply. Whether there is very much going on or not. I can't specify any specific building downtown, I only know from general running experience that there is demand for dump- 20
ing.

Q. Well, haven't you had any work that called for that since 1923 when you were with the Harbor Board? A. No, not in Toronto.

Q. Have you been working in Toronto? A. I have been mostly in Brazil for the last five years.

Q. Mostly in Brazil? When did you return from Brazil? A. In 1930.

Q. Were you there then in 1925? A. No, sir. I was downtown several times in that period.

Q. You came back but your work was there? A. Oh, yes, my steady 30
work was there.

Q. Now then I interrupted you a moment ago when you wanted to say something; I think probably you have said it though; you were trying to say when I was not patient enough with you, I gather, that there would be some dredging out put in there. Is that what you wanted to say? A. Yes, there is a slight amount of dredging.

Q. Well, now, very very slight? Very very slight, is that not true? What is the overlay on the rock? A. Five or six feet.

Q. Of what? A. Of fairly thin muck.

Q. Not a good filling? A. It is a very good filling when you mix in 40
with ordinary building material.

Q. If you have the carts coming with some and the silt being thrown in on top of it it binds up well and ties up the tin cans and so on? A. Yes.

Q. Well, now the dredging would be for what, just the place to lay your crib? A. There would be dredging for that to rock and then I would dredge the slip.

Q. You wouldn't dredge the center around which your crib was to go?
A. Oh no.

Q. Because that would be taking out the filling to put it in again?
A. And you dredge the fifty-four foot slip off.

Q. You dredge the fifty-four foot slip before you put the crib? A. No, afterwards.

Q. So that the crib would have to be built first and of course you would have to get the overlay off that before you laid that, wouldn't you? You have to get down to rock before you can get—? A. Oh, yes, undoubtedly.

10 Q. Because you must form the actual bottoms of these cribs or whatever you call them, caissons, that you put there, you must form them to fit the rock? A. This is concrete.

Q. And that is a very delicate operation? A. Not so tremendously delicate.

Q. Well, this is done with concrete? A. Yes.

Q. Now, Mr. Wilson, are you saying that it is not a very delicate operation, if you are going to lay concrete on top of rock, that it is not a very delicate operation to fit your concrete that you are putting on top of the rock so that it nestles into the rock properly and holds your fill? A. Yes, it might
20 be, in fact it would be—I have allowed for it—to put a slight levelling course of stone to be crushed into the crevices.

Q. You have never done that in the harbor work, have you? A. The cribs are mostly laid on the bed of stone.

Q. The cribs are laid on the bed of stone and they are made of wood?
A. Yes, they are made of wood.

Q. And it is an easier job, not so difficult a job as to shape your concrete to the bed of the rock, is that not so? A. It depends entirely how their cribs are made; you can frame them all of timber butts and scribe them.

Q. We haven't your plan here; I understand from the last witness, who
30 made the design I understand—? A. Yes.

Q. You are not the designer? A. No.

Q. When were you first brought into this? A. Within the last month.

Q. And he being the designer, that his plan was to shape this concrete so that it would fit the rock, and there might be some crushing or grinding that would take off the edges as I understood him? A. Yes.

Q. Do you approve of that? A. I don't think you could get a— You could sound and build a form the same as the rock and make the concrete to fit.

Q. Would any sane man? A. I don't think—I wouldn't say that, any
40 sane man, I don't think that would be the proper way to describe him or the operation.

Q. I withdraw it, I am afraid I am too frank about these things. It would be rather an unheard-of thing to proceed in that way, wouldn't it?
A. It would be doing it a little bit finer than it is ordinarily done.

Q. How would you do it? Using concrete instead of wood? Because my suggestion to you is that no engineer would recommend anything except the wood. Isn't that true? A. No.

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Q. You think you would proceed with concrete? A. I think concrete is a very good modern form to use.

Q. Good modern form to use for a dock? A. Yes, a concrete crib.

Q. So that first it is harder to build, you will agree with that, won't you? A. No.

Q. More expensive to build it, by the time you get it properly shaped and fitting it? A. No I wouldn't think it would be.

Q. More risky of not getting good results? A. I doubt that. No.

Q. These caissons are put down and they have slots in them so that between each pair you let down slides to fill up the space between the two? 10
A. Yes.

Q. And those must all fit snugly and right, so that if the nestling of it on the rock bottom does not keep it precisely true you are in a mess, aren't you? A. Not that bad.

Q. I am told that if it is about an inch out you are in trouble? A. If the cribs are well seated to start with—

Q. I know, but you have to get them well seated if you are going to make a concrete bottom to fit a concrete dock, and then they have to fit within an inch so that the slides wouldn't be out an inch? A. It is open to detail as to just how you would finish the bottom of those cribs. 20

Q. I am just on the bottom of the cribs with you now and I am trying to get whether Mr. Mitchell's suggestion is a—I won't say sane, but a really useful suggestion from an engineering standpoint, considering the cost and risk involved of the thing not being true, and then shortly I am going to put to you this; take it if a boat knocked the crib, the concrete structure would be smashed, your whole concrete arrangements and then you are in a perfect mess, whereas if you have timber you put in a new beam? A. No, I don't think there would be very much. There would be, under this arrangement, if a boat hit it in a certain particular spot it might let down—

Q. The whole business? A. Not the whole business. 30

Q. Well, it would just make a mess, wouldn't it? A. No, no, not very much more than hitting a timber crib.

Q. Really? A. No.

Q. I thought you were agreeing with me; I shouldn't have grabbed at that so soon. Don't you agree that if a boat breaks a concrete structure that runs down fourteen to eighteen feet below the surface of the water and is shaped so that it fits to the rock below you have a very serious problem as compared with a wooden crib structure that you can repair in spots? A. You have the same chance of repairing this in spots.

Q. Of course you would have to repair this in spots, you would have to take it all up and do it over again, but it would be a very difficult operation? 40
A. No, I don't think it would be any more difficult than to repair the face of a crib.

Q. The Harbor Commission work is wood cribs below covered with a concrete top? A. Yes.

Q. And this is built on the assumption of concrete from top to bottom right down to the rock? A. Yes.

Q. That is the theory? A. That is the theory, but—

Q. And then these things are spaced how far apart on the scheme? A. They are centered about twenty-six feet apart.

Q. And then you put in between them what? A. Horizontal beams.

Q. Horizontal beams in slots? A. Yes.

Q. On each one, front and back? A. Yes.

Q. And then putting these beams you fill in between? A. Fill in between.

Q. With what? A. With any material.

10 Q. Well what material, rock or what? A. No, just ordinary building excavation.

Q. Would you? Would you seriously? A. Yes.

Q. Well very well if you say so. And then if the grooves do not adjust themselves one opposite the other in the two caissons so that they are perfectly in alignment you are in difficulty at once? A. No, if one beam is made to go in the rest would follow in the same.

Q. Yes, if one goes in, but I am thinking of the one going in? A. Oh well, of course you have got play in it to let them go in and you can lock them afterwards.

20 Q. So that it is not a thing that requires nicety? A. No, not at all.

Q. Then you carry this out similar to the other? A. Yes.

Q. And you recognize no difficulty between doing this work for a private dock where the man must find his fill and do his operations and doing it in the wholesale way that the Harbor Commission does with a dredge and a tube that takes the fill right in and throws it over the back and fills it up? A. Of course it is safer to dump with teams than it is to do it hydraulically.

Q. It is safer possibly but it is much more expensive, unless you are right that you can delay your work while people fill it up for you? A. I think this is. There is a small amount of yardage and it is easy enough.

30 Q. Did you study out this plan in detail to be able to follow precisely the way it is going to be done, that is the plan which Mr. Mitchell produced? A. Yes, I think I have gone over it sufficiently to know the general extent.

Q. Well now take the upper part, the right hand end of the plan; that shows, I don't know what you call it, a slab or concrete on top of the caisson? A. Yes.

Q. And is that under water wholly or partly? A. The top of the caisson is finished to 245 which normally would be—it might be under water; water has a range up to 247½ in extremes and down to 243; so that 245 is a fair average.

40 Q. It might be in or out of water? A. It might be.

Q. Would it be any more difficult if it were in water to do this job, than out? A. It undoubtedly would. The bottom of that part, the bottom of the dock face is a precast beam.

Q. The bottom of what? A. The bottom of this mass top here, sir.

Q. Up to here? A. No, up to that broken line, which would bring it out of water; it is a precast beam built on shore, precast.

Q. And above that would be out of the water you say? A. Yes.

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Q. Now in your computation you give in your figures filling Lake Street being one of the things the owner would have to do? A. Yes. It is almost essential to fill Lake Street.

Q. And when you distribute your cost over your area do you include Lake Street in the area by which you divide the cost? A. Undoubtedly.

Q. Although the city gets Lake Street and you the owner get south of Lake Street for your area? A. Yes. That obligation of course was the purchase price of the extension.

Q. I am not considering that, I am talking about the area that he gets for the amount he pays. He doesn't acquire Lake Street by filling it, does he? A. No, he agreed to fill Lake Street as compensation for the waterlot extension. 10

Q. Now can you tell me without much difficulty what the cost would be per square foot if you place the whole cost according to your own figures on the area south of Lake Street but excluding Lake Street? A. That is \$1.45.

Q. \$1.45 per square foot if you divide the cost by the area below Lake Street rather than by the area including Lake Street? A. The area down to the line of the Toronto Electric Light dock. If you go the whole depth \$1.20—

Q. Well, the figures would change? A. I beg your pardon, \$1. 20

Q. If you go the whole depth you have a slip fifty-four feet wide on the east of the property and how deep? A. 577 feet I believe.

Q. And fifty-four feet, that means one vessel there at a time? I mean there is no passing or anything of that kind? A. No, no, you couldn't pass or anything of that sort.

Q. And how wide are these boats that come through the Welland Canal, or do you know? A. Yes, about forty-five. Well the old Welland Canal passed a boat about forty-two feet.

Q. I am talking about the new Welland Canal? A. The new Welland Canal will pass a boat up to sixty feet, up to eighty feet, but the normal boat coming in here would draw about eighteen feet of water and be about forty-five or forty-six feet wide. 30

Q. Yes, but if it drew eighteen or twenty feet of water how wide? It might run up to fifty feet and more, or do you know? Are you in a position to say? A. I have a general knowledge of the width of the boats.

Q. Do you know of any dock built anywhere according to this plan of Mr. Mitchell's? A. No. The nearest I know of, of course, are the use of concrete over at the Welland Canal, Port Weller, somewhat similar construction.

Q. And those are hundred foot cribs? A. Yes. 40

Q. Well quite a different problem, isn't it? A. Quite a different, yes. Of course in the last analysis, Mr. Tilley, it is this: I was asked to figure on a dock, I am not quite prepared to go to harbor head wall work and get the same price.

Q. I don't know what price you used? A. About a hundred dollars a foot, this works out at a hundred dollars a foot.

Q. Why the Harbor Commission work ran \$250, \$200 to \$250? A. It did in thirty-five feet of water.

Q. Not thirty-five feet of water, or do you know, because the thing is of record and can be determined? A. I know, and I know the costs of Harbor Commission, the contract prices of Harbor Commission work, up to the time that I left, and the most comparable spread of wall, comparable structure, is the harbor wall around the foot of John Street, which ran \$110 a foot, or slightly less.

10 Q. I don't know what you are referring to but if you put that as your comparison, what was the depth there? A. About twenty to twenty-four feet of water.

Q. Well now you have got between what years? A. In 1912 to 1923.

Q. Had the Welland deepening been arranged by 1912? A. Yes, it was underway before the war.

Q. And I am told that various sections had different prices. I was trying to see if there was any 1923. There was no 1923, when you left. There is a 1920. Would you say that in 1920 the cost of the work done in that year was not \$294 per lineal foot? A. 1924?

Q. 1920? A. It was about \$260 on my recollection.

20 Q. 1919 \$354, possibly that was a special place, was it? A. That is a special place. No, the ordinary run of these cribs when they were first let ran from \$75 a foot to \$125 a foot.

Q. What part was that? A. That was starting at the west end near the Western Channel and coming down to York Street.

Q. What depth? A. Started at about sixteen feet and coming down to twenty-eight.

30 Q. What is the difference in price between 1926 and 1931? A. I am not, as I said, absolutely conversant with Toronto prices in 1926, because I wasn't here around that time, but it might be as much in detail as sixty percent higher than it is today, the peak price.

Q. Sixty percent? A. I think on this work thirty or thirty-five percent on the average would be about a fair difference.

Q. Why do you say thirty to thirty-five? A. Well I mean certain prices—the filling in my opinion wouldn't cost any different.

Q. Well except that in 1931, I would gather from what you said, filling was impossible on your scheme? A. No, not at all, sir.

MR. TILLEY: All right, thank you.

No. 11.

HECTOR WILLIAM FIELDEN, Sworn.

40 EXAMINED BY MR. OSLER:

Q. Mr. Fielden, what is your occupation? A. Chartered accountant.

Q. And with what firm do you practice? A. Vigeon & Company.

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Q. And how long have you been practising? A. Since 1908.

Q. And are your firm the auditors for the Standard Fuel Company?

A. They are, yes.

Q. How long have they been auditors? A. Since that date and before.

Q. All the time that you have been with the firm? A. Yes.

Q. Well then were you asked to verify the figures and furnish the figures from the books to be given to Mr. P. H. Mitchell? A. I was.

Q. And did you give him the figures that he made use of with regard to the number of cargoes? A. I did.

Q. Coming into the Church Street dock, and the amount of tonnage? 10
A. I did.

Q. What years were those? A. In the years—

Q. March 31st, 1921, to 1927? A. 1921 thirty-five cargoes, 36,117 tons.

HIS LORDSHIP: Isn't that found here in this list?

MR. OSLER: That is on page 3, I think.

HIS LORDSHIP: Well then can't you shorten that by asking if it is correctly set out in the statement?

Q. Have you examined this statement, Mr. Fielden? A. I have.

Q. Then can you say that the figures that Mr. Mitchell purported to 20 get from the books of the company are correct according to the Company's books? A. They are.

Q. And that applies to all the figures that purport to be taken from the Company's books? A. It does, yes.

Q. And Mr. Mitchell, you heard him giving his evidence, the figures he said he got from the Company's books? A. I did.

MR. OSLER: Because in some cases he did not in so many words say in his statement that the figures were from the books.

MR. TILLEY: No questions.

HIS LORDSHIP: Any other witness? 30

MR. OSLER: I have no other witness.

MR. HELLMUTH: That is the Claimants' case, my Lord.

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John Hole
Examination

CONTESTANT'S CASE

No. 12.

JOHN HOLE, Sworn:

EXAMINED BY MR. TILLEY:

Q. Mr. Hole, what is your occupation? A. Architect and engineer, sir, registered in the Province of Ontario, practising in the city.

Q. And have you had experience in connection with coal properties and also in connection with harbor or dock properties? A. Yes, sir. 40

Q. Over what period of time? A. Since 1910.

Q. I believe that you are the person who was for a time at any rate joining with Mr. Mitchell in getting at certain values of buildings and machinery?

A. Yes, sir.

Q. And you got to a point of reproduction cost new, of estimating costs of the work you found there. and then the joint effort stopped? A. That is right, sir.

Q. And he has filed an exhibit in which he shows the reproduction cost as you and he computed it? A. Yes.

10 Q. And then did you go on and fix what you thought was a rate of depreciation on the buildings and the equipment? A. Yes.

Q. Have you the statement, or has Mr. Dempsey got it? A. Mr. Dempsey has got it.

Q. Now in this exhibit have you set out the depreciation that you consider to exist as to each item of the physical property? A. Yes.

Q. I see it is headed "Valuation as of November 24th, 1926, of buildings as physical structures and other issues of the Standard Fuel Company premises upon lot 31, registered plan number 5A, disregarding whether they do or do not give any added value to the land." Then you have taken them as I understand just as a piece of physical property and considered its condition?

20 A. The buildings and machinery as well, yes.

Q. The first page is buildings and I presume the second is equipment? A. Yes.

Q. Or machinery on the same, or is that what you mean? A. That is what I mean, yes.

Q. And then attached to the sheet is a blueprint showing the property, the layout, and showing what you describe in your list as buildings A, B, C, D and E? Is that right? A. That is right.

Q. And that, after taking off what you estimate to be the rate of depreciation, leaves a balance of \$22,436.56? A. Yes.

30 Q. And the second sheet, treating the equipment in the same manner shows \$19,370? A. Isn't that 570, sir?

Q. Well it may be; my copy is quite blurred. 570 it should be, \$19,570.13, and the statement shows each item, so that we need not stop to go over that? A. Yes.

Q. Now is that your estimate of its condition? A. That is my estimate of its value and condition, yes.

EXHIBIT 35: Above described statements prepared by Mr. Hole, with blueprint attached, being valuation of buildings and equipment of Standard Fuel Company.

40 Q. Now would you just describe to His Lordship the property generally, its method of construction or whatever occurs to you as being proper things to bring to His Lordship's attention regarding the property in estimating a value?

A. The first building that we come to on entering the gate is a frame office, one storey frame office, covered externally with sheet metal and set upon posts. There is a little brick vault added. It is an irregular shaped building approximately 42 feet by 20 feet with these two little additions sticking out. And that office is plastered inside.

Q. I don't want too much detail in it, please? A. Well it is in pretty fair shape.

Q. We will have to pay for the building if we talk too much about it? A. It seems to have been built between thirty and forty years at least and it has not been any too well maintained, so I made my depreciation on that basis.

Q. But at any rate that is that building? A. This is A, office.

Q. Then B is a garage. You have depreciated that fifty percent. Anything you want to say about that? A. No, only it looked very dilapidated.

Q. Building C is the boiler house? A. The brick boiler house, yes. 10

Q. What do you say about it? A. Well the brick work was spalled away in places and it looked as if it had been up nearly thirty years. It was only a small building, 25 by 30, of one storey and a pit for the boiler.

Q. Well then you come to the main building and it is \$50,000 reproduction new and the depreciation on that is about two-thirds, is that right?

A. Yes, yes.

Q. Well now what have you to say about that? Will you describe that building? A. Yes.

It was a shed built for anthracite coal and it had no bearing on the properties, it was merely a shed over a pile of coal, with the exception of some pockets or hoppers to which the coal was screened and elevated and served to bags outside, but that was only a very small proportion of the main shed. The main shed was on cedar posts, 16 foot centers transversely and 20 foot centers longitudinally, and they were tied together with one inch tie rods and they were, at twenty-six feet high there were beams and walings and wooden ties and squared lumber generally on the top of these posts, so that any deviation or any movement of those posts caused by weight of coal in twisting uprights or moving the posts moved the construction of the roof of the shed, and that is what occurred, I mean any photographs will show that, that the roof was commencing. 20 30

As far as the tower was concerned, I climbed the ladder and went up the tower.

Q. That is the unloading tower? A. That is the unloading tower.

Q. Before you pass from that, what was the chance of these upright posts in a building of that kind used for the purpose this building was moving or shifting? A. There is every chance. If they are maintained well and looked after every year and thoroughly maintained you can keep up with them, you can renew them, but if you let them go for a year or two the superstructure starts to go and then it is a pretty expensive job to get it back.

Q. Did you find evidence of that? A. Yes, I did. And the floor had been concrete at some time, there was patches of it, and the roof had got sunk so that the water poured through the holes. 40

BY HIS LORDSHIP: Q. What do you say about the roof? A. The roof had holes in it, the roof covering was entirely perished.

Q. What do you mean by entirely perished? A. Well it was missing and had perished; it was just ready roofing, felt, you know, and it was missing and rotted and some of the boarding was broken as well and the water had

teemed through and was lying in pools of ice on that day I was there, I think February, 1927.

BY MR. TILLEY: Q. Was that the first time you had been in it? A. No, I was there in 1926. The date of the valuation, I have it here. It was June 11th, 1926.

Q. That would be some three or four months before the expropriation? A. Yes.

Q. And did you note the condition then? A. Yes. On the 11th and 12th I went over the whole thing.

10 Q. Now then will you tell the condition then? A. Well that was practically the same.

Q. Yes? A. Practically, yes. There had been no repairs or upkeep.

BY HIS LORDSHIP: Q. Did you find any rotting wood there? A. Well, no, I did not. Not to a great extent, sir. The chief damage was done with displacement of the structure.

BY MR. TILLEY: Q. That is to say by this shifting? A. Yes. The posts were sound enough, the majority of them, they had been renewed of course at intervals.

20 Q. Well now then let us deal with the equipment. You are going to describe the tower. What about the tower? A. Well I thought that very unsafe. I hadn't got my disability then, I could climb and walk around.

Q. What is your disability? A. Well I have a stiff leg now and I would hesitate to climb up there now.

Q. Well come along? A. Well I have been used to those structures and to climbing around like that and I felt that it was dangerous up there.

Q. Why? A. Why because the whole thing was shaking, the runways were shaking, and I wouldn't care to work around up there.

Q. The shaking due to what? A. To the flimsy nature of the structure.

30 BY HIS LORDSHIP: Q. That is the unloading? A. Well that is the runways overhead and leading from that into the shed.

BY MR. TILLEY: Q. And the equipment, what do you say about it?

BY HIS LORDSHIP: Q. Just pardon me a moment: I was shocked by the witness Mitchell, what he said about the durability of timber in a building like this, lasting indefinitely with certain repairs? A. I beg your pardon?

Q. He said it would continue practically indefinitely, was his expression? A. A frame structure of that kind, my Lord, it is quite possible to rebuild it piecemeal; it costs maybe three or four times as much but you can renew a piece at a time or a board at a time; it isn't very economical to do that but it can be done, but a brick building you couldn't do that kind of work, but a
40 frame structure you can.

Q. By new material being put in from time to time? A. From time to time.

BY MR. TILLEY: Q. Now then we come to the equipment? A. The boilers were very old. One of them had been looked after pretty well though with tubes so it was in working order, but it was very very old. The smaller one was practically finished.

BY HIS LORDSHIP: Q. There were two? A. Yes.

Q. You say the smaller boiler was finished; what do you mean? A. Well it was practically worn out.

Q. Was it in use? A. In use, yes.

BY MR. TILLEY: Q. Yes? A. The other small stuff, items 2, 3, 4, 5 and 6 there, I have taken them largely as being up for a period of twenty or thirty years and the depreciation on that kind of machinery is very—that is the book depreciation is from anything from fifteen to twenty-five years and I have depreciated them on that value. There is a steam engine there.

BY HIS LORDSHIP: Q. That is item No. 3? A. Well that was so old they couldn't get parts for it. I think it was secondhand when it was put in and it had been there over thirty years. And the hoisting drums one of them was home made of second hand material. 10

The coal hoist is the only recent installation of machinery and that I believe was new thirteen years ago.

Q. You have jumped down pretty rapidly there from the steam engine; you are down to item 9. What about the intervening ones? A. Well those are—

Q. What was the state of repair or condition? A. Well they had been up there for over thirty years and I just depreciated them about fifty percent; I thought that was fair. 20

BY MR. TILLEY: Q. Yes? A. The electrical equipment is part of the installation of coal hoists. That was put in the same time.

And cable for the electric light in the yard, that was put in at the same time as the coal hoist. We agree upon the replacement value at \$175 for that and I allowed \$100 for it. Some cables were used to tie back the hoist house, the tower.

Q. The tower—? A. The tower, back through the shed, and I depreciated those fifty percent because they have a short life—cables.

Boom and trolley was new I imagine when the hoist installation was put in. There was a steel boom and I would think that owing to its length it would when it was unloading shake the tower pretty badly. In fact the engineer told me— 30

Q. You may not say what the engineer told you? A. No.

The track was a small industrial track that the cars ran down, the small distributing cars went down, cars overhead, and I depreciated that fifty percent too.

The gasoline pump in yard, that is \$100 depreciated to \$60.

Electric power cable at the south end of the shed from the T.E.L. Company's premises to the west hooking up with the electric hoist installation, that was \$200 and I depreciated that to \$150 for thirteen years. 40

The erection costs I calculated and I depreciated that with the rest of the machinery, as being part of the machinery.

So I think that covers it.

Q. Well now, Mr. Hole, can you tell us just what part of that machinery or building, including tower and so on, would have to be moved out to the front of the lot if there was more filling done out in front? What part could be left north of Lake Street and what part would be useless north of Lake

Street if that land were filled? A. Well they would have to move the tower, they would have to dismantle the present tower and machinery, take it out and reerect it on the new face of the dock.

Q. And what do you say as to feasibility of that? A. Well they could use part of the old lumber and so forth and they could certainly use the machinery, but then they would have to pile it on the dock part there and—

Q. Pile it, you mean support it? A. No, I mean the coal and material.

Q. Pile the coal? A. Yes, they could.

Q. Pile it on the dock? I don't follow what you are meaning by that?

10 A. They would have to distribute it from this tower; after they hoisted it from the ship's hold to the hopper they would have to distribute it over the whole of this new made land.

Q. That would involve a new scheme of distribution? A. Yes, of distribution.

Q. And would it be a feasible scheme, to move the tower out for that purpose, or what do you say as to the value of such a tower to move? A. No. It wouldn't be feasible, not for this coal on a self-unloading basis.

20 Q. We are coming to that in a moment; I don't want to get the two things mixed up. I am assuming that operations would be carried on as before but from a different location. Then what? A. Well, if they wanted to stop with the shed there, this new shed, they would have to cross Lake Street.

Q. And what do you say as to the feasibility of moving that tower out the front, or would it be cheaper to build a new one or what, or what is the situation? A. I would think so; I would never advise moving the tower out to the new dock face.

Q. Even if the operations were carried on the same way? A. No.

30 Q. Well now what do you say as to the modern method of handling coal by water? We have had references to it; I wish you would describe that. First describe the old, as carried on at a plant of that kind, and then describe the new? A. I don't think there are any plants in the city at present that are equipped for handling United States anthracite coal in sheds by water and there has only been about four loads of U.S. anthracite brought over in five years to store at the dock possibly. One of the four merchants of the city did that but it is not the practice to store anthracite in the open; it has to be screened before it is ready for domestic sale and it has to be bagged; as a rule it means that the coal has to be lifted to some overhead active storage and by gravity screened and bagged and sent out. Well there are no waterborne sheds now and it is a question—

40 Q. Why, isn't this a waterborne shed? What do you mean by that is what I want to get at? A. For waterborne coal I should say.

Q. Why isn't this a shed for waterborne coal? A. This was before; it is not there now.

Q. I am taking this one. This one was a shed of that kind, that you have described? A. Yes.

Q. And are there any others in Toronto or were there others? A. Yes, there were others.

Q. At that time? A. When, 1926?

Q. Yes? A. Milnes were just closing up.

Q. I mean about that time? A. Yes. Milnes and the Elias Rogers estate.

Q. We will come to those in detail later, but you say that there were other sheds, and the operation was carried on how? A. There were four other sheds and the operations were carried on in a similar manner.

Q. What was the operation then? You take the coal out of the boat how? A. A clam bucket dropped into the hold.

Q. Into each hatch? A. Yes, into the ship. That was raised and 10 discharged into an overhead hopper; then that was discharged from the hopper by gravity into small trucks varying from three-quarters of a ton to a ton and a quarter.

Q. And these trucks would be on the ground level? A. No, no, up above, and the tracks were all up above too; from twenty-six to thirty feet high, and they were generally about twenty-two inch gauge tracks and there were three or four tracks, covering the whole area of the shed, so that these little trucks could drop it just where they wanted to.

Q. And their carrying capacity would be how much, in weight? A. Rogers' were three-quarters of a ton and these were a ton. 20

Q. Do you mean the Standard Fuel were a ton? A. Yes.

Q. And then these would be up that high in the building? A. Yes.

Q. And that was in that building that you have described about the posts being out and the roof being bad, and so on? A. Yes.

Q. When it is in the truck what is done with it? When it leaves the truck where does it go? A. It has an automatic dumping trip which strikes a little stop and the side opens and it drops to the bottom. If the shed is empty it drops twenty-six feet; if it is filled it doesn't drop so far.

Q. That is to say it drops from that elevation to wherever the coal or the ground is? A. Yes, on the ground; there was some that had a less drop 30 of ten or twelve feet into the overhead pockets.

Q. What are those for? A. That was for screening, or rather for serving the bags.

Q. It has to come into the hopper to serve the bags? A. Just a small proportion of the whole tonnage.

Q. That is to say these cars running overhead that way could put it in the pocket for going directly into the bags or drop it to the floor if there was no pocket ready to receive it? A. As a rule.

Q. Now then I just want to get where in this operation is the screening which was described before it is put in the bags and sold? A. Yes. 40

Q. Where is that? You haven't told us where that enters into the picture? A. Well there is a rescreening plant, that is a cylindrical screen that separates the different sizes, that was in the south end of the shed.

Q. That is at the unloading tower? A. Yes; but it is self-screened by gravity before it enters the bags.

Q. In this pocket? A. Yes, at the mouth of the pockets.

Q. Well, then, if it is dropped to the floor instead of into the pocket

how does it get back so as to be in the pocket? A. It is reclaimed again; they generally had a large shovel driven by either steam, or some of these had horses, along the track, to shovel into a hopper on the ground and it was elevated into the pocket.

Q. And it was elevated into the pocket or into these trucks and carried to the pockets? A. No, lifted into the pocket.

Q. Into the pocket and in the process screened, is that what you mean? A. Yes.

Q. Well now then, that is the method that the Standard Company had 10 prior to expropriation? A. I think so.

Q. Now will you describe to His Lordship what this other method is that is now being developed or has arrived, I don't care which is the proper way to describe it? You go on and just tell me about it? A. Coal dealers have for a long time wished to get away from the expense of big sheds. In 1925 they were looking around to experiment with the open coal pile and small individual elevators, portable, and small pockets so that they could save the expense of big sheds and use American anthracite in the outside piles the same as they had used the bituminous coal.

Q. Do you mean by that instead of having it in the shed it would be in 20 the open? A. In the open.

Q. And then that it was picked up from there, no matter how it was done, and it would be put into a portable pocket that could move around? A. Yes, or a series of small fixed pockets.

Q. Just tell us about that? A. In that case, if they were able to do that, the same as they handle Welsh anthracite and bituminous, these self-unloading boats with a hundred foot boom, and they are making them with a 200 hundred foot boom, you save all the expense of unloading machinery; they would come into their dock and with their own crew unload this cargo with a boom in which there was a cleated belt that would take it up from the cargo 30 and elevate it as high as it was necessary; they could start near the ground so that there wouldn't be much breakage and as the pile raised the boom would be raised and with a 200 foot boom they could reach 160 feet from the dock face, which would be the center of the pile.

Q. That is to say the boom was long enough to carry it so that the pile would be created 150 feet or so away from the boat? A. To the center of the pile, so that it was both sides of that you see.

Q. You say that is the way of handling Welsh anthracite? A. Yes.

Q. Where is that done? Have you seen this done? A. No, I haven't seen that done but I know it is done.

40 MR. OSLER: Well where is it done if he hasn't seen it done? I thought he was describing something that he had seen.

Q. Well, as to the use with Welsh anthracite, have you seen this? A. Well I said,—I mean that either Welsh anthracite or bituminous or any kind of coal can be loaded the same way.

Q. Or unloaded? A. Or unloaded. No, not unloaded.

Q. Well unloaded from the boat? A. Unloaded from the boat, yes.

Q. And bagged? A. Well that would have to be— The pockets could be filled from the same boom at the same time, but you would have to have some reclaiming to get it up to pockets.

Q. Have you seen that operation carried on? A. Not with the self-unloading boat, no. Q. But it is quite well known now, is it, the self-unloading boat? A. Yes.

Q. And how long has there been such a thing on these lakes? A. The small ones I believe four years.

Q. Now then have you in connection with your work had to make tests to ascertain the loss in coal in handling it by boats compared to handling it by 10 trains of cars? A. Yes, I have.

BY MR. OSLER: Q. Are these tests from your experience, or you just heard it? A. No, no, I made them myself.

MR. OSLER: He purported to be a coal expert and then it turned out he hadn't seen that.

MR. TILLEY: We all know about these self-unloading boats now.

BY MR. TILLEY: Q. Just describe it. I don't know whether I have gone beyond what I should in this, but this is your own experiment, is it? A. Yes.

Q. For whom? A. For the Elias Rogers Company, Montreal, and I 20 know of course their Berkeley Street yard operations pretty well. I was with them two years and designed all their buildings since then, both coal handling buildings and other buildings as well, and I know that that was the reason why they quit getting in American anthracite by boat in 1920, because of the degradation.

Q. When did they quit bringing in anthracite coal by boat? A. In 1920.

Q. That is in Toronto? A. In Toronto, yes.

BY HIS LORDSHIP: Q. The Elias Rogers Company, did you say? A. Yes, the Elias Rogers Company Limited. 30

BY MR. TILLEY: Q. And where was their plant, or their dock? A. At the foot of Berkeley Street.

Q. Now you were going to tell what results you found on making comparison? A. I took stock in a very very big shed of the Ogdensburg Coal Company when the Rogers people took it over and I think there was 50,000 tons in there—the shed was of 50,000 tons capacity and there was about 30,000 tons in there. There was in this twenty percent of fine dust, barley and buckwheat in that big stock of stove size and larger coal, egg coal. I wouldn't say that was all over but it was fair to say fifteen percent all over. Well, that was very very much worse than the Toronto plant of Rogers, but 40 ten percent was a fair percentage to allow; I weighed this other, so I know. And I also remodelled their yard for them; they had a tower, an unloading tower on the Lachine Canal for unloading boats just the same as the Standard Fuel had. We got them a couple of tracks put in there and that was put in and the shed remodelled; they never had any coal in by water after this.

Q. That is, you mean railway tracks? A. Railway tracks. And I screened one of these fifty ton cars, the first car that came in after the shed

was remodelled and after the tricklers were put in to economize breakage and there was three-quarters of a ton of screenings over 7/16 by 7/16 mesh out of the fifty ton car; that included the findings that were in the car; that is one and one-half percent as against ten.

Q. That is one and one-half percent, you mean, degradation, is that the word you use? A. Screenings you see over a 7/16 mesh screen; that is dust, barley, bird's eye—

Q. What do you mean by bird's eye? A. It is a special small size coal.

10 Q. And whatever would come through this screen amounted to one and one-half percent, is that it? A. One and one-half percent.

Q. And what is done with that? A. Sold.

Q. Sold as what? A. Sold as screenings, or nowadays for blower coal for domestic use; I think they sell it about \$10 a ton.

BY HIS LORDSHIP: Q. What kind of coal? A. Blower coal for forced draft furnaces.

BY MR. TILLEY: Q. Is that what Mr. Marshall was referring to? A. Yes.

BY HIS LORDSHIP: Q. That is a furnace that has a blower on? A. Yes. Otherwise it would sell for about—

20 BY MR. TILLEY: Q. Well possibly that is speculating. They do sell it for that purpose? A. Yes.

Q. And therefore it is of value? A. Yes.

Q. And then you say that is as compared to ten percent? A. Yes.

Q. How did you get your ten percent?

A. Well, Mr. Barber, who was the General Manager of the Elias Rogers, he told me—

MR. OSLER: I object to that.

30 Q. Was this just something you were told afterwards? A. Ten percent, yes, but it is what I think to be true, because I had discovered fifteen percent in the other and I saw the state of this coal and know my— Well I thought that was true from what he said.

Q. I am not asking what he said?

MR. OSLER: But the witness is volunteering.

Q. I want to know what you saw yourself that justifies you in making that sort of answer? A. In my opinion it was ten percent.

Q. Due to what? Opinion based on what? What you saw? A. What I saw.

40 Q. Well what did you see? A. Well I saw the plant operating over a period of ten years, I was there very often in the yard, I put up buildings, there for them.

Q. You saw these operations being carried on? A. Yes.

Q. And then what condition did you find? A. Well, the amount of screenings that seemed to come through the screens from the coal just in my mind corroborated what Mr. Barber said.

Q. I am not asking what he said at all or what it corroborated; I am asking what you saw and whether you are able to form an opinion as to the

percentage that was coming through the screen when it came by? A. In my opinion there was ten percent.

Q. You saw them operating? A. Yes.

Q. Now what other companies, or do you know, and if you do say so, and if you don't just leave it, what other companies than the Rogers had been operating by bringing in over water and stopped? If they didn't stop I don't want to hear about it. A. The Conger Company had a similar plant and they gave up there around in 1918.

Q. And didn't they bring in coal by water after that? A. No. They had no dock. 10

Q. They had no dock after that? Did they have yards? A. Oh yes, they had yards.

Q. About Toronto in the same way as the Standard? A. Yes.

Q. Is there any point to comparing one of those companies to the other, or were they all operating in the same way? A. All operating in the same way.

Q. All operating in the same way, with the yards about the city? A. Yes.

Q. Well then did the Milne Company bring in coal by water? A. Exactly in the same manner. 20

Q. When did they do it? A. Early in the summer of 1926.

Q. And for how long, do you know? A. That is when they quit, sir.

Q. Well was that due to the expropriation? A. Oh yes.

Q. If it is I don't want to bother? A. Yes, that was due to expropriation.

Q. Well now have you had to do, and if you have in what way, with dock construction in the Toronto Harbor? A. Yes, I was with the Toronto Harbor Commission from 1912 until 1918 and from 1915 till 1918 I was superintendent of construction and we were putting in cribs from Bathurst Street to Peter Street, those wooden cribs. 30

Q. And I understand wooden cribs that are in a way shaped to suit the contour of the bottom, that is the rock? A. Yes. They are close face cribs on all four sides tied back at intervals from eight to ten feet and scribed to the bottom on soundings taken carefully, and when these cribs are, when the first course or first two courses, if necessary, are shaped to fit the rock bottom, you see wood is very elastic and it will settle where a concrete structure would not settle.

Q. What have you to say as to the comparison of wood cribs for building up a dock wall as compared to the concrete method suggested by Mr. Mitchell? A. Well of course the concrete caissons and cribs are a comparatively new departure. Wood if it is kept below water will last forever—well hundreds of years anyway. 40

Q. If kept under the water? A. If kept below water, and being elastic it is bolted together, there is a certain give, and it is sunk and weighted with stone and it will settle together a little better than the other structure.

Q. Do you know of your own knowledge, what, speaking generally, the bed is in the Toronto Harbor? A. Yes, it is shaley rock, and it varies;

sometimes only eighteen inches of shale and then you get hard rock, and sometimes four feet of shale first.

Q. And are these laid on shale? A. Laid on shale. If it is too uneven to fit a crib to it, it is generally blasted out, or clammed out if it is soft.

Q. A witness spoke of dredging? A. Well you dredge the sand or the muck or the overlay, whatever is on top of it.

Q. But you don't do that with the rock? A. No, unless it was very soft and it was very very uneven and you wanted to level it off.

10 Q. Well then how would you get it level? By what process? A. Well sometimes a dipper dredge with teeth will take it out the same as taking hard clay or anything like that, but if it is harder you would have to blast it.

Q. Well then do you know anything about the cost of the work? A. Yes.

Q. By experience? A. Yes. For this last three years I have been in a consulting capacity to the Parks Department of the City of Toronto and I have made estimates and plans of reconditioning this sea wall from Dunn Avenue practically on the west to Bathurst Street.

20 Q. It is one thing to make an estimate and another to have the work done and have the estimate turn out to be right. Have you had that experience from the work being done? A. The work is being done at present, although it was taken out of my hands, but the costs are coming out all right, the costs are coming out just about what I had.

Q. When did you make your estimate? A. In February this year.

I beg your pardon, that was a later one. I think it was in November. But I have made several during the last three years at different times.

30 Q. Well now what do you say if anything as to the estimate given as to the cost of doing this proposed work by Mr. Mitchell, or have you had time to consider his exhibit? A. Well at a glance I wouldn't recommend a concrete crib in that location. As I say, the wood is so much more elastic, and at the same time because I think it would be much more expense. This reinforced steel on top of doing the massed concrete would weigh from ten to twelve tons and that is expensive to handle and to put it between the cribs—

Q. I don't know whether that is quite clear. What are you describing now? Let us visualize the work as you are describing it? A. There is a series of cribs with slots in them and concrete stoplogs dropped into these slots and above these slots and on top of the face of the cribs there is the massed concrete superstructures.

Q. That is to say you have these cribs and then you have these pieces between the cribs in slots going up on the outside and inside? A. Yes.

40 Q. And then on top of that when the work is completed you have some sort of massed concrete? A. Massed concrete dock face. But if the cribs are below water level I think it was suggested that a reinforced concrete pre-cast beam should be put on so that it would raise it above the water and then the massed concrete in forms put on top of that, but that would be about sixteen feet long and two feet deep at least and five or six feet wide which would weigh anything from ten to twelve tons, and it would have these anchors sticking out of it, that is for the massed concrete up above, so that I think in

all it would be a very expensive proposition and I don't think it would be very satisfactory.

Q. At any rate could you say anything about the expense of doing the work at this site, even say that you adopted their prices, or adopted your own for the wooden cribs? A. I made an estimate of filling in the whole lot out to the New Windmill Line under two schemes, one, to fill the whole of the width of the lot, and another to allow a slip on the east side.

Q. Of how wide? A. I allowed eighty feet. I think that that was the width of the Welland Canal locks and you would be prepared for all emergencies, if the city ever filled in Church Street slip you would have an eighty foot slip. 10

Q. And have you any reason to change your view as to whether that would be the right width of slips to use? A. No.

Q. Now dealing with that, have you your estimate? A. Yes. It is in that, what you had.

Q. Have you that statement? A. You have a copy of this plan, both of them.

Q. We can have that supplemented with a copy later and you can give us this. A. One method of doing this is shown on plan here, Mr. Tilley, A.

Q. Now, Mr. Hole, will you proceed? You are dealing with A first, 20
 are you? A. Plan A first, and this one method of doing this work is shown, plan A, with the whole of that area colored pink; the yellow portion is Lake Street, which will show the difference, although to be practical we have to fill Lake Street—for economy's sake and to be practical we have to fill Lake Street together with the other area, whether we are to be compensated for it afterwards, and that requires 248 lineal feet of a retaining face on the west side averaging approximately twenty-nine feet deep, 206 lineal feet on the south side thirty-two feet deep and 644 lineal feet on the east side averaging approximately twenty-six feet deep. Those depths taken from the top of the dock to the rock. The dock is six feet six inches above 245. 30

Q. And what is the water line generally? A. Well we work from 245 and we keep the crib two feet lower than the water level and then put a precast concrete block on the top that raises it above the water and then place the forms on the top of that precast block and cast the remainder of the concrete to the required height, and the finished height we are taking as 251.5, which is 6.6 above the datum, the Harbormaster's datum, 245, to which all these soundings and rock depths and everything have been referred.

Q. Well then having described it in that way can you give us something on the costs? A. I estimated the cost of this work would be \$310,627.50, equal to \$2.63 per square foot, or \$114,653.40 per acre, without taking into 40
 consideration any value for the undeveloped waterlot.

Q. That is to say without allowing anything for the cost of the waterlot?
 A. Yes. That is the cost of the work of filling and retaining the lot.

Q. At what basis do you make that up, present day or 1926 figures, or what? A. At 1926. But I wanted to point out at the same time, sir, that the adjoining owner on the west had the option or the opportunity of filling his dock out to the same line at any time and the city also had the right of filling

Church Street, so that it just emphasizes the fact that they would have the same width of dock face at the end for this extra expensive fill.

Q. You mean on the scheme of plan A if they filled in the whole waterlot out to the outer limit you would be in peril of the owner to the west building out to the same point? A. Yes.

Q. Which would take off your dockage on the west side which is now in front of his part of the property on the scheme? A. Yes.

Q. And then the city might fill in Church Street? A. They had the right.

10 Q. They had the right, which might destroy the use of that for a slip and destroy the dockage on the east side? A. Yes.

Q. And if that were done it would leave you with a dock face of only 203 or 204 feet? A. 206 feet.

Q. And you say this is 1926 prices? A. That is 1926 prices.

Q. And how do you compare 1926 to 1931 prices? A. I would think about thirty or thirty-five percent, today's prices are that much lower.

Q. Do you mean thirty percent off the 1926 there or add thirty percent to 1931 to make it 1926? A. My prices are 1926 and I would say they could be reduced by a third if that were done today.

20 Q. And then is there anything more to say about that? Does that include filling in Lake Street? A. Includes filling in Lake Street.

Q. And do you spread your cost over the balance of the property or do you include Lake Street? A. Over the balance of the property.

Q. And can you tell me, in order to get a comparable figure with what Mr. Mitchell gave us, what that would be on your scheme, per square foot? A. Yes, I can do that, I think. \$2.63 a square foot, the cost of the retention and fill.

Q. And on what scheme do you work that out? Take the question of filling, how do you get at the cost of filling? How do you get your filling?

30 A. Well these soundings shown on the plan A are Harbor Commission soundings in 1923, those are the most reliable.

Q. Those are the ones your answer referred to anyway? A. Yes. Well the average depth of that is thirteen feet.

BY HIS LORDSHIP: Q. You mean to rock? A. No no, from the top of the dock to the average present sand; you see you fill with sand.

BY MR. TILLEY: Q. The silt? A. Yes.

Q. The average thirteen feet, yes? A. And I allowed fifty cents a cubic yard for that fill.

Q. That would be how much in money? A. \$48,002.50.

40 Q. That would be buying it, would it? A. Yes.

Q. That would be getting people to bring it there? A. Yes. You might be lucky and get a small dredge from the Harbor Commissioners at an odd time but you couldn't depend on that, but I would say that you would have to pay something for some of the loads and you could have got a quantity for nothing if you had sufficient time to wait, but fifty cents I don't think is a cent too much. In fact it is fair.

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Q. If you depend on people making you a present of fill you may have to wait, is that what you are saying? A. Yes. As a comparison of that, the fill on the Canada Steamship's we allowed fifty-eight and one-half cents.

Q. How is that? A. The fill on the made land at the old Canada Steamship property was fifty-eight and one-half cents a cubic yard.

Q. Well you mean when was that? How did you get at that? A. I acted for the Terminals in valuing the buildings and the docks and it was settled without going to Arbitration.

Q. What do you mean, it was agreed at that figure? A. It was agreed upon; there was a referee, the three of us, and it was agreed for fifty-eight and 10 one-half cents.

MR. OSLER: Surely that is not evidence.

MR. TILLEY: I am just putting it this way.

MR. OSLER: But my friend certainly may not ask the witness questions and get the witness to volunteer such information as was just given to you.

MR. TILLEY: I think it is quite proper, if I may say so.

WITNESS: It helps in making up my estimate.

Q. Let me ask you this and then His Lordship will rule when you develop your point: In connection with the Canada Steamship Arbitration you and some person else were to make valuations as you and Mr. Mitchell tried to do 20 for buildings and so on here and you had to try to agree and you did agree upon the fill? A. Yes.

Q. As I understand? A. Yes.

Q. And you are merely citing that as corroboration of your own estimate? A. Yes

Q. And your estimate was how much? What was your own estimate? A. Fifty—

MR. HELLMUTH: I submit, my Lord, that is not proper evidence at all. As three gentlemen fixed—

MR. TILLEY: I am not putting it forward in that way. 30

MR. HELLMUTH: You are putting it forward as corroboration.

MR. TILLEY: He was giving it as his corroboration, but putting it that way I don't press it.

MR. HELLMUTH: I submit if we are going into that then we have a perfect right to find out what was given by another Arbitrator, after this was done, or by another referee, and that would not be evidence before Your Lordship.

MR. TILLEY: I am not pressing it. If I had known exactly what he was going to say about it I would not have introduced it.

MR. OSLER: Then it follows from that it should be stricken out.

MR. TILLEY: Well strike it out then. 40

HIS LORDSHIP: I would not pay very much attention to it anyway. Your evidence was fifty and you want to give something in corroboration.

Q. Will you take plan B and give it of your own knowledge, Mr. Hole, and we will get along quicker. We are not asking you to present the whole case, just your own part of it. Now plan B, and make it short and quick?

A. In plan B we fill to the New Windmill Line leaving a slip eighty feet wide on the east side. The expense, computed for a new acreage, that is 1,649

acres, shown in pink, would be \$269,156.50, equal to \$3.74.7 per square foot; that is, \$3.74.7 per square foot or \$163,236.74 per acre without any allowance for the waterlot valuation.

Q. Yes? A. The remaining fill would only be 124.5 feet wide, which would make it a very unhandy shape for operating.

Q. That is to say 125 feet would be the full width of the property?
A. Left.

Q. After taking eighty feet? A. Yes.

10 Q. In that connection what do you say as to whether it would be a better arrangement to make your slip fifty feet and throw thirty feet more into the land? A. Well every foot that you could add is helpful.

Q. Every foot that you can add to the land? A. Yes.

Q. And when you have got it in the land every foot that you can add to the slip would be helpful I suppose too? A. Well you are safer by having the extra width of slip.

Q. Just a matter of whichever you give it to, slip or land? A. Yes.

Q. The lot itself is just 204 and you cannot make it wider by filling it?
A. No.

20 Q. Is there anything else you want to say about plan B? A. No.

MR. TILLEY: That is all, thank you.

EXHIBIT 36: Plan A, produced by Mr. Hole, "Showing possible retention of fill of waterlot south of lot 31—previous to 1926 occupied by the Standard Fuel Co."

EXHIBIT 37: Plan B, referred to by Mr. Hole above, of similar description to plan A.

CROSS-EXAMINED BY MR. OSLER:

30 Q. What is your present occupation, Mr. Hole? A. I am practising in the city as an architect and engineer.

Q. And are you under retainer from the Harbor Board? A. Yes.

Q. And when did you cease to act for the Harbor Board on salary? A. Pardon me, did you say am I under retainer with the Harbor Board?

Q. Yes? A. I thought you meant the Toronto Terminals. Not from the Harbor Board, no.

Q. Just the Toronto Terminals? A. The Toronto Terminals, yes.

Q. And when did you cease to act for the Harbor Board? A. In 1921 or 1922. I have got it here some place.

Q. I don't want it exactly. When did you examine the buildings of the Standard Fuel first? When did you first see them? A. June 11th, 1926.

40 Q. You hadn't ever been on the property before? A. Oh yes, I had been on it, walked through to there, and I had seen it from Milne's of course across the Church Street slip.

Q. And you had seen it operating? A. Yes.

Q. Seen it handling large quantities of coal? A. There were large operations, yes.

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Q. And seen it handling large quantities of coal? A. Yes, from the boats, yes.

Q. But you hadn't actually been on the property? A. No, not until June 11th.

Q. Till June 11th, 1926. And were you then sent down by the Toronto Terminals to examine it? A. Yes.

Q. And you were sent to make notes of what you found there? A. Yes.

Q. Did you make notes? A. Yes.

Q. Have you got them? A. No, I haven't. 10

Q. Where are they? A. Well when Mr. Mitchell and I agreed to establish replacement value—

Q. Just a moment; a simple question: Where are your notes that you made in June 1926? A. They are in the office.

Q. Can you get those for me? A. I can get them.

Q. And when can you let me have those? A. To-morrow.

Q. Could you let me have them this evening? A. Well if— Yes, I think I could have them this evening, I don't think I will let them go out; they are my instruments of business and I would rather not let them go out; they are mine, I don't have to put them in. 20

Q. You don't have to put them in? A. No.

MR. TILLEY: We will bring them anyway.

HIS LORDSHIP: Bring them here tomorrow morning and we will see. They may wish to ask some questions with regard to them.

Q. Did you make these notes in detail covering all the buildings and all the machinery at that time? A. Enough for my own information, yes.

Q. That is to say did you make a note of the condition of each particular item in the buildings? A. Yes.

Q. And the same with regard to the machinery? A. No, not with regard to the machinery. The buildings yes, but not with regard to the machinery. It was such a dirty old place that I just took a general glance, and we had—there was an inventory of the Standard Fuel, that I went through it and checked it, it was perfectly all right so I am quite agreeable to use that if we can, of the Standard Fuel, for what there was there and the replacement value of it. 30

Q. Well then, did you make a detailed examination of the machinery as you did the buildings? A. No, not such a detailed examination of the machinery.

Q. So that may I take it that what you did was to make a pretty careful check-up on the buildings and take a general look around the machinery? A. Yes, that is right. 40

Q. That is about what you did? A. Yes.

BY HIS LORDSHIP: Q. Could you say anything of your own knowledge of the machinery? Do you know anything about the machinery, its value? A. Well I would get list prices for replacement and then take into consideration the number of years it was in use and then on that basis.

BY MR. OSLER: Q. And I suppose you have been consulted about

the amount that should be provided for depreciation on buildings? A. You mean in this case?

Q. Oh, no, I mean generally? A. Oh yes.

Q. And what is the usual rate of depreciation that you take, on a brick building for instance? A. Well, we have to use a little commonsense. There is no set value. You take a period of years, give it a life of a period of years, according to the type of building, and then you use a little commonsense in taking off the depreciation.

Q. And with a wooden building what do you do with that? A. The same, according to the way it has been used—the way it has been maintained and the condition it is in.

Q. What is your ordinary rate of depreciation for a wooden building? A. According to the way it has been maintained.

Q. But I am speaking of a building ordinarily maintained? A. I would be entirely guided by the condition of that, sir, I wouldn't give any hard and fast rule of depreciation for any type of building.

Q. Have you no amount per year in mind that you use at all? A. No.

Q. None whatever? A. No, unless it were a new building. If I were designing a new building I would naturally give it a certain life which it might last out, or it mightn't, but then the depreciation could be calculated at the start from the given life of the building.

Q. Then in this case I understand you didn't know how old these buildings were? A. My information is the big shed was built in 1881; I don't know. I don't know whether I would be corroborated, sir.

Q. You have no knowledge yourself? A. No. I wasn't in the city at that time.

Q. And you did tell HIS LORDSHIP that in the case of wooden buildings it is quite different from brick buildings? A. Yes.

Q. As a piece wears out it can be replaced? A. Yes.

Q. And you found when you were examining the buildings in 1926 that that had been the practice at the Standard Fuel Company? A. It didn't appear so, sir; all the metal sheeting was missing, the floor was practically missing and the roof was wanting renewing entirely.

Q. When you say the roof you mean the roof covering? A. Well the boards and the sheeting of the roof.

Q. And that is quite a small job, that prepared roofing? A. Well you would have to renew about fifty percent of the boards.

Q. How much did it cost a square foot—?

BY HIS LORDSHIP: Q. Why? A. Well there were gaps that you could put your hands through in the joins. A photograph shows that very plainly, I think.

BY MR. OSLER: Q. What had happened to it? Had it rotted away? A. No, I don't think so.

Q. Or broken? A. I don't know whether it had shrunk or whether it was due to the movement of the roof.

Q. How much would it cost a square foot to renew that prepared roofing, about? A. About fourteen cents.

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Q. About fourteen cents? A. That is the sheeting and the boards.

Q. That isn't what I asked you, the sheeting? A. The felt roofing, you meant.

Q. Yes? A. From four to five cents.

Q. And that is the kind of thing that is in ordinary practice done in buildings of that kind? A. Yes. Part of it was ready roofing, at four to five cents, and a part was tar and gravel at around seven cents.

Q. And the timber work apparently showed no signs of rot? A. No, I wouldn't say that I saw any rotten timber there, no.

Q. As a matter of fact wasn't your attention called to the fact when some of the posts were sawn off they were in particularly good shape? A. Yes, I know they were. 10

Q. And when you say that there had been some movement and disruption that is the kind of thing which you would expect in any wooden building in which machinery with these heavy loads is operated? A. Yes. I wouldn't say the machinery had very much to do with it; it would be the coal load against the posts bending the tie rods; that would be it.

Q. The machinery under load, I suppose? A. Yes.

Q. And when you find a certain amount of twisting like that I suppose that one of the things to do is to straighten it up from time to time? A. But when the joists and the roof beams all depend on these posts and they once start a sagging and sinking movement it is a pretty hard job, you want to strip the roof before you can do it. 20

Q. And it had evidently been done before? A. Well, no, I don't think it had. I don't think that had been done before, that is on such a large scale; small maintenance was done no doubt.

Q. Do you mean to say that those buildings, built according to your information as early as 1881, had stood in that condition until 1926 without any replacement or repairs correcting that? A. No. If the replacements were made early or when necessary part of the time it would be perfectly all right, but if they are left for three or four years that is a different thing. 30

Q. Quite. And up to how long before you saw that in 1926 would you say that those buildings had been repaired or replaced? A. Well, I wouldn't like to say that, sir. Evidently the sheeting outside, the metal sheeting, was entirely missing; there were pieces as large as your hand there; the concrete floor, there were just patches of that left.

Q. I wasn't speaking about the concrete floor; I was speaking about the construction of the building itself? A. Yes. No, I couldn't see any evidence of repairs that had been made lately.

Q. And how long would the building stand up under such twists if the repairs were not made. A. Well they might stand three or four years, they might, or they might collapse in one year. I have seen a shed that went that way a 7,000 ton shed that went that way in one year. 40

Q. But this shed had not? A. Pardon?

Q. But this shed had not? A. It hadn't collapsed but it was just, to my mind, just ready to.

BY HIS LORDSHIP: Q. This shed just ready to collapse? A. Well, if it wasn't entirely stripped and remodelled.

Q. Was that because of the roof being defective, the want of repair, or because the structure had moved? A. The structure had moved.

BY MR. OSLER: Q. And yet apparently it had stood what weight was put on it by moving these hoppers of coal carrying a good many tons and a great weight of snow for a great many years and yet it was all ready to go in 1926, was it? A. Just about that.

BY HIS LORDSHIP: Q. What do you mean by all ready to go? A. 10 Well I would say, sir, unless it was seriously taken in hand and practically totally remodelled that it would be unsafe to operate.

Q. What do you mean by remodel? A. Well the roof would want stripping.

Q. I understand the roof, but what else? A. And all the beams. And you see the shed was ninety-five feet wide and the roof is quite a—there is construction supporting the roof.

Q. I am not so much concerned with the roof, but I want to know about 20 the pillars or whatever it was that held this building together, were they out of alignment because of gales of wind or by lack of repair and movement of machinery, or age, or what do you call it? A. Because of the loading. You see the coal was dropped all around these cedar posts so they would give a little. If the tie rod sagged they would move and with the load that is on them like that if they give ever so little the roof follows and it stays that way until the load is taken off.

Q. Can you give any particular instance apart from the hole in the roof where you saw the building in that condition? A. Yes sir. It looked to me as if it were out of place.

Q. I know, but what I want to get at (and I am sorry to interrupt you, Mr. Osler) give me evidence of something that was out of place, never mind 30 the roof? A. Well the roof.

Q. Tell me one thing? A. The poles were out of line.

Q. Give me the photographs, please. Do you mean the poles referred to—? A. The posts.

Q. Referring to Exhibit 24, No. 4, what posts do you refer to there? A. Well this was the long end of the shed. (Indicating.)

Q. Referring to No. 4 of Exhibit 24, and what do you describe these uprights as? A. Posts.

Q. Now where does it show there? A. It is not particularly shown; this is the best side of the shed.

40 Q. Looking north? A. Yes.

Q. And this was all right? A. No. This structure on the top, you can't see it there (indicating), this was just sitting on these posts and that had gone.

Q. What had gone? A. This structure had moved.

Q. You saw that for yourself? A. Yes.

Q. In 1926? A. In 1926.

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BY MR. OSLER: Q. Which part do you say had gone in that photograph No. 4, Mr. Hole? A. Part of the structure above these posts.

BY MR. HELLMUTH: Q. Isn't it shown in the photograph? A. No.

BY MR. OSLER: Q. The photograph doesn't show it at all? A. No. I didn't have this taken. These were given to me; this was the Terminals had them taken and they were just to show progress of demolition; it doesn't show any part—

BY HIS LORDSHIP: Q. Would the photograph show? A. It wouldn't show in a dark shed.

BY MR. OSLER: Q. But as far as the structure itself or any poles it was all right? A. Yes.

Q. No rot shown at all? A. No.

Q. And these poles, looking at this, didn't show any signs of sagging? A. No.

Q. Therefore you are not speaking about this end of the building when you are speaking of the building having sagged? A. No.

HIS LORDSHIP: The north end.

Q. That is the north end. A. There is another photograph, I think 7 or 8, that shows poles.

Q. These are both taken in August 1931? A. That is quite all right; it shows the poles that were also in that photograph there where you couldn't get the daylight through.

Q. Well now then you refer to No. 8, those aren't in; this was a photograph taken in 1931. What do you say that that shows. A. This is (indicating), that post there is an enlargement of that.

MR. TILLEY: When you say "that post there" give the number.

WITNESS: This is an enlargement of that post.

HIS LORDSHIP: We will adjourn now till tomorrow morning.

—4.30 p.m. Arbitration adjourned until 10.15 a.m. Friday, April 8th, 1932. 30

—10.15 A.M. FRIDAY, APRIL 8TH, 1932, RESUMED:

JOHN HOLE CONTINUED:

CROSS-EXAMINATION RESUMED BY MR. OSLER:

Q. Mr. Hole, have you the notes that you made in June 1926? A. Yes sir.

Q. Let me see them, will you, please? A. (Produces two note books). They are very rough. The notes on the buildings were made in June 1926, and I have a book with some notes on the machinery made in May 1927.

BY MR. TILLEY: Q. Are the books all about Standard Fuel property? A. Only those pages that are marked. 40

BY MR. OSLER: Q. I assume not, because some have been put down

with elastics. A. They are just rough field books with quite a lot of other matter in them.

Q. Well now Mr. Hole, let us take these items up: The office building was in actual use by the company when you were there? A. Yes sir.

Q. And you say that that was in bad shape? A. Yes, it was.

Q. That is, as I gather it, the wood was all right? A. Well you couldn't see the wood, of course you would only see the outside of the place and the plaster inside; you couldn't see the frame or the sills, that was all covered.

10 BY HIS LORDSHIP: Q. You are speaking of the office now? A. Yes the little office building.

BY MR. OSLER: Q. But the bad shape consisted of the metal work on the outside? A. The metal construction on the outside, and the floor was bad also, and the partitions, the plaster was cracked, and it was an old building?

Q. Of course, it was over thirty years old, but apparently serviceable for the purposes of the Standard Fuel Company? A. Yes.

BY HIS LORDSHIP: Q. What do you say about the partitions? A. The partitions, the plaster was cracked.

20 Q. And what else? A. And that shows settlement or shrinkage.

BY MR. OSLER: Q. How much would the outside metal sheeting cost? A. Will you take this report, sir, that is the one which your engineer gave me, which did away with these notes; I scrapped my notes and accepted his own report as to quantities and so on, so that those rough notes are not much use to you.

Q. Did you have some notes? A. I made notes. I elaborated those. I made further notes while it was in my memory, from these note books, and made quantities of material from them, and when Mr. Mitchell and I met together he submitted his bill of quantities that is there, that Mr. Osler has, and I checked them and accepted that, which is the basis of our replacement valuation.

30 BY MR. TILLEY: Q. I don't know whether you mean that is Mr. Mitchell's document wholly or that is his document with your—? A. No, it is his document only and I checked it.

BY MR. OSLER: Q. And you are satisfied it is correct? A. Yes.

Q. And now then looking at that, Mr. Hole, will you tell me the area of the sheeting?

HIS LORDSHIP: This is the office.

MR. OSLER: Still the office. A. I haven't got this.

40 Q. Well you have it with that figure? A. 6,100 feet board measure, page 2.

Q. And what does it cost per square foot? A. The metal sheeting?

Q. Yes. A. Twelve cents.

Q. So that if that was in bad shape what would that amount to altogether? A. That would be \$732.

Q. \$732, 1,200 feet at twelve cents? A. I beg your pardon, 1,233 square feet at \$12.

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BY MR. TILLEY: Q. That is sheet metal, is it? A. Sheet metal.

Q. Twelve cents, I think you said, it isn't \$12 a square foot? A. Twelve cents, is \$147.96. Then you put some sheeting paper beneath the metal, about two cents a square foot, so that you bring it up to another twenty-five, that is say \$175.

BY HIS LORDSHIP: Q. All told? A. All told.

BY MR. OSLER: Q. And the roof, you said, of the office was in bad shape.

BY HIS LORDSHIP: Q. Well now when you state the sheeting metal cost so much does that include the labor of putting it on? A. That includes 10 it, sir.

BY MR. OSLER: Q. How much was allowed in the replacement value for that, Mr. Hole? A. For the roofing?

Q. No, for the sheeting metal? A. Well I haven't got those rough notes here, sir, not in such detail; we agreed on all these items and we have the sum of our agreed value for replacement.

Q. Then your note here apparently, Mr. Hole, is: "Office o.k., metal clad frame one storey, ready roof"—

HIS LORDSHIP: What kind of roof?

MR. OSLER: "Ready roof. Span roof bad, very dilapidated, part 12 by 20 8 brick, brick chimney, post foundation; plumbing in bad shape."

Q. And then you have got that marked "To the bay." Does that mean the drain to the bay? A. Yes.

Q. That is what I understand? A. Yes.

Q. It didn't mean that the plumbing itself was in bad shape in the office? A. Oh yes, it was in terrible condition.

Q. But in your note you qualify that "to the bay?" A. I know. That is just my notes; I had it in my head.

Q. But you didn't put that down, and when you state the plumbing was in bad shape in your notes you qualify that by putting in brackets the words "To the bay"? A. Yes. The discharge ran to the bay.

Q. What was the area of the roof?

MR. TILLEY: When you say qualify that, that is not what it reads of course.

MR. OSLER: Yes, that is. That is what it reads: "Plumbing in bad shape (to the bay)."

MR. TILLEY: It led to the bay; that is not a qualification of its condition.

HIS LORDSHIP: I understand.

MR. OSLER: Not a qualification of its condition but it is a qualification 40 of the part of the plumbing that is referred to in the note surely.

Q. Isn't that so, Mr. Hole? A. It was for my information.

Q. And what was the area of the roof? A. 1,900 square feet.

Q. What would be the cost of that ready roofing? A. Stripping and replacing five cents a square foot.

Q. Which would account for how much? A. \$95.

Q. And then you say the floor was worn and there were cracks in the

partitions and for that you take off \$1,228? A. Of course the redecoration would need to be done.

Q. Oh, you have included decoration? A. There had been nothing done for several years, sir; it had been allowed to get into a state of rack and ruin, you might say, and the plaster would need patching, painting, and the floor renewing; it was in a terrible old state.

Q. And yet it was in active use by the company at the time? A. Yes. Oh yes.

10 Q. And they continued to use it? A. The roof was not letting in water or anything like that.

Q. And they continued to use it until they left that part of the Esplanade in 1931? A. Yes sir. I think \$1,228 was plenty for it; that is what I have allowed.

Q. I was wrong in that, you allowed only \$1,228, but you take off some \$1,800? A. Yes. I considered that \$1,228 as what that building was worth.

Q. Was worth to the Standard Fuel Company? A. As a building, its physical value.

Q. As a building in use in their business? A. Well it was being used.

20 Q. It was being used, and you say it was not worth more than \$1,200 to the company, used for their purposes? A. No, I don't think so.

Q. Although it was in active use when you saw it and they continued to use it for four years afterwards? A. Yes.

Q. Without any further repairs? A. Yes.

Q. Then what are these scales and pits? A. There were two scales in pits by the side of the office.

Q. What was the construction of the pits? A. I took them as concrete.

Q. What shape were they? A. Well I didn't get down to see, but I allowed \$600 for the concrete pits, \$250 for one and \$350 for another.

30 Q. And what was the replacement value? A. A total of about \$800 or \$900.

Q. And how much did you take off for the concrete pits that you didn't see? A. Well I took forty-five percent off the whole as a unit.

Q. How much did you take off the concrete pits that you didn't see? A. Well I wouldn't be prepared to say just what proportion of that forty-five percent I allowed for the concrete pits but I took forty-five percent off the whole replacement value as the value of the two scales that were there.

Q. The scales were in use? A. Yes, they were in use, sir.

40 Q. And they had been inspected by the proper persons? A. Well they wouldn't be in use if they weren't passed by the government.

Q. And they continued the use of them for four years after that? A. Yes.

Q. Without any further repairs or replacements? A. Yes. Then they bought back one of them for \$200.

Q. Bought another one? A. They bought back one scale for \$200.

Q. And moved it away somewhere? A. Yes. So I allowed \$1,094.50 for both of them.

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Q. And do you think the sale at \$200 is a fair basis of comparison? A. Well if I allowed six hundred—

Q. Answer the question? A. Yes, I do, sir.

Q. You think it is a fair basis of comparison? A. Yes.

Q. As the Terminals Railways had these scales they were worthless to them, they weren't using them for coal? A. No.

Q. They would have had to simply throw them out if they couldn't sell them? A. If they couldn't sell them, but they sold them.

Q. And therefore I suppose you realize that they would sell them for what they could get? A. Well I don't know, sir. 10

Q. You don't know? Do you say you don't know, Mr. Hole? A. They could hold them till they got a better price if they wished.

Q. Is that the only answer you can make to that question? A. Yes sir.

Q. What material were the scales made of? A. Well they were the standard cast iron and steel scales of course with a wooden platform on top, a three inch wooden platform on top.

Q. And I see you have got no note, at least I don't observe any note of the condition of the scales, unless it is in machinery. It doesn't seem to be here, no? A. No, I have no note of that there, sir.

Q. And the steel part of the scales was in good shape? A. Well I 20 didn't get— There was a wooden platform on top; I didn't see the scales.

Q. Well then may I take it all that you did see was the wooden platform on the scales and perhaps the indicator beside them? A. Yes.

Q. That is all you saw? A. Yes, that is all I saw.

Q. And the wooden platform was in good shape? A. Well it was doing duty. It wasn't new of course.

Q. Now then let us come to the garage building, building B. Or before I go to building B, Mr. Hole, let me ask you this: If you didn't see the condition of these things how did you arrive at the particular percentages you take off? A. Well for the time they had been in use. 30

Q. That is you applied an arbitrary reduction for the time in use? A. Yes. Because those things wear out of course.

Q. Now what amount per year did you allow for that? A. Oh I didn't go into it so closely as that, Mr. Osler; I depreciated it forty-five percent and I thought for the time it had been there that \$1,904 was all that it was worth.

Q. How long had they been there? A. Over thirty years.

Q. The scales? A. Yes, I was told.

Q. You were told? A. Yes.

Q. Did you make any inquiry from the Standard Fuel Company? A. No, I didn't. 40

Q. Then may I take it that you just saw the platform over the scales and you were told by somebody that they had been there for a considerable time and you jumped at the amount to be taken off. A. No. The beam of the scale inside, if I remember, was of the same pattern of an old type and that was just my information at the time, that forty-five percent depreciation on the scales and pit was fair.

Q. Now, Mr. Hole, there were two scales? A. Yes. One was a larger and one was a smaller.

Q. I am instructed that the larger scale was bought in 1922? A. Well I don't know. I didn't have that information.

Q. You didn't have that information? A. No.

Q. And you didn't inquire? A. I didn't inquire.

Q. From the Standard Fuel Company? A. No.

Q. By the way, before we pass from the office, I note that you say: "Plastered walls and ceiling" in your notes, but you have no note in the memorandum that you took at the time of any cracks in the plaster? A. No, but I could see the cracks in it in my mind.

Q. So that I take it if there had been any crack that was of a serious character it would have been noted in the notes you made? A. I elaborated those as soon as I got back into the office from memory while those things were in my memory. These were just rough notes to guide me.

Q. Where is the elaboration that you made at the time? A. Those were the ones I used with Mr. Ellis to get at these replacement values and when we fixed on that I scrapped everything else, I thought there was no use carrying it.

20 Q. So that you don't on the note that you made while you were there note the cracks although you did note the dilapidation of the roof, you did note that the plumbing was in bad shape? A. I didn't note it there, no.

Q. Who was Mr. Ellis? A. Mr. Mitchell, I should have said.

Q. Now when you come to the garage, building B, that again was in use by the Standard Fuel Company? A. Yes.

Q. And was apparently weather-tight? A. Yes.

Q. And they continued to use that for some four years after 1926 when you saw it? A. Yes.

30 Q. And again without doing any further repairs on it? A. I don't know whether they did any further repairs.

Q. And so far as I can see in your notes there was no note of that not being in good condition; your note apparently reads: "Garage, frame one storey, covered with metal except on five doors which are sheeting 9 x 9; part cinder floor and part concrete, 28 by 30; roofing ready, main part flat pitch about six inches in thirty"—? A. Six feet.

Q. "Six feet in thirty, other part flat" something; "addition flat," I guess, "one storey addition for bags" it is, "metal clad, heated with one and one-quarter inch pipe coils of water; open wiring."

40 is will you show it? A. No, there isn't.

Q. And although that garage cost \$2,112 to replace new you have put the value of it in at fifty percent? A. Yes.

Q. Now how did you arrive at just half the replacement value? A. It was my opinion that a thousand dollars was enough for that. That is all it was worth there without regard—I didn't entirely work on these replacement values, I used a little other judgment as well, and looking at the building for its size and its condition I thought a thousand, what I have here, \$1,056.35,

which is fifty percent of the new cost, was all it was worth; now that is all I can say I think about that, Mr. Osler.

Q. How old was the garage? A. Well I didn't know at the time but in evidence it has been— 1913. I thought it looked older than that.

Q. So that I suppose if it looked older you probably treated it in making your estimate as older? A. Yes.

BY HIS LORDSHIP: Q. Wouldn't everything there look older in consequence of the dust from the coal and that sort of thing? A. Yes sir.

BY MR. OSLER: Q. Would you be surprised to know, Mr. Hole, that a part of the garage was built in 1913 and the balance in 1920, only six years 10 before your valuation? A. Well it doesn't make any difference to my opinion, Mr. Osler, I think that is all it was worth.

Q. Yes, but then you told us a little while ago that you had regard to the age of these things in arriving at an arbitrary estimate for depreciation? A. Not entirely.

Q. Not entirely, I know? A. That is just a factor.

Q. That was a factor? A. Yes.

Q. But suppose you had been told that that garage part of it was built in 1913 and part in 1920 do you still say that there should be a fifty percent deduction for the age of that building? A. Well from the state of it that is 20 all it was worth, sir, in my own opinion.

Q. Well, now then let us come to the boiler house, that was building C, and see what you have to say about that in your notes. I don't find any reference to the boiler house in your notes, Mr. Hole. Perhaps you can find it? A. Yes, sir, here it is. (Indicating.)

Q. Oh, yes: "Building C, boiler house and engine, one storey brick 14"— what would that refer to? Is that 14 by 12 high? A. 14-inch brick, that is the thickness of the brick wall.

Q. 14 inch brick wall? A. 14 inch brick wall.

Q. That is rather unusually substantial, isn't it? A. No, not for that 30 type of building, one storey fourteen inches.

Q. "12 feet high, ready flat roof 18 inch fall, three windows, two doors, fire hole concrete floor, Polson Iron Works boiler, 24 inch smokestack" . . .

Is that 24 inch smokestack? A. Yes, sir.

Q. "Open wiring, water, single cylinder engine, 20 stroke; concrete floor."

Is that "benching, hot water heating?" What is that word? A. Bench. A bench, a work bench.

Q. Just a work bench? A. Yes.

Q. And not a word in that about that boiler house being in bad condi- 40 tion? A. I know the face of the brick, the north face of the brick wall was very very badly eroded and that building had been up for a good many years too.

Q. When you say badly eroded—? A. The face, the weather and frost had spalled the face of the brick.

Q. How much? Half an inch? A. Yes, half an inch I should say.

Q. And the erosion of the brick I take it was the only depreciation you observed in that building although you didn't mention it in your notes? A. There had been no recent repairs made to any of the buildings; they all wanted painting, and you know if woodwork is left without painting—

BY HIS LORDSHIP: Q. We are on the boiler house now? A. Yes.

Q. You are referring to the lack of paint in the boiler house? A. On the woodwork of the boiler house, the doors and windows and that sort of thing.

BY MR. OSLER: But that erosion of the brick was all that you noticed
10 about it except the decoration and painting? A. Yes.

Q. And how much did you deduct for that? A. Forty percent.

Q. What? A. Forty percent.

Q. How old did you think that building was? A. About thirty years.

Q. So that you took off some \$800 or \$900 for the erosion of the brick which might have gone to half an inch on a 14 inch wall? A. Well not entirely, sir.

Q. And there again the building was in active use? A. Yes.

Q. And remained in active use for the next four years? A. Yes.

Q. And you don't know when that was built? A. I took it as thirty
20 years.

Q. You took it as thirty years? A. Yes.

The engine was such an old engine that the boiler and the engine was in such bad condition, and the building must have been there when they were put in, so I took it that the building was at least thirty years old. It looked that or older from its appearance.

Q. But you told my learned friend that the engine was secondhand?
A. Well I heard it was.

Q. You heard it was? A. Yes.

Q. Well, if the engine was secondhand how would the condition of the
30 engine be any guide to you as to the age of the building? A. The boilers will—

Q. Do you mean to say that you assumed from the condition of the boilers and the engine what the age of the building was and yet you assumed that the engine was secondhand? A. I assumed that the value of the building as it stood was \$1,200.

Q. No, no, answer the question, Mr. Hole, it is too easy to get to these rough and ready values. You did base your estimate of the value on the assumption that the building was thirty years old? A. That was one of the factors, yes.

Q. How did you know that? A. Well it looked like it.
40

Q. And do you mean to tell me that you could guess the age of a building by taking a look at it? A. Generally within a few years.

Q. Well, then if that is so why did you have to look at the engine and calculate from the age of the engine? A. That was another factor that guided me in the whole thing in the whole valuation.

Q. Now then, Mr. Hole, let us see what you have to say about the buildings D and E, the main coal shed: Now which was D and which was

E? A. D was the little hoist house on the south end; there was a little projection there under the tower, that was D, and E is the main shed, the entire main shed, the big main shed.

Q. Tell me, Mr. Hole, in your notes again I cannot find E, and D has some fairly extensive notes. Does that include both D and E? A. D is one storey, the frame hoist house under the tower, just a very small thing, a hoist house.

Q. It is only those first two lines that refer to D? A. Yes.

Q. The rest all refers to E? A. I think so. Yes, I think that is right. 10

Q. You have drawn a line under the words "One ton clam?" A. Yes.

Q. Which you say represents—? A. That is the machinery of course.

Q. But what is below the line you have drawn across page 31 in your notes—? A. That is the main shed.

Q. The other one refers to D alone? A. And on the other side too.

Q. As far as D is concerned you made no note then that is was in bad condition? A. I had a picture of the whole thing in my head, sir; it was ready for scrapping, the whole thing.

Q. You went there I suppose to see how low a valuation you could put on it, Mr. Hole? A. No, I did not, sir. I went to try and put a fair valuation on it. 20

Q. You were sent by the Terminal Railway Company with a view to finding out how much they would have to pay for these buildings? A. Yes, I was sent to see what they should pay.

MR. TILLEY: He was sent to work in conjunction with your man and your man wouldn't take up this part of the question.

MR. OSLER: No.

Q. You understood, Mr. Hole, that I am referring to this trip you made there in June 1926? A. Yes.

Q. Before there was any reference to working in conjunction with our man? A. Yes. 30

Q. That is right. And at that time you were sent there to see how much the Terminal would have to pay for these buildings? A. Yes, sir.

Q. And did you understand that your instructions were to put a high value on them or a low value? A. My instructions were to find a value in my own idea that was a fair value; they couldn't tell me to put a high or a low value on; I act for both parties.

Q. Not in this case? A. No, but I do.

Q. And you did put on whatever you thought would be a minimum value they would have to pay? 40

HIS LORDSHIP? You don't want me to assume that any witness on either side would deliberately—

MR. OSLER: I am not suggesting that, my Lord. but I am suggesting, and I think it is quite obviously the fact, that he goes there in a very pessimistic frame with regard to the buildings!

HIS LORDSHIP: You may leave that to my imagination.

Q. At all events we have it that you didn't see anything in these buildings, in building D, which caused you to make a comment on the condition of the building? A. It was such a small building, about 12 feet by 14 feet, that it wasn't worth considering with the whole big shed.

Q. Well, then, when we come to the part below which isn't marked E but which I understand is E you found, you say: "The roof broken and dilapidated?" A. Yes. There is a photograph showing that, that is an exhibit.

Q. That is Exhibit 3? A. Yes.

10 Q. And let us look at Exhibit 3. A. I beg your pardon, you mean photograph 3?

HIS LORDSHIP: It is No. 3, part of Exhibit 24 or whatever it is.

Q. I suppose this photograph was taken to show the dilapidation of the roof? A. Yes, sir, it was; that is the first thing that would strike a valuator.

Q. Wait a moment.

HIS LORDSHIP: Just answer the question.

Q. And I suppose that you selected the part of the roof that showed the worst dilapidation for that? A. Just one part to bear out my contention that the roof had moved.

20 Q. And do you suggest that the part that you selected for taking the photograph was better than some of the other parts which you didn't photograph? A. No. It was rather inaccessible to get to the flat roof, and the flat roof was worse than this.

Q. Well now you see in the foreground of the Standard Fuel Company's roof there are some holes shown in the roofing. I suppose the covering had been taken off to show what was underneath? A. No, no. The buildings hadn't been repaired for ten years or longer ago than that. Nothing had been taken off, that is how it had worn.

30 Q. This photograph of course was taken after the autumn storms and the winter snow? That is true, isn't it? A. It is taken on that very date that is on the photograph.

Q. On the 2nd February, 1927? A. Yes.

Q. And since your June visit, in June 1926, there had been wind and the snow, so that it wouldn't get any better? A. No.

Q. And a part of the roof so far as the covering is concerned looks in pretty good shape? Isn't that true? A. No, it is not, sir.

Q. Well, what do you say as to the lefthand portion?

BY HIS LORDSHIP: Q. Doesn't that look in good shape there, from there on (indicating)? A. That is a different photograph.

40 Q. What is this shed here? A. They are wires, electric wires.

Q. But I mean from there, the upper part, beyond the openings in the roof, that looks in good condition? A. That portion is water tight.

Q. Now excuse me just a moment: What is this rough looking surface? A. That is a patch that had been put on.

BY MR. OSLER: Q. And what was the total area of the roof of the big shed, Mr. Hole? A. 5,000 square feet.

Q. 5,000 square feet? A. 5,000 square feet.

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Q. Of the whole of the sheds D and E? Where are your figures showing that? A. I should say 50,000 square feet. I beg your pardon.

Q. Did you calculate that closely, because I am told it was 45,000 square feet? A. The floor was 48,550 and I allowed—of course I didn't get up and measure the roof but I allowed the extra thousand feet for the slope of the roof and the overhang, which I think is quite right.

Q. You actually measured the floor? A. I measured the floor.

Q. And you told us that the ready roofing material would cost four or five cents? A. Well, there is a lot of boards would want replacing.

Q. Yes, but let us get at one at a time; answer my question, please. 10
The ready roofing material would cost four or five cents? A. It would cost \$5,000 to strip and cover that roof, sir.

Q. And then you go on in your note: "Flat roof, joists 2 by 10 above 6 by 10 posts at twenty foot centers with 2 by 6 spurs carrying 6 by 8 beams, and corbels" (is it) "12 feet long?" A. Yes.

Q. Then, "Stringers 20 feet apart, 2,000 square feet 2 inch plank walkways on wide posts, three long tracks." Is that "two sharp?" A. Three long ones and two short.

Q. "Note: Two long ones only in shape?" A. In use.

Q. You have it "in shape?" A. Yes. 20

Q. But it was only the two long ones in use at the time you were there?
A. Yes, at the time I was there, yes.

Q. "Shed has been metal clad" . . . Well we will come to the cladding in a few moments, but I think you told us there was no rot in the beams and the joists and the only thing that you criticised about that was that there had been a sagging of the roof and shifting of the timbers? A. Yes, sir.

Q. And that is a thing that one finds in barns and wooden buildings of any character? A. This is differently built from a barn, sir; you can't compare it. 30

Q. But do you mean to say that that could not be corrected? A. Certainly, by starting from the ground up and spending \$15,000 on it at least.

Q. \$15,000? A. \$15,000 on that plus \$21,000 for the sheeting, the roofing and the floor.

Q. Well, now wait a moment. How would you spend your \$15,000? You wouldn't have to buy any new material for those joists? A. Oh, yes, you would have to buy a certain proportion of new material.

Q. How much? You remember you said there was no rot and they were in good shape? A. I know, but if they are distorted the bolts pull through and break the ends and you have to take an estimate of what is new. 40
You would have to put new runways, new braces, new tie rods, strip the roof boards and take off the rafters, straighten up and use new material where required. Now, sir, I allowed \$10,000 for a new floor, that is to say break up the old concrete floor and put a new concrete floor down.

Q. Let us get at that one at a time. I wasn't asking you about the floor. You gave us an estimate of \$15,000 for the resetting of the joists? A.

For the stripping of the shed and practically straighten up, almost building it again.

Q. Let us do it one at a time, Mr. Hole. Did you sit down and make a detailed estimate of this or are you just shooting in the dark? A. I made an estimate of \$21,000 first of what we can speak about and then the rest I thought that \$15,000 would be about a sum to do that with comparison with other jobs that I have done of the same kind.

Q. I haven't followed you. You made an estimate of \$15,000 first for what? A. No, I made an estimate of \$21,000 first.

10 Q. \$21,000 for what? A. \$10,000 for a new floor, \$5,000 for a new roof covering only, that is part boards and all felt, and \$6,000 for covering the walls with sheet metal, allowing fifty percent of new boards and all new material at seventeen cents the two.

Q. Have you your detailed estimate? A. I just made that up this morning, sir. It is only a rough figure.

Q. Well now how much of that—I am afraid I haven't got you quite accurately yet—you say you estimated \$21,000 for these items which you have just given me, and where does the \$15,000 come from? A. Then I think you can spend at least \$15,000 on the straightening up and stripping
20 the joists and renewing where necessary, putting new tie rods, putting new braces.

Q. I thought that was included in the twenty? A. No, no, that is merely the levelling you might say, the roof, floor and walls and structure.

Q. How much labor comes in the fifteen? A. Well I would say \$10,000 worth of labor and \$5,000 worth of material.

Q. \$5,000 worth of material? A. Just as a rough estimate.

Q. And how much would you pay for your material a running foot? A. Well, I would use B.C. fir today in place of the lumber that was there, and in 1926 that was \$50 a thousand, at five cents a foot board measure.

30 Q. Well you would use \$5,000 that way? A. Well there are tie rods twenty feet long, one inch tie rods.

Q. Just give me how much B.C. fir would you use on it? A. Well, I didn't itemize that, sir. I just thought that \$15,000 would about put that straight, having in mind other similar work that I had done.

Q. Where did you do similar work? A. Well it cost \$50,000 to put a shed like this into shape in Montreal, one hundred thousand altogether, fifty thousand for replacements and fifty thousand for actual repairs and straightening up the structure, it had been let get into a state of disrepair the same as this.

40 Q. And a good deal of rot in the timbers down there of course? A. I didn't include that with it though as replacement; that was in another sum.

Q. Do you say you would have to have new tie rods? A. More tie rods than were there.

Q. But you suggest new ones? A. Yes, extra ones.

Q. The ones that were there were in perfectly good shape, they weren't tightened up? A. They wanted straightening and tightening up with new washers on them, you could see, quite a lot of them.

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Q. That is your idea anyway. Did you see one that you couldn't use?
A. No, you could probably use all of them if you straightened them and put a certain amount of work on them, and then you would want a lot of new ones to make the shed stronger than it had been. It would stand rebracing and straightening.

Q. So you don't think this shed was strong enough although it had lasted for thirty or forty years? A. Putting it last year I think it was ready to fall down, sir, and that is just the point.

Q. We have heard that two or three times, Mr. Hole, but at the time you were inspecting it they were carrying in coal in hoppers carried on this overhead track that I think you said carried a ton apiece? A. The cars, I think that was the size of the cars. 10

Q. And while you were there they were handling cars carrying a ton?
A. It wasn't operating; they weren't operating or unloading while I was there.

Q. But they were doing it immediately before and immediately after?
A. Yes.

Q. And you knew that? A. Yes, oh yes.

Q. And how many of these hoppers would be carried overhead at the same time? A. Oh only two. They were only using two tracks. They 20 would only use two tons.

Q. So that this material that was already to fall down was running carrying overhead loads of two tons? A. Yes.

BY HIS LORDSHIP: Q. It would be pretty dangerous, wouldn't it? A. It was dangerous.

BY MR. OSLER: Q. And I suppose you know that in construction of this kind there has always got to be some play and some give and take, it cannot be too rigid? A. If those posts go, sir, the roof must go, because it is an integral part of the place.

Q. But you don't put up a building of that kind with an idea of having 30 it too rigid? A. That is just what you must do if you are going to keep the stresses out of the roof, which would pull it all to pieces.

Q. When you took your replacement values did you include anything for the metal sheeting? A. No.

Q. In other words you found that the metal sheeting was gone? A. The work to take it off I am including.

Q. And you would have to take it off? A. Yes.

Q. So that in agreeing on the figure of \$50,000 altogether, including the building and the contents, in this figure of \$50,472.63, nothing is included whatever for the metal sheeting? A. No. 40

Q. Now then how much of that included the shed, the large shed? How much of that \$50,000 was for the large shed?

HIS LORDSHIP: That is building E.

MR. OSLER: D and E, it is the main coal shed, but I think that was split up. A. \$34,509.50.

Q. And how much did you allow as the value of that? A. I depreciated that seventy-five percent.

Q. Seventy-five percent? A. Seventy-five percent.

Q. So you allowed something less than \$9,000 for that shed? A. Yes, \$8,627.38.

Q. And you took off about \$26,000? A. Yes, about that.

Q. Or about between twenty-five and twenty-six thousand? A. Yes.

Q. And then you take off \$21,000 for replacing the floor and the roof and the metal sheeting on the sides, is that it? A. No sir.

Q. Well give it to me in your own words how did you arrive at your \$25,000? A. I took it as a whole structure, the whole shed, that was my 10 final thought. These others were just helps towards getting the whole depreciation and I thought if one part was good and the other part was good, the good part was good to use, then the bad part or the shed as a whole I depreciated sixty-six percent.

Q. Well now isn't this the case now, that you took a flying shot at the value and deducted that from the replacement to get the depreciation and then began to estimate how much the depreciation was? A. No. But I had a sum in my own mind before I started that I wanted to—that I thought was fair, and I thought I should try and reach that sum if I could.

Q. If you could? And how much of that sum did you allow for the 20 sheeting? A. I am afraid I haven't got this in detail here, Mr. Osler.

Q. I thought you gave it to me in detail before? A. Oh you mean the replacement of the metal sheeting outside.

Q. Yes? A. Yes, I did.

Q. No, one moment, I mean how much did you estimate that it would cost to metal sheet it? A. \$6,000.

Q. And that was part of the item of twenty-one that you took off? A. Yes, sir.

Q. And so far as the flooring was concerned you didn't make any note that the flooring was in bad shape? A. Yes. There was a note, sir, there.

Q. Where is that? A. The water had seeped through or poured through 30 from the roof and frozen in pools. The concrete was pretty well all gone, just patches of it left.

Q. Find that for me, will you? I looked but I didn't see it there? A. "Concrete floor bad."

Q. That is over the page. "Concrete floor bad." How many holes were there in this concrete floor? A. I didn't count the holes, sir. It was ready for renewal.

Q. What was the size of the largest one? A. Well there was just a few patches of concrete left. It was full of holes, it is easy to say what was the 40 size of the largest patch of concrete there.

Q. The floor had been used that way for how long? A. Oh you could use it. You could use an earth floor.

Q. And it had been used in that way. How much had you allowed in your replacement value for the floor? A. I haven't those—

Q. No, but you have the figures which you and Mr. Mitchell had? A. Yes. I made it up this morning, \$10,000.

- Q. Was that in the replacement values that you had with Mr. Mitchell?
A. It isn't itemized, sir.
- BY MR. TILLEY: Q. You say \$10,000 for doing it, or for the floor that was there? A. No, to put in a new floor.
- BY MR. OSLER: Q. How much in your value of \$34,509 did you attribute to the floor? A. I say I haven't those details with me, Mr. Osler.
- Q. Did you attribute anything? A. Oh yes, we allowed a new floor.
- Q. You allowed for a new floor? A. Yes.
- Q. How much? A. Twenty-five cents a square foot I believe it was.
- Q. Where are the figures, Mr. Hole? A. Well I didn't bring those but 10
Mr. Mitchell should have them.
- Q. I am instructed you didn't allow anything for the floor in that replacement value? A. To the best of my belief we allowed for a new floor, sir.
- Q. Wait, I was wrong. Mr. Mitchell instructs me that you allowed at the rate of four cents a square foot for a floor of materials rolled in? A. I don't remember that, Mr. Osler.
- Q. And you have now none of the figures on which you based it? A. No, I haven't got them here; they were just rough pencil figures when we agreed upon values. 20
- Q. And you didn't keep that? A. No, I didn't keep that. Oh yes, yes, I kept those; I have got the values, but it is others that I destroyed.
- Q. Well now let us have the figures showing how much in this replacement value you allow, because you say you are deducting from the replacement cost a new floor at \$10,000? A. Well I haven't got them here, sir.
- Q. Where are they? A. They are in the office. I can get them.
- Q. You can get them? A. Yes.
- Q. Because you see if it was only four cents a square foot then the amount you allowed of this figure for floor would be only \$2,500? A. It would be four cents instead of twenty cents; I have got twenty here in this, 30
\$10,000.
- Q. That is your arithmetic is that it will come to \$2,500? A. Yes.
- BY HIS LORDSHIP: Q. How do you account for that? You said five thousand and now you say twenty-five; was that a mistake of yours?
- MR. TILLEY: He said ten thousand.
- Q. Yes. And now you say \$2,500? A. A deduction of twenty-five hundred I think.
- Q. How do you account for that? It is rather odd.
- MR. TILLEY: One is a concrete floor and the other is the rolled floor; the question is which did they allow. 40
- BY MR. OSLER: Q. How do you account for the difference, Mr. Hole?
A. In what way, sir?
- Q. I say how do you account for it?
- MR. TILLEY: For what?
- Q. For the difference. You have provided in what you say should be done to the building for putting in a \$10,000 concrete floor? A. It certainly should. It should be put in.

Q. Well now was the floor of the north part concrete, or was that material that had been just rolled in? A. From the appearance, the patches that were showing, it was concrete, but you know there was a lot of coal dust and mud that had come through the roof on the floor so you could only see patches here and there. I took it that it had been a concrete floor at some time entirely.

Q. But you don't mean to say that in agreeing on these replacement values you agreed as one item to include the replacement of a concrete floor? A. Well it would need either a concrete or a wooden floor, sir, to give a good job of it.

10 Q. I am not speaking of a good job; I am speaking of a job as the buildings were; we are not replacing a rolled in floor with a concrete floor; and you were undertaking to fix the replacement cost of the building as it stood, weren't you? A. Yes.

Q. And you didn't find a concrete floor under the north shed? A. I took it as a concrete floor throughout.

Q. Well then do you say still that these figures of replacement, the \$34,000, included a concrete floor? A. I wouldn't tell you until I looked at the notes. I can tell you then what we allowed for it. It isn't detailed here.

20 Q. I am instructed that it was only the south part of the shed which had a concrete floor, as you say; the remainder was cinders rolled in? A. Well we had better wait till we get those notes and see what we allowed for it, Mr. Osler.

Q. Can you send for them? But at the moment you cannot recollect? A. No, I can't, sir.

Q. But in calculating your depreciation you have taken off the \$10,000, there is no doubt about that? A. That I was speaking of this morning.

Q. \$10,000 for the floor? A. That was a check on this depreciation.

30 Q. But for checking your depreciation \$10,000 for the floor is one of the items that you have taken off the value? A. Yes.

Q. Then what was the next largest item in that \$50,000? A. The hoppers or pockets.

Q. Now what timber were they made of? A. Squared timber, white pine, I think.

Q. Are you sure it wasn't fir? A. No, not in those days, they wouldn't use fir; it was white pine.

Q. Are you sure they didn't use fir in these pockets? A. That is unlikely. White pine would be likely used. My instruction is that they were built in 1898, the pockets.

40 Q. Your instructions from whom? A. Well the instructions that I got from the man that knows those sheds.

Q. Who was that? A. George Harrison, a man that has been along the waterfront all of his life, and he gave me the builder as well, the man's name, that built them in 1899.

Q. Did you look at the pockets yourself? A. Yes, I looked at them.

Q. How long did it take you? A. Oh I just gave them— It is a dirty job, Mr. Osler.

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- Q. Oh I suppose so, and I suppose they were covered with coal dust?
A. Yes, they were.
- Q. And how long were you actually looking at these pockets? A. Well six years ago, I couldn't tell you now, sir.
- Q. How long did the whole job take you? A. We were there two days.
- Q. And you didn't really know whether they were B.C. Fir or white pine?
A. It is immaterial, they are both the same value.
- Q. I say you don't know? A. No. There was no B.C. Fir in those days.
- Q. You could see the hoppers in the north shed quite easily.? A. Yes. 10
- Q. And you could see that these were B.C. Fir, not even discolored, not even weathered, isn't that right? A. It wouldn't make any difference.
- Q. No, but the fact was that the hoppers on the north shed which you could see were not even weathered, they still had their yellowish natural color?
A. I didn't see it, sir, they were all covered with coal dust.
- Q. In the north shed? A. In the north shed.
- Q. As well as the others? A. Yes.
- Q. And how much did you take off those? First what was the size of the two? A. The plan shows it here. They were 140 feet long and 25 feet wide and the top of the pocket was about 26 feet high I think. I have got 20 my notes that shows that.
- Q. Do you mean these? A. Yes, it is in the note there.
- Q. And what was the size of the timber of which they were composed?
A. 12 by 12.
- Q. And there was no indication of any rot in those timbers? A. They were in fairly good shape, sir, as far as I could see.
- Q. And they hadn't been twisted? A. No.
- Q. And then the total amount was how much for these? A. \$10,460.
- Q. And how much did you allow for that? A. I took off fifty percent.
- Q. Fifty percent? A. Yes. 30
- Q. Why did you take off fifty percent if they were in fairly good shape, not out of alignment? A. They depended upon the shed for their life, so I took it as a general depreciation.
- Q. So that apart from the fact that you thought their life might be shortened by the shed coming down those would have been much better than fifty percent? A. Yes. They would have been salvage value then only if the shed had been taken down.
- Q. So that what you have allowed here is then only salvage value?
A. No no, I have allowed fifty percent of the actual replacement cost at 1926 value. 40
- Q. But you don't suggest that there was any physical depreciation?
A. I didn't see any.
- Q. And you don't suggest now that there was any? A. Well no, I can't say there was, but I would imagine there was.
- Q. And really, Mr. Hole, you put this figure on because somebody on the waterfront told you that they had been there for a very long time? A. That was one reason, sir.

Q. That was a fact? A. Yes, one reason.

Q. Now then you said something about the tower. How long were you up the tower? A. Not very long, sir; I didn't like to trust myself up there for very long, it wasn't safe.

Q. It wasn't safe? A. The walkways were all sagging, I was afraid I would walk through into the shed and fall twenty-six feet.

Q. The walkways were ladder approaches? A. They were inside, sir.

Q. They were ladder approaches for the shed out to the tower? A. They were wooden pathways across the top of the shed for the operators of the cars
10 to walk across.

Q. And you knew at that time the tower had been in operation shortly before and was continued in operation afterwards? A. Yes.

Q. They were conducting their coal business in the shed there when you were there in exactly the same way as they had been for years? A. Yes.

Q. Excepting there didn't happen to be a cargo coming in at the time you were there, is that correct? A. That is right.

Q. And did you warn anybody that this tower was unsafe? A. No, I didn't.

Q. Did you go up there alone or was anybody with you? A. No, I
20 went up by myself.

Q. And the machinery was in working order as well? A. I suppose so. They had been unloading coal.

Q. And the timbers of the tower were not rotted? A. I didn't see any evidence of rot.

Q. The uprights hadn't gone? A. There was many more steel cables to hold the tower back than there should be if it had been safe and well designed; that would give any person the opinion that it was not very safe.

Q. There were a number of cables there, guy cables? A. Yes, guy
30 cables.

Q. And how many guy cables were there? A. I believe there were six.

BY HIS LORDSHIP: Q. Are these the guy cables there (indicating)?
A. Yes sir.

Q. How high was that tower from the floor? A. From the top of the roof, sir.

Q. Well from the top of the roof? A. About thirty-five feet.

Q. And how far would the top of the roof be from the floor? A. I think it is about thirty-six feet.

BY MR. OSLER: Q. What was the length of the boom? A. That is
40 in the machinery. 56 feet 6.

Q. 56 feet 6? A. Yes.

Q. And do you know how much coal would be taken up in each bucket load? A. A ton.

Q. And the ordinary practice was to drop the bucket into the hold of the vessel and then raise it by this 56 foot boom and then swing it? A. No, it was a fixed boom.

Q. Then it would run in along the boom? A. On trolleys along the boom.

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Q. And then get into the hopper and the conveying system? A. Yes.

Q. And you really judged by the number of guy wires that it was not very safe? A. That is one of the reasons, yes.

Q. What was the other reason? A. Well I think that was one of the factors in displacing of the shed structure, the vibration from the tower.

Q. Well then we are speaking about the tower now and you said you judged it wasn't safe and one of the factors you mentioned was the fact that they had six guy wires, and what other factors were there? A. Only hearsay.

BY HIS LORDSHIP: Q. Would you say that, if they were operating that in active operation then, that they were really in danger all the time? A. 10 Yes, I do, sir.

BY MR. OSLER: Q. And how long do you think that danger had existed? A. Well it had been getting worse year by year.

Q. I know, but—? A. I wouldn't like to say how long it had become so acute.

Q. How long had those guy wires been up? A. I don't know. The engineer that was there put some of them up.

Q. And how much did you allow for that tower? A. \$1,722.

Q. That was the replacement cost? A. Yes.

Q. Yes. but what value did you attribute to it? A. I depreciated forty 20 percent.

Q. Forty percent? A. \$1,033.

Q. You allowed \$1,033, did you? A. Yes.

Q. And yet according to your story the tower was unsafe to use and shouldn't have been used for another hour? A. Yes.

MR. TILLEY: Mr. Osler, did he give you the figure of replacement that is included in the fifty thousand?

MR. OSLER: These are included. He told me it was \$1,722.

BY MR. TILLEY: Q. And that was reduced to how much? A. \$1,033.

BY MR. OSLER: Q. Reduced to or by that? A. Reduced to \$1,033.35. 30

MR. OSLER: These are items comprising the fifty thousand, the thirty-four and the ten thousand and the seventeen thirty-two, they are the main items comprising the fifty thousand.

Q. Then what kind of detailed examination did you make of these other small items, Mr. Hole? I gather there was a Dynamo House, value \$268, a car house for \$612, a controller house for \$115, an unloading hopper \$635, the outside trestles \$899, and the outside trestles unused \$470, and the open bins in the yard and the gasoline tank and pit, those were the remaining items making up the \$50,000? A. Yes, sir.

Q. All of them individually under a thousand dollars? A. Yes. 40

Q. What examination did you make of those? A. I just looked at them, sir.

Q. When you say you just looked at them did you just walk past and cast your eye on them? A. Well I looked at them.

Q. For instance the outside trestles unused, I understand that there you just put in what you considered the present value instead of using replacement on that item? A. Yes.

Q. \$470? A. Yes, and as they are of no use I depreciated those the same as the others, forty percent.

Q. So that that is not a replacement value; that includes only your estimate of the then present value of these trestles? A. For that \$470 item, yes, sir.

Q. And then you have taken another forty percent off that? A. Yes. Salvage on them. That is all that part of it is worth.

Q. But if they had been put in at their replacement value it would have been considerably more than \$470, whatever the amount is? A. Yes, sir,
10 if they were any use to the shed.

Q. Then the gasoline tank and the pit, I suppose you couldn't see that? A. No.

Q. And you took how much off that? A. Just twenty-five percent off that.

Q. Now when you were looking at the machinery you said that the small boiler was in bad shape, but it was in actual use? A. It was in use, yes.

Q. What kind was it, a Goldie & McCulloch boiler? A. It was a little vertical boiler.

Q. And you don't know how old it was? A. No. It was very old.

Q. And I suppose that parts had been replaced from time to time? A. Yes, it had been retubed so many times that it was practically useless. Of course I had to take the—

Q. When you say it was practically useless are you an operating engineer? A. I couldn't draw the fires and examine these boilers and I couldn't have told you probably if I had, but I had to depend on the engineer for that.

Q. Did the engineer tell you you should take off seventy-five percent? A. No, he told me the state of the boiler.

BY HIS LORDSHIP: Q. Who was the engineer? A. A man by the
30 name of King; he was there a few years; he was there at the time I was there.

BY MR. OSLER: Q. And was he one of the Standard Fuel Company's employees? A. Yes, sir.

Q. And did you just go around asking him how the boiler was working? A. Yes, of course. The same with the engine, I couldn't tell unless it was taken to pieces just how the parts were worn.

Q. So that this estimate really depends upon something that you got from one of the engineers in the boiler house? A. The condition of this particular piece of machinery, yes.

Q. And have you ever bought or sold boilers of that kind? A. Yes,
40 secondhand boilers, around \$200, if you are lucky, in good condition, that cost \$1,200 or \$2,000 maybe.

Q. And you have allowed \$100 for this boiler? A. I have allowed a hundred dollars for that boiler considering it was working.

Q. And did you consider when you were doing that that the boiler was in active use at the time? A. Oh yes.

Q. And that it continued in active use for the next four years? A. No, I don't think so.

Q. When did it go out of use? A. Well I couldn't say that.

MR. TILLEY: According to the evidence it went out of use in 1926.

MR. OSLER: No. At least I don't remember that.

MR. TILLEY: Some person said that that was stopped in '26.

Q. Well then what about the larger boiler? Is that again based on your hearsay evidence? A. Yes, from the engineer.

Q. And how did you arrive at the reduction of sixty percent? Was that just a general convenient round figure or was it at a rate per year? A. No, it was just a proportion, considering that it was a very very old boiler and had been retubed so many times that \$864 was a good price. The scrap value would be about \$150. 10

Q. But this boiler you knew had been actually doing the business required in the operation of this yard on a substantial scale? A. Yes.

Q. Do you know anything about the steam engine? A. No, I had to depend for the steam engine from the engineer's description.

Q. And have you ever found a grouchy operator who will complain about his equipment or his tools? A. Oh sometimes. They are mostly proud of their equipment.

Q. This fellow wasn't? A. Well he told me the truth I think.

BY HIS LORDSHIP: Q. Did he know why you were inquiring or for whom you were inquiring? A. Yes, he did, sir. 20

BY MR. OSLER: Q. Had you told the Standard Fuel that you were going to make this inspection? A. Well I called in the office and told them who I was and what I was going to do, yes.

Q. And they just allowed you to go over the plant by yourself? A. Yes.

Q. And how old did you think that engine was? A. So old that they couldn't get parts.

Q. Now just be serious, Mr. Hole? A. Over forty years.

Q. That was a Goldie & McCulloch, was it, or an Ideal? A. No, there was no name on it at all, it was so old. It was possibly an Ideal. 30

Q. Did you examine it to see if there was a name on it? A. Yes.

Q. And do you mean to tell me you can't get parts turned out for any machine, or are you merely speaking of stock parts? A. Yes.

Q. You are speaking of stock parts? A. Yes.

Q. But they had in fact been getting parts as they needed them? A. I don't know what they had, whether they made them or what.

Q. Well they had been in fact getting parts as they needed them, because you have told us they got new tubes for the boilers? A. Yes. Of course that is different from the engine.

MR. TILLEY: You are on the engine now. 40

Q. The engine had been repaired from time to time I suppose? A. It must have been.

Q. And they must have been getting new parts? A. Yes, of course.

Q. You didn't get any word from the engineer that they couldn't get new parts? A. Yes, he told me that.

Q. Then the lubricator, injector, steam line and valves you depreciated at what rate? A. I have taken them separately. The lubricator I have

depreciated from \$88 to \$22, the injector from \$55 to \$30 and the rest from \$158.50 to \$80.

Q. Where is the lubricator and injector? That is a small item on this list? A. The whole items are small, Mr. Osler, about \$200 in all, \$201.30.

Q. \$201.30? A. Yes.

Q. And you just took a round figure off those? A. Yes.

Q. And then you dealt with the labor I suppose on the basis of the other percentages that you had taken off the machines? A. Yes.

Q. Labor installing? A. That is right, sir.

10 Q. Then your next substantial item is shafting, couplings bearings and gears. Have you any note of those in your book? A. I have got \$1,629.40 as replacement for them and I have depreciated those fifty percent, the shafting, couplings, bearings, gears and sprocket wheels.

Q. Those are things that need replacement every now and then I suppose, or do you say they had been up for forty or fifty or 100 years? A. They had been up as long as the shed had been operating, the screening plant.

Q. And do you say those had been up there without replacement all that time? A. No, they would need small replacements of course.

20 Q. And how often had that been done? A. Oh I couldn't tell you that, sir.

Q. And these are things, just like the wooden building itself, Mr. Hole, that is when anything needs replacement it is feasible to replace it? A. Yes, but they hadn't replaced them as far as I could see for a good many years.

Q. Did you make any note in your memorandum of the machinery as to those belts? Have you made any note of those things being in bad condition? If so will you show it to me? A. I don't think I made many notes; I just relied on my memory. No, this is more of a list of the things that were there; I have not made any remarks there.

30 Q. Although you did that at the same time as you made the remarks in the other book where you noted the dilapidated roof and the things that you have complained of? A. There are notes on the buildings, yes, a few, not all.

Q. But you didn't make any notes on the condition of the machinery? A. No, I didn't make any notes there.

The conveyors, the trucks and the bucket and screen, the scraper conveyors were very old pattern and I based my estimate a great deal on the old type of scraper and conveyors that they were using, a triangular scraper with links in between in a metal lined trough.

Q. It was a little out of date? A. Out of date, yes.

40 Q. But so far as the physical condition of it was concerned it was all right? A. Well they were operating and I didn't examine them. I went to see—

Q. So far as the condition of it was concerned you cannot refer to any physical depreciation of that item? A. Not any particular physical depreciation.

Q. But you take off fifty percent apparently? A. Yes, I did.

Q. Just on account of your not liking the type? A. Well.

Q. They were able to do their work perfectly well?

HIS LORDSHIP: I don't suppose he knows that.

MR. OSLER: I was just trying to carry it out to see whether he had speculated on it, my Lord.

BY HIS LORDSHIP: Q. I see it begins, those items, Equipment, etc., Cost New, and the items all the way down. I don't know whether I understand that. For instance, take the first item, two boilers, the first boiler \$2,160. Is that what it cost new? A. No.

MR. OSLER: No, my Lord, that is the replacement cost of that kind of machinery.

BY MR. TILLEY: Q. That is what it would have cost in 1926 new? 10
 A. That is right.

BY MR. OSLER: Q. That is the replacement cost new? A. Yes.

MR. OSLER: I think on the other exhibit that was put in this morning, or by Mr. Mitchell when he was in the box, signed by Mr. Hole, Exhibit 27, that is made quite clear, my Lord. It says "Agreed replacement values of this equipment as listed hereunder as of November 24, 1926."

HIS LORDSHIP: I just happened to see the word "new" there.

BY HIS LORDSHIP: Q. Well, in these smaller items here do I gather that you went in there, you just looked at them and gave them a sort of cursory investigation and in your own mind fixed a value of so much and you depreciated them so much? That is, did you have knowledge yourself 20 to say what shafting could be replaced at there or what a coupling would be worth? A. The replacement cost, I asked over the phone and by letter from the manufacturers.

Q. Oh, you went to that trouble? A. Oh, yes.

MR. TILLEY: If Your Lordship will permit me, you will see that is the agreed figure between two men; the other people had their representative, Mitchell; and they said Let us find out from the manufacturers or whom we can find out from just what it will cost you to get that there, and those are the agreed figures. That is as far as we could get; we hoped to get farther 30 but we couldn't agree upon the other. We could agree on the top but we couldn't agree on the bottom.

MR. OSLER: It is quite apparent why.

MR. TILLEY: Yes.

BY MR. OSLER: Q. Then the hoisting drum, Mr. Hole, what kind of machinery was that, \$4,500 new? What was the character of that? A. On page 8 is that, Mr. Osler?

HIS LORDSHIP: It is item 9.

Q. It is item 9 on this exhibit 35? A. I have it, sir.

Q. What kind of machine is it? Steel or wood? A. Cast iron, the 40 ordinary cast iron drum.

Q. Cast iron? A. Frame and shaft and chain rod.

Q. The physical condition of that good too I take it? A. No, I depreciated that sixty percent.

Q. What do you say was wrong with the physical condition? A. It was old.

Q. It was old, I agree. No defects that you could see? A. Not that I could see.

Q. How much did you assume? A. I depreciated that sixty percent.

Q. And did you take that off just because it was old? A. Yes.

Q. It had in fact been doing its work well? A. Yes, I suppose so.

Q. Then the coal hoist, what kind of machine was that? A. That was an electrically driven drum hoist, cable for hoisting conveyor; we had the invoices for the cost of that.

10 Q. And what was the physical condition of it? A. It was doing its duty but the cables hadn't a very long life. They have to be renewed every—oh, say five years for the life of a cable, and they had been in thirteen years I understand. I depreciated it fifty percent because twenty-five years is the book given life of that type of machinery.

Q. So you were taking the book life and depreciating it on that basis? A. I did, sir, because I hadn't time to—or I didn't make a closer examination. I would have to have the cable all unwound.

Q. And do you know enough about depreciation, Mr. Hole, to know that these book lives are almost invariably exceeded if the machinery is taken care of? A. Oh yes.

20 Q. That is the usual practice, isn't it? A. Sometimes yes and sometimes not, sometimes less.

Q. If taken care of always more? A. No, I wouldn't say that.

Q. What proportion of that was for cables? A. Well, I haven't got that.

Q. It would be very small though, wouldn't it? A. No, it was quite an item.

Q. How much? Five hundred or a thousand dollars? A. \$1,500 I should say.

30 A. Q. And do you know how old the cables were at that particular time? A. No, I don't.

Q. You have no idea of that? A. No.

Q. For all you knew they might have been put in within the last two years? A. For all I knew, yes. I made my depreciation in that case on the book life.

Q. So that you told me a moment ago you based it partly on the fact that the cables required renewal every five years, but that wasn't quite so?

A. That was a fact, sir, that five years is the life of cable. The cables' life wouldn't be so long as the life of the hoist; I mean the bucket, the life of the bucket wouldn't be so long as the life of the hoist.

40 Q. Then there is this additional feature, that in a piece of machinery the life would be based on operating twelve months in the year, isn't that so?

A. Pardon?

Q. The book life would be based on operating twelve months in the year? A. Yes.

Q. And—of course, in a plant like this where they were hoisting from vessels it would be limited to about six or seven months a year, is that right?

A. Yes.

Q. So that you would ordinarily expect the book life to be considerably increased on six months' operation, isn't that the case? A. Yes, you would.

Q. Did you take that into consideration? A. Yes. And that is all I took the life of the shed. If the shed was there for ten years and your equipment was scrapped—

Q. So part of this depreciation on the machinery is on account of the shed? A. Yes. I took it as a whole.

Q. Assuming the shed in good condition, serviceable condition, how much of that depreciation that you have taken off the machinery as a whole is attributable to the shed? A. I couldn't say, sir. I couldn't say. 10

Q. No? You are a pretty ready estimator? A. Well, I couldn't tell you that.

Q. Well, we will perhaps come back to that when we get to the total. Then the electrical equipment, how much was that? Thirty-five hundred. That is another substantial item? A. That was part of the equipment for the hoist.

Q. Oh, you have been dealing with that and the hoist together, have you? A. The controller and so forth to the hoist.

Q. I had been asking you with regard to the item Coal hoist, which is \$9,500 replacement new 1926. Have you been answering me as though I had 20 included both the coal hoist and the electrical equipment? A. No.

Q. Then what about the electrical equipment? A. Well, I take that as an integral part of the equipment and depreciate it the same amount, fifty percent.

Q. Did you see any physical depreciation in it? A. No.

Q. So far as you could observe it was in first-class order? A. It had been there thirteen years.

Q. And then you applied a book value to that? A. Yes.

Q. And how much was the book life that you applied to that? A. I think it has a twenty-five year life the same as the other. 30

Q. A twenty-five year life? A. Yes.

Q. So that you really took that off partly on account of the age of the building too? A. Yes, I was governed by that.

Q. Now then, you have, omitting some of the smaller items, Track \$1,575? A. Yes.

Q. Any physical depreciation in that? A. Well, it was very well worn.

Q. Very well worn, but it was wearing very well, wasn't it? Come, Mr. Hole, it was doing its work perfectly satisfactorily in the operation of this dock and coal yard? A. Two tracks out of five was in use, yes.

Q. And no reason to suppose that when they had got more vessels 40 coming in they couldn't have put the others into perfectly good operation?

A. If they had spent some money on them they could.

Q. How much? A. Oh, I am not prepared to say that.

Q. But you cannot point to any physical depreciation in those tracks? A. Except that through the failure of the beams that supported them; these tracks were spiked to beams that were in turn fixed to the cross beams that had given way and let the roof down.

Q. So that if we make provisions for putting the other beams into alignment that would take care of any depreciation in these tracks? A. Yes. The wooden part of the tracks, yes.

Q. And the iron part, I suppose they had rails for these hoppers, had they? A. Yes. A cent a pound scrap value.

Q. Did you say a cent a pound? A. A cent a pound scrap value.

Q. They were in operation, Mr Hole? A. Yes, but they were so very badly worn, they had been used so badly.

Q. They had been used, yes, but they were still being used? A. Two
10 of the five tracks were, yes.

Q. And no signs of any of these trucks being run off them and broken? A. No, but there was fifty percent depreciation in the useful life of those tracks in my opinion.

Q. Well then on the whole you have taken this machinery, which had a replacement cost new in 1926 of \$41,876 and you have come to the conclusion that it was worth only \$19,570? A. That is right, sir.

Q. Now then I want to get your judgment as to how much of that reduction was due to your estimate that the building was in bad shape and how much was due to the condition of the machinery? A. It would be just
20 an opinion, Mr. Osler; I should say twenty-five percent of the depreciation would be attributable to the bad state of the shed.

Q. Well I am just going to ask you what you mean. How many dollars' depreciation do you think would be attributable to the bad state of the shed? A. \$4,892.

Q. You get at that by just a round percentage? A. Yes.

Q. You don't say that you considered that in fixing this depreciation? A. Not that sum, but that is my idea of the proportion that it would bear. I was influenced by that.

HIS LORDSHIP: Twenty-five percent of the \$19,000 odd.

30 BY MR. TILLEY: Q. Might I just interrupt: I don't understand what the witness means by that. I understood Mr. Osler's question, and I just want to know whether I have it right, what part of the depreciation of the machinery was taken off because the machinery was in a building that itself was in that condition that you have described? A. Yes.

Q. And you said about twenty-five percent. Then I was trying to find out whether that was twenty-five percent of the depreciation or what it was and you have taken twenty-five percent of the \$19,000, which is the residue value and I don't follow that. Am I right?

MR. OSLER: I think you are right.

40 MR. TILLEY: We are all passing that over.

BY HIS LORDSHIP: Q. Is that what you mean? A. That is what I mean, yes, sir.

BY MR. OSLER: Q. Which did you mean? A. That is what I mean.

Q. You mean you should add twenty-five percent to the residue value? A. The depreciation included a consideration of twenty-five percent for the state of the shed.

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MR. TILLEY: Then that would be, if that is so, \$5,000 more depreciation of the residue.

MR. OSLER: No, if that were so it would be \$10,000.

MR. TILLEY: No.

MR. OSLER: If the depreciation included twenty-five percent by reason of the condition of the shed.

MR. TILLEY: He didn't say that.

BY HIS LORDSHIP: Q. Get that cleared up. Clear it up as simply as you can. What do you mean by that? A. Twenty-five percent of the difference between \$19,570 and \$41,876.42.

10

MR. OSLER: That would be something over \$5,000.

MR. TILLEY: Yes.

BY MR. OSLER: And that was attributable to the state of the building? A. I think so, sir.

Q. And, broadly speaking, Mr. Hole, all this machinery itself, although the plant was in active use to your knowledge down to the end of the season of 1926 and had been for many years, and although part of it was continuing to be used for the next four years, you have suggested that the fair value of the buildings is about a third of the replacement cost, that is \$22,436 as against a replacement cost of \$61,000—? A. Yes.

20

Q. And the fair value of the machinery is a little less than a half of the replacement cost? A. Yes.

Q. And did you know that they took off cargoes over the few years preceding this date amounting to 50,000 tons in that plant? A. I knew they took off fifteen thousand tons in 1926, or about 15,000 tons.

Q. And you knew that they had been continuing to take in a substantial tonnage in the previous years? A. Yes.

Q. And have you ever operated a coal plant yourself? A. No, sir.

Q. And you have never actually been engaged in the operation of a coal plant? A. No.

30

Q. You told us you had been employed by the Rogers Company to design one? A. To design one.

Q. And that was a plant at Montreal? A. Yes, at Montreal, and two in Toronto, one the Lappin Avenue yard in Toronto, and the Danforth Avenue yard, and any other yards that they were contemplating, several new yards they have contemplated they have come to me, Rogers, and suggested the way coal could be handled in these districts.

Q. You knew that the Rogers Company had carried coal by water for a great many years? A. Yes.

Q. And built up a large business on that basis? A. Partly, yes.

40

Q. And then their plant was located in a part of the waterfront where they weren't going to allow coal yards to be established? A. Yes.

Q. You knew that? A. Yes.

Q. And Rogers got out? A. They didn't get out until—

Q. They did get out? A. They got out eventually, yes.

Q. And you don't know of your knowledge why they got out? A. Yes, I do. I was very close to some of the members of the firm and that is

why I know. I have no—of course, that is the only way you can know those things.

Q. You may have been told this or that possibly, but you didn't go into the details of their business and see how profitable it was or anything of that kind? A. No.

Q. And if the Rogers had any notions of that kind they could be here to tell them? A. Oh, I suppose.

Q. And then you would find out something about them?

HIS LORDSHIP: You mean they might be subpoenaed here.

10 MR. OSLER: Yes.

MR. TILLEY: There is a little too close an association between the various people.

MR. OSLER: Yes, that is what we think.

MR. TILLEY: Well that is so.

MR. OSLER: I am glad to have my learned friend admit it.

Q. Well then do you know how many people unloaded vessels—?

MR. TILLEY: If people we interviewed were not interviewed afterwards we would get along first rate in this Arbitration.

HIS LORDSHIP: We are getting along.

20 MR. HELLMUTH: I don't know why that remark should be made.

MR. TILLEY: My friend has raised the question and I submit that if my learned friend leaves that alone it is all right but if he suggests we should get in all the opposition, all these concerns, let us have the facts.

MR. OSLER: What are the facts?

MR. TILLEY: I will prove them if you want them proven.

MR. OSLER: You will have to use your own judgment.

HIS LORDSHIP: That is just one of the little thrusts that come up.

MR. TILLEY: I couldn't proceed along that line in this Arbitration.

30 Q. You spoke about the navigation of self-unloading vessels, Mr. Hole. Have you had anything to do with the transportation of coal? A. No, I have not.

Q. Do you know how many self-unloading vessels were in use prior to say 1928? A. No, I don't.

Q. Do you know how many are now in use? A. I do not.

Q. Do you know that a considerable number of vessels without self-unloading plants are still in use? A. Oh yes.

40 Q. And do you know that where there are no facilities for putting up land equipment you have got to get self-unloading vessels, but that where there are facilities there are advantages in dealing with it that way? A. I know that it cost about twenty-two and one-half cents a ton to unload by the method that the Standard Fuel Company people were unloading and you could get prices from the self-unloading boats for ten cents a ton.

Q. And the area of dock that you could handle the material on is of course a limited distance from the dock front? A. About eighty feet I believe with a hundred foot boom.

Q. About eighty feet with a hundred foot boom is about the maximum? A. Yes, at present.

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Q. So that you have to do all your handling and storage in about eighty feet from the dock front? A. No.

Q. With a self-unloader? A. That is the center of the pile.

Q. Then you could extend that 140 perhaps? A. About. At the base of the triangular shaped pile it would be about 140 feet.

Q. So that if you wanted to get sufficient storage and if the sufficient storage exceeded the depth of 140 feet from the dock front you couldn't handle it merely with self-unloaders, you would have to have the machinery? A. Not with the ones that are in use at the present time, sir.

Q. In use where? A. The ones they are building, the ones with longer 10 booms.

Q. And they are building ones with longer booms? A. Yes.

Q. Who is building them? A. I have read of it.

Q. You have never seen it? A. No.

Q. And you don't know anything about it? A. I have never seen it, but they are building them. There is no reason why they shouldn't though.

Q. And you know of course why the movement of the coal docks off the central waterfront in Toronto and the equipment for handling coal otherwise than by self-unloaders has been dismantled? A. Yes.

Q. And you know that the plans of the Commission are such that nobody 20 can tell yet exactly how much area he can get, whether he can get more than 140 feet back from the dock for a large enough plant? A. I don't know about their plans, no.

Q. You don't know? A. No.

Q. And you don't know whether it is the practice of the coal companies to store their coal in the open or to cover it today? A. Soft coal always in the open, sir.

BY MR. TILLEY: Q. What is that? A. Bituminous coal always in the open.

BY MR. OSLER: Q. Anthracite covered? A. Domestic anthracite 30 covered, it has been.

Q. In fact they make quite a feature on their anthracite that they keep their anthracite covered?

HIS LORDSHIP: Well do we need to cover that?

MR. OSLER: Perhaps not. Well he was undertaking to pose as an expert my Lord.

Q. You spoke of new methods of handling by small pockets, small portable pockets I think, and if that were done it would not be feasible to cover it, would it? A. No.

Q. So that that would not give you covered storage for your coal? A. No. 40

Q. And those small pockets would not be very feasible, would they, economically, if you were handling a cargo of say four or 5,000 tons? A. No, the majority of the cargo would be stored in a pile and it would be reclaimed into these pockets by portable derrick.

Q. Then I think you were giving some account of your experience with the Rogers Company in Montreal and the condition of the stock of coal that was down there and I wasn't quite sure how you described that. Whose plant

did they buy? A. The Ogdensburg Coal and Towing Company's plant, six years ago.

Q. Near Lachine? A. Two of them were on the Lachine Canal.

Q. And their stock consisted of 50,000 tons, did it? A. About that I think at that time.

Q. And you saw that when the Rogers Company took it over? A. I took stock.

Q. And that plant had been operated for a good many years? A. Well that was an up to date throughout, it was all steel throughout.

10 Q. Yes, but it had been operated for a good many years? A. Oh yes.

Q. And you found you said 30,000 tons of coal and 20,000 tons of—
A. No no, I didn't.

Q. What did you find? A. I had a box made two feet each way, two feet by two feet by two feet, and took samples of this coal and weighed it and then turned it out and screened the small coal, there was a 7/16 by 7/16 sieve, and weighed that and we have found from twenty to fifteen percent of finings in different parts of the piles.

Q. And of course what you took would be the stuff near the ground?

A. No, we climbed the piles—there were two of us, one for each side—and
20 tried to take the whole.

Q. But you don't know how long that stock had been there? A. Well this was in April; I presume it was all brought in the year before.

Q. But you don't know? A. Well I didn't know.

Q. And you had never, as you said, been operating a coal business?
A. No.

Q. And how much of the screenings consisted of pea coal and how much of buckwheat? A. Well everything that would go through a 7/16 mesh.

Q. Well what does that produce, a 7/16 mesh? A. Some buckwheat and smaller sizes.

30 Q. You know of course enough about the coal business to know that none of that is wasted, it is graded into the smaller sizes and sold in that way?
A. Oh yes.

Q. And when you compared that to the sample which you took from the car—you took that from a car that had just come in? A. Yes.

Q. And did you think it was fair to compare two samples, one taken from a pile of waterborne coal that had come in at least a year before and for all you know longer ago and another from a railway car? A. It is a matter of comparison, sir.

Q. That is all you say? A. Yes.

40 Q. Now you were on the Harbor Board you said from when? A. 1912 to 1918 and then I left the Board and went back in 1921 to 1923, I was with them again a second time.

Q. And what was your exact position from 1912 to 1918? A. I was—

Q. Had you a title? A. Yes. I started as a draftsman, I was more or less of a stranger in the city and had to work up, and worked as a draftsman for two years and I was made Assistant Chief Draftsman, and then I left in 1915,

but didn't leave the Commission—I took the position of Assistant Superintendent of Construction, and was with them until February, 1918.

Q. Who was your chief? A. A. C. Mitchell.

Q. What was his position? A. General Superintendent of Construction.

Q. And you were with them then until 1918 and then you left them?

A. Yes.

Q. And went to whom? A. I went in business for myself as construction engineer for a year.

Q. Still with a retainer from them? A. No, not from the Harbor 10
Commission.

Q. Or from the Toronto Terminal Company? A. No.

Q. When did you get your retainer from the Terminal Company? A. I think it was in 1926, Mr. Osler.

Q. And has that pretty well occupied your time since then? A. No no, I have a practice.

Q. And I suppose your time is three-quarters on the Terminal? A. No.

HIS LORDSHIP: What is this leading to, Mr. Osler? Are you trying to find out his qualifications or what?

MR. OSLER: I am trying to find out what his qualifications are, my Lord. 20

WITNESS: Oh I have a list if you would like me to read it, sir.

HIS LORDSHIP: No, I don't think so.

MR. OSLER: No.

I don't want to duplicate matters; I understand my learned friend Mr. Hellmuth wants to ask some questions with regard to the plans that the witness put in. I would like to reserve the right to ask a question on this other branch if I should want to do so.

HIS LORDSHIP: On the branch Mr. Hellmuth is going to cover?

MR. OSLER: Yes.

HIS LORDSHIP: What branch are you going to cover? Is there anything 30
left for this witness to say?

MR. HELLMUTH: I want to find out something about these plans, my Lord, if I might.

CROSS-EXAMINED BY MR. HELLMUTH:

Q. Mr. Hole, you stated that you had, as I understand it, done some actual construction work of sea walls or perhaps I should say lake walls or bay walls while you were with the Harbor Commission? A. Superintending, sir, yes.

Q. Did you draw the plans for those works? A. No sir.

Q. Then you were superintending the construction where now? Will 40
you tell me what part of the bay? A. From Bathurst Street to Peter Street.

Q. What was the first piece of work of that character that you superintended the construction of? You were Assistant Superintendent, weren't you? A. Yes.

Q. What was the first piece of work you did and what year? A. Well I was the general superintendent, I wasn't posted on one job alone, I had charge of all the construction that was going on at that time for the Harbor Commission.

Q. Well what construction was going on in the way of these sea walls, and I assume the filling in behind, wasn't it? A. Yes. Some of the Don diversion channel was being done, but that was a different type of retention to what we are speaking of.

10 Q. I wanted to get now to something that was done between, as you suggest, Bathurst and Peter. Was that filling and sea wall construction?
 A. Yes sir.

Q. And what year was that, or what years if there were, that you were engaged down there? A. That was in 1925.

Q. Well then during the period that you were first there, that is up to 1918, you didn't have any of this work? A. No, that is wrong, Mr. Hellmuth. I have to consult my records for that. That would be 1917.

Q. Yes, 1917, because you left in 1918? A. In 1918, yes.

20 Q. Now what was the work that you did, was it nearer Bathurst than Peter Street or was it done all together? A. It was started at Bathurst Street and continued east.

Q. Continuously? A. Yes.

Q. And about what area was filled in during that time, about how many acres if there were acres? A. Well I couldn't say that.

Q. You couldn't tell me that? A. No.

Q. About how much wall was built or dockage if any? Was there any?
 A. Oh yes, the wall was built.

Q. But was this for dockage facilities? A. Yes, retention purposes.

Q. Well had you any costs of that, or did the costs vary entirely upon the depth of water in which you had to go? A. Yes sir.

30 Q. You mean it did vary? A. It did vary, yes.

Q. So that if you had a piece of property extending out into the bay where the depth was greater than it was in we will say the next piece you would have a very much heavier cost? A. Very much.

Q. Very much? A. Almost four times.

Q. Yes, exactly so, and if you were to go out into the bay where the depth was twenty feet, we will say, it would be a very much lower cost than thirty feet? A. Yes. Yes.

Q. What proportion would you put there between the two? A. I would take it at \$10 a cubic yard, which is a general estimate.

40 Q. For what? A. For the retention work.

Q. You mean it would be \$10 a cubic yard more? A. More, the deeper depth.

Q. That is if it were—? A. No, \$10 each cubic yard for the extra cross section of the greater depth.

Q. I see you say \$10 a yard? A. \$10 a cubic yard.

Q. But I mean isn't it more costly to construct where the water is deeper,

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per cubic yard, than it is where the water is shallower? A. Not very much; it is made up by the extra cross sectional area.

Q. Yes. Now you went back, didn't you, to the Harbor Commission in 1921? A. 1921.

Q. Are you familiar with the new Canada Steamship docks? A. No, I am not familiar with them, I wasn't on that work. When I went back I was resident architect in western—

Q. So you cannot give me any idea of the cost of that; you haven't inquired? A. Yes, I think I have got that in my office, all the costs.

Q. You know all the costs? A. Yes. 10

Q. Well perhaps you will tell me what was the cost of the new present Canada Steamship site both for sea wall and for filling? A. No, I can only give you the retention costs.

Q. Well that is the wall costs? A. The wall costs.

Q. And in addition to that there would be the filling? A. Oh yes.

Q. What was the cost of the retention wall there? A. It was around \$300 a foot. A little more in places and a little less. A lineal foot of wall that is.

Q. About \$300 a lineal foot? A. Yes.

Q. And about how many lineal feet were there? A. Oh I couldn't 20 tell you.

Q. About 3572 lineal feet? A. I haven't the figures here, sir.

Q. But I thought you were familiar with the cost of this?

MR. TILLEY: You are asking him about the length of the slips and so on; I don't know how any man could keep it in his head. I knew it at the time perhaps but I don't know now, and the slips and everything else you are asking now.

HIS LORDSHIP: What I am wondering about, what is this leading to? You are representing the owner of course of the property. What is this leading to now? 30

MR. HELLMUTH: Because he has put a cost upon filling and a cost upon retaining walls. Mr. Wilson gave his cost of filling and his cost of retaining walls or cribbing, whatever it might be, that is by the caissons that were to be put in, but if this witness doesn't know that I am not going on with it of course my Lord.

MR. TILLEY: He doesn't know the length of lineal feet commencing at the easterly end of the steamships and following all the slips around. He told you the lineal per foot cost, \$300 more or less.

MR. HELLMUTH: I know he did.

Q. Do you mean that that is the lineal foot cost of the Canada Steam- 40 ship's, that you know—? A. Yes.

Q. It is \$300 or over per foot?

MR. TILLEY: He didn't say over or under; about that.

WITNESS: About \$300.

MR. HELLMUTH: I thought the witness did say it was over.

MR. TILLEY: He said more in places and less in places.

HIS LORDSHIP: He used the phrase "above," as I recollect.

MR. TILLEY: And more or less.

HIS LORDSHIP: Around.

Q. What do you say, does it average \$300? A. To the best of my recollection that section does.

Q. Well, now you wouldn't compare the work that would have to be done upon the present waterlot of the Boulton property with the elaboration for the Terminal facilities that were done at the Canada Steamship docks?

A. Yes, I would, sir, in the same depth of water.

10 Q. I am asking you now with slips and walls you wouldn't compare the two as to cost? A. Yes.

MR. TILLEY: Mr. Hellmuth, if it is so much per foot following the wall around and this is a retaining wall the only thing that could change is the depth you have to go.

Q. The depth is quite different, is it not? You know that? A. Of the Boulton property?

Q. And the Canada Steamship? A. It needs 24 foot cribs; it is about two feet different, I think.

MR. TILLEY: It would depend how far you are going to carry your docks out.

20 Q. Let me understand: You have in plan A not provided at all for any dock? No, sir.

Q. You have just filled the land out? A. That is one suggestion.

Q. You have filled the land out and you have left in that case—?

HIS LORDSHIP: What is the plan?

MR. HELLMUTH: Exhibit 36, my Lord, plan A.

Q. You have just filled the whole waterlot in without providing any sort of slip and the only access to that waterlot would be at the south end for boats? A. Yes, sir.

30 Q. And that shows a width of 213 feet, is it not? A. 206 feet on the face, on the slope.

Q. Well, then that would not leave a property that would be of any advantage so far as having boats come into it unless you could use Church Street, would it? A. No, sir.

Q. No, it wouldn't. So that that would not be what any sensible business man would apply to that property, would it? A. No, sir.

Q. Then we may turn to the plan B: Now plan B in your diagram shows a slipway which runs 577 feet and some inches north and south and has an east and west width of 80 feet? A. Yes, sir.

40 Q. Now, do you know of any boats that at the present time are of that width coming into Toronto? A. No, sir, certainly not, but I think, what guided me was the width between the locks of the Welland Canal.

Q. I quite understand the locks of the Welland Canal are eighty feet in width? A. Yes.

Q. But the largest coal boats bringing in coal to Toronto have about a 7,500 ton load, isn't that about the biggest load? A. I think so.

Q. What is that? A. Yes, I think so.

Q. And that is unusually large, is it not, so far as boats coming in to Toronto with coal? A. Yes.

Q. And that boat has a width of something under fifty feet, hasn't it? A. Yes.

Q. So that a boat that would bring in coal for that purpose, I mean for the purpose of unloading it at that dock, would not require anything like an eighty foot slip? A. I would think—

Q. That type of boat, I say? A. Well you have to get directly opposite the slip to get in and if there is any wind you would have an awful job if you have got the slip just to fit the boat. I think eighty feet is just a proper 10 operating width, sir.

Q. Do you mean to say that a boat acting perfectly properly operating into a fifty foot slip, that was carrying coal for instance, a fifty foot slip, a boat that would have a leeway of two or three feet coming in to the bay, I am not speaking of out in the lake but in the bay of Toronto—

MR. TILLEY: On each side or one side?

Q. No, between the wall, if you like to call it a wall, and the side of the boat? A. Well what is the width of the slip you are speaking of, sir?

Q. Fifty foot slip, or fifty-five foot. On Mr. Wilson's Exhibit 41, the slip there fifty-four feet five inches, on Mr. Wilson's plan. Now have you 20 had any experience regarding car ferries coming into slips? In Toronto do they have anything like a seventy foot slip to come into, or eighty feet you put, a slip that would give something more than thirty feet in width? What do the car ferries have? Don't they fit pretty snugly in?

MR. TILLEY: Here at Toronto, do you say, coming in?

MR. HELLMUTH: An Island ferry.

MR. TILLEY: That isn't a car ferry.

MR. HELLMUTH: No, an island ferry.

Q. Don't they come in pretty closely? A. Yes, they do.

Q. You have been in Detroit? A. No. 30

Q. Never? A. No, sir.

Q. You haven't seen then—? A. Not to see any shipping.

Q. No, but have you crossed? A. Oh, just across for an hour or two, that is all.

Q. Crossed in the ferries there, on the train? A. Oh, yes.

Q. Don't they come right in snugly, into the slip, without any great widths? A. I was sitting in the car; I didn't notice it.

Q. Have you had any experience in shipping at all? A. No, I haven't.

Q. Do you know whether it would or would not be an advantage to a boat coming in to come into a slip that wasn't a great deal wider than the 40 boat itself, that it is an advantage and not a disadvantage, would you know that? Have you had any experience whatever in regard to the construction of slips for boats entering the harbors? A. No, I have not.

Q. No, you haven't? A. But I still think eighty feet is a proper width.

Q. Yes, I know, but without experience you say that? A. No, the usual smallest slips, in laying out a double slip for small boats it is a rough rule

generally a hundred feet, or 200 feet altogether, your slip, and then you get two boats in this, of course, and then when you have one boat in you have the whole width to operate in.

Q. Now, is there any necessity, in bringing in coal to Toronto Harbor, to have the two boats in? A. No. You wouldn't get two boats in in the eighty feet.

Q. Now why do you make the slip 577 feet long? That is what your slip is. What is the necessity of that? None of these boats are 577 feet or anything like that? A. These plans were made, sir, in the first place
10 to convey the idea of the cost of fill of the waterlot and these are two plans of mine as to how it might be done and any other way you could probably fix from the cost of this, the unit cost, I mean.

Q. There wasn't any necessity of having a slip for the whole length of the waterlot, was there? A. Well, no.

Q. Do you know of any boats that are 570 or 550? Do you know the W. E. Fitzgerald? A. They are around 310, something like that.

Q. And you have left a slip of 577? A. Well, when you are spending this amount of money, sir, I thought perhaps that it would be as well to provide for future emergencies and that would be big enough even if you
20 hadn't got it and might wish afterwards you had.

Q. And you can say, can you not, that the design that you show in plan B leaves an unnecessarily narrow land portion? A. Yes, of course.

Q. And the more that you could save by the widening that and shortening the slip for such boats as you speak of, 350 feet, would add very materially to the value of the land portion? A. Yes, sir.

Q. But your plan would take as much as possible from the value of the land portion by extending your slip to the full extent? A. It would, but it wasn't prepared with that object.

Q. But that would be the effect if constructed on it? A. It would of
30 course make the land cost more.

Q. Now, do you know when you were engaged with the Harbor Commission what it cost the Harbor Commission for fill? A. I believe the Canadian Stewart Company's contract—

Q. We don't want that. I want to know whether you can tell what it cost the Harbor Commission for fill?

MR. TILLEY: I am objecting. It is not at all useful to go into the \$33,000,000 building proposition along the waterfront. There is no comparison.

HIS LORDSHIP: Very tremendously large I should think; but Mr. Hell-
40 muth apparently has some idea in view.

Q. Do you know what it cost the Harbor Commission?

MR. TILLEY: Per cubic yard or what?

Q. Yes, per cubic yard? A. The Canadian Stewart contract was 19 2/3 cents per cubic yard for millions of yards.

BY MR. TILLEY: Q. How many million? A. I am not sure about that.

Q. What contractor did it?

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MR. HELLMUTH: My friend can re-examine. Surely I may be allowed to continue that. I never interrupted him.

MR. TILLEY: I will be quiet, I promise.

MR. HELLMUTH: All right, much obliged.

BY MR. HELLMUTH: Q. Then the Harbor Commission were making a profit when they sold to the city? A. I don't know about that, sir.

Q. I thought you said fifty cents was what they charged the city for fill? A. No, I didn't say anything of the kind, Mr. Hellmuth.

Q. You didn't say? A. No. It was my figure that I used for this fill, fifty cents per cubic yard. 10

Q. Did the Harbor Commission while you were there charge the city for fill they did for the city? A. I don't know about that.

Q. Where did you get your fifty cents? A. Well, I have seen thousands of yards deposited on the waterfront at a cost of about five cents a yard for levelling, that is just the cost of levelling the fill, about five cents a cubic yard, and other times if you wanted a fill badly you would be glad to pay these contractors a dollar a yard to bring it in, so I am basing my fifty—I don't know how you will get it at the time it was done, because we don't know when it is going to be done or when they may do it, and I have allowed fifty cents a yard as taking care of most things. It might cost them a little more if it was done 20 later or sooner.

Q. You know that a great deal of the fill that came in cost nothing, except for the levelling? A. About five cents.

Q. Some came in without any charge whatever, didn't it? A. No, you would have to level it and keep a man there, and that cost about five cents a yard.

Q. We are at cross purposes. I say it cost nothing except the levelling, the five cents? A. That is right.

Q. And there was an enormous quantity there came in, didn't it? A. Yes. 30

Q. And when they were in a great, special hurry, then they may have had to pay,—did you know of any paying as high as \$1 a load? A. Yes. Well, that is well on to a dollar a yard for it.

Q. A dollar a yard, rather, I should have said. Well did you pay it? Did you? A. I have heard of it—

Q. No? A. No, I didn't.

Q. You never paid? A. No.

Q. What is the highest you ever paid, and on what? A. \$1.25 for cinder fill.

Q. What is that? A. \$1.25 a yard for a cinder fill. 40

Q. I didn't ask you that; what is the highest price you ever paid per cubic yard for that fill? A. No, I have never bought any for myself.

MR. OSLER: Well, then, Mr. Hole will have his figures as to that flooring which he said he hadn't got, of the big shed.

WITNESS: Yes.

MR. OSLER: You will have those at two-fifteen.

MR. TILLEY: Do you think that is material enough?

MR. OSLER: Oh, a small item of \$10,000, I would regard that as material.

WITNESS: It was the \$2,500, it made up, didn't it, the difference?

BY MR. TILLEY: Q. Well, at any rate, you will get that, will you?

A. Yes, I will get it.

MR. OSLER: It was a small item of \$10,000; I think it was worth examining about.

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—1.00 p.m. Arbitration adjourned until 2.15 p.m.

—2.15 P.M. (FRIDAY, APRIL 8TH, 1932) RESUMED:

JOHN HOLE Continued:

10 CROSS-EXAMINATION RESUMED BY MR. OSLER:

Q. You were going to get your working figures to show what was included in that replacement item of \$34,000. Have you that, Mr. Hole

A. Yes, I have, Mr. Osler. That ten thousand that we were speaking of was the cost of the new floor. I find in our replacement values we only took for patching existing floor and allowed \$1,000 for it. The notes are here.

Q. So that if you struck the floor out altogether you would reduce the replacement value by only \$1,000? A. Yes.

Q. So that your \$10,000 would have no bearing on that at all? A. No. Although I still think it should be done.

20 Q. Well, that isn't what we are discussing. I would think the proper way would be to take a new floor and then take off for depreciation. If you did that you would revise your replacement cost by \$9,000? A. Yes.

Q. So that instead of having \$34,509 for the replacement cost of that building, if you were construing it on the basis of a concrete floor the replacement cost would be \$43,509? A. Yes.

Q. The total amount that you included in the replacement cost for the roof was only \$2,095? A. No, I don't think so. They are split up you see.

30 Q. Perhaps the quickest and shortest way would be to give us the items that you have making up the \$34,000 and then we can see what you are taking into account?

MR. TILLEY: How do you make up the thirty-four. A. Squared lumber including nails and bolts, profit and engineering, not uprights 228,975 feet board measure at ten cents per foot \$22,897.50.

Q. That doesn't include the roofing, of course? A. No. That is squared lumber. Poles, cedar, I have the length of them here, but I will give that to you now, \$6,087. Tie rods \$2,230. Roofing, 52,377 square feet at four cents, \$2,095. Improving floor \$1,000. Two new ventilators, \$200. That is \$34,509.50.

40 Q. So that the only item in that replacement cost for the roof you say is the \$2,095. A. Yes, for a new roof covering, but not for repairing this other roof.

Q. No? A. That would cost for the boards as well as the roof covering.

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Q. But you didn't include in this estimate at \$34,000 any of the cost of the roof boards? A. Why yes.

Q. Where do they come in? A. Those must be in that 228,975 feet board measure of lumber in the whole shed.

Q. No, because you said that was squared timber, I think your note said that it was confined to squared timber? A. Well, I will have to check that before I could say which way it is, and from those other figures that we have here—

Q. It is rather important that you put down the replacement cost of two thousand and then want to take off five? A. But we weren't replacing 10 it so much boards, Mr. Osler, we were replacing the whole shed, and the roof boards were included in the shed so that was included. Mr. Mitchell knows that the whole shed was in this.

Q. Mr. Mitchell tells me that the only allowance you made on his replacement cost was for the roof at \$2,095 and the other, the timber, was squared timber and poles? A. Well no, I have got, I think 228,975 feet board measure is the entire lumber bill in the shed, sir.

Q. What does your figure say? A. Well it says squared lumber, but I mean as apart from cedar poles.

Q. Would you speak of these roof boards as squared lumber? A. Well 20 it is sawn lumber, and cedar poles are not, they are just barked, the bark taken off.

Q. I know? A. No, but that is the difference; in building a new shed you would never forget the roof boards; and there is nothing there for sheeting on the side, there is no two inch sheeting but it is all in that bill of lumber.

Q. Not the metal sheeting? A. No, two inch and one inch sheeting on the walls, all that lumber in the shed is in the bill.

Q. Have you your calculation of that, because that isn't Mr. Mitchell's memorandum of that at all? These are your figures? A. They are my 30 figures, yes.

Q. Where do you get 22,000? A. Adding all these items, the board measure, up from this bill of material, Mr. Osler, in the shed.

Q. Now let us see that, because it is curious that you should call it squared timber—? A. I will do it if you want me to; it will take a little time. The outside of the north part of the building—

MR. TILLEY: A little louder, please.

WITNESS: \$86,000 odd. (Indicating). This is only one part of it; there is some more to be added yet.

Q. Perhaps the shortest way would be for you to stand down, with His Lordship's approval, and note what was in it and what was left out instead 40 of making the calculation; you might perhaps get together with Mr. Mitchell? A. Well I think that is the best part of it, because I am sure that this is right.

HIS LORDSHIP: Can we take another witness in the meantime?

MR. OSLER: Yes.

AUBREY JAMES MITCHELL, Sworn.

EXAMINED BY MR. TILLEY:

Q. Mr. Mitchell, what position do you occupy in the Canadian Pacific Railway? A. General Yardmaster.

Q. What does that involve? A. Charge of the movements in the Toronto Terminals.

Q. Charge of the movement of trains and engines and so on? A. Yes.

Q. In the Toronto Terminals? A. Yes.

10 Q. And do the Toronto Terminals include the east as far as Yonge and Church Streets? A. As far as Leaside.

Q. Or all between Leaside and Toronto stations? A. Yes sir.

Q. And how long have you been in that position? A. Since 1922.

Q. And I think you have been called in other cases to prove the movement of trains along the Esplanade? A. Yes sir.

Q. In other Arbitrations I mean. And are you able to say how many, and can you give it now, regular train movements east of the station? Have you it in a statement? A. Yes. I have a statement. (Produced).

20 Q. Is this the statement? A. This is the statement of the regular movements.

Q. This is the statement of the regular movements of the trains—? A. Of all movements over Yonge Street crossing, that is the regular movements on these dates.

Q. I think for the purposes of the other cases you gave it as of Yonge Street? A. Yes sir.

Q. And this is correct as to Yonge Street? A. Yes.

Q. You will come to Church Street in a moment?

HIS LORDSHIP: Movement of trains coming in?

MR. TILLEY: Along the Esplanade at Yonge Street.

30 WITNESS: Along the Esplanade.

Q. And on these dates, July 1st, 1922, it gives several dates, 1922, 1923, 1924, 1925, and so on, just to show over a period of years? A. Yes, sir.

Q. What the movement of trains was, and first you have "engines." What do you mean by engines? A. That is engines to and from the station for the trains.

Q. What would you mean by that, engines attached to trains? A. No, that would be light engines.

Q. Running light? A. Yes sir.

Q. That would be the engine movements? A. Without trains.

40 Q. Now then the next would be passenger cars. That means the number of cars, or the number of trains with cars? A. That is the number of trains with the cars I think.

Q. "17 regular movements of trains"—? A. Oh passenger engine moves and this is freight engine moves. (Indicating).

Q. First you have "17 regular movements of trains; 26 trains to place in station." What does that mean? A. That means trains for any direction, outbound trains.

Q. Outbound? A. Outbound trains from the Union Station, west, east, or any other way.

Q. "26 trains to take to yard; 34 passenger engine moves; 8 freight engine moves; 14 extra moves in passenger trains."

Well that is 125 engines and that would include 419 cars where there were cars and 40 freight cars, is that correct. A. Yes sir, that is correct.

BY HIS LORDSHIP: Q. Is that on one day? A. I don't know that I 10 understand this.

BY MR. TILLEY: Q. Can you enlighten us about this? A. Yes.

Q. You have made up in some way a further movement at one time? A. This here—

Q. In the first column under the heading of "engines" you have 125? A. That is the total number of engines on the different moves, on the complete number of moves.

Q. On the complete number of moves at the left hand side? A. Yes.

Q. There are 125 of them? A. And 419 passenger cars is the total number of cars handled on those trains that day. 20

Q. Well then freight cars? A. That is the total number of freight cars handled over Yonge Street with those eight freight engine moves. That is a yard engine move. (Indicating). That is the number of cars handled by that engine on those eight freight engine moves that day.

Q. The number of cars handled over Yonge Street. Where are your freight trains then? A. Well we have no freight trains, it is just a yard engine.

Q. You have no freight trains coming in at the Esplanade? A. No, not the C.P.R.

Q. I am sorry; that accounts for it, I couldn't understand the forty 30 freight cars, but those eight freight engines moved some forty cars onto sidings or some place? A. Yes, that is it.

Q. That isn't a regular freight train move? A. No. That is a regular movement but it is just a yard engine movement.

Q. And then likewise on the other basis, taking these in the other years, it has been picked out just to give the year to year change; these are the movements that took place? A. Yes sir. Those were taken from the books.

Q. Well then these are all what you call regular movements? A. Regular movements, yes sir. They wouldn't include any movement such as a special movement down with a car of fruit or anything like that. 40

Q. If you had to take a special movement with a freight car of fruit it would be outside of those? A. Yes, outside of those; we don't keep any record of the extra movements.

Q. Then this is as of Yonge Street? A. Yes.

Q. How does Yonge Street compare with Church? I understand you have not made the description separately? A. No.

Q. Do these all cross Church? A. I wouldn't say they all would. Possibly twenty-five of the movements wouldn't go across Church Street, that is of that kind, but the eight freight engine moves there would be far greater at Church Street than they would at Yonge Street because they are working down in that district.

Q. Then what you mean when you say greater, you mean to say that their interference at Church Street or being at Church Street would be a more important matter than their being at Yonge? A. Well them eight freight engine moves would make more movements over Church Street than
10 it would at Yonge Street, because it is a straight haul over Yonge Street and he may have ten or fifteen cars going down which would be placed in the different sidings between Yonge Street and east of Church Street.

Q. When that freight engine goes down with cars it is going down with cars to spot? A. That is it.

Q. Or to leave on sidings? A. That is it.

Q. Or to pick up and bring them back from the sidings possibly? A. That is it.

Q. And those sidings or the places where it stops, that is east of Yonge Street? A. East of Yonge Street.

20 Q. And therefore the movement forward and back about Church with that engine one presumes would be greater than at Yonge Street? A. That is right.

Q. Is that what you mean? A. That is it.

Q. Then apart from that extra movement at Church Street with these freight engines, moving cars and spotting them and so on, would Church and Yonge be the same? A. Well some of the passenger engine moves wouldn't go to Church Street, that is go over Church Street, possibly twenty-five movements on there wouldn't go that far, and a number of the trains that is shown on there would stop and stand east of Yonge Street waiting for the signal.

30 Q. That is to say a number of trains coming into Toronto would stand east of Yonge Street, do you mean? A. Yes sir.

Q. Or going out from Toronto? A. Coming in to Toronto.

Q. They would stand east of Yonge? A. Yes.

Q. With a train? A. With a train, yes.

Q. Waiting for a signal where? Where do they get the signal? A. They get the signal from the tower man from the end of the station.

Q. And where do they stop, waiting for that signal? A. East of Yonge Street. The engine would be on the east side of Yonge Street.

Q. Between Yonge and Church? A. Between Yonge and Church.

40 Q. So that did that happen always or just sometimes? If the signal is set do they go right through? A. Well if the track in the station was clear he would get a clear signal, wouldn't stop.

Q. Sometimes he would go through and wouldn't have to stop and others he would stop and the engine would be between Church and Yonge Streets? A. Yes.

Q. And where would the end of the train be? A. Oh anywheres from Church Street to West Market Street.

Q. Then on the other side of that you say that possibly twenty-five of the passenger engines would not reach Yonge Street? A. Yes, because they would just go over Yonge Street.

Q. I mean they wouldn't go to Church Street? A. They wouldn't go as far as Church Street.

Q. They would go over Yonge Street and then what, stay back? A. Stay back. On going into the station. And some coming out of the station, excepting in a case where the engine happened to be going up close to the end of a train and it was pulling out and it would go on over Church Street.

Q. But ordinarily there would be trains that would come up to make a 10 movement back into the station that wouldn't get as far as Church, that is what you mean? A. Yes, that is right.

Q. How many tracks are there there? A. Seven.

Q. At Church? A. Yes sir.

EXHIBIT 38: Statement produced by witness "Canadian Pacific Railway Company—regular movements over Yonge Street," dated March 20th, 1929.

Q. Is there anything else that you can tell us about the movement, or is it all summed up in this, that there is a statement that shows regular movements, that there are specials but you don't keep track of them and you can't 20 say what it was? There are special movements that are not in this sheet?

A. Yes. Any switching movement to Yonge Street is not on that sheet. That is, freight switching movements are not on that sheet.

Q. And you cannot estimate that, or can you? A. Well no, I couldn't Mr. Tilley. It would be—oh, it may run into several moves and it may be only two or three, there is a number of sidings there.

Q. In a day? A. Yes. There is a number of sidings west which the engine would have to pass over Church Street to serve them.

Q. I suppose apart from that being so there are some passenger trains that go down there to Yonge and back in that wouldn't be shown in 30 that; on the other hand there are trains coming in from the east that as it were overrun Church that wouldn't overrun Yonge? A. Yes sir.

Q. And that sort of thing. A. I know that I would be pretty near safe in saying that all passenger trains coming out of the station would go to Church Street. It is just light engines—?

Q. That would come out and go back and not reach Church? A. Yes sir.

Q. Well then could you just say, speaking generally, is this for all day or certain hours of the day? A. This is for all day.

Q. That is what time in the morning? A. Six o'clock in the morning. 40

Q. Till what? A. Eleven at night.

Q. That is day movements? A. Yes. That is from six in the morning right till eleven at night.

Q. I was just wondering whether you could shortly sum up the position at Yonge as compared with Church; would it be about the same or one a little more than the other, and if so which? A. You mean any detention.

Q. Interference with the crossing? A. I would say it would be more at Church Street than at Yonge, because we have had cases that Church Street has been blocked anywheres, at least from the complaint we received from the Standard Fuel Company foreman, twenty to thirty minutes.

Q. At Church? A. Yes.

Q. Church Street doesn't run through south of the Esplanade? A. It stopped right at the Esplanade, right at the south side of the tracks.

Q. So that there was no thoroughfare down across the tracks to the waterfront? A. The Standard Fuel entrance was about a hundred feet west
10 of Church Street; you see they had no way of getting on Church Street until they crossed the tracks.

Q. The Standard Fuel hadn't? A. No.

Q. They had to cross the tracks to get on Church, and did the same apply to get towards Yonge Street? A. Yes, sir.

Q. There was no street south of the tracks towards Yonge? A. No.

Q. Nor towards Church? A. No.

MR. TILLEY: That is all, thank you.

CROSS-EXAMINED BY MR. OSLER:

Q. I notice these are all on holidays. I suppose the passenger traffic
20 on holidays is a little heavier than ordinary? A. Well the passenger travel, that is about the usual run, Mr. Osler.

Q. On holidays? A. Well on holidays we have it sometimes it is heavier than that; on the holiday it is usually not as heavy as the day before the holiday.

Q. But it is a good deal heavier than an ordinary day of the week?
A. The day before the holiday is.

Q. And the holiday too, heavier? A. Well the holiday, the first thing in the morning is usually maybe a little heavier, but the rest of the day it is practically normal.

Q. And the switching, you are confined to switching after five o'clock
30 in the evening, are you not? A. No, sir, not along the Esplanade.

Q. Not along the Esplanade? A. No, sir.

Q. Do you mean to say that you switch along the Esplanade and across Yonge Street at all hours of the day? A. At any hour of the day or night.

Q. And what time are you allowed to block this crossing? A. Five minutes I understood, but we didn't stick to five minutes; our practice was to get off the crossing as soon as possible.

Q. But you were legally required to be off in five minutes according to your understanding? A. Yes, sir.

Q. And so whenever you did just carelessly leave a train on the crossing
40 there was a complaint? A. Absolutely. Well I wouldn't say carelessly, Mr. Osler; the conditions there were different to what they are in the majority of places. For instance you would have a train on the track there waiting to pull into the station; while he was waiting for the signal another train would

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pull out of the station and the train that was already standing there couldn't move until the train got out.

Q. And he would have to wait while the train was actually moving out of the station? A. Oh yes, sure.

Q. And if your dispatcher's arrangements were right so that their trains could get in and out on time they would go right through, as Mr. Tilley said, without waiting? A. Well—

Q. It would be only when something went wrong and detained some train on the track longer than expected? A. Well sometimes a train would be longer unloading in the station. 10

Q. Or there might be a dozen other conditions? A. Yes.

Q. But the whole plan and design of your operations was to let the trains go right through? A. Yes sir.

Q. And these times that you give us are all before you went on the upper level? A. Oh yes. That is the Old level operation.

Q. How many of these movements of freight trains were before and after five o'clock? A. Five o'clock in the evening?

Q. Yes? A. Six of them. Six of them between six in the morning and six at night—seven in the morning and six at night.

Q. That is out of how many? A. Six out of eight. 20

Q. That would be freight engine movements? A. Yes sir.

Q. And the six by day would be at what times? A. Starting, the first movement would be between seven and eight in the morning, back again around noon, back again right after lunch, back in at three o'clock, down about 3.15, and back again about 5.30.

Q. And there would be one movement in each of those times? A. That is over Yonge Street, yes sir.

Q. And the engine that they worked on it would have only how many cars? A. Anywheres from maybe two or three to twenty-five.

Q. Oh, not twenty-five, because you had forty cars for instance in eight 30 moves? A. Yes.

Q. There is an average of five cars to the move? A. Yes, but some of the movements there may be only one or two cars; other movements there may be twenty-five cars.

Q. And that would leave most of the rest of them with only one? A. Yes sir.

RE-EXAMINED BY MR. TILLEY:

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Q. You were asked I think whether there was complaint whenever you stood longer than five minutes. Did they always complain when you were longer than five minutes, the Standard Fuel? A. Well, I wouldn't say that 40 they always did, Mr. Tilley, but on different occasions they called up about the crossing being blocked for twenty or thirty minutes. I know I went down to see the manager about it and of course it wasn't always the C.P.R. was blocking it; maybe the C.N.R. train had been standing there for ten

minutes and about the time he started to move the C.P.R. train would come along.

Q. So you arranged it between you to one take the other's job on when he left.

MR. OSLER: I wonder the railways didn't leave a train there permanently blocking the crossing and then we would have had no access and that would have settled everything.

MR. TILLEY: I suppose that would have appealed to some.

10 Q. Then the list gives 17 regular train movements. Is there any difference between holidays and other days as to the regular—? A. On the day before the holiday usually there may be a couple of extra trains.

Q. The day before? A. Yes sir. Generally before a holiday at that time we used to run two sections on a train to Tweed, sometimes two sections.

MR. OSLER: Do I understand that he means that the extras were not included in these figures?

WITNESS: No, sir.

BY MR. OSLER: Q. That includes everything, extra and regular? A. That is the regular, Mr. Osler.

BY MR. TILLEY: Q. Not the specials? A. Not the specials.

20 MR. OSLER: Please let him answer himself.

WITNESS: That includes the regular, the records taken right from the books.

BY MR. OSLER: Q. Showing everything? A. Yes.

Q. Regular and special? A. On passenger trains, yes. On passenger trains that is—

Q. So you cannot really tell me whether those were 17 regular ordinary daily movements or 15 ordinary daily movements plus 2 specials? A. The 17 regular movements are regular movements between here and say Leaside, because everything going east to Ottawa, Tweed, Montreal, or—

30 Q. Supposing you ran a train out in two sections? A. If we ran it in two sections—

Q. It would be not included in these? A. Yes.

BY MR. TILLEY: Q. Is that two or one? A. It would be included, those two movements.

Q. In the 17? A. In the 17, but the 17 regular movements I believe there is no sections there. These are all regular moves between here and Montreal, Ottawa—or between here and Leaside I would say.

MR. TILLEY: That is all, thank you.

No. 14.

40 THOMAS JOHN McCLAY Sworn:

EXAMINED BY MR. TILLEY:

Q. Mr. McClay, what is your position? A. Passenger Yardmaster, Canadian National Railway.

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Q. Well do you occupy the same position to the C.N.R. that the last witness does to the C.P.R.? A. Yes sir.

Q. And with the same district, that is, do you go east of Yonge? A. I do, sir.

Q. And have you a statement showing the movement of trains along the Canadian National? A. I have, sir. (Produced.)

Q. And you have the dates, about July 1st; you commence 1923 and run through till 1928? A. Yes sir.

Q. One each year, and you have eastbound trains sixty-five, westbound sixty-six, total 131 trains? A. Yes sir. 10

Q. And it runs one year 107, July 1st, 1927, it seems to be lower than the rest; July 2nd, 1928, also; but down to and inclusive of 1926 it runs about 131? A. About an average of 124 or 125 movements a day I believe.

Q. About an average of 124 or 125 movements a day? A. Yes sir.

Q. Then does this include freight trains, light engines, passenger and switching movements? A. Yes sir.

Q. And this is at Yonge Street? A. Those are regular movements, regular passenger trains, regular transfers and regular yard movements.

EXHIBIT 39: Statement produced by witness "Canadian National Railways—all train movements over Yonge Street crossing," above referred to. 20

Q. And then would there be other movements than these set movements? A. Yes, sir, there would be. Maybe some merchant would order a car down there to a certain distance east of Yonge Street in the fruit belt and I have no jurisdiction over that, that comes under the General Yardmaster at Bathurst Street. This is the regular movements we check through the depot, that go by the depot and Yonge Street.

Q. And how would Yonge Street compare to Church? A. Well I would say that them going towards Yonge Street would go over to Church Street barring maybe about four or five of them light engine movements. 30

Q. Barring four or five light engine movements—? A. Everything would go over both crossings.

Q. At Yonge and Church Streets? A. Yes.

BY HIS LORDSHIP: Q. There wouldn't be much difference in the movements? A. No sir.

MR. TILLEY: That is all, thank you.

CROSS-EXAMINED BY MR. OSLER:

Q. And do you say that there weren't more trains run on holidays, such as the 1st of July, than on ordinary days? A. 1st of July is a holiday; we run maybe less trains on the 1st July. That is less extra trains. The day 40 before the holiday we run two sections on every train practically.

BY HIS LORDSHIP: Q. Whether you have passengers or not? A. Well we always have them.

BY MR. TILLEY: Q. Had then? A. At that time.

BY MR. OSLER: Q. But you say that you run fewer trains on the holidays than on the regular days? A. These are regular moves.

Q. You run fewer trains? A. Fewer freight trains.

Q. I am speaking of passenger trains? A. Oh, no, all movements of passenger trains shown on there, that is the daily occurrence.

Q. And what is your idea of how long you are entitled to block a crossing? A. Always my instructions were we were allowed five minutes.

Q. And I suppose you had flagmen and watchmen on these crossings?

A. On the main crossings such as Yonge Street, Church Street.

10 Q. And you don't mean to suggest that you cut off the track so that people couldn't get through with more than perhaps a few minutes' delay?

A. Oh just depends on the size of the train. We handled 125 cars on a freight train; that takes quite a while to go over a crossing, sir.

Q. How many times will you take a 125 car freight train over that crossing? A. Very often. Very often. Our trains for the past number of years has run from 75 to 125 cars.

BY HIS LORDSHIP: Q. 125 freight cars there? A. Yes sir.

BY MR. OSLER: Q. Have you been running those long freight trains down the Esplanade? A. Yes sir. That is the only place we had to go up
20 coming from Montreal district.

Q. How many of your passenger trains are Ottawa and Montreal trains?

A. We have three trains in the morning from Montreal and one train from Ottawa, this is in the morning.

Q. That is going out? A. Coming in.

Q. Coming in? A. Yes sir.

Q. That of course is all early in the morning? A. No no. The first passenger train would start, I believe the first train from Montreal in them days was about 7.10 in the morning.

BY HIS LORDSHIP: Q. What time does that arrive here? A. Arrived
30 here. They started at six o'clock, 7.10 and 7.30. It varies on the movement of the time accordingly, sir.

BY MR. OSLER: Q. And the C.P.R. morning trains from Ottawa and Montreal come in about the same time? A. Pretty much.

Q. And the trains going out? A. The trains going out starting around seven o'clock and continue till after nine.

Q. And how many trains go out in the evening? A. In the evening we had three Montreal trains and the Ottawa.

Q. And those are the heavy passenger traffic trains? A. That is the heavy passenger, yes sir. Some of them we have a train coming in there in
40 the evening there may be eight or ten cars on from Ottawa.

Q. At what time? A. Around 7.30.

Q. But between eight and 6.30 during the day all the passenger trains you have are straight trains running out to Belleville? A. Yes, local.

Q. They are local trains, three or four or five or six cars? A. Yes. Our biggest delay though would be the freight trains; you get more freight trains during them hours; we have a restriction on freight trains in the early morning hours.

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Q. You were restricted to early morning hours for the freight trains?
A. For our own convenience, yes sir, to keep out of the passenger trains'—

Q. So that these long trains you have spoken of were all trains that were set at what hours? A. Between 8.30 say and seven or eight o'clock at night, those long freight trains.

Q. You mean 6.30 at night? A. 7.30 in the morning. Between 7.30 and eight o'clock after our through trains got in we started to run our freight trains.

Q. And you ran some freight trains at night too I suppose? A. Yes.

Q. What proportion? A. I would say the biggest proportion would 10 be in the day time.

Q. What proportion would go through between say eight o'clock at night and eight o'clock in the morning? A. Oh I couldn't tell you. I would have to check the register for that.

Q. Would it be half? A. No sir. More in the day time. We got more freight moves in the day time.

Q. You can't say? A. No. I can check the register for that.

Q. You didn't think it was fitting to note that on this statement? A. Not necessarily. We know that these freight trains were handled during them hours, sir, and if you have to get the exact hour we have to check up 20 the register to get that.

Q. And you weren't asked to do that? A. No sir.

BY MR. TILLEY: Q. These movements on the statement shown are between what hours? A. Between six in the morning and eleven at night. Mr. Tilley.

MR. TILLEY: That is all, thank you.

No. 15.

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Evidence
No. 15
Redvers King
Examination

REDVERS KING Sworn:

EXAMINED BY MR. TILLEY:

Q. Mr. King, what is your business? A. Motor mechanic now, sir. 30

Q. And what was it in 1926? A. Steam engineer, sir.

Q. And for whom did you work? A. Standard Fuel, sir.

Q. How long did you work there? A. Approximately three years.

Q. That would be 19—? A. '24, '25 and '26.

Q. When did you leave? A. I am not sure of the date. Sometime either June or July in 1926.

Q. Were you the one in charge of the engine and boiler house and so on? A. Yes sir.

Q. And you were in charge during those three years? A. Yes sir.

Q. Now first will you describe the boilers that you had to use? A. 40
The boilers?

Q. Yes? A. We had a small boiler, I should figure about seven or eight horsepower, and one about fifty—and one about sixty horsepower.

Q. Can we refer to them as one large and one small? A. One large and one small.

Q. Were they both operated all the time? A. Not at all times. The small one was used when we were washing the big one out; only during washing periods, possibly once a month.

Q. Well then what make were they, do you know? A. The big one was built by the Polson Iron Works, a return tubular boiler. No name on the
10 small one.

Q. And would you just describe their condition when you were there operating it? A. The big one had to be kept in fair condition to stand the pressure.

Q. How do you mean by the pressure, the use you put it to? A. Yes. It stood eighty pounds per square inch and it had to be kept in a fair condition to stand that.

Q. Yes? A. And the boiler, the small one, was not in very good condition; both crown sheets were corroded away and you couldn't keep the tubes tight, the sheets were too thin.

20 Q. Well then what do you say about the larger one? Can you say what expenditure was made on it? A. None at all while I was there, sir.

Q. None at all while you were there? A. No sir.

Q. Well did it need expenditure? A. The brick work badly.

Q. The brick work badly?

HIS LORDSHIP: I don't quite understand.

Q. The brickwork around the boiler? A. Around the boiler.

Q. Needed repairs? A. Yes, repairs badly.

Q. What was wrong with it? A. Really needed replacing—burnt out.

Q. The brick, or the boiler? A. The brick work.

30 Q. And do you know why it was not replaced? A. That I don't know, sir.

Q. Well I mean did you bring it to any person's attention? A. Yes sir.

Q. And with what result? A. He said they were going to move soon and try to make it last as long as possible.

Q. Who told you that? A. My foreman, the yard foreman.

Q. Who was that? A. I can't recollect his name now.

Q. Then so much for the boilers. What about the engine? A. The engine was in pretty good shape, sir, only inclined to be old. An old slide valve engine.

40 Q. What do you mean by that? A. Well it was a simple one cylinder slide valve engine.

Q. When you say old do you know how old? A. You could never find the name on it, sir.

Q. Well did you look for one? A. Yes sir. We had the governor wear out one time and we tried to get a replacement for it; we had to have it made, sir, we couldn't buy one.

Q. Well can you usually buy those things? A. Absolutely.

—continued

Q. For engines? A. Yes sir.

Q. Did you get other parts? A. No. We had to have the brasses all made for that, we couldn't buy them; we used to have them made just across the road from where we were situated.

Q. Well then, what about other parts that came immediately under your control in the operating of the engine and the boilers? Can you describe those? A. There was only injectors and one duplex pump, that is in the boiler room.

Q. What do you say about those? A. Those had to be kept in good order, sir, or we couldn't get water in our boiler.

Q. Can you say anything about their age? A. Well I can't tell you anything about their age. Possibly put there when the rest was installed.

Q. But at any rate you can't say. What about the gauge valves and so on? A. The gauges had to be tested regularly, sir.

Q. And the stacks? A. The stack was replaced, while I was there, sir, a new stack.

Q. It is said there were two? A. The small one—both replaced while I was there, sir.

Q. How long before you left? A. Oh possibly a year.

Q. And how often are those replaced usually? A. Well of course that is hard to say; just depends on the condition.

Q. There is no fixed time for repairing? A. No. Just when they get bad.

Q. And then lubricator, injector and so on, I think you referred to those, did you? A. I beg your pardon?

Q. Did you refer to the lubricator? A. The lubricator, yes, it was perfectly O.K., kept in good order.

Q. And the steam line valves? A. Oh yes, those were all kept in good order.

Q. Then does that cover everything in your department? A. No no, there is shafting. The shafting and pulleys and belts.

Q. What condition were they in? A. Well the age of the building, it of course, settled—a building settles with age—and shifted a couple out of line and caused us trouble to keep belts on, and breaking belts and such as that.

Q. Was that going on? A. Yes sir.

Q. Can you describe to what extent? A. Just depend on the weather, sir. If we got wet weather we would have to tighten up our belts to keep our shaft rolling, because it took a tremendous amount of power to turn the shaft over; if it was out of line it would break our belts and if it was dampness, we would have to tighten them up. If it was so dry why they would slip.

Q. Then anything else? Couplings and bearings and gears? A. Well of course they wear with the shafting; we kept tightening them up now and again until we got one that run hot. That was a big trouble, when they started to get hot. If the shafting settled, we would get one hot, we would have to either raise it or lower it to take the weight off it.

Q. What were these standing on? A. They were fastened right on the uprights of the building, sir.

Q. Those uprights being what, made of what? A. Posts.

Q. Well then what about the other things, the pulleys and that? A. Well of course pulleys—if a pulley was a steel pulley why there wouldn't be much wear on a steel pulley; a belt will wear faster than a pulley.

Q. What condition were the belts in? A. The belts, well of course, the belts were not bad. They had to be kept good at least to turn the conveyors and one thing and another.

10 Q. Well then did you come in contact with the hoisting apparatus? A. Yes sir, I worked on the hoist.

Q. Worked on the hoist? A. Worked on the hoist. I done repairs on the hoist.

Q. Now will you describe it? A. Well it just consisted of two electric motors and a hoisting machine, which everybody is well acquainted with I suppose; I don't know whether two or three drums, it seems to me it was; and the control house was up in the tower and the operator operated from up in the tower and it had an arm out to travel up, that the bucket travelled in and out from the boat.

20 Q. That is there was a stationary arm out to the south? A. Yes.

Q. And a bucket coming in and out on that? A. Yes; the bucket travelled on a little carrier that went in and out.

Q. And then when it would come in what happened? A. It was dumped in the hopper, sir; it come right in and dumped on the hopper and ran out again.

Q. Where was that hopper? A. Oh it was right in between the legs of the hoist.

30 Q. And then when it was in the hopper, what? A. They pulled the chute downstairs and ran it in a car and then let the car go downstairs and dump it into the pile.

Q. And that hopper was at the top of the—? A. Not at the top, no, about level with the floor of the shed— With the roof of the shed I should say.

Q. So that it would come in at the level of the roof of the shed into the hopper and down the hopper into a car? A. Yes, and then down the track, the weight of the coal took it down the track and lifted a counterweight that came down after they dumped and the counterweight brought it back up.

40 Q. And then something was said here about some coal would go into the pockets direct from the—? A. One pocket, sir, that would be egg coal only. Directly into the pocket, right out of the hopper down a tin chute in a pocket— No, pardon me, I guess you are right about the pocket, we dumped some cars right over the pocket, there was a drop down over the pocket, that is correct.

Q. Was there much went into the pockets direct, or did most of it go to the floor? A. Oh the most of it went to the floor, sir.

Q. Or at least went down? A. Down, the most of it went down in the pile.

Q. Well then that mechanism that was applied, what condition was that in? A. The electrical equipment was in good shape, sir.

Q. The electrical hoisting equipment? A. The motors. The only trouble we had was from short circuits with the dampness coming in.

Q. What was the dampness, just the ordinary dampness? A. Well, sir, it was very close to the water and she was right down level with the water possibly—it is only four feet above the water. After laying up for a time the motors would absorb the dampness and when we started up we would get short circuits and that kind of thing until they dried out again.

Q. And then apart from that you describe their condition as being 10 what? A. Good, sir, considering their use.

Q. So much for the electrical equipment. What do you say about the tower itself? A. The tower was in bad condition, sir.

Q. What was wrong with it? A. Well it had a broken back, if that is plain. Halfway up the shed, the roof of the shed, the timbers, the water got in and rotted the timbers and they broke off and give the tower a lean to the water of about three feet.

Q. Out to the south? A. Yes, sir. Give that a lean to the water of three feet.

Q. What was the distance from the roof to the top of the tower, about? 20 A. Oh approximately 25 feet.

Q. 25 feet; and that had a lean to the south of about what? A. 3 feet.

Q. Was that lean acquired when you were there or was that there when you arrived? A. To a certain extent it was there while I was there but a certain amount was there when I went there.

Q. You mean increasing? A. Increasing. We put five guy wires from the top to the ground to keep it from going any further.

Q. You wanted to keep it on the premises? A. Yes.

Q. Where were those guy wires? Can you identify them? A. Right 30 here, sir, four; you can't see the fifth for the tower.

Q. This is photograph No. 1, and you can see them just like threads across over to the tower? A. Yes.

Q. Now then were those guy wires put up in your day? A. Yes sir. There was some there when I went. We strengthened it when I went there.

Q. Where did those wires go to to anchor? A. That is not the picture. We have to have one underneath the bins.

Q. Have I one here? A. No sir. Down in here. (Indicating.)

MR. OSLER: Where?

WITNESS: There is a bin down in here where we put the egg coal and those cables were fastened to the uprights of the bins. 40

Q. Now, Mr. King, you are looking at photograph No. 2 and you are pointing to the place where the hole is in the west wall? A. Yes sir.

Q. Was it at that point or was it in the building there? A. Right in the other side of the building here, right in this side of the building, they would come right through the building and right down.

Q. That is to say those wires would pass from the tower—? A. Yes sir, through the roof of the building.

Q. Oh I see. And be fastened down to the north end? A. No no, about in line with the tower on the north end.

Q. That is what I say, they passed in line with the tower but to the north end of the building? A. Yes sir.

BY HIS LORDSHIP: Q. And do you say that they went all the way to the north end of the building? A. Yes sir, they were fastened on the egg coal bin, sir. There was a bin in there, and the legs of the egg coal bin.

BY MR. TILLEY: Q. At the north end of this building? A. Yes. Of course that building went further than we can see there, sir; not including
10 the engine room; the engine room is in front of that.

Q. Well then at the east side of the building it extended out farther than it did the west? A. Yes.

Q. And did these go to the east side of the building? A. Well you see right to this corner back the width of the bin.

Q. Well I think that describes it well enough, it is not possibly very important to get the exact location. Well now then where did the operator operate from? A. Right there, sir. (Indicating.)

Q. That is in that sort of cage which is above the roof? A. Yes sir. Those windows come out when she is in operation.

20 Q. You take out the windows? A. You take out the windows so the man can see out.

Q. And then the bucket is carried above him? A. Well the bucket—this is the hopper right here.

Q. The hopper is behind? A. Right here, yes. This is right in the center of the tower.

Q. Right in the middle of the tower? A. The bucket comes up with the carrier there, there is the place there, the bucket is hooked on here and taken on down there. (Illustrating.)

30 Q. How much did the bucket carry a time, do you know? A. Approximately a ton.

Q. Do they ever need to go higher than this cabin where the operator works? A. Yes sir.

Q. What do they go up there for? A. To grease it.

Q. And have you ever been up there? A. Yes sir. Up here as well. (Indicating.)

Q. Out on the yard? A. Yes sir.

Q. Well now then will you just describe the condition of that tower, as to its rigidity and condition down there as you saw it, and felt it? A. Well I said that the tower was rotted off right level with the building.

40 Q. When you say rotted off you mean the upright? A. Yes, the water had got in here and rotted the timbers away and naturally the timbers had gave way and the tower started to lean to the shore. We put the guy wires on here to hold her back.

In these cross braces you will notice here there is bolts in there, you will notice with a big centre there.

Q. You mean you can see that on the photograph? A. Yes. Then

with the bucket operating the bolts pulled out of their regular cross pieces, with the tower going over, so we put new cross pieces on.

Q. That is these cross pieces that are just to the right hand of the cabin where the operator works, those bolts pulled out and you had to put in new ones? A. Yes sir.

Q. And to what extent did you do repairs to this as you went along; for three years you were there? A. Just on the motors, kept the motors in good shape, and put those guy wires on and replaced some of those stays.

Q. Well then did you have to put the guy wires on more than once, or was that all done at the one time? A. No, twice, sir. We replaced the old wires at one time and put on new wires, the wires we would use for hoisting we put at the back; if the ones on the back got too bad we replaced them with some we had on the hoist. 10

Q. And then put on new for the hoist, do you mean? A. Put on new for the hoist.

Q. Well now is there anything more about the tower that you can tell us? When you were they did you notice movement? A. Oh absolutely, every time a clam would go the hoist and all went up and down.

Q. Did it? A. Yes sir.

BY HIS LORDSHIP: Q. What do you mean by "the hoist and all went up and down?" A. Well the operator's house on the tower, sir every time the bucket let go the tower would go up with the weight of pulling of the cables which were on the back. When the clam took a load and took a hold the tower would go towards the water. 20

BY MR. TILLEY: Q. And have you been there when there was a wind? A. Yes sir. Just a sway sideways; that was braced from one side of the building to the other.

Q. Where is that brace? A. That would be hard to say, but there is one come up here (Indicating); it is braced here you see. (Indicating).

Q. I don't follow now? A. Onto this stick. (Indicating) The braces of the cable going up? 30

Q. Oh yes, the cable going up to about the middle of the yard arm there? A. Yes. There is two goes out to the end.

Q. And two to the end to hold it. Would they be there originally? A. That was the original, and then there was an extra from here to each corner of this building.

Q. That is to the southwest corner and to the southeast corner, is that right? A. Yes sir.

Q. Were they put on in your day? A. No, they were there.

Q. Now, Mr. King, you referred to certain cars used. They were on tracks, were they? A. On tracks, sir, yes. 40

Q. And what condition were they in? A. Well sir, they were old, terrible old, they used to have an awful time getting them to dump. The bottom opened up when she come down to a trip that was on the track, the bottom opened up; sometimes they wouldn't open and they would carry the full load back and we would have to push them down by hand then and knock the trip up with a hammer.

Q. I just wanted to know how the work was carried on in that respect. And then what were they fastened to, the tracks? A. The tracks, on cross beams.

MR. OSLER: Are you speaking of the cars or the tracks?

MR. TILLEY: The tracks.

WITNESS: The tracks sit on about 12 by 4 timbers on their edge.

Q. On their edge? A. Yes, right down the building.

Q. And what were they fastened to? A. Well one side sir, sit on top of the hoppers that we dumped the coal in and the rest were sitting on cross
10 beams, sir, fastened onto the posts.

Q. Now what condition did you observe these posts to be in when you were there? A. The posts were in good condition sir.

Q. What purpose did they serve? A. The posts?

Q. Yes. A. They held the roof and held the buildings where the operator— Or the platform where the operator works there to operate the hoist that brought the coal up into the hopper, as well as hold the roof.

Q. What condition was the roof as you saw that? A. The north part good condition; the south part very poor.

Q. How would you describe the south part? A. The south part, sir
20 we would have to either take a ladder if we wished to see the roof in some section—

Q. Take a ladder to do what? A. To cover a large area so as to carry my weight.

Q. Keep the strain off one point? A. One point, yes sir.

Q. Well what was wrong with it? A. Well, sir, some of the posts had moved, come up through the roof.

Q. That is the posts below which were carrying the roof would come through the roof? A. Yes sir.

Q. What pressure was there on the posts? A. The coal, sir.

Q. The coal below? A. Yes sir. Some were rotted off at the top.
30

Q. Some of the poles? A. Yes sir.

Q. Where would the rot come from? A. Right where they go on the beam that carries the roof, sir, there, water continuously came in and rotted the posts off.

Q. At the top? A. At the top, sir.

Q. Well then when you say the posts went to the top, did it get off the beam? A. Got off the beam, sir, yes.

Q. How many times did you see that? A. Well of course the south section of the roof was terrible bad.

Q. Yes? A. It would be where we come up the steps as you see in the
40 picture.

Q. Well show us in the picture whatever it is? A. There is a set of steps here. (Indicating); They come up here.

Q. That is on picture No. 1 towards the south end there is a sort of stairway? A. Yes, a landing and then another stairway, a landing and then another stairway.

Q. Now what are you going to say about that? A. Right here sir is where the roof was bad; the posts come up through the roof in this section across this corner. If you see in here. (Indicating).

Q. Just go and show His Lordship, will you.

Just to get your directions right, would it be the north end or the south end? A. The south end.

BY HIS LORDSHIP: Q. Where are those stairs? A. Right here. (Indicating); stairs and a landing, and stairs and a landing, and stairs again.

BY MR. TILLEY: Q. Mr. King, I was confused about it; I see what you mean. You are saying the south end of the building? A. The south end 10 of the building.

Q. And therefore when you point to the west side there you are still at the south end of the building? A. Yes.

Q. Now then were you going to say anything more about that?

BY HIS LORDSHIP: Q. You say the roof on the south part was very poor? A. Very poor, sir.

Q. In all this area was very poor? A. Well of course some sections were not too bad; it wasn't all in one area. There was a bad area over where the roof on the front building—where the roof met there was a bad area there; very bad, it wasn't safe to walk on. 20

BY MR. TILLEY: Q. Is that what you mean, No. 3 (showing)? A. Yes.

Q. Well now "Roof of adjoining property." Whose property is that? A. Well that will be possibly Hydro Electric.

Q. So that you are looking at that across some other person's property? A. Yes sir.

Q. And that part that is there is not the Standard Fuel Company property? A. This here?

Q. In the front of the picture? A. No.

Q. And then you see the building beyond that; does that represent it 30 as you saw it? A. Yes sir. Right here; up here. (Indicating.)

Q. You are pointing to up at the top. What do you notice there? A. That the roof sagged there, sir; always was sagged.

Q. Always was sagged while you were there, is that what you mean? A. Yes.

Q. These poles are poles with wires on between the two buildings I suppose? A. Yes.

Q. Well then what shifted these posts? A. Well the coal shifted some of them, sir.

Q. And was anything done about the coal then? A. You couldn't do 40 anything about the coal; it was all piled in the shed.

Q. Why not? A. Thousands of tons, you couldn't move the piles with thousands of tons of coal in them.

Q. Is that photograph 3 of the south end or the west end or what part? That is the west I should think, isn't it? A. I think it is the west side.

HIS LORDSHIP: The west, yes.

WITNESS: And this roof end is in the flat roof, it is not a peak roof, the back section over the tower where the hoist was is a flat roof.

Q. And this picture ends at the other roof? A. Yes sir.

Q. Well then this would be part of the north part of the roof, would it?
A. It is hard for me to say that.

Q. Did you ever have any mishap there yourself? A. Just my foot going through, that is all.

Q. Through what? A. Through the roof.

Q. When was that? A. That was during the time we unloaded the
10 last boat. I can't recollect the date exactly.

BY HIS LORDSHIP: Q. Was that in 1926? A. Yes, I believe so.

BY MR. TILLEY: Q. Well just tell us about the boats, the boats came in to the south side just under this yard arm? A. Yes sir, under the tower.

Q. And what kind of coal did they bring in? A. Well, sir, they brung in mine run coal.

Q. What do you mean by mine run coal? A. A mixture of stove coal, egg coal, screenings and everything else all in the one boat.

Q. And did you see them unloading that? A. Yes sir, I was right there all the time.

20 Q. Did you take part? A. Yes sir, shovelled coal in them.

Q. Shovelled coal in the—? A. In the boat.

Q. That is while the— A. As long as the hoist run I would shovel coal.

Q. And you speak of screenings. Were there much screenings? A. Oh yes, quite a bit. You could see the screenings on the top of the coal; it is a mixture you know, all mixed together.

Q. All mixed together? A. Yes.

Q. Was that the way it came in on the cars? A. No, sir, it come clean on the cars.

30 Q. What kind of coal? A. Different sizes, egg, stove and nut.

Q. You mean assorted? A. Well of course one car would be stove coal and the next would be egg coal.

Q. Did the Standard Fuel Company deliver direct from the cars at all?
A. At times they would load their wagons direct from the car.

Q. Was the coal screened?

BY HIS LORDSHIP: Q. At what time? All the time you were there?

A. No, they didn't always bring it in by car, sir.

BY MR. TILLEY: Q. When did they start? A. It was just at the latter end of the time I was there.

40 Q. And when they did that did they screen it off the cars? A. No sir. Not as a rule, unless they piled it in the shed.

Q. If they did not pile it in the shed but delivered off the car it was bagged from the car? A. Yes sir, bagged out of the top of the car sometimes.

Q. And then sent direct to the customer? A. Yes sir.

Q. And other times other cars would be emptied and put in the shed, I gather from what you say? A. Yes sir. Coke or whatever the case may be.

Q. Coke or anthracite coal? A. Yes.

Q. Now what was the condition of the coal that came in the car in that way as to any breakage in coal? A. It was a very small amount of breakage off the car, sir.

Q. How would you see that? A. When the car was empty, sir, it would all come out on the track; when we emptied the pockets all the screenings was left on the track.

Q. And what was done with them? A. And then we pulled the car out of the way and took it to the machine they call the separator and then they sorted it there in the different grades of coal. 10

Q. And what kind of coal would be produced then? A. Screenings and buckwheat.

Q. What is buckwheat? A. Buckwheat is a fine coal about, oh, we will say a quarter of an inch in diameter.

Q. How did that compare with what they call pea coal? A. Pea coal, about the same size; pea coal is possibly a little larger.

Q. And do you know how the pea coal sells as compared with the other coal that would come off the car? A. No sir.

Q. You don't know the prices? A. No sir.

Q. And these cars, did they empty from the bottom? A. Emptied 20 from the bottom, yes sir.

Q. And I don't quite follow what you mean by at the end there would be the screenings? A. Well we shovelled the coal up as it comes out the hopper at the bottom.

Q. You what? A. We shovelled all the coal out of the hopper at the bottom of the car; any small coal goes through the big coal and lays on the ground.

Q. As the coal comes out the siftings and the small stuff—? A. Would naturally go to the bottom.

Q. And lie on the ground? A. Yes sir. 30

Q. And then when you have taken your coal off—? A. Yes sir, we would move the car and take it off the tracks.

Q. What did you have to do to get the coal in the shed? Was it done by horse and wagon or was it done by a conveyor, or how? A. We had one conveyor.

Q. From where? A. Just a portable conveyor, it is an endless belt about 20 feet long with a little motor on it that run the belt; we moved it under the hopper of the car, let the coal land on it out the hopper and into the wagon, and then from the wagon we would pull it into the shed.

Q. Oh I see. The first thing you are describing about this, the hopper 40 was merely to load the wagon? A. Yes sir.

Q. So that the coal would come out and then you would get this conveyor working and that would put it in the hopper and the hopper would put it in the wagon? A. No no, the conveyor took it from the hopper of the car; it is just a loader merely, it is only a loading machine to load the coal from the car to the wagon.

Q. And then hauled in by horse? A. Hauled in by horse and by truck.

Q. And how handled there? A. We had a scraper to unload the trucks and wagons every day by hand.

Q. Would that operation be going on all the time you were there?

A. In coal, yes.

Q. And coke? A. Pardon?

Q. Coke too? A. On the coke, there was more of that done on the coke. The shed was loaded with coke that way.

Q. Which part of the shed? A. The north end of the shed.

Q. Was the north end of the shed filled by the hoisting apparatus to the south from the boats? A. No sir.

Q. Could you fill the north end of the shed from that? A. Only up to the second door.

Q. Well now possibly you can show us that in the photograph. Can you show us about where that would be on any one of these photographs?

A. No. Up to this partition here. (Indicating.)

Q. That is to say, looking at No. 5 and look at the building with "Standard Fuel Co." on the end of it, and you see just beyond a doorway there or something a partition standing? A. The second partition; there is another one at the other end of this; that is where the stairs went up back there, there was a stairs went up, you could walk along from one end to the other of this building. The other partition here was the farthest you could fill from the boats.

Q. Why did it stop there? A. There was no conveyor there.

BY HIS LORDSHIP: Q. Where did you get the coal from the water? Where did it cease? A. It ceased at the other end of this; there was a partition down here. (Indicating.)

BY MR. TILLEY: Q. Now can you describe as you saw the operations carried on the amount of screenings and small bits of coal that would come from the car as compared to the boat? Which produced the greater amount? A. The boat, sir.

Q. Can you describe that more in detail? A. Well sir, there was a—I don't know who it was for but there was a wagon hauling screenings away at all times.

Q. Hauling screenings away from the plant? A. From the plant, yes, and the majority of them come from the boat; all that would come out of a car could be put in a wagon.

Q. All that came out of car could be put in a wagon? A. Yes.

Q. What size wagon? A. A wagon that would take a ton and a half; there would be a ton and a half of screenings in a car load.

Q. Where would that be put? A. Down to the separator, sir.

Q. Down to the separator to be sorted out? A. To be sorted out.

Q. And comparing that with the boat what would come from a boat, as you saw it? A. Well of course the boat come gross ton; the car come net ton.

Q. Just tell us about that? A. There is 2,240 pounds to a ton coming on a boat; 2,000 pounds coming to a car and 2,240 to the boat to the ton.

Of course I don't know what percentage of screenings you would get out of that.

HIS LORDSHIP: I don't quite understand that.

Q. You mean to say a ton by a boat has more pounds than a ton by rail? A. Yes, a long ton.

BY HIS LORDSHIP: Q. By 240 pounds? A. I think so.

BY MR. TILLEY: 2,240 a ton, the long ton is the measure by boat? A. Yes sir.

Q. And 2,000 by the car? A. Yes.

Q. But I would like to get at if I can some way, if you can describe it as you saw the operation going on there, the difference between the screenings that would come from the boat as compared to the screenings from the car? A. I will tell you, sir, when the plant was running full and the coal company took it out kept a horse and wagon busy drawing screenings from under the chute to the separator ten hours a day.

Q. Under the chute? A. Yes.

Q. That is each day as you were going along you mean? A. Yes, as the plant ran.

Q. As the plant was running? A. Yes.

Q. And the coal being brought in each day? A. Elevated up from the shed inside into the bins, carried over a screen, that is where we got the screenings; the screenings would fall under the chutes you see. If you have a picture I will show you.

Q. I don't know whether I have it. I don't know whether I know what I have got; if you can tell me what I have got I will be very glad?

A. You can't see them very plain from the picture. There is chutes along this wall and that comes down that you put a bag on.

Q. On No. 5, on the wall of the building? A. Yes sir.

Q. There are chutes coming out? A. That we load the bags from.

BY HIS LORDSHIP: Q. There are chutes coming down there that they load the bags you say there; where is "there?" A. Right along the side of the building.

BY MR. TILLEY: Q. The west side of the building? A. The east side of the building.

BY HIS LORDSHIP: Q. And how far distant from the tower? A. Runs from the tower—right on the back wall there is some along there—along down here right up to where you see the coal pile there.

BY MR. TILLEY: Q. Now I am looking at the plan attached to the valuation filed by Mr. Hole.

HIS LORDSHIP: That is Exhibit 35.

Q. Now, Mr. King, where are these chutes on this building? A. Right down along this wall and over here. (Indicating).

Q. Then to describe what you have said to me, it commences at the—? A. At the north limit.

Q. About the line marked "north limit"? A. Yes sir.

Q. And then running south from there? A. Yes sir.

Q. To the point where it turns again? A. Yes sir.

Q. And then across—? A. There are others would be on this section.
(Indicating.)

Q. On the curve? A. Yes.

Q. Just on the part that is curved below the letter "C?" A. No, back further here. Right here the others would be. (Indicating.)

Q. Along here? A. Yes, along this section.

Q. Supposing I just put a cross where you indicate. (Marks.)

Now, Mr. King, will you just check me, if I am right in this: The chute would be down along there and then— A. And then a space for a door,
10 about that much, and then two chutes here. (Indicating.)

Q. I will put a cross on right there where the door will possibly be, and then a couple of chutes up there? A. Yes sir.

Q. Now then where the red is on Exhibit 35, the blueprint, that indicates the location of the chutes? A. The loading chutes for the cars—the wagons and trucks.

Q. Well for instance if you are filling bags—you have the bag at the chute, is that the idea? A. Back your truck in to the chute and your bag held up over the chute and then the coal comes down and the screenings goes through the screen.

20 Q. The coal comes down and the screenings would go—? A. Through the screen here onto the ground.

Q. And where does the coal go? A. In the bag.

Q. So that when you are operating there you separate the screenings from the coal at the chute? A. Yes sir.

Q. Where you are filling the bags? A. Yes.

Q. And then you say that the screenings go to the ground? A. Go to the ground. Taken from the ground by horse and cart and taken to the separator.

30 Q. And then you are saying that one horse and cart—? A. One horse and cart.

Q. Was at that job? A. Yes sir, steady when the plant was running when the coal was being put up. When the coal was delivered to customers why he was kept busy.

BY HIS LORDSHIP: Q. Ten hours a day I think you said? A. Yes sir.

BY MR. TILLEY: Q. Well then that is coming out of the shed. To what extent would there be coal in there? Was there much or little coal off the cars and the train? A. Not out of that; that all come off the boat.

Q. Well then how did that compare with coal coming off the train?

40 A. There was a lot more screenings from coal from the boat than from the car.

Q. A lot more screenings? A. Yes.

Q. Could you describe it? A. Well I couldn't tell you the amount exactly.

Q. No? A. But I know there was quite a lot more screenings from boat coal than car coal.

BY HIS LORDSHIP: Q. Half as much more or three times as much more or a third or a quarter? A. Oh I would say there would be three times as much more, or possibly four.

BY MR. TILLEY: Q. Now then when that fell to the ground what?
A. It was shovelled up into a cart.

Q. And then taken to a separator? A. To a separator.

Q. How was it handled by the separator? A. It was just dumped out of the cart and shovelled into a separator.

Q. How did the separator work? A. It was a conveyor just like you load the coal with off the car, it is an endless chain conveyor.

Q. Where does it carry it? A. Carries it up, put it in a drum, and the drum was on an angle and the coal rolled through as it went around.

Q. It was dumped on this endless conveyor? A. Yes. 10

Q. Which would carry it up—? A. Into a drum, and the drum revolving.

Q. And it would find its place? A. Yes, all the different sizes.

Q. And then what was done with it? A. It was delivered just as ordinary coal after that, the different sizes.

Q. All different sizes? A. Yes.

Q. Well did I understand you to say sometime ago that it was constantly being taken some place? A. Yes, sir, there was a wagon constantly taking screenings some place, but where I don't know.

Q. Do you mean a wagon of the Standard Fuel? A. No sir, I think 20 Britnell. I think he was taking it to the T. Eaton Company.

Q. But at any rate you cannot say with accuracy about that? A. No sir.

Q. Well then when you came to the so to speak residue from a car after you had taken the coal off in the manner you have described and put it into the wagon and taken the wagon into the shed and you came to the residue of that you handled that the same way, did you? Was that taken to the separator in the same way? A. Yes sir, just the same.

Q. Now did you work at any of the other stations or yards where they had just rail coal? A. No sir. 30

Q. You were working at Church Street all the time? A. Yes sir.

MR. TILLEY: That is all, thank you.

HIS LORDSHIP: I think the cross-examination will have to stand until we open the court a week from Monday; I have to attend a meeting at four o'clock.

—4.00 p.m., Arbitration adjourned till Monday, April 18th, 1932, at 10.30 a.m.

The Arbitration in this matter was resumed before the Honourable Mr. Justice Fisher (J. A.), at

—10.30 A.M., MONDAY, MAY 23RD, 1932. 40

Same Counsel

—His Lordship stated that the Chief Justice of Ontario insisted upon his presence in the Court of Appeal and that he regretted he was therefore unable

to continue with the Arbitration at present. After discussion an adjournment was taken until 4.15 p.m., but it was later arranged to resume at 2.30 p.m.

Arbitration
Proceedings

Contestant's
Evidence
No. 15
Redvers King
Cross-examination

—2.30 P.M. (MONDAY, MAY 23RD, 1932), RESUMED—ALL PRESENT:

REDVERS KING, Continued:

CROSS-EXAMINED BY MR. OSLER:

Q. Mr. King, for whom are you working now? A. I work for the Queen Motor Service.

Q. And for whom did you work before you were working for the Standard Fuel Company? A. Toronto Harbor Commission.

10 Q. Under whom? A. Under Mr. Bell.

Q. And under Mr. Hole? A. Yes, under Mr. Hole.

Q. How long had you been working for them? A. Approximately five years.

Q. And under Mr. Hole all that time? A. No, not all that time. I met Mr. Hole at Sunnyside.

Q. So that when Mr. Hole came to look over the work there he already knew you? A. Yes.

Q. Then how long do you say you worked for the Standard Fuel Company? A. I am not quite sure. In the neighborhood of two and one-half
20 to three years.

Q. When did you first go to work there? A. That I can't remember.

Q. I am told that the time books show that there was no entry of your name in 1924 at all? A. Well I couldn't be sure about that. Of course they would know.

Q. Did you go to work in the spring or the summer? A. Around Christmas time. I think the day before Christmas.

Q. So that if you weren't there in 1924 it would mean you didn't go there till Christmas, 1925? A. Well I am not sure. I can't recollect the dates.

30 Q. And how long did you continue to work there? A. Well I was there that time from when I started about two and one-half to three years.

Q. Yes, but you see you said you were working there in 1924, 1925 and 1926 I think? A. Well of course that is hard for me to recollect the dates. I don't recollect the dates.

Q. Then what was your first job with them? A. I was hired as a laborer.

Q. You were hired as a laborer? A. Yes sir.

Q. And how long did you work as a laborer? A. I am not sure. Mr. Sweeney was manager when I first started. Until he left and Mr. Cuthbert
40 took it over, and Mr. Hawton was engineer and I went from laborer to engineer.

Q. And that was the time you said you were in charge of working on the engine and the boilers? A. At that time when I took the engine over.

Q. At that time when you began to work with the engine and boilers did you do anything else besides that? A. Shovelled coal.

Q. So that you were still working as a laborer while you were working on the engine? A. Well when there is nothing to do in the engine room they won't keep a man sitting around doing nothing.

Q. Had you any assistant in the engine room? A. No sir.

Q. And were you working on the hoist at the same time as you were working on the engine? A. Well the hoist only run when the boats came in, and then when the boats came in well we were all on the hoist.

Q. And who looked after the engine then? A. Well the engine was 10 shut down then.

Q. The hoist operated by electricity? A. By electricity, yes.

Q. And then you said something about having replaced one of the governors on the engine? A. Replaced, yes. We replaced the gears on the governor.

Q. The gears on the governor, not the governor itself? A. No, not the complete governor, just parts of the governor.

Q. And when was that? How long before you left? A. Oh that would be about a year I think.

Q. So that at that time the gears on the governor were new? A. Well 20 of course they were used a year.

Q. And when were the stacks renewed? A. The stack I think about the same time.

Q. I think you said the both stacks were renewed? A. Yes, both stacks were renewed.

Q. So that at that time they were new, subject to the use that they had? A. Subject to the use that they had, yes.

Q. Then you said something about the brick work. Do you mean the fire bricks under the boilers? A. Fire bricks under the boiler, yes; there was only fire bricks under one boiler. 30

Q. And that is what you were referring to when you spoke of the brick-work? A. Yes.

Q. And how big a job was that? A. Well of course the outside end of the building was part of the brick work around the boiler as well; it meant taking it down.

Q. And when you speak about the fire bricks—? A. Well there was only a portion of the fire box covered with fire brick.

Q. How many square feet? A. Oh there would be about 250.

Q. 250 square feet of bricks? A. Yes.

Q. And did the whole of that have to be renewed? A. Yes sir, it was 40 burnt away at the bottom.

Q. And how about the top? A. Well the top is not so subject to the same heat as the bottom.

Q. And are you a mason as well? A. No.

Q. You don't know whether it would be feasible to repair the brick work without taking it all down? A. I don't see how it could be done, sir, because there was too many fire cracks in it.

Q. Well then you spoke about the belting. What kind of belting was it?
A. The boiler room was brick.

Q. The belting? A. The belting?

Q. Yes? A. Oh leather belting in the boiler room and rubber and fabric or cord composition outside.

Q. And have you worked on machinery operated by belting apart from this job? A. Yes, sir. Toronto Harbor Commission.

Q. And I suppose you find there that it needs tightening and loosening according to the weather? A. Oh yes.

10 Q. Then you spoke about the posts on the tower. Will you just show me exactly what you say was rotten in the posts on the tower? Looking at photograph No. 2? A. You can't see the post here.

MR. TILLEY: What is the exhibit?

MR. OSLER: It is the photograph No. 2.

MR. FLEMING: Exhibit 24.

Q. Those were the things that were bad? A. (Witness indicates).

Q. You are pointing to the upright on the tower? A. Yes.

Q. At the right hand side of the picture? A. Yes.

Q. Of the tower? A. Yes.

20 Q. And you say they were renewed, were they? A. Well there was a section put in this one.

Q. In which one? A. This one over here. I mean we can't see it; there was one here (indicating); there was four.

Q. This arm stretches out southerly? A. Yes.

Q. So that the northeast upright would be the one that you say—? A. Would this be northeast?

Q. Yes. No, I am wrong, it is the northwest one? A. The northwest one.

Q. And you say that had been repaired? A. That was repaired.

30 Q. In what way? A. Well we just took a 12 by 12 and put on the outside and put a bolt through.

Q. And bolted it through? A. Yes.

Q. And then you said that these cross pieces that are shown were replaced? A. Yes, some of these were replaced.

Q. I suppose the bolt heads had worn a bit? A. Of course some of the bolt heads had pulled the timber right out. If you look close you will see a block that I have put on here. (Indicating.)

Q. And when were those done? A. Those were done the last time the crane ran, before the last unloading was done.

40 Q. You said the tower leaned out towards the south? A. Leaned out towards the south.

Q. Did you observe that the tower was built for the purpose of leaning out towards the south? A. Well of course—

Q. Did you ever see a plan of it? A. Not the original plan, no.

Q. Did you ever see any plan? Didn't Mr. Hole have a plan of it?

A. I don't know. That I couldn't say.

Q. This is a blueprint showing the tower (showing)? A. Would this be towards the lake (indicating)?

Q. This is the west elevation and this is the north elevation. No, this would be towards the lake, to the right hand side of the blueprint would be towards the lake; this is the west elevation. (Indicating)? A. This would be naturally vertical.

Q. You assume it would be naturally vertical? A. Yes.

Q. But do you see by the plan that it is only vertical up to a certain point and then—? A. At the top, yes.

Q. At the top? A. Yes.

Q. And then it leans out towards the south? A. Yes. Here is where we had the trouble with it going south, right at the cab house— I mean the car house.

Q. This is marked "car house?" A. Yes.

MR. TILLEY: That is not proved, is it?

MR. OSLER: I am showing it to the witness to see what he says about it.

MR. TILLEY: Well it isn't an original, the blueprint.

MR. OSLER: It is not an original, it is a blueprint.

MR. TILLEY: I would like to have it proved.

MR. OSLER: It purports to be prepared by James, Proctor & Redfern; I am not sure whether I shall be able to get them or not, but if not if my learned friend objects why I won't put it in. It is a blueprint of the tower.

MR. TILLEY: Of course this is made in March 1929. It would hardly be a blueprint of the original.

MR. OSLER: I hadn't observed that date. This is probably a copy of the original plan.

MR. TILLEY: I don't suppose this witness knows how it was originally constructed.

HIS LORDSHIP: No.

MR. OSLER: I don't suppose so, no.

However, just as you say, shall I put it in or not?

MR. TILLEY: I don't see how you can put it in, but I don't mind you asking the witness any questions like that if that helps you.

Q. The tower was obviously built so that it leaned over towards the south at the top? A. Well that I couldn't say. Of course where that tower has got a lean over the lake is not where we had the trouble.

BY MR. TILLEY: Q. That is where the blueprint shows the lean is not where you had the trouble? A. No.

BY MR. OSLER: Q. How long did you have trouble with that? A. 40 There was guys on it when I went there.

Q. That is guy cables? A. Yes, on the back.

Q. Guying it on the back? A. Yes.

Q. And there never were any guy cables on the front, on the south?

A. Just to keep it from sagging sideways.

Q. There were guy wires on the sides and on the back, that is the north

end, but none on the south? A. No. It wouldn't be necessary to guy it on the front to pull it in the lake.

Q. The pull of the derrick would take care of that? A. Yes.

Q. The pull of the hopper? A. Yes.

Q. And those wires were there when you got there? A. Some of them. Three I put up.

Q. And how many were there when you got there? A. I am not quite sure of the number; I think there was about six on the derrick all told.

Q. Six of them? A. Six. That is on the back.

10 Q. Was that after you had added the three? A. That was after I had added the three.

Q. And do you know whether there had been any guy wires there before that you replaced with the ones you added? A. That I don't remember. It was a case of strengthening the tower. I think they put extra ones on.

Q. But you don't remember that actually? A. No.

Q. You always watched the guy wires on the tower? A. Yes sir.

Q. To see how they were working and when you thought they were getting old you replaced them with new wires? A. Not with new wires; 20 some wires that was used on the hoist.

Q. From wires that were used on the hoist, and that was perfectly suitable for the guy? A. For that occasion.

Q. For the guy? A. Yes.

Q. And then you put the new wires on the hoist? A. On the hoist.

Q. And who told you first to do that? A. Mr. Cuthbert I think.

Q. And I suppose you gathered from him that that was the customary practice in operating the tower, to watch the guy wires and keep them in good order? A. Of course every time they got an order there was a boat coming in they sent me up there to look at it.

30 Q. And when that boat came in and they sent you up to look at the wire and you thought it would be better to put on a fresh wire there you put on a fresh wire there? A. Yes sir. The operator wouldn't run it with only three on.

Q. And so you put the others? A. I put the extra on.

Q. And then with regard to these cross pieces, how recently before you left were those cross braces put on the tower? A. At the same time the tower was repaired.

Q. And that was a year before you left? A. Well as near as I can recollect.

40 Q. And that was repaired with new pieces? A. Some of the holes was rebored and the bolts put in at different places.

Q. And I suppose where you found the cross pieces sound you used the old and rebored the hole? A. Yes.

Q. And where you found that the old cross pieces were not suitable you got new ones? A. Yes sir.

Some of these cross pieces were too short on the lower part of the tower. We had to renew here. (Indicating.)

- Q. But you did in fact renew them? A. Oh yes.
- Q. And they were new a year before you left, or about a year? A. Yes.
- Q. Then have you ever worked on a hoisting gear like this before or since? A. Before.
- Q. Where had you worked? A. Toronto Harbor Commission.
- Q. What kind of work were they doing? A. Building the Sunnyside Bathing Station.
- Q. And did you notice that there was a good deal of vibration and movement when the load came on the bucket? A. No, it was a vertical 10 tower, as in this one.
- Q. But you don't suggest that you could operate a tower with that long arm, hoisting as much as a ton, without a very considerable amount of vibration? A. Of course there would be a certain amount of movement, yes.
- Q. There must be necessarily with that kind of plant? A. Yes.
- Q. And you said that this moved up and down? A. Yes, the boom moved up and down.
- Q. No more than you would expect with that kind of plant? A. Well yes; it used to give at the roof, that is where our trouble was.
- Q. And when you saw that giving at the roof—? A. We put on more 20 cables.
- Q. You put on more cables and repaired it? A. Yes.
- Q. And you were perfectly satisfied that it was safely operating when you had done that? A. Well it was the only thing that we could do at that time.
- Q. But you were satisfied it was operating efficiently, and it did carry the loads? A. Yes, it did carry the loads.
- Q. And you had no suspicion it wasn't operating efficiently? A. No.
- Q. And you had no reason to suppose that it was dangerous under those conditions? A. Well any tower is dangerous with the uprights rotted 30 away.
- Q. And when you speak of the uprights rotted away you don't mean to suggest that they were just in a state of collapse? A. Almost, yes. That one.
- Q. And that wasn't so after you had put on the braces? A. Of course that is why we had the braces there, to take care of that.
- Q. And when the braces were put on it was all right? A. Yes, absolutely.
- Q. Now then you have said that some of the tops of the upright posts in the building had rotted? A. Yes sir.
- Q. And you referred to one of the photographs; it is Exhibit 24. Now 40 will you show me on that picture exactly where you say the upright posts were rotted? A. You can't see the posts, sir.
- Q. But you indicated that in your former evidence? A. But there is one where you see the roof. You see the roof, the posts coming through right at the top of the stairs.
- Q. Is this the one you mean, No. 3? A. Have you a portion of this roof right at the stairs?

BY MR. TILLEY: Q. I think that is No. 2. Is that it (showing)?
A. No.

BY MR. OSLER: Q. But you were referring at that time to picture No. 1, that is the one you have in your hand, that is at page 677? A. Well at the top of those stairs, I think about here, the posts come through the roof.

MR. OSLER: Have you No. 1 before you, Your Lordship?

HIS LORDSHIP: Yes. You are talking about some posts going through the roof.

Q. You were being asked about those and I think you said you could see on this photograph some of the posts going through the roof? A. I think if you look closely you can. There is a post come right through the roof there. (Indicating.)

Q. That is just to the right of the little skylight building? A. Yes, because I fell through here with one foot.

Q. That is where you hurt your foot? A. Yes.

Q. And you think you can see some posts? A. I think I see the roof raised there.

Q. But you can't see the posts? A. You can't see the posts there.

Q. How many posts do you say were rotted? A. This section of the building wasn't safe to walk on; this section here. (Indicating.)

Q. You are pointing from the skylight to the left of the picture? A. Yes.

Q. In photograph No. 1? A. Yes.

HIS LORDSHIP: That is the southerly part. But wait a moment, Mr. King, they are not asking you if it was safe to walk on.

Q. I thought I said from the skylight to the left hand side of the picture, that would be to the west end of the building; that is what you say was unsafe to walk on? A. Yes.

Q. But, Mr. King, I wasn't asking if that roof was safe to walk on; I was asking how many posts you say were rotted? A. Well I don't know approximately how many, but there quite a few timbers rotted off at the top.

Q. How many? A. Well that I can't say; I know there was quite a few in this section of the building.

Q. That is along that south wall of the building? A. Well there is quite an area there that wasn't in good shape.

Q. Did you show those to Mr. Hole? A. No sir. I wasn't up on top of the building with Mr. Hole.

Q. And it was just along that south wall of the building that you say they were rotted? A. Well of course it takes in a large area, that building there.

Q. Oh, I want something more definite than that. You say quite a number. Were there ten posts that were rotted? A. Well of course I never counted them.

Q. I know, but you are telling us some of these posts were rotted and I want to know how many?

BY HIS LORDSHIP: Q. Was it a general condition? A. Well over that section of the building, yes.

Q. That is south of the skylight?

MR. TILLEY: West of the skylight.

BY MR. OSLER: Q. Now the roof covered all those posts over in that direction? A. Yes.

Q. How many of the posts can you actually see? A. Well you couldn't see all the posts, they are inside.

Q. That is standing on the bottom and looking up? A. Yes.

Q. And how high were they? A. Well I would say close to 35 feet I think.

Q. And when you have been telling us that these posts were rotted at the top were you looking up from the bottom? A. Well I worked on the roof of that building, that is where we found that the posts were off their timbers and rotted off.

Q. And how many of these posts that you worked on did you find rotted off? A. We didn't do anything with these posts, they still stayed the way they were.

Q. How many did you find were rotted off, when you went there to work on them, evidently? A. I worked on the roof, not on the posts.

Q. Not on the posts? A. No.

Q. And over what area of roof did you work? A. I have been all over the roof of that building.

Q. And you can't tell me whether there were five or ten or twenty posts that were rotted? A. There never was a call for me to count the posts.

Q. I know. Is that the best you can do? A. Well of course it is pretty hard for me to recollect how many posts come through the roof and count them.

Q. It was only the ones that came through the roof that you say were rotted? A. Yes, absolutely. They came out through the weather.

Q. And you were working on the roof and you can't tell me how many of these posts came through the roof? A. No sir.

Q. You can't say whether it was ten or fifteen? A. I couldn't say.

Q. It might have been five? A. Of course I couldn't say that. If there was a reason for me to go to count them why it would be different.

Q. But anybody going to take a photograph of the roof such as No. 3 could have seen posts projecting through the part of the roof where they did project through? A. Yes. I don't think this is a picture of the roof that the posts come through.

Q. No, I don't think it is, but anybody going up there to take a photograph of these posts could have easily seen them and taken a picture of them? A. Well it is possible.

Q. Or were they hidden under the roof? A. Well of course the posts come up through the roof and took the timbers with them—took the roofing with them.

Q. Oh, so that you don't mean that the posts actually projected through the roof? A. Well they went over and where the board was joined you would see the posts; the posts would be like that; (indicating); if you looked along

that roof there would be nothing to see but the boards sticking up with a little lift at each end of it.

Q. But if you looked through the cracks you would see the tops of the posts? A. Yes.

Q. So that you really wouldn't see the post unless you made a special examination? A. Yes, where the raise was in the roof.

Q. How many of these places did you examine? A. I am not sure.

Q. You say you made an examination of this; you should be able to give us an idea of how many you examined? A. There was portions of the
10 roof that we very seldom went over. There was no call for to go on it.

Q. But evidently because it was apparently all right? A. Well there was no—

Q. No indication of trouble? A. No.

Q. And the portion that you did have occasion to go on was where there was indication of trouble? A. Yes.

Q. And that was along the south end? A. Along the south end.

Q. Of the building. And how far back from the south end? A. Where the other building joined the south portion.

Q. How wide would that be? A. Oh I couldn't say.

20 Q. And were those posts running on a line where the roof timbers came together in the middle of the roof, or at the side? A. I don't know what you mean there.

Q. Well was there a rafter along the middle? A. I guess there was rafters every so many feet.

Q. And you can't tell me, although you examined it, how many of these things there were rotted? A. No, I couldn't tell you, sir, to be honest, how many there was sticking through the roof.

Q. Well then you spoke about the unloading of coal in the boat and I understand that when these boats came in the coal was lodged in separate
30 compartments in the boats, that they all had separate compartments? A. There would be a number of hatchways on the boat but nothing underneath.

Q. Nothing underneath? A. Just the keelson of the boat.

Q. And when you were unloading the coal you gave us the impression that the coal was just dumped on the pile or on the ground if the pile hadn't come up to that size? A. Yes.

Q. I understand that there were machines that they call tricklers? A. Yes, sir.

Q. To ease the coal down, so that it wasn't like simply dumping the coal a straight fall? A. But how many was there?

40 Q. You are giving the evidence. They had machines of that kind? A. One.

Q. And that was operating all the time you were there? A. Not all the time.

Q. But it should have been if the men on the plant had been doing their job? A. Of course I don't know anything about that.

Q. And I think you said that so far as the screenings on the railway cars were concerned you would find on the average a ton and a half, about as much

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as a wagon that would take a ton and a half could take up? A. A car, yes. That screenings was hauled to my boiler room and I burnt that, that is how I know there was that much screenings, because it was charged up to me.

BY MR. TILLEY: Q. From what? A. From the track.

BY MR. OSLER: Q. That is from the hard coal? A. That is from the hard coal.

Q. That had come in by the railway? A. Yes.

Q. And did you make any estimate of the number of tons of screenings that would come in with a cargo of coal, with a boat's cargo?

HIS LORDSHIP: I didn't think any hard coal came in by rail. 10

MR. OSLER: Yes, some of it.

WITNESS: We had some cars of hard coal

MR. TILLEY: The hard coal in the last year was all by rail when the water supply was cut off.

WITNESS: There was hard coal come in by rail when I was there.

BY HIS LORDSHIP: Q. You mean anthracite coal? A. Yes sir.

BY MR. OSLER: A. Anthracite. And did any bituminous coal come in by rail when you were there? A. Yes sir.

Q. And how much screenings on the bituminous coal which came in by rail? A. Well it just depends what grade of coal it was. If it was soft coal there would be a large portion of the screenings; if it was Pocohontas why it was graded at the mine. 20

Q. But we are asking you now as to the fact. You told my learned friend when you were being examined before that there would be about a ton and a half of screenings and I understand from your evidence that that was a ton and a half from the anthracite? A. Yes.

Q. And that was so? A. Yes.

Q. In the car load of coal? A. Yes.

Q. Now take a car load of bituminous coal? A. Yes.

Q. Not how much there would be but how much did you see? How much was there? A. Well soft coal, that is what you are referring to, soft coal, always comes as mine run or blacksmith coal. 30

Q. I am asking you now not what always happens but how much you saw of screenings from a railway car of bituminous coal? A. I couldn't answer that, because I really don't know. It would be pretty hard for me to give you an estimation of the amount of screenings with soft coal.

BY HIS LORDSHIP: Q. You didn't keep any record of that? A. No no.

BY MR. OSLER: Q. And you are not able to estimate it at all? A. Not the soft coal.

MR. TILLEY: Do they separate it in the soft coal? 40

MR. OSLER: I don't know.

Q. Are you able to give an estimate of the amount of screenings of soft coal in a railway car? A. No sir.

Q. Are you able to give me an estimate of the amount of screenings from a ship's cargo of soft coal, in tons? A. No sir.

Q. Not able to say whether it was one ton or twenty tons? A. No sir.

Q. Well then you also said that you thought the coal was measured by gross tons on the boats and by net tons on the cars? A. Yes sir. That is what I am led to believe.

Q. How were you led to believe that? A. Mr. Sweeney explained that to me.

Q. And did you ever see any invoices that were received. A. No sir.

Q. I am instructed that the shipments by rail and the shipments by boat are all on the same basis? A. Of course that I couldn't say.

10 Q. You don't really know? A. No. I only know what the manager told me.

Q. The manager? A. Mr. Sweeney was manager.

Q. Manager of what? A. Of the dock yard.

Q. And you don't know whether he was referring to a measurement for railway freight or some other purpose? A. All he told me—

Q. I don't want what Mr. Sweeney told you. You are not able to say of your own knowledge how the coal was measured, either by rail or by boat?

A. No sir.

Q. And when you were speaking of one being measured by gross ton and the other by net ton you merely meant that somebody had told you that?

20 A. Yes sir.

Q. And you had no knowledge of your own about that whatever? A. No sir.

Q. Did you unload any boats with hard coal, with anthracite? A. Unload any boats with hard coal?

Q. With anthracite, loaded with anthracite? A. Well all the boats were loaded with anthracite.

Q. And then it was with reference to that that you couldn't tell us how much the screenings were that came out of the cargo? A. No, I couldn't tell you exactly how much screenings come out.

30 Q. Do you know how the size of the cargo compares with the size of a railroad car? A. No sir.

Q. You don't know how many tons usually came in a railroad car? A. Oh on a railway car about forty tons.

Q. About forty? A. I think so. About forty ton as near as I can recollect. They would say there was forty ton in a car.

HIS LORDSHIP: You are just guessing.

Q. Are you just repeating gossip or do you know these weights yourself? A. No sir, I only know what I have been told on that occasion.

Q. You have never had them weighed? A. No sir.

40 Q. Never anything to do with anything in that connection? A. No sir.

RE-EXAMINED BY MR. TILLEY:

Q. Now, Mr. King, you were asked about the roof and as I understand you when you say that the posts went through the roof you mean that the posts raised the roof? A. Well not exactly. The posts were rotted and come

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off the scantling that they sit on, come through the roof, opened up the boards and you could see the posts through the roof if you wanted.

Q. That is to say there would be a scantling normally across the top of the posts? A. Yes.

Q. And then when it would leave the scantling on the top it would come up through the roof? A. Yes.

Q. And when you speak of being on that part of the roof more frequently than other parts—? A. Yes sir.

Q. When you refer to other parts what parts do you mean? A. Well there was very little call to go on the slant roof, the slanting roof. 10

Q. Now where is the slanting roof? What do you mean by the slanting roof? Can you identify it here some place? A. I think, that is the slanting roof there. (Indicating).

Q. You think that is the slanting roof, which would be—? A. This is the slanting roof. (Indicating).

Q. Yes, on picture No. 5 you show the slanting roof and that is at the north end next to the tracks? A. Yes sir.

Q. Is that the part that you refer to that you didn't go on so much, or was it part of the roof still farther south that you didn't go on? A. This was the portion that we were very little on, this portion here. (Indicating). 20

HIS LORDSHIP: Whereabouts is that?

MR. TILLEY: This piece marked "Standard Fuel" on the end of the building, this is No. 5, and it has got a sloping roof to it and he says on that part they were very little on.

Q. Well what would determine whether you would be on or wouldn't be there? A. The running of the machinery inside. If the machinery was all right, nothing went wrong, then you wouldn't need to go on there.

Q. What would go wrong? A. Well if they were replacing it or lifting something we had to tie onto the scantlings of this roof and possibly put a plank through the roof. 30

Q. You say timbers had to go there? A. Yes.

Q. I think my friend asked you that there was nothing wrong with it and you say Seldom went on; no indications of trouble, was the expression he used. Was there any trouble on that roof? A. Yes. On the side facing the Hydro Electric Plant.

Q. That is on the west side? A. Yes. I think the timbers were all rotted on that side. The roofing anyway.

Q. The roofing was rotted? A. Yes.

Q. Then how was that demonstrated? What did you have to do? Did you have to repair it? A. No sir, it was left that way; we put some 40 paper on it once or twice—tar paper.

Q. Then would it, a roof of that kind, shed water? A. No, sir, it wouldn't shed water.

HIS LORDSHIP: That is the northerly part on the west side.

Q. The northerly part on the west side? A. Yes.

Q. Did you get any evidence of that, that the water went through?
A Yes sir, into that shed, this portion here. (Indicating).

Q. That is the portion with the sloping roof? A. Yes. From here up to here.

Q. That is from the north end down to the first partition out into the yard, is that what you mean? A. Yes.

Q. You just see a sort of black—? A. That is a partition. There is a pile of coke behind it.

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Q. What were you doing to say? A. Well this shed was full of coke and we had a lot of mild weather I recollect one time and rain and then it turned cold and the water went through this roof and the coke all froze in there and
10 we had to use dynamite to get the coke out of that shed.

Q. When was that? A. That was I think the last year that I worked there.

Q. Did you find any other occasion that trouble? A. Well only where the water come through the roof.

Q. You can say that, can you? A. Oh yes, the coke and coal was all stored together where the water come through the roof.

Q. Well now then beyond that is the flat roof? A. Yes sir.

Q. And then was that all in a uniform condition or was that in different stages of conditions? A. It was in different states of repair. Some places
20 it would appear to be in fairly good condition; in other places there would be no tar paper and the boards all ripped away.

Q. Well then I don't quite know what that means. Was that because part of it was new and part old, or what? A. Well of course that I couldn't say, the reason; it looked as though there was paper put on some and not on the other.

HIS LORDSHIP: Isn't it shown pretty well on photograph 3?

Q. Is that what you mean, 3? A. This was the good portion of the roof.

Q. That is the roof. Is this part of your roof? That is adjoining pro-
30 perty? A. No sir, that is the adjoining property, that is the Hydro Electric.

Q. Well then where is the good part of the roof there? A. Well the good part of the roof you can't see; it would be over here (indicating); that is the place I was referring to the water came through.

Q. That is where you refer to that it came through but the better part of the roof was on the other side? A. Yes.

Q. But can you say from what you saw inside what is it that causes these undulations on the roof? A. This here, I couldn't say. (Indicating).

Q. That is the dip between the two cupolas, what about that?

MR. OSLER: He said he couldn't say on that.

Q. Tell us what you say at any rate? A. Some of the posts were taken
40 out of the front portion of the building and we moved them to the rear.

Q. Why? A. For to repair the roof at the rear.

Q. Well then did you take them out from under the roof? A. Took some out from under the roof in the front of the building.

Q. The front being the south end? A. Facing the railway tracks.

Q. That is at the north end? A. Yes.

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Q. Did you take them away from the north end to some other place or did you put them in the north end? A. No, we put them in the south end.

Q. Put them in the south end? A. Yes.

Q. And when was that? A. Well I can't recollect the dates.

Q. I mean which year, do you remember? A. I can't, because—
Let's see, a portion of the back building, the side wall fell in, we moved that down there.

Q. When did that fall in? A. It fell in during the spring, but I don't recollect what year.

Q. How much of it fell in? A. Well the side facing the Hydro Electric Building, I think there would be a hundred square feet. We repaired that again you see, took some posts down there to repair it. 10

Q. Well then you were asked about the screenings that come from the boat and you said you couldn't estimate that. Do you remember that? A. I couldn't estimate the weight, the amount that would come from the coal.

Q. Well can you give us any information that would indicate how it compared to screenings from the rail shipments? A. I am afraid I can't, because I didn't weigh it. Only what I am going by is the amount of screenings a man would shovel.

Q. And that you told us about the last day you were here? A. Yes. 20

Q. That is out of these spouts? A. Yes.

MR. TILLEY: That is all, thank you, Mr. King.

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No. 16
Edward Lancelot
Cousins
Examination

No. 16.

EDWARD LANCELOT COUSINS Sworn:

EXAMINED BY MR. TILLEY:

Q. Mr. Cousins, I believe that you are acting in an advisory capacity to the Toronto Harbor Commission? A. Yes, Consultant to the Board.

HIS LORDSHIP: What is his occupation?

WITNESS: Consulting Engineer.

Q. Will you just tell His Lordship what your academic and practical training has been, Mr. Cousins? A. From 1902 to 1906 I was at Toronto University. In the summer months on general railway construction on the middle division of the Grand Trunk Railway. During 1906 in charge of construction on the West River Branch of the Central Vermont Railway. I graduated in 1906, took a post graduate course in 1907, and in April 1907, I was appointed Divisional Engineer of the middle and southern divisions of the Grand Trunk Railway, 1,200 miles of main line. 30

Q. With headquarters where? A. At Toronto.

Q. Now then what next? A. I was in that position until 1910. In July 1910 I was appointed City Engineer of the City of Toronto. I remained 40

in that position until—I was in charge of railways, bridges, docks and special works—

Q. My word, no one can take it down that fast you know; can't you go a little slower? Time was made for slaves. A. I was in charge of railways, bridges, docks and special works for the City of Toronto and in February 1912 I was appointed Chief Engineer of the Toronto Harbor Commission and remained in that work until 1916 when I was appointed Chief Engineer and Manager of all works.

10 Q. Of the Toronto Harbor Commission? A. Of the Toronto Harbor Commission. And in 1922 I started in practice for myself as a Consulting Engineer in general practice, remaining as Consulting Engineer to the Toronto Harbor Commission, and I occupy that position today.

Q. Then did you hold any appointments while you were with the Toronto Harbor Commission? A. Yes, I was on the Joint Board of Engineers in Charge of Works for the Rapid Transit and Radial Railways Report for the City of Toronto with Mr. F. A. Gaby, Chief Engineer of the Provincial Hydro Commission, and Mr. R. C. Harris, Commissioner of Works for the city.

20 I have also been on the Board of Consulting Engineers for the Toronto Transportation Commission, for the Federal Planning Commission of Ottawa and Hull, and in a consulting capacity with the Port of New York Authorities in 1923, and with the Town Planning Commission or City Planning Commission two years ago for the City of Toronto.

And I am also Vice-President of the American Association of Port Authorities. That is an organization representing all the ports on the Great Lakes, Gulf Coast, Pacific Coast and Atlantic Coast of the United States of America, as well as some European members.

HIS LORDSHIP: You have been a pretty busy man.

WITNESS: Fairly, sir.

30 Q. Yes. Well now then, taking it from beginning to end how many years have you been in touch with the Toronto Harbor and its problems? A. From its inception in 1912. You mean the Toronto Harbor Commission.

Q. That is, the improvement? The inception in 1912, that was the first improvement? A. I was on the Harbor Commission in 1912 and as such had the responsibility of the planning and designing of the entire waterfront improvements.

Q. Now what was the depth of the entrance to the harbor at that time, 1912? A. About 14 feet at the new western channel.

Q. And was the eastern deeper or shallower? A. A little shallower, about 12 feet, and the Queen's Wharf was about 12 feet.

40 Q. When you say the Queen's Wharf—? A. That was the old entrance to Toronto Harbor.

BY HIS LORDSHIP: Q. Is that Queen Street Wharf? A. No sir. At the foot of Bathurst Street. It was the old entrance, in fact before the new western channel was constructed, it was the only entrance from the west of Toronto Harbor, into the Harbor from the lake.

BY MR. TILLEY: Q. Well then what was the depth at that time of the Welland Canal, the old Welland Canal? A. 14 feet.

Q. And what was the depth of the canals from Montreal up? A. 14 feet.

Q. So that speaking broadly it would be fair to say that the depth of the waterways leading to the Toronto Harbor and the harbor itself would be about 14 feet at that time? A. Governed by the canals on the east and the west.

Q. Now generally what was the scheme of improvement as to depth? A. In 1911 the Federal Government had brought down the plans and contracts for the New Welland Canal and the locks for that work were designed for thirty feet over the sills, 800 feet in length for the locks with a width of 80 feet, a provisional depth of some 25 feet in the reaches. That has now been altered to 27 feet in the reaches. The governing depth is 30 feet over the sills, so that we in our Toronto work—

BY HIS LORDSHIP: Q. The governing depth over the sills? A. Is 30 feet.

Q. What do you mean by over the sills? A. That is the bottom of the locks, the sills for the locks. It was designed to be for 25 feet, but upon doing this it was recognized that the major cost was in lock construction and knowing that ultimately they would have to go deeper that first cost was taken care of in the first instance.

BY MR. TILLEY: Q. That is to say that the plan involved taking these parts of the structure that would be very expensive the whole 30 feet at once? A. Yes sir.

Q. And then lowering the reaches as needed if they ever would be needed? A. That is the way they are working and they have already increased it to 27 in the reaches.

Q. From 25? A. Yes. Our work at Toronto was all designed in keeping with the New Welland Canal standard.

Q. I was going to ask you that. And the changes in the Toronto Harbor then had that in mind? A. Absolutely. Planned for it.

Q. Well I don't know whether I am allowed to speak about some change being made that has yet to be made: The canals from Montreal to Toronto remain the same, the sills, the old 14? A. The old 14, but the new report, and on which they are now delivering an agreement, they also provide for 30 feet over the sills of all locks.

Q. That is in the lap of the gods yet, but that is the scheme that you say is being discussed? A. We don't think it is very far away, sir.

Q. I don't know who "we" are? A. The Toronto Harbor Commissioners.

Q. At any rate there it is. And then will you just describe to His Lordship the character of the harbor bed insofar as it is material to be considered when thinking of deepening the water at the docks? A. The depth of water, in fact, the governing factor along the inner harbor in relation to the conditions as they were in 1912 was the rock stratification.

Q. Will you explain that? A. It was from 14 to 16 to 18 feet below general water level, what we call flume water, which is 246 feet above mean water level at New York.

Q. I don't know what you mean by that. You are going to have it below something and after a while we will be hunting up to find what it is below? A. The datum, if I may describe it that way—

Q. What is the datum? A. The zero of our gauge at Toronto Harbor, is elevation 245 above mean sea level, New York.

HIS LORDSHIP: Mr. Tilley, do you think we need to go into this?

MR. TILLEY: I just wanted to show what it meant, what it would need to fix these docks, what can be done to these particular dock structures. An estimate, Your Lordship will remember, was put in by Mr. Mitchell showing
10 that for a certain expenditure they could make the dock so that it would be serviceable for a proper coal site.

HIS LORDSHIP: That is in the event of their extension.

MR. TILLEY: Their own extension. I want to show where that would have been without these harbor changes.

WITNESS: Our studies indicated it was much more economical to move the harbor head line out, or the pierhead line out, that is southerly, my Lord, than to move it a quarter of a mile at the corner of York Street.—

Q. You are just making a little jump there, Mr. Cousins. How does the rock formation of the bottom of the harbor slope? A. To the south.

20 Q. That is to say it is deeper as you go south? A. And to the east.

Q. And what do you mean, to the east? A. The high point of rock in Toronto Harbor is at Bathurst Street. The highest point of rock is at Bathurst Street, about 12 feet below water level. As you go east to Cherry Street it drops to 39 feet below water level and as you go south towards the island it is a steady drop.

Q. Then that means that as you go farther east you would have to carry it less south to give us deeper water? A. Exactly.

Q. But you say the problem of how to get the deepest water at the dock was solved by carrying the line of docks out to the south rather than
30 by blasting out the rock at the docks, is that the idea? A. Much more economical, and in addition, sir, the inner harbor had to be dredged of the soft silt, and in improving the harbor we used that material to reclaim the lands to the north of the new development work, thereby creating a new vastly improved harbor facility and improving the land for commecrial and industrial purposes.

Q. So that that accounts for it I suppose, that opposite say the Union Station you have the land fill carried out? A. Yes.

Q. Whereas as you go farther east you don't carry that fill out, because the water is deeper there without going out very far? A. Well, Mr. Tilley
40 what we did was this, we developed the dockage on the inner harbor from Bathurst Street to Yonge and we left from Yonge Street to Parliament Street for the bulkhead, that is the filling in referred to at the Union Station to the north of the bulkhead, and we left that for industrial development, but our big development yet to come with the future years will be from Yonge Street to Parliament over a distance of about 4,000 feet and we go there farther out into the bay about 600 feet additional; that is the same length approximately as the Canada Steamship Terminals are now projected into the bay.

Q. Well then in connection with these harbor improvements have you had to consider the method of laying out suitable sites for various industries including coal handling sites? A. Yes, and the steamship companies, Canada Steamship Company.

Q. For the steamship companies? A. Oil companies, sand and gravel companies, coal companies; in fact, all industries of that nature requiring vessel facilities, we have conferred and developed studies for them and in some cases built the work to their requirements.

Q. Going back to 1926 will you just tell His Lordship what other sites were then or have since been available to the Standard Fuel Company? 10

HIS LORDSHIP: Do you mean in this development?

MR. TILLEY: In this development, yes. As matters stood then or as they stand now. A. Well in 1926 and from that date on the first site I recall is what is known as the National Iron property at Parliament Street, the westerly eleven acres of that property has been available to anyone since 1926.

Q. Will you just show that? A. On the plan?

BY HIS LORDSHIP: Q. How far is the National Iron Works from this Church Street? A. I would say about 3,000 feet, sir.

Q. 3,000 feet? A. East. 20

Q. They went away about 6,000 feet, didn't they? A. They are down at Cherry Street. I don't know whether this plan is too big, sir, but this shows the whole picture. (Producing a plan.)

BY MR. TILLEY: Q. Is it one that you will be demanding back? A. Well it can be put in as an exhibit.

Q. Let us see that now, will you? A. This will give His Lordship a picture of the whole waterfront development.

Q. This is the improvement plan? A. Yes.

Q. Where is the National Iron? A. The National Iron site, sir, is colored pink, at the foot of Parliament Street here, consisting of 11.3 acres 30 with 1288 feet of dockage, 600 feet on the south side and 688 feet on the west side.

Q. And was that available in 1926? A. Available to anyone since 1926, and the Harbor commission bought it in 1931.

BY HIS LORDSHIP: Q. How do you know it was available in 1926? A. For the simple reason, sir, I had been working with the National Iron Works in connection with development of that property—

MR. HELLMUTH: I submit this evidence of what might be available by the Toronto Harbor Commission's scheme has nothing to do with this arbitration. There might be some other scheme which might give the potential 40 values but it has nothing to do with the value of our property in 1926.

HIS LORDSHIP: I think it has. You are making a claim for very large damages because you are being obliged to locate out at Cherry Street.

MR. HELLMUTH: I am not at all, my Lord, I am speaking for the owner.

MR. TILLEY: There is only one owner now.

MR. HELLMUTH: I am not making any claim for that, I am asking for the value of that property as it was in 1926 when it was expropriated with

all its potential value; I am not making any claim for that disturbance part of it; my friend of course is but I am not joining in his claim. But as owner I am making no claim.

MR. OSLER: And, as tenant, my Lord, I don't understand how Mr. Cousins can give any evidence as to what might have been done with a property that his Board didn't own, that the Terminal Company owned. This is based upon hearsay.

HIS LORDSHIP: That is why I asked the question how he knew in 1926. I mean how did he know for certain it could be secured?

10 MR. OSLER: That I think would depend upon what he was told.

MR. TILLEY: He didn't say that.

WITNESS: I said I was retained by the National Iron Corporation to prepare studies for the dockage development and industrial use and the development of that property with the object of selling.

HIS LORDSHIP: How did he know it was available for Standard Fuel in 1926?

WITNESS: I don't know particularly.

MR. TILLEY: What he said was that, acting for the owner, he was developing for the purpose of sale.

20 HIS LORDSHIP: Oh yes, I understand that all right, but I just wanted to know whether he knew it was available in 1926 to any person who wanted to purchase it.

WITNESS: Yes sir.

BY MR. TILLEY: Q. At any rate that is the location of it? A. Yes.

Q. And it was still there? A. Yes.

Q. And still available? A. Yes.

Q. And the Harbor Commission bought it in when? A. 1930.

Q. And what did they pay for it? A. \$260,000.

Q. For how much? A. 11.3 acres, 85 percent of which was filled.

30 Q. And what does that work out per square foot? A. I never worked it out per square foot, sir. I could work it out.

Q. Now then were there any other sites in 1926? A. The only other site north of the ship channel in the industrial district up till 1929, or from 1926 till 1929, available for coal purposes was the 8.11 acres of property east of Cherry Street.

Q. Along the north side of the ship channel? A. Yes. With 680 feet of dock frontage, 8.11 acres; that was leased for a year for coal—

MR. OSLER: I couldn't get that; Mr. Cousins is going very fast.

40 BY HIS LORDSHIP: Q. This location is just north of the ship channel and east of Cherry, how many acres? A. 8.11.

Q. And that was available in 1929, was it? A. Yes sir, it was available up till 1929 when it was taken by the McColl-Frontenac Oil Company.

BY MR. TILLEY: Q. Was that available in 1926? A. Yes sir. It was used in 1926.

Q. Then I would think it wouldn't be available if it was used? A. It was used temporarily for the storage of coal, a short term use.

BY HIS LORDSHIP: Q. By whom? A. Canada Coal Company used the dockage space across the 680 feet in 1926; they weren't there in 1927 or 1928; and in March 1929, 8.41 acres was leased to the McColl-Frontenac Oil Company as part of a large tract of land including some 47 acres.

Q. Well now who owned that property? A. The Harbor Commission.

Q. In 1926? A. Yes.

Q. And was it available for a long lease? A. Available to anyone that wanted it.

Q. What was the price then? A. It has been leased.

Q. What then? A. This is an 8.41 acre dockage site that was leased 10 to the coal company.

Q. What coal company? A. Canada, at a top wharfage charge of some thirty cents per ton.

BY HIS LORDSHIP: Q. That doesn't give me much information? A. Well another way of expressing it, my Lord, is this, a dollar a square foot was the other basis for a depth of 150 feet back from the face of the dock and north of that any property that would be required fifty cents a square foot or roughly \$22,000 or \$23,000 per acre; in other words the dockage was \$43,000 per acre, 150 feet deep, and the property to the north, which would be fifty cents per square foot property, \$22,000 an acre. 20

BY MR. TILLEY: Q. That is about a dollar a square foot for the wharfage part and fifty cents a square foot for the rear? A. Yes.

Q. Now when was that price provided, as of 1926 or 1929 or when? A. Starting about 1928 and 1929. I will have to get these last lease figures, Mr. Tilley.

Q. Well let us get it in order.

BY HIS LORDSHIP: Q. 1926 is the time that they moved out? A. In 1926. The occupancy of the Canada Coal of this portion of the property under discussion was, as I stated, twenty cents per ton top wharfage charge.

BY MR. OSLER: Q. I thought you said thirty before? A. Well did I? 30

Q. It is twenty, is it? A. Twenty cents per ton, yes.

BY HIS LORDSHIP: Q. Going back to the National Iron Works, what price does that give you? A. There was no dockage on it, my Lord. You mean this, sir? (Indicating).

Q. Yes? A. There was no dockage and no retention—that was frontage I was working on—it was simply a waterlot and partially finished.

BY MR. TILLEY: Q. At that time it wasn't developed into a dock property; that was for the property without the dockage, is that what you mean? A. Yes.

Q. Without the dock being built? A. But that is the work I was on, 40 developing those sites for possible industrial uses.

BY HIS LORDSHIP: Q. Then if they had cared to have it, the dockage, wharves and piers and all that would have been added to the expense? A. Yes, added to the expense to the owner, the purchaser.

Q. That would be considerable of course? A. Yes, sir. The Giles lease, 553 feet on the marginal way, north of McColl Brothers, in this section (indicating).

BY MR. TILLEY: Q. What are you on now, Mr. Cousins, other properties? A. His Lordship asked for prices of it.

Q. No, he just asked for the price of that particular property. Let us keep to the one thing that we are at. Have you the price? A. That was on a top wharfage price of twenty cents.

Q. What does that mean, on a top wharfage charge? How about the amount to be paid? A. Well the coal companies at that time and the Harbor Commission, neither of them knew just exactly what they would put over the dock.

10 Q. How much coal would be handled? A. Exactly. And in order to try it out and test it out the Harbor Commission established twenty cents per ton for every ton of coal unloaded from the water over the dock onto the property, that was their rent, plus taxes.

Q. And was that a rental on a term of years or for a short time? A. These are all one year term leases.

Q. That was an experimental thing, for a year? A. Yes.

Q. Now then put that to one side just for the moment and while you have the plans there, so that we won't have to come back to it, will you just show to His Lordship the coal dock properties year by year that were in use or
20 available along the harbor front?

MR. HELLMUTH: At what period?

MR. TILLEY: Year by year from 1926 on he is going to give.

HIS LORDSHIP: Isn't that going back considerably Mr. Tilley?

MR. TILLEY: I think we should really define what a coal dock property is and where they could be located.

HIS LORDSHIP: We have some knowledge of that now, where they can be located to the best advantage, at Cherry Street, about a mile from Church, and you say that they could have got closer?

MR. TILLEY: Yes.

30 HIS LORDSHIP: And at the same expense to them?

MR. TILLEY: At a comparatively low expense having regard to the figures they are talking about here.

Q. What have you to say about that, Mr. Cousins? A. That is my judgment, sir.

Q. That is what you want to establish, isn't it? A. Yes.

Q. Now can't we get rid of this big plan of yours now? A. I can leave it there or put it to one side, whichever you like.

HIS LORDSHIP: It helps me I think.

WITNESS: Church is here; this is Cherry Street (indicating).

40 BY HIS LORDSHIP: Q. What are these? A. These are the plans of the eastern harbor terminals from Parliament Street easterly to the turning basin; they are shown in pink; in 1926; the various leases. This is the Milnes Coal Company.

BY MR. TILLEY: Q. Are the names on them? A. Yes, sir. Canada Steamship. (Indicating). Century Coal Company, which is a subsidiary to Canada Steamship Lines, leases docks at Cherry Street, Mr. Tilley, and immediately south of that site on the marginal way is the W. T. Giles. Then

west of Cherry Street along the north side of the ship channel is the McColl Oil Company occupancy and to the east of Cherry Street on the north side of the ship channel is the Canada Coal Company. That represents the uses of the property along the dockage face in 1926.

BY MR. OSLER: Q. These are all in 1926? A. Yes.

EXHIBIT 40: Bundle of seven plans above referred to produced by Mr. Cousins, showing coal company locations, year by year from 1926 to 1930.

WITNESS: In 1927 there was Milnes Coal Company on Keating Channel where they were in 1926; Canada Steamship Lines remaining as at that time. 10

BY HIS LORDSHIP: Q. You have shown us that on the other plan, there is no use going over that again? A. The Milnes are in here, sir; they came in on the west face of the marginal way in 1927.

Q. That is on the west side of Cherry? A. And the Canada Coal they moved up from the ship channel to the west side of the marginal way.

BY MR. HELLMUTH: Q. Just a moment. Are those properties leased permanently to these people or year by year? A. In the case of the Milnes Coal Company on the Keating's Channel that is a long term, Mr. Hellmuth; in the case of the Canada Steamship Line, that is just west of Cherry Street, that is a long term lease; the others are all year by year occupancies. 20

The only change, in 1928, the Weaver Coal Company came into Toronto and located on the west side of the ship channel—west of Cherry Street.

HIS LORDSHIP: You are going away on now to 1929, which is away past.

BY MR. TILLEY: Q. The other sheets just show the development, do they? A. Yes.

BY HIS LORDSHIP: Q. When was that bridge completed? A. In 1930, June.

Q. And then following the plan out you have the locations on the other side of the ship channel? A. Yes.

HIS LORDSHIP: These are all possible. 30

MR. TILLEY: Yes.

HIS LORDSHIP: I don't think we need go any further with that.

WITNESS: In 1931, June.

BY MR. OSLER: Q. When the bridge was built? A. Opened for traffic.

BY MR. TILLEY: Q. Mr. Cousins, these plans show year by year and you could very conveniently take the last plan I should think and mark the year on with pencil in which it was located there, couldn't you? A. Other than the fact that they changed locations; that is why we had to make all these plans. 40

Q. Now then will you just roll it up.

Now, Mr. Cousins, do these plans show a good deal of property available from time to time? A. Oh yes.

Q. Now you spoke of short term leases. Will you just tell us what the development has been about these short term leases, what kind of lease you mean? A. The Harbor Commission determined on a policy of short term leases, for one year's duration, at rentals based generally speaking on a basis

of \$1 per square foot for 150 to 200 feet back of the face of the dock and approximately fifty cents per square foot—

MR. HELLMUTH: My Lord, I submit we are not interested in what the policy of the Harbor Commission as to what they would lease property at was.

HIS LORDSHIP: There was some evidence went in that the Standard Fuel Company was not permanently settled, they were still there for a year.

MR. HELLMUTH: Where, my Lord?

HIS LORDSHIP: At Cherry Street.

MR. HELLMUTH: But the Standard Fuel are now there; they weren't
10 there.

HIS LORDSHIP: That is what I mean; they are there, but they didn't have, if I recollect the evidence correctly, any definite agreement yet with the Harbor Commission.

MR. HELLMUTH: No. I submit what the Harbor Commission's policy may be in regard to these leases is not a matter which is vital, but when in 1926 they took over this property.

HIS LORDSHIP: It will come down to what the Standard Fuel were able to secure.

MR. HELLMUTH: At that time.

HIS LORDSHIP: At that time. What your general policy was, I suppose
20 Mr. Tilley wanted to show.

MR. TILLEY: Yes.

MR. HELLMUTH: It will be subject to my objection.

HIS LORDSHIP: Yes, it will go in subject to your objection.

MR. OSLER: And subject to my objection also as to any statement of general policy. The facts are there. Just how far the general policy was adhered to, that is another thing.

HIS LORDSHIP: I don't know how valuable it will be to me but I will take it subject to objection.

30 Q. Now, Mr. Cousins, will you just tell us what conditions exists in point of fact that make that kind of treatment necessary or desirable? I want to know the conditions? A. Well the conditions as to permanent coal sites were such that the coal companies themselves in conference with the Harbor Commission officials were never able to—?

MR. OSLER: I object.

HIS LORDSHIP: I cannot accept that. That is too indefinite.

Q. I want to know what conditions. Not conditions affecting sales but conditions affecting the business I suppose you are going to speak of? A. Yes sir.

40 Q. What were the changing conditions? A. The changing conditions was mainly the development of the coal unloader.

Q. Are you familiar with the coal unloader? A. Yes.

Q. Will you show that to His Lordship?

BY HIS LORDSHIP: Q. This is the new method, is it? A. This in known as the self-unloader, my Lord.

HIS LORDSHIP: This is the new method we heard of before?

MR. TILLEY: Yes.

Contestant's
Evidence

No. 16

Edward Lancelot
Cousins

Examination

—continued

HIS LORDSHIP: Which is going to save a great deal of expense in unloading?

MR. TILLEY: Yes.

Q. I just wanted to ask this question; I don't think I understood correctly: Would this new method of unloading do away with sheds for the storage of anthracite? A. It has so far, sir, in the last two years.

Q. I will just develop that with you for a moment: Why would it do away with sheds? A. One reason is this: Insofar as the business that has come in here, all the rented property was for the self-unloader. They haven't determined themselves on a policy and they are on one year leases or short term leases and they couldn't go to the expense of putting up any structures when they don't know themselves what they want. 10

Q. That isn't what I wanted to get at. Supposing these people get firmly located here, as no doubt they will, with that new method of unloading would that do away with the shed to have the coal stored? A. Well the answer, my Lord, is that since 1926, since this condition started, there isn't one of them has a shed on the waterfront. They handle it entirely from the stock pile. It is unloaded from the boat onto the dock by means of a self-unloader and with their loading equipment they load it into a truck and deliver it. 20

Q. But supposing a boat brought in coal they may not want to deliver right away? I mean as in the Standard Fuel case, they brought in great quantities of coal, some 20,000 tons, in the off season, and stored it and then delivered it to their customers? A. That is what they are doing today, sir.

Q. No, they would have to deliver at once? A. No, we have anywhere from 250,000 to 300,000 tons of coal in stock stored on the waterfront property.

BY MR. TILLEY: Q. In sheds? A. No, all out in the open.

BY HIS LORDSHIP: Q. Then does it make any difference in the condition of the coal, not having it protected? A. I don't know as to that. They haven't it covered, that is all I can say, my Lord. 30

Q. Would it make any difference as to the coal, whether it was covered or not, speaking of anthracite?

MR. OSLER: I don't think he was speaking of anthracite. A. I am speaking of Welsh anthracite and bituminous.

Q. I know that Mr. Hole said he had worked for some firm down in Montreal, planned their new warehouse or whatever you may call it, and it was to do away with sheds altogether, the new method of loading, to do away with sheds, and I was just wondering why the new method of unloading from the boats would do away with the sheds? A. I can't say as to that, sir.

BY MR. TILLEY: Q. You cannot answer that, you don't know what the ultimate development will be about whether they will have the sheds or not? A. No sir. 40

Q. Now will you just show us about the method of unloading? A. This is a picture of the Dow Chemical that came in here on April 27th.

BY HIS LORDSHIP: Q. What is the Dow Chemical, a boat? A. That is the name of a boat.

Q. Taking in coal? A. On April 17th of this year, to Toronto, that is the largest freighter that has been in, 531 feet long—

BY MR. TILLEY: Q. The method of unloading, Mr. Cousins?

MR. HELLMUTH: My Lord, I suppose what took place in April 1932 has no bearing on what took place in October or November 1926.

HIS LORDSHIP: Yes, I have that in mind.

Q. Is this the new method? A. Yes.

Q. Where is this boat? A. (Witness indicates on photograph.) That is a Canada Steamship Lines boat, that is the Midland Prince.

10 Q. And this takes it and hoists it right off the boat onto the dock? A. Along this belt conveyer. (Produces several photographs.)

BY HIS LORDSHIP: Q. These photos were taken by whom? A. The Harbor Commission Photographic Department.

Q. Did you take them? A. No sir.

BY MR. TILLEY: Q. But you saw the boats? A. They were taken under my instructions.

Q. And they are correct representations? A. Yes.

MR. OSLER: Is this one of the photographs you were going to put in?

MR. TILLEY: Yes.

20 MR. OSLER: That obviously looks out of scale. I don't think it ought to go in.

MR. TILLEY: It is just to show the unloading device.

MR. OSLER: That is making it look as if it would reach almost up to Bloor Street.

MR. TILLEY: They will find it won't. If that does not suit you we can mark something on it for your special benefit.

HIS LORDSHIP: All I am making use of these for, Mr. Osler, is just to see how it is done.

30 EXHIBIT 41: Six photographs produced by witness, showing various boats and method of unloading coal by self-unloaders.

Q. Will you just tell how that operates, Mr. Cousins? A. In the case of the modern self-unloader—?

BY HIS LORDSHIP: Q. The one shown in the photograph? A. The Dow Chemical, this has an unloading capacity of about 1,100 tons per hour and that boat has a cargo capacity of some 9,000 tons and came into Toronto with 7,000 tons. The smaller type canal size self-unloader—

BY MR. TILLEY: Q. That is the 14 foot boats? A. 14 foot draft, with capacities of about 450 to 500 tons per hour.

Q. And what do they carry? A. 2,500 to 2,600 tons.

40 Q. And do they have those on Lake Ontario now? A. Yes.

Q. Will you tell me when they first started on Lake Ontario? A. About 1926, that is the small canal size self-unloader. The large size freighter or self-unloader did not come into Toronto until the new Welland Canal would be opened in 1931, about 18½ feet.

BY HIS LORDSHIP: Q. This unloader, that has the machinery within the boat? A. Yes sir.

Q. And they bring that machinery in and as soon as they dock they can start that machinery and throw the coal out? A. The coal is in pockets, my Lord, and goes into a belt in the boat and travels along the belt to the end and into a hopper and out of the hopper onto the belt conveyer and taken off.

Q. So that it is the boat itself that provides this new unloader? A. Yes, and it costs about \$350,000 to equip one of the large type boats with this equipment.

BY MR. TILLEY: Q. And then you say that the large size boats weren't on Lake Ontario until the Welland Canal was opened, but prior to that were they on the upper lakes? A. Oh yes, they have been on the upper lakes 10 for years, there are forty or fifty of them in service.

Q. And to what extent have the 14 foot boats been used as self-unloaders, do you know? A. Oh very few of them compared with the larger type boat.

Q. Most of them are the larger type boats, are they? A. Yes.

MR. OSLER: Those photographs, Exhibit 41, are subject to my objection.

HIS LORDSHIP: Surely.

MR. OSLER: Some of them look as though they might be misleading.

HIS LORDSHIP: The only use, as I said, I want to make of them is to show me the new method of unloading.

Q. Now then will you tell me what coal docks or properties were there 20 near the Standard Fuel Company's dock prior to 1926; whether they were in use or not I care not so long as they were there? A. There was the Elias Rogers Company and the Milnes Coal Company, the Standard Fuel and the Conger Fuel all between Yonge Street and Parliament.

Q. And where are they now? A. There is none of them of course operating in that section.

Q. And do your plans show where they have been located? What about Rogers, have they taken a waterfront property? A. Rogers have under consideration the development of the National Iron site and have also just— 30

BY HIS LORDSHIP: Q. Do you know these things?

BY MR. TILLEY: Q. You do know these things, don't you? A. My Lord, I am developing the dock site.

HIS LORDSHIP: As long as you know of first hand knowledge; not what you have been told.

MR. HELLMUTH: Is it of any interest at all that somebody has something under consideration?

MR. TILLEY: I think it is very material when we are coming to the particular development of the Standard Fuel Company; now we can't separate the two of you, you are both to be treated as owners so far as I am concerned 40 now under the arrangement we have made.

MR. OSLER: As I understand it my learned friend's objection is that there is a certain amount of gossipy conversation, or even not gossipy conversation, between various people.

HIS LORDSHIP: We will try to keep that out.

MR. TILLEY: Mr. Cousins may have first hand knowledge.

WITNESS: I am acting with the Elias Rogers Company for the Harbor Commission.

MR. OSLER: Supposing the Rogers Company have been discussing with Mr. Cousins the question of whether they should go here or there, that is surely not a thing to be given in evidence.

HIS LORDSHIP: It gives me an idea of the possibilities and probabilities and so on of this particular location, but whether it is going to assist me in coming to a conclusion I don't know yet.

MR. OSLER: My submission is that that kind of evidence should not
10 be accepted.

HIS LORDSHIP: Well here are the Rogers, Milnes and Congers in close proximity to the Standard Fuel. They at one time were bringing in coal by water. Mr. Tilley says now that this witness is going to prove that they had all abandoned for some time bringing in coal by water, that they were bringing it in by rail.

MR. OSLER: If he proves that he has a vivid imagination, because we have a great deal of evidence as to their being driven off the waterfront.

MR. TILLEY: If we have had some evidence may we not put in some other evidence? If we may not it will stop.

MR. OSLER: My submission is conversations between the Rogers Com-
20 pany and Mr. Cousins are not evidence.

HIS LORDSHIP: As I have admitted some other evidence which seemed very doubtful I will allow this in subject to objection.

Q. Have you completed what you were saying?

HIS LORDSHIP: As I understand Rogers, Milnes and Congers were all on the waterfront.

MR. TILLEY: Yes.

BY HIS LORDSHIP: Q. On property of the Harbor Commission? A. Yes. Well no, some of it privately owned and some of it publicly owned, sir.

BY MR. TILLEY: Q. But they were all on the front? A. They were
30 all on the waterfront between Yonge Street and Parliament.

Q. Some owned their own properties and some were rented? A. Yes. and with the viaduct construction and waterfront improvements they have had to lease other places and in the consideration along those lines I have acted with the Rogers Company on the matter of the development of the National Iron site of 11.3 acres and provided plans with estimates for them as to what use they could make and what the cost would be if they took over this property from the Harbor Commission at Parliament Street.

BY MR. OSLER: Q. Are you acting for the Rogers Company or the
40 Harbor Commission? A. Both.

Q. I understand you are the engineer for the Harbor Commission? A. I am acting for both. I am acting with the Rogers Company as a consulting engineer and I am working with the Harbor Commission as it is Harbor Commission property.

BY HIS LORDSHIP: Q. You are both buying and selling? A. I am not, sir.

Arbitration
Proceedings

Contestant's
Evidence
No. 16
Edward Lancelot
Cousins
Examination
—continued

Arbitration
Proceedings
—
Contestant's
Evidence
No. 16
Edward Lancelot
Cousins
Examination
—continued

Q. But you would be? A. I don't pass on that as to leasehold, that is a matter for the Harbor Commission, sir; I am only on the engineering and construction end.

BY MR. TILLEY: Q. You are on the suitability of the site? A. And the way it is to be laid out and the cost of the dock structure.

Q. Has the Rogers Company taken any sort of lease? A. Yes, they have taken a lease on the east side of— Or at least they have offered for a lease last Friday or Saturday on the east side of the turning basin.

Q. Is that temporary or permanent? A. Temporary.

Q. Have any of these companies settled about any permanent lease? 10
A. None.

Q. Not one of them? A. No.

Q. Running along in the way you have indicated, year by year? A. Yes, and they have all adopted that policy.

Q. And have they all the same problem facing them? A. Yes sir.

Q. That is handling coal? A. That is probably why they can't make up their minds.

MR. OSLER: Surely Your Lordship won't pay any attention to that.

HIS LORDSHIP: You cannot say probably.

MR. OSLER: We have had the evidence we wanted to get something 20 definite from the Commission and couldn't.

MR. TILLEY: Yes, but then you have an arbitration on.

MR. OSLER: Rogers evidently succeeded in avoiding it.

MR. TILLEY: Yes. Others were not so sensible perhaps.

Q. Then, Mr. Cousins, will you tell us just what the depth is at these various properties? Take National Iron Works first and tell us about what is the depth? A. Depth of which?

Q. Of the water in front of the docks? A. They are all designed for 30 feet of water.

Q. And what are these other sites you have spoken of shown on this 30 Exhibit you have filed, No. 40? A. They are all designed for 30 feet of water save and excepting the Milnes site on the River Don.

Q. And what about the Milnes site? A. The Milnes site on the Don had 18 feet of water.

Q. Now then will you say what study you have made of the Standard Fuel Company, that site, to discuss Mr. Mitchell's proposed improvements or alterations and to suggest some of your own?

HIS LORDSHIP: He hasn't seen it I suppose.

Q. You have seen Mr. Mitchell's? A. Yes.

Q. And you were given the working sheets. Were you able to work 40 out anything? A. I am sorry, I couldn't work it out from them, they were not much use.

Q. Why? A. Well they were what I would call studies tentatively but developed by Mr. Mitchell on his own extension, but they weren't completed or detailed estimates from which I or any other engineer could analyze his figures.

Q. Well now will you just give your own? A. You are speaking now of the Church Street site?

Q. Yes, the Church Street site? A. I have developed studies for the Church Street dock on the basis of—study plan No. 1 provides for a 54 foot slip taking the dock structure out to the Toronto Electric Light Company dock line.

MR. OSLER: Has Mr. Cousins a plan that he is going to speak about?

MR. TILLEY: Yes.

10 BY HIS LORDSHIP: Q. You said plan No. 1; that is your plan? A. Yes sir.

HIS LORDSHIP: We will have to put that in.

BY MR. TILLEY: Q. Is that along the line of any plan made by Mr. Mitchell? A. This is a replica practically of Mr. Mitchell's study.

Q. That is you have made up your own study based on his? A. With the exception that Mr. Mitchell's scheme didn't provide for any bulkhead wall or crib construction or any dock wall on the south side of Lake Street or the north end of his slip.

20 Q. You have provided for that in your study, why? A. You have to retain the fill at Lake Street. And I have provided that structure at the north end of the slip.

Q. At Lake Street which side? A. South side, sir.

Q. Why wouldn't that be filled? A. Well Lake Street would be filled and is shown on this plan in yellow, and on Mr. Mitchell's plan this north limit of his slip remained on the south side of Lake Street.

Q. Then you would have to have a retaining wall along there to make it a slip, is that what you mean? A. Yes.

BY HIS LORDSHIP: On the west side? A. On the north side, sir.

BY MR. TILLEY: Q. On the north side of the slip to hold up Lake Street? A. Exactly. The rest of the plan is the same as Mr. Mitchell's.

30 Q. Well now then, Mr. Cousins, have you more than one copy of that? A. Yes.

BY HIS LORDSHIP: Q. Then give one to Mr. Osler. Mr. Mitchell's scheme did not provide for a retaining wall there? A. No.

Q. And that would have to be done? A. Well the cost of the wall, my Lord, is in our estimate.

BY MR. TILLEY: Q. You have added the cost of the wall? A. Yes.

EXHIBIT 42: Mr. Cousins' alternative dockage study No. 1 above referred to.

40 Q. Now have you worked out the cost of that? A. I have worked on the estimates and prepared estimates of costs based on Standard Harbor Commission dock practice.

Q. Is that a proper method of construction? A. Well we built 14,000 feet of it.

Q. Well you see you pin it to one thing. I wanted to know whether it is a proper and suitable method? I believe Mr. Mitchell said that it was? A. Yes.

Q. But he said he had done the work a little differently, that is instead of having cribs he took concrete work of some sort? A. Mr. Mitchell's plans provide for concrete caissons and in between those caissons he proposes to establish 12 by 14 concrete and wooden beams. We have provided in our plans for a timber crib filled with rock with a concrete block on the top and the mass concrete superstructure, the standard dock construction throughout all our work on the inner harbor.

Q. What is the difference between doing it your way and his way? What is the real point of it? A. Well, Mr. Tilley, as Mr. Mitchell said in his evidence, and Mr. Wilson also, they had never built a dock of that nature, of 10 that type of construction.

Q. Did you ever hear of one? A. I don't know of one ever having been built. Concrete cribs have been built as on his proposal using a concrete crib and I prefer to adhere to the practice that I know is acceptable and that I have the cost of and that we have used as a standard at Toronto and that is a standard throughout the Great Lakes.

Q. Now I just wanted to know this, is the cost of yours less or more than if you did attempt to follow his practice? A. Our estimates of the costs are more than Mr. Mitchell gave.

Q. I am not asking you that, but I am asking as between doing the work 20 your way and doing the work his way which would be the more expensive? A. I think our plan is more economical.

Q. That is to say your figures may be higher but that may be because you would criticise his estimates of his own work, is that what you mean?

A. Well the placing of concrete cribs or caissons is very difficult and very costly.

Q. Due to what? A. And we put a timber crib down—

Q. Due to what? A. Due to getting it perfectly level and adjusted under his plan to drop in these sluice gates as I call them.

Q. Before you come to that, you must make the bottom of it match the 30 contour of the rock, must you not? A. No, what you would do in his scheme, you would take out and excavate the clay and shale down to rock level, then you would take and put that crushed stone all along the bottom of the rock, or the top of the rock at the bottom of the structure, and you must level that up, and then you come along and float into position your concrete caisson or concrete crib and you sink it into position and you have to keep it perfectly level, and a concrete crib is much more difficult to set, and costly to set than a timber crib. And further than that, my judgment is that the plan as suggested by Mr. Mitchell, the cost would be more for his caissons than it would for a concrete crib and naturally much more than it would be for a wooden crib. 40

Q. Well then have you gone on and computed what the cost would be of doing the work according to this Exhibit No. 42? A. Yes.

Q. Have you that in a document of which we can let Mr. Osler have a copy? A. Yes.

BY HIS LORDSHIP: Q. How about durability? You say it is less expense, but under your scheme, as against the use of concrete, what about the

durability? A. There is no difference, sir, as long as your timber is under water, between concrete and wood.

BY MR. TILLEY: Q. Your scheme I think we found out from the Canada Steamship Arbitration involves the woodwork being under water and then the mass concrete on the top of it? A. The block on top of that and mass concrete on top of that.

Q. Block on top of wood and then mass concrete on top of that brings the concrete above the water line and not the wood? A. We cut our wood off two feet below water.

10 Q. So as to preserve it? A. Yes. And the life of timber under water, my Lord, is just as good as concrete.

Q. Now then is this the cost of the work according to Exhibit 42? Is that right? That will be 43. A. This is study No. 1.

Q. Is that the one? A. That is the one referred to here.

EXHIBIT 43: Statement produced by Mr. Cousins, "Study No. 1, covering 54 foot 4 $\frac{1}{4}$ inch slip," as outlined in Exhibit 42.

Q. Now, Mr. Cousins, just tell us what this means, 54 foot 4 $\frac{1}{4}$ inch slip? That is the width? A. Yes.

20 Q. With 18 feet by 20 feet by 100 feet cribs. The wall, east side, and then you give the length of wall, 541 feet some inches? A. That is right.

Q. And you take the cost at \$181.31 per lineal foot? A. Yes sir.

Q. How do you get the \$181.31? A. Well that is the cost of the crib substructure.

Q. How do you get at the cost? A. Well from my estimate.

Q. Have you that now so that we can take that? A. Yes.

Q. Have you copies of the computation? A. Yes, they are all there.

Q. Is that the only copy, or have you one for me? A. Here is one, sir.

30 Q. This is the way you build up your estimate? A. These are the detailed estimates for the standard timber crib rock filled with concrete block and mass concrete superstructure, based on 1931 prices; all the details as to the bill of materials, quantities and how we arrive at the figures are indicated in the estimate.

MR. TILLEY: Well, then that will be Exhibit 44.

EXHIBIT 44: Statement produced by Mr. Cousins "Estimated cost of crib work and concrete superstructure in 1931 at Church Street re Standard Fuel Company," covering his studies Nos. 1, 2, 3 and 4.

Q. Now you have given the details; I will not stop to go into that, because that can be criticised. And then you have dredging slip. (Ex. 43).

40 Q. How do you get at that cost? A. From the soundings and the estimate of costs of fifty cents per yard to dredge.

Q. How do you get at the estimate of fifty cents a yard? A. It is our judgment as to what it should cost to dredge this slip.

Q. Then is that something to be determined just in that way? A. No, it is our knowledge from our experience.

Q. That is doing it in what quantities, in the quantities that we are considering here? A. Well in this particular case, sir, there is only 1,573

cubic yards. You will note the average depth is only 2.33 feet, and I presume and have assumed that it would be overcast from the slip into the back of the structure.

Q. That is thrown over the front? A. Yes.

Q. Into the dock? A. Yes.

Q. Now then do we get the same figure of fifty cents when we come to different depths and different schemes? A. Well insofar as this excavation of this slip is concerned, yes.

Q. Now that is dredging? A. Yes.

Q. And filling back of wall up to elevation named? A. Yes. 10

Q. And you have the fill? A. Yes.

Q. How do you get at that figure? A. From the soundings and borings.

Q. I know, I have got the quantity, but how do you get at cost? A. That is estimated cost on what we consider is a fair value to put in the fill.

Q. But is that buying fill or getting it for nothing? A. It is our experience, or my experience has been this, that when you want fill of this nature it isn't always available through dumps or through somebody wishing to dispose of it, and I cite two cases in my own experience: When we were doing the work at Sunnyside, building the swimming tank, we had to buy fill and we paid ninety cents a yard to have it brought in on the work. 20

Q. We don't care about one particular case of that kind, you will probably be cross-examined about that, unless you show that you have the facts on there to end it, but what I want to get at from you is, this is your estimate, what do you say as to the scheme of waiting to get people to bring it here? A. Well you wouldn't do it with this expensive dock structure.

Q. Why? A. Because your money is invested and you want to use your property and you have to get your fill or make a contract with somebody to get it and bring it to you quickly.

Q. And you think it wouldn't pay you to wait for it? A. No.

HIS LORDSHIP: He couldn't depend on people bringing it. 30

Q. Then you have the area to be filled and the net fill and the price? A. Yes.

Q. Now then that shows a cost per square foot for wall and reclamation of \$2.285 per square foot? A. Yes.

Q. Of what? A. Of available area of land shown colored pink on plan No. 1.

Q. That is piling the whole cost on the dock so to speak? A. Yes.

Q. And as compared with Mr. Mitchell's what, do you remember? A. I think it was a little over a dollar, his figure.

Q. Where lies the difference between you? A. Well Mr. Mitchell 40 estimated if I remember rightly thirty cents for filling; ours was fifty cents. And Mr. Mitchell's estimate of cost of dock structure is different from ours considerably.

Q. Well then do I gather that you quarrel with the cost as estimated? A. I don't think Mr. Mitchell can build the dock that he suggested here for that price that he filed.

Q. Well then can you take his detailed figures and yours and show to His Lordship just where the difference comes in between the two of you?

A. No. But in his case it is estimated on what he thinks the dock will cost; the like of wall has never been constructed. In this particular instance I am giving you the cost of structures of a helpful nature, 14,000 lineal feet of them across the waterfront that we have built and designed.

Q. Then when you take your \$181 odd per lineal foot for the dock wall are you taking that according to your experience or are you taking what it would be in 1931? A. I am taking it according to experience and basing my

10 estimate as to unit quantities on the prices for materials I am now buying for work I have got under construction.

Q. And what do you say as to this figure of \$116,000 odd or \$2.28 cents per square foot being a fair cost to any owner filling in in that way? A. That represents in my judgment what it would cost the Standard Fuel Company or anyone else to build the type of structure as outlined here and fill it.

Q. You filed that of course. Now then, Mr. Cousins, will you give us your next scheme, that will be Exhibit No. 45? A. (Witness produces a plan).

Q. Is this also following one of Mr. Mitchell's? A. No. Well it is as to the length of structure, because it is stopped at the south end of the Toronto
20 Electric Light Company dock, only this provides for a slip 80 feet in width.

BY HIS LORDSHIP: Q. Wait a moment. A. It is the same as the other, my Lord, with this exception, that the slip is widened to 80 feet in place of 54 feet 5 inches.

Q. You have it at 85? A. 80 feet. On this slip, my Lord, it is 54 feet.

Q. They put it 54? A. Yes.

Q. Why do you put it 80? A. Because I don't think 54 is wide enough.

Q. Is that because of the larger boats? A. No, my Lord, I don't think that 54 feet is a wide enough slip for even a canal size boat to enter with safety. I don't know of any 45 or 50 foot slips in operation.

30 BY MR. TILLEY: Q. Now I couldn't have overheard that if I had tried to, but the mere fact you are not counting on using Church Street as a slip for your boats, would you think that that would be a sound thing to rely on?

A. Well the city have the right to fill Church Street and all the streets out to the Windmill Line and if you were designing this structure by putting this amount of money into a dock site of that nature you would have to design it on the basis that the city might extend Church Street to the Windmill Line.

Q. Well now then it does show that you are not relying on the use of Church Street, that is to say according to your scheme, and the dock ought to be capable of being used even if Church Street were closed? A. Absolutely.

40 You have no right to assume you can use Church Street.

Q. When you enlarge the slip from 54 feet 5 inches to 80 feet why do you choose 80? A. The reason I took 80 is the limit in width that you should go to and—

Q. Well you mean maximum or minimum? A. Minimum. And that in all the other studies I have made I have never gone below 100 feet in width and then only on the basis that the user of the slip owned both sides of the slip and there would be no conflict between his boats as to egress and ingress.

Q. That is to say in all other slips you have designed along the waterfront? A. All our other slips or the majority of, or every one of those, sir, with the exception of the Don River outlet, which is 120 feet wide, but that is not a slip, that is an outlet for a river used by small craft—all our other designs are 200 foot slips.

Q. And why 200 feet? Why not have 80? A. Well take for instance at the foot of Bay Street, I have seen myself on more than one occasion four canal size boats of 43 to 44 foot beam in the one slip at one time, two on each side. Now you might have this, and this often happens: You would have a boat at the south end of the Bay Street slip unloading into the west shed and 10 you have a boat on the east side of the Bay Street slip loading into the north end of the shed and a boat coming in and wanting to get on the west side of the slip at the north end of the slip, it has got to cross in between the two. That is why we make them 200 feet wide, for purposes of operation.

Q. But, Mr. Cousins, in that connection you have an owner owning land on each side of the slip? A. Not necessarily. We have 200 feet otherwise, sir. At York Street, Canadian Rail & Harbor Terminals on one side and the Toronto Harbor Commission on the other one.

Q. Yes, but here if you do not allow Church Street as a slip you have on that side, the east side of the slip, the city property that would not interfere 20 with the use of the slip? A. Quite so, but a boat coming in here into an 80 foot slip—take for instance even a 54 foot slip, or, if I am confining myself to the 80 foot slip, now you have a boat of 44 foot beam, 250 feet long, loaded with 2,500 to 3,000 tons of cargo, coming in here with a blow, you are not going to get it into a slip if you have a bad cross wind; you may have a tug alongside tug them in, as we have had before now; and in that case a tug noses into the slip and he throws out his lines and the tug throws the stern around and then tugs him into the slip. If you are going to do that in 54 feet I think that is very very narrow and I think 80 feet is the limit you could possibly have, and in cases where you have a tug taking a boat into a slip, if 30 your boat is 43 foot beam and your tug twenty you have got to have more than a 54 foot slip to handle it.

Q. What size boats are you referring to? A. 43 foot beam boats with 18 foot draft.

Q. What would be the length of them? A. 250 feet.

Q. And what is the length of this slip? A. 335 feet.

Q. So that it would accommodate one of these boats in that length?
A. Yes.

Q. And what would be the depth at the north end, on the south side of Lake, the depth of water? A. 20 feet. All of my work is designed for 20 40 feet of water.

Q. And at the outside limit? A. 20 feet, the same, sir.

EXHIBIT 45: Plan showing alternative dockage study No. 2, prepared by Mr. Cousins, and above referred to.

Q. Now then will you give us the estimate of this structure according to 45, which will be 46? A. (Produces a statement). The estimate per

square foot re the dock structure is the same, Mr. Tilley, and the estimated cost per square foot is \$2.67.

Q. Is there no difference between the length of the walls? A. No sir.

Q. Because what you lose at the outside limit you have to put in on the Lake Street limit? A. Exactly.

Q. The cost of wall is given and then the dredging, fifty cents, the same? A. All the same, sir.

Q. So that it is just a matter of size? A. That is all.

10 Q. And that produces \$2.67 per square foot? A. Yes, because that is a lesser area against the total cost.

Q. Less square footage to spread it over. Well then I suppose the details are not necessary? A. They are all in the same basis.

HIS LORDSHIP: The estimate of \$2.67 is No. 46.

MR. TILLEY: Yes.

EXHIBIT 46: Statement produced by witness being details of cost of work shown in Mr. Cousins' study No. 2, covering 80 foot slip with 18 by 20 by 100 cribs.

Q. Let us have the next study? A. (Witness produces a plan).

20 Q. And that carries the structure out how far? A. Out to the New Windmill Line, with a 54 foot slip.

Q. And I think that was Mr. Mitchell's plan? A. Mr. Mitchell or Mr. Wilson. Yes, Mr. Mitchell had that too.

Q. The same slip but carrying it out farther south? A. To the Windmill Line.

EXHIBIT 47: Alternative dockage study No. 3 prepared by Mr. Cousins, above referred to.

Q. Now, Mr. Cousins, what have you to say to this design? A. This is study No. 3, or drawing No. 3.

30 Q. Well Exhibit No. 47? A. Drawing No. 3 provides for a slip 54 feet $4\frac{1}{4}$ inches wide from Lake Street out to the New Windmill Line. On account of the deeper water at the southerly end in this case the average width of structure is 20 by 20; that is the crib substructure. In the previous ones that have been submitted the cribs were 18 by 20. This is out, you will note, at the Windmill Line, and this is 25 feet to rock, My Lord.

Q. When you say 25 feet you mean—? A. 25 feet below elevation 245.

Q. We didn't get that properly explained; I don't know whether anything will turn on it; however there it is? A. It is the datum line, sir, to which we refer.

40 Q. Where is the datum line with regard to the everyday level of the water in the summer time? A. The average mean water of Toronto Harbor is 246, and ours, the datum, is 245.

Q. What do you say as to this as a feasible scheme? A. Well it has the same objection but more so applying to the narrow slip in this case than the other.

Q. Why more so? A. On account of the greater length. If you were unloading a boat—

Q. What is the depth of that slip? A. 20 feet of water.

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Q. I mean back to Lake Street? A. 577 feet.

Q. So that it either ought to be available according to width for a much longer boat than it is or else it ought to have room to pass, is that what you mean? A. Well when we get 500 to 600 foot slips we make them 200 feet wide throughout and in this particular case if you had a boat unloading at the south end you couldn't get into the north end at all without disturbing the unloading facilities at the south.

Q. Anything else now you have to say about that plan? A. The only differences in these estimates, sir, are the fact that the crib 20 by 20 and the dock wall, the lineal foot cost is slightly increased to \$192.11 per lineal foot, 10 and the price per square foot of finished structure, that is the finished land area shown in pink, is \$2.59.

Q. There is not much difference between the figures, but this estimate will be Exhibit 48, to have it complete:

EXHIBIT 48: Estimate produced by Mr. Cousins, covering cost of work shown on his study No. 3, Exhibit 47, for 54 foot 4¼ inch slip with 20 by 20 by 100 cribs to New Windmill Line.

That is to say you have a larger square footage to spread that over? A. Yes. But you have got more dockage in this case, because you have got the return back on the west side of the structure; it has got to be balanced against 20 your small area, so your costs are up per square foot.

Q. Well then you have the dockage area but you are docking right in front of another man's land? A. Yes.

Q. Who might build out to the same line? A. Well he would probably fill to that line.

Q. And then it would save you another wall but you would lose that dockage? A. Exactly.

Q. Have you any other scheme or are we through with these schemes? A. Well then you have it here for an 80 foot slip and this finishes it up. 30 (Produces a further plan).

EXHIBIT 49: Alternative dockage study No. 4 produced by Mr. Cousins, above referred to.

Q. 80 feet and out to the same point? A. The length of dockage is the same as in No. 3; the cost per square foot in this case is \$3.04.

Q. That will be Exhibit 50. A. That is on account of the widened slip against lesser reclaimed land.

EXHIBIT 50: Estimate produced by Mr. Cousins, covering cost of work shown on Exhibit 49, study No. 4; 80 foot slip with 20 by 20 by 100 foot cribs to New Windmill Line. 40

Q. Mr. Cousins, what do you say as to the length of that slip from a practical standpoint? Is it useable and serviceable or would you shorten it and have some land on the back? A. Which one are you referring to now?

Q. Well on your last one? A. 80 feet.

Q. It is the same length as the one before? A. An 80 foot slip should only be provided if it is to be used by the one person on the both sides of the dock property.

Q. I am assuming it is only one person here, because you have a street to the east of you? A. Yes.

Q. I am talking now about the length of the slip. If you shorten up the slip you would have more land property up ahead at the end of the slip?

A. Yes.

Q. What do you say as to the length of slip, never mind the width of it now? A. Well this length of slip permits of the large size type of boat.

Q. Well now then can you use the large sized type of boat there with a 54 foot slip? A. Yes. You can with difficulty.

10 Q. And of course you can with the 80? A. Well you are speaking of the 80 foot slip I believe.

Q. No, I was speaking of 54? A. Well the large size boats wouldn't go in the 54 foot. I beg your pardon; I thought you were referring to the 80.

Q. No, 54? A. No, the larger Great Lakes boats run from 52 to 56 feet beam; you wouldn't think of putting them in 54 feet.

Q. Well I don't know what I would think of doing, but you say it isn't practicable? A. Well it isn't done, that is all. They run from 54 to 56 feet.

20 Q. Well then would you, as a person familiar with these layouts, recommend any person going to the expense of building up a dock there and carrying the property out either to the Electric Light frontage or to the New Windmill Line to try to get along with less than 80 feet per slip? A. No, the site isn't large enough from an economic point of view to develop it adequately and economically.

Q. I don't know what you mean by that. I asked you whether you would recommend any person to use less than an 80 foot slip and then you said the site wasn't large enough to develop it economically. I don't know whether that is an answer to my question or an answer to something else? A. Well, Mr. Tilley, my judgment is a minimum slip should be a hundred feet in width.

30 Q. If you had 100 feet in width? A. Then you haven't any property left for commercial use.

Q. Well then the answer to my question would be that you wouldn't recommend them to do that less than 80 feet, I suppose? A. No, certainly not.

Q. And is the site one that is capable of suitable development as a dock property? A. I don't think so, for coal purposes.

Q. Why? A. The cost of the structures and the reclamation in relation to the available area for commercial uses is excessive—too high.

40 Q. And you think you have given a fair estimate of what the cost would be? A. Yes, I have.

Q. In your studies? A. Yes.

Q. Now is there anything more, Mr. Cousins, you desire to say about the Mitchell plans or the Mitchell estimates? A. The only other comment that I could make, on the concrete caisson construction or concrete crib as Mr. Mitchell suggested, with the timber ties and concrete ties in between dropped into place through those grooves, I have already said that I think it would be most difficult to do that, because they have got to be absolutely

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actually plumb four ways to drop those sluice gates or timbers into position to retain the filling.

Q. You told us that difficulty, didn't you? A. I am coming to this other point, sir, that in connection with that we have had here quite often the experience out there where a boat heads into a structure, in other words comes head on into your timber structure; in timber and stone we can go down with divers and repair it; if a boat breaks a concrete crib or a concrete caisson I don't know how you would repair it; I don't know of one ever having been repaired.

Q. Then, Mr. Cousins, if the cost of those dock walls along the harbor front is so large and the cost of filling and reclaiming is so large so that it comes to as we have it here over \$2, and over \$3 according to one scheme per square foot to make it a dock property at greater depth of water, how is it that the scheme can be carried on by the Harbor Commission? A. It is entirely one of magnitude and size. The Harbor Commission plans provide for the development of the dockage from Bathurst Street to Cherry, for the reclamation of 230 acres of property. 10

Q. I know; I can understand the length of the wall but I cannot see that the mere length of the wall would make any difference? A. Well the dock wall along the waterfront strictly acts as a retaining wall for the filling to the north. 20

Q. And at the place where there is the dock wall how much reclaiming has been done behind the wall by the Harbor Commission? A. No more than probably fifteen percent of the total reclaimed to the north of the dock wall.

Q. That is to say it holds back a good deal more than the particular property, this dock? A. It is the only manner in which you can keep your reclamation cost down to a reasonable price per acre, is on account of the magnitude.

Q. For instance, talking about a property you are going to lease as a dock, do you treat the cost of the dock wall as part of the cost of that particular piece of property which you lease? A. No, not at all. 30

Q. You spread the cost over? A. If there is another area benefited by the result of the wall it carries its portion of the cost.

Q. So that it is a per acre scheme of the Harbor Commission? A. Yes.

Q. And inside properties bear part of the cost? A. Absolutely.

Q. Then one other question and I think I am through: To get these depths in his slip that you have referred to, at the south of Lake Street the depth of water is how much? You said the depth was 20 feet? A. Are you speaking of these plans? 40

Q. Yes, your plan? A. 20 feet of water throughout.

Q. And does that require blasting then at the north end of the opening?
A. A little dredging; it is shale and rock.

Q. You can dredge that, can you? A. By light blasting we can handle it without much difficulty.

—5.00 p.m. Arbitration adjourned until Wednesday, May 25, 1932, at 10.00 a.m.

—10.00 A.M. WEDNESDAY, MAY 25TH, 1932,

RESUMED—ALL PRESENT:

EDWARD LANCELOT COUSINS—Continued:

HIS LORDSHIP: I wish to mention to Counsel at five minutes to eleven I must absent myself for at least ten minutes to appear in the Court of Appeal.

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EXAMINATION IN CHIEF RESUMED BY MR. TILLEY:

Q. Before Mr. Osler commences with Mr. Cousins there are just one or two matters I would like to touch on:

Mr. Wilson's figure of cost per lineal foot was \$100, that is of dock wall?

10 A. Excuse me, just a minute, Mr. Tilley, part of my file is there.

Q. Yes. Do you remember that? A. What was that, sir, again?

Q. That he took the cost of \$100 per lineal foot for dock wall? A. Yes. In the vicinity of John Street.

Q. I thought he was taking it for this work? A. I beg your pardon, it was for this; also the other.

Q. I think he got it by using the other, wasn't that it? A. Well that was my understanding of it.

Q. He wasn't figuring it out by the other but he understood that the cost of John Street was \$100. Do you remember the data about that? A. The
20 actual cost of the work at John Street was \$162.48 per foot of structure with cribs 18, 20 and 22 feet deep.

Q. 18 and 20? A. Well the variation in the rock level, sir.

Q. From 18 to 20? A. 18 to 20 feet, and that provided for the construction of 2,264 feet of wall, nearly half a mile.

Q. I know, but I don't know yet the rest of it. The cribs would be 18 by 20, is that right? A. They would be 18 feet square and 20 feet square and 22 feet square.

Q. And that left them 2,264 feet of dock wall? A. Yes sir.

Q. Now were those figures 1931 or 1926? A. That work was done
30 between 1917 and 1922.

Q. Now then what is your experience as to cost in 18 to 22 feet of water.
A. 18 to 22 feet, a fair average cost on large work is \$162.48 per lineal foot and for dock walls in 24 to 26 feet of water, that is the cribs 24 to 26 feet square, the cost is \$253.61 per lineal foot. Those are costs, my Lord, between 1917 and 1922.

Q. And is that for large work? A. All on large work, sir.

Q. I didn't ask you this as well: You gave us certain estimates of cost for 1931. Are the costs in 1931 lower or higher than in 1926? A. Lower.

Q. What would you have to add, in your opinion, to make them fair
40 costs for 1926? A. Between 25 and 30 percent.

Q. Then I meant to ask you, as you had estimated the cost of developing the National Iron Works site; we had it that you gave figures undeveloped?
A. Yes.

Q. Now have you had to make a study or have you made a study as to the cost of development? A. Yes.

Q. And have you that? A. The dock wall, for the construction of 2,458 feet of modern dock wall with steel sheet piling and wooden piling, cost is \$373,813.

Q. That is the wall itself? A. Yes sir.

Q. For how many acres? A. That is on a site of 11.3 acres, and the site of course as I gave on my previous testimony cost \$260,000 or approximately 52.82 cents per square foot, eighty-five percent of which was already reclaimed but not filled up.

Q. Making the site \$260,000, fill 52.82 cents per square foot, and about two-thirds reclaimed? A. Eighty-five percent was already reclaimed.

Q. And with no dock? A. And with the dock wall costs added to the purchase cost of the land the cost is \$1.41 per square foot complete.

Q. With how much dock wall? A. 2,458 feet of dock wall.

Q. And a capacity to take how much coal, do you know? A. About 144,000 tons capacity of storage of coal.

Q. And the total cost then would be about \$1.41 per square foot? A. Well there is some interest during construction and things like that added. Be about \$1.41 per square foot is the total cost of building.

Q. Add interest during construction? A. And also the interest to the Commissioners during the time they carried the property. In other words cost to the Commission.

Q. What do you mean by "in other words cost to the Commission"? A. The Harbor Commission operate on the basis of giving this at cost to the industries, with no profit, and they pay five percent rental on twenty-one year leases usually with the option of purchase within five years at the leasehold price.

Q. Well then \$1.41 per square foot would be how much per acre? A. About \$61,000.

BY HIS LORDSHIP: Q. With the option of purchase what? A. The option of purchasing, my Lord, within five years from the date of the lease at the price per acre of the land set forth in the lease.

BY MR. TILLEY: Q. On which the five percent is based? A. Yes, sir, and the lessee pays taxes.

Q. I think you had some comment to make on Mr. Mitchell's statement that he thought the future would develop the largest tonnage by the smaller boats? A. Well I think Mr. Mitchell was mistaken in that statement, because the large tonnage for coal and ore on the Great Lakes today or in the past on Lake Eric, Lake Huron and Lake Supreior is all confined to the six, seven, eight and nine thousand ton boats, and it wasn't until the New Welland Canal was completed in 1931 that we were able to get the boats of the five and six thousand tonnage capacity and only during last year. With the increased tonnage involved it is self-evident that the big boat is coming in here, with the lower cost, with coal.

MR. TILLEY: That is all, thank you.

CROSS-EXAMINED BY MR. OSLER:

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Q. Mr. Cousins, there is no doubt that the policy of the Harbor Board was to refuse to allow any coal companies to establish on the central water-front properties? A. From 1929 on, yes.

Q. 1929 on? A. Yes.

Q. Do you mean to say that in 1926 they were content to permit the permanent establishment? A. Not permanently, no sir. There were temporary coal sites generally considered in 1925 and 1926, Mr. Osler.

10 Q. But for any permanent site you were definitely against allowing any coal companies? A. Between Parliament and Bathurst.

BY HIS LORDSHIP: Q. As between what dates? A. This is about 1929.

Q. 1929? A. 1929 and 1930 and 1931. The Harbor Commission changed from time to time and the policy changed, but that was the policy in 1929.

BY MR. OSLER: Q. But you don't suggest in 1926 and 1927 any company could have got from the Harbor Board a coal site? A. I don't know what they would allow. They would have allowed temporary sites but I don't think they would have allowed permanent sites.

20 Q. In other words they regarded a coal business as more or less of a nuisance? A. The Commissioners have always been of the opinion and so have the officials that the coal situation should be developed in the eastern harbor terminals.

BY HIS LORDSHIP: Q. Did you hear Mr. McBrien's evidence in that? A. Yes.

Q. Did he correctly state the Commission's ideas, to establish the coal business out at Ashbridge's Bay? A. During his tenure of office, yes.

Q. Has that changed since? A. No, not that I know of.

30 BY MR. TILLEY: Q. What was his tenure? A. Mr. McBrien was on I think from 1926 to 1929.

BY MR. OSLER: Q. And the desire of the Commission I suppose was really to put these coal businesses on the south side of the main channel at Ashbridge's Bay? A. Not necessarily the south side, sir, because they had already leased sites at Cherry Street, at the Don, away at the north end.

Q. But all of these leases were one year leases? A. Oh no, the Century Coal Company was a twenty-one year lease, granted in 1917.

Q. In 1917? A. That is my recollection, yes, somewhere about that date.

Q. On what they call the marginal way? A. Yes.

40 Q. That was limited to a depth of 150 feet? A. 180.

Q. Are you sure of that? A. Yes sir.

Q. Assuming a situation that there should be some development to the east of that, they limited them to 150? A. Are you speaking now of what we call the Cherry Street marginal way? That is the only one I know of.

Q. I have heard of only one marginal way? A. Well some people have referred to the south side of the ship channel as the marginal way but I

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have never referred to it as that. The one you refer to I think is south of the Canada Steamship docks and north of the ship channel on the extreme west end of the industrial district; that is 180 feet.

Q. And the leases given there have been 150 feet, have they not? A. There has been a reservation for trackage along the front. You mean the effective usage.

Q. Yes? A. Yes.

Q. So that really it is 150 feet usage? A. No, it has 150 feet of depth, Mr. Osler for the storage of coal but the trackage on the west which can be used by the coal company and is used by the coal company for shipping coal 10 out by rail is there so that there is 30 feet taken off the 180 feet over all.

Q. And when was that rail facility established there? A. It has been there since 1916 and 1917.

Q. Railway? A. Yes sir.

Q. Running along? Now get your plan. A. (Witness produces a plan.)

Q. You are referring to here, aren't you, that is what you call the marginal way, along here (indicating)? A. Yes.

Q. That is at the canal running east of Cherry Street? A. No no, here is the ship channel; this is to the north of the ship channel. 20

Q. That is to the north of the ship channel? A. Yes.

Q. What exhibit is this plan? A. It isn't in. I just used it here on account of being a small size plan of the whole waterfront; you can mark it and have it.

Q. Let us see one that is in, there is no use putting in too many? A. From that dock to here is the marginal way. (Produces a further plan). What year are you thinking of?

Q. We will take 1926? A. This is it. (Indicating).

Q. This is Exhibit 40?

MR. TILLEY: The 1926 sheet of Exhibit 40. 30

Q. And this shows the marginal way to the west of Cherry Street? A. Yes sir.

Q. Now will you show me where the railway ran in 1926? A. Right along there (indicating), and right down there.

BY HIS LORDSHIP: Q. Right down to Villiers Street? A. Nearly to Villiers Street and along the face of the dock.

HIS LORDSHIP: Down Villiers Street to the west and to the west of Cherry Street.

BY MR. OSLER: Q. And do you say it was there in 1926? A. Oh it was out before that. 40

Q. Right out to what is shown as the McColl-Frontenac? A. In 1927 it was extended through to the Dominion Paper Board or Box Board, and then the Canada Cement in there. (Indicating).

Q. Is there any provision for the railway crossing the ship canal to the south of the ship canal where the Standard Fuel now are? A. Yes. You come in this way, we come in to the west of Leslie Street and then turn south-

westerly over what we call the circulating channel, then back along the ship channel wall to Cherry Street.

Q. Was that railway built? A. It is built to here, sir, about halfway through, it is built from Leslie Street through to that; I would say it is probably within 1,800 to 2,000 feet of Cherry.

Q. When was that built? A. Last year.

Q. So that until last year there was no railway facility there at all?
A. Oh well, Mr. Osler, we couldn't get across.

Q. You couldn't get across? A. In 1931 when the bridge was opened
10 we could.

Q. And the policy of the Harbor Board I understand is not even yet settled as to giving longer term leases. Were you here when Mr. Marshall was giving evidence? A. Yes.

Q. And the letter from the solicitor of the Board was read? A. Yes.

Q. At page 199? A. Well Mr. Marshall's and that were both put in as exhibits.

Q. It is said these documents do not contain any reference to any option or anything of that sort, that, as you are aware, the policy of the Board has not been decided upon? A. I understand the Standard Fuel Company
20 asked for a temporary lease.

Q. And that was all that anybody could get? A. I wouldn't say that, no sir. The Standard Fuel Company asked for a temporary lease in the first instance.

Q. And they had been told that the Commission's plan hadn't been settled? A. The Commission's plans, when they first made application, were more or less settled.

Q. Were settled? A. More or less settled.

Q. What do you mean? A. For this reason, that since 1925 we have endeavored to develop a modern coal terminal on the south side of the ship
30 channel there. The object I had in mind was that there was no individual coal company in Toronto on the Waterfront doing business of a magnitude that would permit us or allow the construction of a modern coal bridge. The bridge is worth approximately \$1,000 per lineal foot of span, and I suggested as far back as 1925 to the various coal companies in the Harbor Commission Board Room, called them together, that the Harbor improvement might possibly or would have included a bridge, giving a coal bridge as a terminal facility for the entire south side of the ship channel, on the basis that the Harbor Commission would receive from the coal companies sufficient revenue or rental to pay for the fixed charges, that the Commission would look upon
40 it as a port facility.

Q. And that is one of your plans and that is still a plan? A. No, I couldn't get the coal companies together for any one site; they wanted their individual operations.

Q. And that plan involved an agreement between all the coal companies who might come there? A. Yes.

Q. And you were never able to carry it through because you couldn't get them together? A. Yes sir.

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Q. And I suppose the solicitor correctly stated it at 1932, February, the plans of the Commission were still unsettled, because you hadn't been able to carry through your plans? A. I don't recollect his letter from hearing of it. Just what is it, sir?

Q. He said "As you are aware, the Commission's plans for the development of the locality in question have not been decided upon."

HIS LORDSHIP: What is the date of that letter?

MR. OSLER: 27th February, 1932, my Lord. A. I presume by that Mr. Scandrett meant the Harbor Commission had under consideration the development of another channel to the south of the ship channel. 10

Q. Whatever he may have meant? A. And that is the plan.

Q. You are not prepared to contradict him? A. Oh no, not at all.

Q. Then with regard to the National Iron Company, how far do you say that is from the Church Street dock of the Standard Fuel Company? A. About 3,600 feet.

Q. 3,600 feet? A. Yes.

Q. I thought you said 3,000? A. Well I simply said about 3,000.

Q. But it is in fact 3,600? A. The scale is 3,600, yes.

Q. And when you gave that figure I gather you gave an airline figure?

A. Down Fleet Street. 20

Q. Down Fleet Street? A. Yes sir.

Q. And is that 3,600 feet by roadway out there? A. That is from the centre line of Church Street— I beg your pardon, I am wrong, it is not quite 3,000 feet.

Q. From the center line of Church Street to where? A. Just a minute. This is an odd scale, Mr. Osler. Probably 3,200 or 3,300 feet; 1,200 feet to the inch this drawing is.

Q. From where to where? A. From Church Street to Parliament.

BY MR. HELLMUTH: Q. Which side of Church? A. Well this is a 1,200 foot scale, Mr. Hellmuth. 30

BY MR. TILLEY: Q. Church Street is 66 feet wide, isn't it? A. About that distance, yes. From the east side of Church Street to the west side of Parliament, which is the west limit of the National Iron site.

BY HIS LORDSHIP: Q. Down Fleet Street? A. Down Fleet Street, yes, my Lord. Here, I can give it to you accurately; I have the plan.

BY MR. OSLER: Q. I thought you were giving it to me accurately? A. Well it was off a 1,200 foot scale plan, sir; I have a hundred feet to the inch here. (Indicating on plan).

Q. Are you giving us the way the wagons would have to go to get there?

A. I am giving you on the north limit— 40

Q. Are you giving us the way the wagons would have to go to get there?

A. Yes.

Q. And what is your route? A. Just a minute, please. 3120 feet from the east side of Church Street to the west side of Parliament.

Q. Now when you take it this way what is the distance from Church Street to Jarvis? A. Church to Jarvis, you mean from center to center?

Q. Center to center? A. All right. 1,400 feet.

Q. 1,400? A. Yes sir.
Q. And what is the distance from the Jarvis Esplanade to the Fleet Street? A. Just a minute. 700.

Q. 750, isn't it? A. 700 feet. 700 feet from the center of Jarvis to the center of Church.

BY MR. TILLEY: Q. Instead of 1,400? A. Yes, sir. I was assuming a 200 foot scale.

BY HIS LORDSHIP: Q. Just a moment. Church Street to Jarvis Street 700 feet, is that it, instead of 1,400? A. Yes, sir.

10 HIS LORDSHIP: You go pretty quickly, Mr. Cousins.

BY MR. OSLER: Q. Church Street center to Jarvis Street 700 feet. Now from Jarvis to Fleet Street? A. Fleet Street, sir, is right along the south end of Jarvis.

HIS LORDSHIP: I have it Fleet Street to Jarvis 700 feet; now what is the next thing?

Q. Jarvis Esplanade to Fleet Street you have to come down, haven't you, you have to get up to Fleet Street, haven't you? A. Well you are on Fleet Street.

20 Q. I thought you said you were on the Esplanade? A. I told you, Mr. Osler, that this plan I am measuring from Church Street to Parliament Street along the center line of New Fleet Street.

Q. Yes, but then you have to get up to Fleet Street from the Esplanade, haven't you? A. You mean down.

Q. Down? A. Well the Esplanade is not shown on this plan.

Q. Well let us take a plan where it is shown? A. I haven't got one here on reasonable scale, sir, to show that.

Q. You haven't? A. No sir.

Q. Have you anything that shows the distance from the Esplanade to Fleet Street at Jarvis? A. At what point?

30 Q. At Jarvis? A. You want the distance from the south side of the Esplanade to Fleet Street on the line of Jarvis?

Q. Yes? A. About 1,500 feet.

Q. And then take the distance on Fleet Street from Jarvis Street to Parliament Street? A. I have just given you that.

Q. No, I don't think so. You gave us Church to Jarvis. A. 2,400 feet.

Q. And then the National Iron Works is a little east of Parliament, isn't it? A. Well the west limit of the National Iron site I referred to is right on the line of Parliament Street.

40 Q. To get in there you would have to drop two or three hundred feet? A. Oh yes, you have got the width of the site, 600 feet.

Q. So that for the purpose of practical operation you have something like 4,500 feet to go along that route? A. Well if those distances I have just given you added up make that, yes.

Q. Well now will you add those up?

BY MR. TILLEY: Q. Just a moment; I just want to follow where you have been going? A. (Witness indicates.)

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BY MR. OSLER: Q. Haven't you a plan that is in already instead of putting in more? Now that Exhibit 40, isn't that the most convenient one to refer to? A. It isn't on 40.

Q. Let us work it out on 16, Mr. Cousins. The Standard Fuel Company's property is down west of Church Street? A. Yes.

Q. Well then you go up, let us take that distance up from there to the Esplanade and then from there to Fleet Street? A. Not on that plan, sir. I wouldn't want to scale it.

Q. Tell us, Mr. Cousins, if you will, how are you going to get to the new layout by the streets? A. You mean assuming that this company's property 10 is north of the viaduct?

Q. Exactly, we are just not assuming anything? A. Well because it was part of it north and part of it south, sir, and the viaduct is in the middle of it; to-day Church Street is closed.

Q. Well then how do you go when you get from the north end of that property to Cherry Street? A. If you were developing on the south side—

Q. I am not speaking of development. Here are the sheds at the present time, a large shed of the Standard Fuel, and you have to cross railway tracks going north to the Esplanade; now from there to the National Iron? A. Then you go north up to the Esplanade, east on the Esplanade and down 20 Jarvis to Fleet and east on Fleet to Parliament, is that what you mean?

Q. Yes. I thought you gave us those figures? A. No, I didn't.

BY HIS LORDSHIP: Q. That would be the natural and shortest way, wouldn't it? A. No, sir, because with the development of the plans that are here before the court, sir, you would go along Fleet Street.

Q. It is all developed there that you can go? A. Yes, the whole thing is developed south of the viaduct and north of the viaduct.

Q. Well then it would be an unusual and out of the way route to go the way Mr. Osler is now indicating? A. Yes sir.

BY MR. OSLER: Q. When was Fleet Street developed? A. It was 30 opened three years ago.

Q. Three years ago, 1929? A. Yes.

Q. As long ago as that it was developed out to Cherry Street? A. Oh yes. I think the paving was completed in July or August 1929.

Q. And was that open for traffic in 1929? A. Yes, it was open then.

Q. Up until 1929 the route I suggest would have been the only available route? A. Yes. Oh yes.

Q. And then that would have been pretty nearly a mile, in round figures? A. Well I don't know as to that, sir.

Q. You gave us those figures as I understood it? A. But not your 40 way, sir. I gave you the distance along Fleet Street first of all and you asked for the distance between Church and Jarvis along Fleet; I gave you that, 700 feet; then you asked me for the distance through to Parliament Street.

Q. And from the Esplanade to Fleet you gave me? A. Yes, I did, off this plan.

BY HIS LORDSHIP: Q. 1,500 feet? A. Yes.

MR. TILLEY: I don't know yet whether the witness and Mr. Osler are at one in what they are doing.

What Mr. Osler is asking you to do is to start from the north end of the Standard Fuel Company's property as the streets were laid out in 1926 and then go from the north end of the property to the National Iron works property by the streets that were then in existence.

MR. OSLER: I have asked him to give me the figures. Please let the witness tell me.

10 Q. In 1926 taking a load of coal out of that building where would you go?

MR. TILLEY: To get to the National Iron Works.

Why he would make the journey I don't know, but let us assume that he would make it.

A. About 4,800 feet, that is via the Esplanade as you would go in 1926, my Lord, and down Parliament.

BY MR. OSLER: Q. Then you spoke about the open storage for coal, Mr. Cousins? A. Yes.

20 Q. And you said that was the present practice. You are not in the coal business yourself? A. I only said, Mr. Osler, that the coal companies in the eastern harbor terminals at any rate use their coal docks for their Welsh anthracite coal.

BY HIS LORDSHIP: Q. Is that because they haven't their plans developed? A. I don't know, my Lord. Apparently they can store Welsh anthracite outside.

Q. Welsh anthracite? A. Yes sir, that is all we have got in the eastern harbor terminals.

BY MR. OSLER: Q. And you don't know whether that is merely because they haven't been able to get things suitable so as to be able to put up permanent works? A. No, I don't know.

30 Q. And you don't know whether in fact they transfer it to other yards where it is under cover? A. No, but I know the practice is for some of the companies, sir, to deliver direct from the stock pile, not to a yard at all.

Q. So that you really are not able to say whether or not an efficiently managed coal company should have its coal under cover or not? A. Oh no. I didn't say that, sir.

Q. Then I don't know why you referred to the practice as though it had some significance? A. Because I was asked by HIS LORDSHIP as to whether they covered it or not.

40 Q. Well, then, do you know the draft of the vessel that you spoke of the Dow Chemical? A. It came in here with 18 feet draft, but it is good for twenty-one feet, sir, loaded.

Q. Do you know the difference between the effective loading with coke and the effective loading with coal? A. It didn't come in with coke; it came in with soft coal.

Q. Do you know the difference? A. Not of draft, no. I know the Dow Chemical has a capacity of 9,000 tons loaded to 20 feet 6 inches.

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Q. And she is about the largest boat? A. That we have ever had in Toronto.

Q. And she is the only one of that size? A. No, no, there are three. We have had her sister ships in here since that.

Q. How many of them are there? A. Three of them I believe converted by the Cornelius Company of Buffalo last year. These were old freighters, my Lord.

Q. And there are a great many of the smaller boats still plying? A. What do you mean by smaller?

Q. Smaller than the Dow Chemical? A. The average boat is 450 10 feet over all and the draft about 18 feet 6 or 20 feet.

Q. You are speaking of your own knowledge? A. Yes.

Q. Because I am told they draw only 14 when they come in? A. Are you talking of the small canal size boat? Because that is a 5,000 ton boat. If you are speaking of 16 feet, to 2,600 tons—

Q. I am speaking of the boats that are actually using these docks and bringing these cargoes of coal to Toronto? A. The boats that are actually using these docks today commence with the canal size boat drawing 14 feet of water with a cargo capacity from 2,200 to 2,500 and as high as 2,600 tons and they go from there up to boats 450 feet in length with 54 and 56 foot beam 20 of 5,000 tons capacity; that is the major proportion coming into Toronto today, and not the small boats.

Q. And if that is so what is the object of having 30 feet of water in these Cherry Street docks? A. For the simple reason that when you are designing costly structures it is good engineering to design them for what you know the ultimate need of the country will be, namely 30 feet. If you don't go down to the 30 feet you couldn't make your structure that without tearing it out if you wanted to. That is the same basis as the New Welland Canal locks.

Q. So that we may say that your 30 foot depth is a long distance view 30 of future requirements? A. No. We are assured today of 27 feet and so are the government.

Q. For coal? A. Mainly for coal.

Q. You say that you anticipate you will be mainly using 27 feet of water for coal? A. I mean that any large tonnage coming into Toronto, as near as we can estimate, will be coal tonnage coming from the Erie ports. Our tonnage has increased over 60 percent last year with only 18 feet in the canal; we would be up to two million with 30 feet in one year. Our normal tonnage is about 450,000.

Q. And this boat you knew of last March comes in with 22? A. Only 40 because she could get through the canal with 22. It would be coming through with more if there was more water.

Q. Do you know that all the Welsh coal comes in in canal size boats, the smaller size? A. Yes, because it has to come from Montreal in self-unloaders.

Q. Small size boats? A. Because it is only 18 feet of water.

Q. Answer the question. It does come in in small size canal boats?
A. Yes; which is all they can operate.

Q. Now with the self-unloaders you have to use the dock merely as a transit station, that is you cannot store beyond I think you said 160 feet?

A. 189 feet back of the dock at the bottom of the pile, sir, with 160 foot boom, and 155 feet with the small size boom.

Q. And do you know that the self-unloaders make an additional charge for that service in addition to the ordinary freight rate? A. They didn't last year. They did originally but last year they came down to the hatch
10 rate. They were fifteen cents a ton previously higher.

Q. Do you say that the same rate was charged last year? A. Yes sir.

Q. By both the self-unloaders and the others? A. As the hatch boat, yes. They dropped their rates. They used to be fifteen cents a ton higher.

Q. And if a coal company wanted to handle its coal after it got on the dock it would still have to have a loading plant for doing that? A. Oh yes; all the self-unloader boats do is put it on the dock quickly.

Q. And it would get it out a little quicker than the dock handling?
A. There is no comparison as to speed, sir. The ordinary method of un-
loading out of a hatch with a small equipment is about 60 tons an hour; with
20 the small canal size self-unloader it is 400 to 500 tons an hour and with the large boat it is 1,100 tons an hour.

Q. And up to last year they had to pay more for that service and if they had been able to establish a permanent site and put in their own facilities for handling their coal at their storage plant, if they had been able to get a storage plant there, they would have had those facilities as well as not paying for the unloading? A. Oh yes, with a differential rate.

Q. There is no doubt about the advantage of waterborne coal, is there?
A. Well we think from the increase in tonnage naturally it is an advantage.

BY HIS LORDSHIP: Q. An advantage to the coal merchant? A. And
30 to the citizens, sir.

Q. So it is an advantage you say? A. Yes, because the decreased cost of handling facilities is reflected in the price to the consumer.

BY MR. OSLER: Q. Although the Rogers Company left the waterfront for a time they are considering going back there? A. Because they are going into bituminous business. They hadn't been in bituminous coal.

Q. And the cost that they are considering I think you said was \$260,000 for the National Iron Works site, is it? A. \$260,000 was the purchase price of the 11.3 acres.

Q. And to that you would have to add you said \$373,000? A. \$373,000
40 or \$383,000 for dockage.

Q. For dockage and development? A. Yes.

BY HIS LORDSHIP: Q. \$373,813? A. \$373,813.

Q. And they are now considering paying that price to get these facilities?
A. No, the Rogers Company are considering a site, Mr. Osler. Just last week they have offered them a one year term on a site 200 feet deep on the side of the turning basin.

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Q. So that they didn't take the National Iron Works? A. No, it is open to anyone yet.

Q. You don't like the concrete embankment for the piling and filling?
A. What?

Q. You don't like the concrete embankment for the piling and filling?
A. I don't know what you mean.

Q. The concrete wall? A. You mean the concrete caissons as on Mr. Mitchell's plan?

Q. Yes? A. No.

Q. And you didn't even check over the details of it to check his statements? A. I did the best I could with them, yes sir. 10

Q. And you couldn't arrive at a figure for them on Mr. Mitchell's plan?
A. No, I certainly could not. His details are not comparable with ours.

Q. I suppose there is no doubt that the cost of constructing a concrete crib is less than the cost of constructing a wooden crib? A. It is more. You are speaking of a concrete crib.

Q. I am speaking merely of the concrete crib? A. Let us be perfectly clear. If you are talking of a concrete caisson such as Mr. Mitchell's plan suggests that is one thing; if you are talking of a concrete crib of 100 foot sections, which is standard practice, twenty feet wide, concrete is more expensive 20 than the wood; slightly more, not an awful lot.

Q. Assuming Mr. Mitchell's concrete caissons; I am not speaking of the concrete caissons in site, but just the construction of them ready to fill? A. They are not comparable. They are only 24 feet wide and you are speaking of a timber crib 100 x 20 x 20.

Q. Take a comparable size? A. I wouldn't say that, because you wouldn't build a timber crib that size.

Q. So you couldn't compare the two? A. Well you could if you worked it out, yes sir. The concrete would cost more than wood I would say.

Q. You say it would cost more than wood? A. Yes. 30

Q. How much would you say it would cost to fill the concrete? A. Well the concrete cribs ordinarily, sir it is standard practice to fill them with stone or gravel or sand.

Q. Or mud? A. No, there isn't a concrete crib that I know of on the Great Lakes filled with mud.

Q. Are you saying you have never seen any concrete docks? A. Oh, yes, I have. I have considered concrete docks for Toronto with Mr. Tromanhauser, the inventor.

Q. How long ago? A. Seven or eight or ten years ago.

Q. Your plan for wooden cribs as you developed it was adopted I believe in 1912? A. In 1913 or 1914, yes sir. 40

Q. And the art of dealing with concrete and the characteristics of concrete has been developed and improved considerably since then? A. No, concrete cribs were available in 1912 and 1913, because Mr. Tromanhauser asked us to use them; he was the original inventor of the concrete crib.

Q. And you said you didn't know of any concrete work of that kind?
A. No.

Q. Do you know the docks at Victoria, B.C.? A. No, I don't.

Q. Have you been there? A. Yes.

Q. Have you seen them? A. Well I have been over them, but not the actual dock structure that you are referring to. I was referring, as I said, on the Great Lakes, I didn't know of any.

Q. You were limiting it to the Great Lakes? A. Yes.

Q. And I suppose at the time the crib construction on the Great Lakes was developed timber was relatively cheap and rock was available? A. Oh I wouldn't say that. It was a matter of judgment between engineers, and
10 concrete cribs so far on the Great Lakes have been largely confined to breakwaters and channel entrances in to piers and docks largely.

Q. But in other places they have been used very successfully? A. You say they have been used at Victoria; I don't know.

Q. But you know as an engineer they have been in use? A. Yes.

Q. And used successfully? A. No, I wouldn't say that, for the simple reason in sea water, the trouble they are having in the sea water construction with concrete is where they have frost at what they call the wind and water line; that has given a great deal of trouble to all the engineers, dealing with that range of temperature.

20 Q. But in spite of that they have followed that method of construction in other places than the Great Lakes? A. In fresh water, sir the everyday construction on the Great Lakes by the United States government and by the Canadian government and by all the engineers is timber crib construction for docks. It consists of ninety-five percent of the work throughout the Great Lakes.

Q. You have said that, but you said that such a plan as Mr. Mitchell suggested has never been used anywhere? A. No, it has not, because I am talking of a concrete crib.

30 Q. But you are speaking from your experience on the Great Lakes? A. Yes, in fresh water. And I am also, Mr. Osler, speaking of the concrete crib, not a caisson; I am talking of a crib a hundred feet long. Take Montreal, they are 42 feet deep, they cost \$400 a foot.

Q. That is not very useful in this place, because we have no such depth? A. We haven't it designed for that, we are only designing for 30.

BY MR. TILLEY: Q. Which were Mr. Mitchell's of, caisson or crib? A. Caissons.

Q. What is the difference? A. According to Mr. Mitchell's—

40 BY MR. OSLER: Q. Can't you tell us shortly? A. Mr. Mitchell's proposal is just a concrete box I think 21 or 22 by 12 and that is at 24 foot centers, and in between he drops these timber and concrete, what I call just like stop logs, and then another unit of concrete caisson.

When I am referring to a concrete crib, I mean, my Lord, a structure of solid concrete with a solid bottom 20 feet wide, 20 feet deep and in 100 foot lengths, that is a concrete crib.

BY HIS LORDSHIP: Q. And a concrete caisson, that is what? A. What Mr. Mitchell suggested, probably 12 x 24 a box constructed, with stop logs between, and I pointed out the difficulty of setting it.

BY MR. OSLER: Q. You don't suggest that is an insuperable difficulty?
A. I suggest it is quite a departure from standard practice. I would like to have seen the estimates of costs from reliable marine contractors that have to do the work. I take my plan to them for figures before I call for tenders. I naturally want the advice of the man who has got to do the work.

Q. Well then, Mr. Cousins, have you had any experience in the operating of ships? A. No.

Q. You don't know from that point of view what the necessary width of slip or dock is? A. I do from the ships' captains and the men I have to confer with, yes, but not of personal operation, no. 10

Q. And your work has been to provide public slips for public use and joint use by the people? A. No, my work in the main, Mr. Osler, has been to confer with the shipping interests that were going to use the facilities, to provide layouts as to dock structures, slip length, slip width, on the basis that they could use— For instance we worked for three months with the Canada Steamship officials on their layout along there, we worked with the ferry company for a month.

Q. You know for instance that the ferry company for years operated their vessels into a slip just wide enough to hold the vessel? A. Mr. Osler, a ferry— 20

Q. Do you know that? A. Yes, I do, but just a minute, you don't compare a ferry with a freighter.

Q. No? A. One with paddle wheels and one with a twin screw; one can spin around in nearly a quarter and one can't stop in its own length at four miles an hour.

Q. And have you seen car ferries operating? A. Yes, I have built car ferry docks.

Q. Have you seen them sliding into docks that are just wide enough to take them? A. With spring piles and fender piles to bump into place, yes and with this suggestion, the man operating a car ferry is doing that day and night every day of the week. Take for instance at Windsor and Detroit, compared with a slip in Toronto harbor; you may have a captain come in here once and not be back for three months; he may come in at twelve o'clock at night to make your slip. Quite different. 30

Q. And you suggest that a dock cannot be operated for a vessel 45 to 50 feet in width if the slip is 54 feet wide? A. I would say that I would not approve of it, I would not recommend it.

HIS LORDSHIP: Excuse me, it is ten minutes to eleven.

—His Lordship having to appear in the Court of Appeal, an adjournment of one-half hour was then taken. 40

Q. Then, Mr. Cousins, do you know what the depths of the other harbors on the Great Lakes are besides Toronto? A. On an average 19 to 21 feet on the Great Lakes.

Q. An average of 19 to 21? A. They are being deepened now under the new canal regulations.

Q. How many of them, in making that average, are over 18 feet? A. Well Erie ports that I know of are nearly all 19 to 21, sir.

HIS LORDSHIP: What is this directed to now, Mr. Osler?

MR. OSLER: To the uselessness at present of going to 27 feet.

Q. You say ships have to use other harbors and the Erie ports are deeper than the others? A. No.

Q. Take Hamilton for instance? A. Well Hamilton hasn't got any harbor facilities at all to speak of, only for the small canal size boats, excepting the Steel Company and the Gas Company docks, which are designed for 30 feet of water.

Q. Leave out Toronto and Cleveland, what is the average? A. Oh the St. Clair governs the water—19 to 21 feet.

Q. And can you tell me the depth to rock at the Old Windmill Line at Church Street? A. Yes. About 17 feet 6 inches. You have only got it at one point, Mr. Osler. That is below 245—17 feet 6 inches.

Q. That is your draft of water at the level on which you have based all your harbor work? A. You mean 245?

Q. Yes? A. Oh yes.

Q. And it is 17 feet 6 inches down to rock from that level at the Old Windmill Line as near Church Street as you have a sounding? A. Yes.

Q. And what is the depth at the New Windmill Line? A. 25½ feet.
MR. OSLER: That is all, thank you.

RE-EXAMINED BY MR. TILLEY:

Q. Then, Mr. Cousins, that depth at the Old Windmill Line and the New Windmill Line, each of them would gradually decrease as you went north? A. Yes.

Q. That was the slope? A. The rock contours there from north to south.

Q. Then you were asked about harbor facilities. Are changes in depths taking place now? A. Yes, the new standards from 25 to 27 feet.

Q. Do you mean the Dominion Standards? A. United States government mainly.

Q. And what about the Dominion? A. Well the Federal government, the new Welland Canal is the indication of the Federal Government's policy.

Q. And you spoke of Hamilton in particular? A. Hamilton. Insofar as the Hamilton Harbor Commission's operations are concerned they have been restricted to facilities provided by the Canada Steamship, only 14 feet depth, on account of plying between Montreal and Hamilton, and as regards the newer work for the Gas Company, those works are all designed for 30 feet of water.

Q. And the Steel Company? A. Yes.

Q. You say the policy and the plans are shown by the Welland Canal? A. Well, Mr. Tilley, also, the Dominion government are now deepening our western channel from 27 to 30 feet at their expense and we are deepening the inner harbor to correspond to it.

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Re-examination

Q. Then you were asked about the method of construction out at Victoria and you spoke of fresh water as distinct from salt water. Are there different problems in each? A. Much.

Q. What? A. Apparently the experience is that in salt water structures, that is concrete structures in salt water, exposed at what we term the wind and water line by the rising tide, on ocean conditions, freezing and thawing very seriously attacks the concrete and the engineers are trying to get away from it.

Q. Do you know whether as to wood they have other problems out there that we haven't got in fresh water? A. Well speaking of wood, sir, in the Pacific Coast or Atlantic Coast waters you have what is known as a toredo that attacks wood structures. 10

Q. What is it attacks them? A. It is what they call a water borer, it is a bug that gets into the wood and eats right through the pile.

Q. So that salt and fresh water problems are quite different? A. Entirely different.

Q. Then you were asked about the change made by Rogers, that they were considering going back to water facilities. What have they done? Anything more than applying for this temporary lease? A. Well they have asked me to make a study for the development of their site at Parliament Street as a modern coal terminal. 20

Q. They in the meantime have taken a temporary lease? A. Yes sir.

Q. And you spoke of one or two having permanent leases. I think you said Milnes? A. The Milnes Coal Company.

Q. When did they take that? A. The Milnes Coal Company were granted a lease on the south side of Keating's Channel for 1.609 acres for five years from the 10th May, 1926, at a valuation of \$49,702 per acre. This lease later extended to a fifteen year term expiring in 1941.

Q. When was it extended? A. I don't know. I think about two or three years ago, sir. 30

Q. And that is shown on this Exhibit 40 of yours? A. Yes sir.

Q. Where the location is, we needn't ask you to locate it. And included dock walls and everything? A. Oh yes.

Q. And what depth? A. 18 feet. It is in the Don.

Q. And the five year lease was granted in 1926? A. Yes sir.

Q. Now what other permanent leases? A. Century Coal Company dock.

Q. That was granted when? A. I haven't got that here, sir.

Q. Was it before the Milnes? A. Oh yes, it was granted in 1917 or 1918, for twenty-one years. 40

Q. Well that is sufficient for my purpose. And are there any other permanent leases granted to coal companies? A. No. Not that I know of.

Q. And apart from those who got permanent leases have you had any coal company that has taken the position that it is ready to take a permanent lease? A. No.

Q. The leases are all temporary? A. They are considering facilities

in conjunction with the change on account of the self-unloading, is my understanding.

Q. At any rate they have not been pressing you for permanent leases?

A. No.

MR. OSLER: Does he know that? Because here is an obvious case, where the Standard Fuel say they couldn't get any.

MR. TILLEY: The Standard Fuel may be leaving it to the Harbor Commissioners to design what they ought to have but have they come forward with a plan of their own?

10 WITNESS: I was at the conference between Mr. Marshall and Col. Langton, the General Manager, and my distinct recollection, Mr. Tilley, is that Mr. Marshall asked for a temporary lease at the beginning until he could make up his mind as to what they wanted to do.

HIS LORDSHIP: That was really the understanding I got from Mr. Marshall's evidence, that they weren't definitely settled.

MR. OSLER: That was, as I understand, they were told they couldn't get—

MR. TILLEY: I suppose the coal company if they had a scheme would be here expounding it and telling us what their plan was.

20 Q. Now you were asked about the distance to the old site following some line of travel. Now I don't know what the point of it is but it is from the north limit of the old site to the National Iron Works following the highways that were in existence in 1926? A. Via the Esplanade.

Q. Now the other distance that you first gave was the distance between the two properties according to routes of travel that are now in existence?

A. Exactly. Fleet Street.

BY HIS LORDSHIP: Q. But were they in existence in 1926? A. No sir.

30 BY MR. TILLEY: Q. And with the line that is taken from the old site to the new in 1926, have you any reason to think a single ton of coal would travel that route? A. Well if you go out of the old site and go north across some six or eight tracks and turn east on the Esplanade to Parliament Street.

Q. Well would they be hauling coal from the old site to the National Iron Works? A. I don't know. I wouldn't think so, sir.

Q. And then you spoke of a coal bridge at a cost of a thousand dollars per lineal foot. Where would they be used? What service do they perform?

40 A. They are standard equipment on the Great Lakes, at the head of the lakes, at Superior, Duluth and the Soo, and they consist of spans of trusses running up and down a dock from 300 to 500 feet across, with a carriage that takes the coal.

Q. Yes, but back from the dock or along the dock or what do you mean?

A. Well let us take it here, 200 feet wide and a thousand feet long, such as they have at Superior, they will have spans right clean through some of them 300 feet.

Q. Spans which way, lengthwise of the dock? A. Lengthwise of the different piers, and on the right hand side or the left hand side they unload from the boats down there by a bucket or draft conveyer that I spoke of if it

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is a hatch boat and back along and dump along the dock for storage facilities. Now that bridge span, what we call a coal bridge, depending on the length of the span, it runs about a thousand dollars per lineal foot of span.

Q. Is that necessary under any modern method of unloading? A. That has been established as the modern method of unloading coal until this advent of the self-unloader and that has probably changed it.

MR. TILLEY: I think that is all, thank you.

BY MR. HELLMUTH: Q. What is the depth of the Century Coal? I didn't get that? A. The Century Coal dock?

Q. Yes? A. 21 feet, sir. 10

Q. At present? A. Yes.

Q. With the improvements? A. Well the Century Coal dock was constructed, Mr. Hellmuth, by the city before the Harbor Commission was formed.

Q. And it is 21 feet? A. It is designed for 21 feet.

Q. But is the water now? A. I can't tell you.

Q. Can you tell me the Milnes' depth there? A. No. It would be about 16 feet or 18 feet of water.

Q. That is the new site of the Milnes? A. On the Keating Channel, yes. At 16 to 18 feet of water. 20

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Frank B. Poucher
Examination

No. 17.

FRANK B. POUCHER Sworn:

EXAMINED BY MR. TILLEY:

Q. Mr. Poucher, what is your occupation? A. Manager of the Real Estate Department of the National Trust Company.

Q. And how long have you been in that position? A. Since 1905.

Q. And prior to that? A. Prior to that I was in the real estate and building business with my father, who was in that business for a great many years. Prior to that I was in the Assessment Department at the City Hall for about six or seven years. 30

Q. Doing assessment work? A. No, I was more generally engaged in assisting the Assessment Commissioner to make valuations, gathering data for him.

Q. In the downtown area or all parts of the city? A. All over the city.

Q. Now then will you just indicate what experience you have had in connection with valuing properties and in connection with expropriation cases and settling damages? A. I have done a great deal of work for the Dominion Government, the Provincial Government, the City of Toronto, Board of Education, the Trustees of the Toronto General Hospital. I do all the work here for the Canadian Pacific Railway Company and a great deal of 40

the work for the Canadian National Railway. I have been real estate valuator for the Harbor Commission since the Commission was constituted as at present in 1912, and I did work for the previous Harbor Commission and I made a complete valuation of all the Harbor Commissioners' property in 1906, about the end of 1906, in connection with an investigation that was being held before His Honour Judge Denton.

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MR. HELLMUTH: You said 1906. Did you not mean 1926?

WITNESS: 1926, I am sorry.

10 Q. Yes, I see? A. Before making that valuation I took a trip to Milwaukee, Chicago, Cleveland, Toledo and Detroit, an inspection trip, to compare the value of waterfront property and industrial sites on the waterfront.

In connection with my work I have had a very considerable experience in what is known as compulsory buying. I bought the present site of the Toronto General Hospital on College Street in 1906 and 1907 and in 1930 I bought the extension of that site, about thirty-three houses. The original site consisted of about 250 properties. I have bought for the Lake Shore boulevard the property through South Parkdale required by the Toronto Harbor Commission; they had the right to expropriate there. And for the railways I have negotiated a settlement for a great many of the claims in purchases of properties in connection with subways and other railway work.

20 HIS LORDSHIP: I think that is sufficient.

MR. TILLEY: I just wanted to get at it from this standpoint, because it is rather important: We are calling as our witness a man who has made a great many settlements and I just wanted to get at his point of view when he comes to valuing these properties.

Q. Take the Toronto General Hospital, did you have any arbitrations from that? A. I had one on the original purchase of about 250 properties.

Q. One out of 250? A. Yes.

Q. The rest were all settlements? A. All settlements.

30 Q. Then take some of the subway work, like Bloor and others? A. I have settled all of the claims for the C.P.R. subway on Bloor Street and Royce Avenue, both purchase of properties and damage claims, without any arbitration.

Q. Without any arbitrations at all? A. Yes sir. About four-fifths of the claims—

MR. HELLMUTH: I submit, my Lord, because this witness has settled something without arbitration should not have the slightest weight with Your Lordship.

40 HIS LORDSHIP: It won't help me but it is showing that this is a witness of very wide experience.

MR. HELLMUTH: I am not questioning that, but because he has been able to make settlements is no reason—

MR. TILLEY: I am putting it this way, that his values that he places on properties are values not for the purpose of putting an extreme case for an arbitration, but for the purpose of settlement.

MR. HELLMUTH: Then, my Lord, would it be in order for me to show that in some of the arbitrations his values have not been accepted at all? I

shouldn't think so, and if I cannot do that I don't think that his valuations in those that have been settled should be given.

Surely Your Lordship would stop me if I said Well now were you in such and such an arbitration and did the arbitrator decide you were far too low?

HIS LORDSHIP: Oh, I think if Mr. Tilley came down to give some particular instances of these other properties' land values your objection would have some force, but I am keeping in mind what Mr. Tilley is really leading up to.

MR. HELLMUTH: I hope Your Lordship will let me examine him on some in which his settlements have not been accepted at all by the arbitrator. 10

MR. TILLEY: I am not suggesting my friend would not have a legitimate ground for cross-examining and if you take all the properties that he has valued and take the number of cases where the arbitrator has put a different value I would be quite content to judge his standing as a valuator by that.

Q. What about the others, just generally?

MR. HELLMUTH: Your Lordship is receiving that subject to objection as quite proper evidence?

HIS LORDSHIP: Yes, I think so.

A. The subways that have just been completed, two of the Canadian National Railway and one on Lansdowne for the Canadian Pacific Railway, 20 I have settled all the claims in connection with those except probably one or two small ones on St. Clair Avenue; they were all settled without arbitrations.

Q. Now then take waterfront? A. Well on the waterfront, of course, I haven't had charge of the negotiations in connection with the waterfront, but I have been asked to assist the Commission that has been handling the negotiations and put in valuations of various properties where others are endeavoring to make settlements.

Q. Well then, Mr. Poucher, will you just describe the land as you think it should be referred to of which you have made a valuation here?

HIS LORDSHIP: This is the Boulton. 30

MR. TILLEY: The Boulton property.

A. I would like to say, Mr. Tilley, I am still engaged as valuator for the Harbor Commission and I have kept in touch with all their transactions, because the Toronto General Trusts Company and the National Trust Company are trustees for the bond holders, they must get our approval from that standpoint on all transactions, so I am in touch with all the transactions in connection with the Toronto Harbor Commission's Toronto property.

Q. And you are still acting in an advisory capacity to the Commission itself? A. Oh yes.

The lot in question is situated a short distance south of the Esplanade 40 on the south limit of the Canadian Pacific Railway right of way and at the west corner at Church Street; it has an actual frontage of about 213 feet but owing to the angle on which the street runs the actual width is only about 204 feet 5 inches, and leaves an average depth to the old Windmill Line of about 450 feet 3 inches. The property is filled to that point; in fact, part of it is filled slightly south of the Old Windmill Line, filling part of Lake Street. Then there is a waterlot in front.

Q. When you say part of Lake Street does that mean more than a foot of Lake Street? A. No, about one or two feet on Lake Street, a part of Lake Street.

Q. Yes? A. Then south of Lake Street the lot is the same width, and a depth of about 577 feet 4 inches to the New Windmill Line. The total filled land is about 92,021 square feet or 2.113 acres.

BY HIS LORDSHIP: Q. Of filled land? A. Yes sir, north of Lake Street. And the waterlot south of Lake Street consists of about 118,016 square feet or 2.70 acres, giving a total area of land and land covered by water
10 of 210,037 square feet or about 4.821 acres. That is the total of land and land covered by water.

BY MR. TILLEY: Q. Now then you valued it as of what date? A. As of November 1926. I think is the date the plans were filed, about the 1st of November.

Q. And these measurements that you have given as to land covered by water and land covered by fill or earth they are 1926 measurements I suppose? A. Yes.

Q. Now then what in your opinion is a fair value of that property as of November 1926? A. In my opinion a maximum value of the entire thing
20 at that time is \$214,637; that is at the rate of about \$1,050 per foot frontage across the actual width.

BY HIS LORDSHIP: Q. For the 204 or 205 feet? A. Yes, 204 feet 5 inches.

BY MR. TILLEY: Q. Yes. Now is that land only or land and buildings? A. That is the total land and buildings.

Q. That would cover the land and buildings? A. I don't think the buildings add anything to the value of that land.

Q. Why do you say that?

BY HIS LORDSHIP: Q. Excuse me a moment: \$214,637, that includes
30 the buildings with the land? A. Yes.

Q. Combined. All right. A. I would say I don't think those buildings would add anything to the value of the land except a wreckage value or salvage value of \$200 or \$300. I don't think they are suitable or adequate for land of that value.

BY MR. TILLEY: Q. What do you mean by that? A. Well I don't think anybody would consider using that land to the best advantage and leave those buildings on there. I inspected them in June 1927; I didn't make a complete inspection but I went down and looked at them, and the small frame office building, small frame garage, small brick boiler room and what
40 I considered a dilapidated old frame coal shed, I—

BY HIS LORDSHIP: Q. This main coal shed? A. Yes. I wouldn't consider that those buildings would add anything to the value of that land, because I think if the land were used to the best advantage the buildings would have to be demolished.

BY MR. TILLEY: Q. Well, then if you had the property for sale would you expect to get anything more than the price you have given here for the

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whole, land and buildings? A. No. No, there wouldn't be any chance of that, in my opinion.

BY HIS LORDSHIP: Q. And even if it were for sale for a coal business? Supposing that the Boultons, a man came along to them, another coal man, and offered so much for the property, wouldn't you consider the buildings? A. I wouldn't think so, my Lord, because I don't think the buildings had any rental value. If the Standard Fuel Company or the Boulton Estate had come to me and asked me to try to lease that property for them at anything like an adequate return on the value that I placed on it plus taxes—

BY HIS LORDSHIP: Q. But they were running a business there, or conducting a business there of \$2,603,000 a year with these buildings that stood there; they were answering their purpose; they may be, as described, in a dilapidated condition and all that kind of thing, but they were answering their purpose? A. I would explain that, my Lord, this way: The buildings would have some value to carry this property along up to the date of expropriation, but I have looked at it in this manner, that at the date of expropriation the property was either expropriated or not. Previous to that it had what might be called a cloud on it owing to the former Railway Board Order of 1913 in respect of the viaduct, but as of the date of the expropriation we will take it is either expropriated or not, and I don't believe that anybody would consider using that land with those buildings on to get a fair return out of the land. The rental value on the valuation I have placed on there at four and one-half percent is \$9,658 and the taxes amounting to \$6,000, so that the rental value of rent and taxes on that land was over \$15,000 a year. I don't believe anybody could use those buildings to advantage over and above that figure. 10

MR. TILLEY: Well I should point out to Your Lordship that the figure you gave as to business was for the whole business, not to that site.

HIS LORDSHIP: I have that in mind. It was only fifty percent of their anthracite business the coal came in by boat. 30

BY MR. TILLEY: Q. Now, Mr. Poucher, did you consider Lake Street? A. Yes. I knew that Lake Street was liable to probably have to be opened at some future time, opened and filled as a highway.

Q. And what effect did that have on your valuation? A. Well I didn't make any change in my valuation for that reason. At least I had that in mind when I made my valuation, that at some time that property would possibly be converted into a street. I didn't take into consideration what difference that would make if it were opened, because it might be some years before it would actually be opened as a street.

Q. The development in that direction was sort of all in the future? A. Yes. 40

Q. Would it add to the value or detract from the value if that street were actually and in fact opened in 1926? A. Well it would depend upon how and what business the property was being used for. It would separate the two parcels and if the property were used as it was used by the Standard Fuel they would have to get their coal across Lake Street into their property where they could store it. I am not in the coal business, I don't know how

much difference it would make, but with Church Street filled—the city had the right to fill the Church Street slip, and if they filled the Church Street slip and Lake Street were filled why then the dockage which could be used by this property would be only along the south side of Lake Street. If they were allowed to use that to transfer their goods across Lake Street in some manner—

BY HIS LORDSHIP: Q. Or under, was a suggestion? A. Cont'd: Yes sir, with the approval of the city, they might have been able to provide a tunnel, but of course you can do that on any street with the approval of the City Council.

10 BY MR. TILLEY: Q. Could that approval be obtained? A. It would depend on circumstances. The Eaton Company have not had much difficulty in having the right to build tunnels to their various buildings, but I have known considerable difficulty in cases of building tunnels or overhead bridges. At one time the King Edward Hotel wanted to build an extension—

MR. HELLMUTH: Surely, my Lord, this is objectionable.

WITNESS: And they applied for a right to build an overhead bridge from their old hotel to the new extension across Colborne Street and I remember that that right was refused.

Q. Do you know anything about the character of the property there
20 where it is filled as on Lake Street? What is the possibility of tunnelling? Do you know anything about that, or have you considered it? A. Well, I don't know, of course, I am not an engineer.

Q. Now then have you separated your value between north and south of Lake Street? How would you divide it? A. I would take the filled land and place a valuation on that of \$155,629.

BY HIS LORDSHIP: Q. That includes the buildings and the land north of Lake Street, is that right? A. Yes sir, any value that would be in the buildings. And the land covered by water I placed at \$59,008.

BY MR. TILLEY: Q. Now the first at what rate per square foot? A.
30 Well that would bring the land at about something like \$1.70 a square foot, a little less than that.

Q. And the land covered by water? A. And the land covered by water fifty cents a square foot.

Q. Making the total of \$214,637? A. Yes sir.

Q. Now how does that compare to the assessment? A. Well at the time the property was assessed: Land \$163,000—

MR. OSLER: Well is that proper?

BY HIS LORDSHIP: Q. The 1926 assessment? A. Yes sir.

MR. OSLER: Is the assessment relevant?

40 HIS LORDSHIP: I think it is a matter I may properly take into consideration. I don't see why it shouldn't be.

BY MR. TILLEY: Q. What was the assessment at that time and before?

MR. HELLMUTH: Well, I take objection, my Lord, that the assessed value is not admissible in evidence in regard to this.

HIS LORDSHIP: I think it is. I think it is evidence that an arbitrator could take into consideration. It may not control but assessment should be some assistance.

MR. OSLER: My objection was it was given as mere hearsay. The only man who could give that evidence would be the man who made the assessment.

MR. TILLEY: If the assessment is evidence then the fact of assessment is the thing, not who made it.

MR. HELLMUTH: I submit, my Lord, where it is impossible to cross-examine the witness as to how the assessment was made up the mere fact that this gentleman has been to the assessment office and found out what it is is purely in the nature of hearsay evidence.

HIS LORDSHIP: If I am going to pay any attention to the assessment I suppose strictly the assessment would have to be proven in a proper and regular way. Mr. Tilley was asking what this property was assessed at; I don't know whether he knows. 10

WITNESS: Yes.

BY HIS LORDSHIP: Q. How did you gain your information? A. From the Assessment Department records.

MR. TILLEY: If my learned friends want the records brought—

MR. HELLMUTH: No, I want the witness who made the assessment.

MR. TILLEY: That is a different matter. I am proving that is the assessment.

HIS LORDSHIP: If the records are produced then from the records this witness may speak. 20

MR. HELLMUTH: I am not taking a technical objection at all, my Lord. If this witness has seen those records and Your Lordship is going to receive the records without the Assessor who made it and who may justify it, as the case may be, I am not going to object to this witness telling what he found in the records, but my submission goes a little deeper; I submit that when an assessment is attempted to be shown as an indication of value then we have a right to cross-examine the man who made the assessment.

HIS LORDSHIP: What did the assessor take into consideration when he made the assessment. 30

MR. HELLMUTH: Yes, exactly.

HIS LORDSHIP: Yes. If it is going to be made much of an issue here, the question of the assessment, why I think probably that evidence ought to be put in, but I don't think it is going to help me a great deal in coming to a conclusion.

MR. HELLMUTH: I am not taking objection to their not producing the actual record, because that is purely technical.

MR. OSLER: But without waiving the objection to putting it in if the record were here.

MR. TILLEY: Well I am submitting it as the assessment. I am not submitting it as expert evidence, calling the assessor, I am simply putting it in that that was the assessment in point of fact and that is shown by the records, what the assessment was, for what it may be worth. 40

HIS LORDSHIP: Yes. It may go in subject to objection.

MR. OSLER: It is understood definitely we are to be in the same position as if the assessment records were here, and waiving of the production of the record does not prejudice our objection in any way.

MR. TILLEY: Oh no, I don't want that to prejudice you; I am just saying we are getting along without the record.

HIS LORDSHIP: I think when you come to read my reasons you won't find very much so far as the assessment is concerned, but these things do help an arbitrator I believe to some extent.

BY MR. TILLEY: Q. Well, Mr. Poucher? A. The corner portion of that property was assessed at \$800 a foot.

BY HIS LORDSHIP: Q. Wait a moment. Which part?

BY MR. TILLEY: Q. Well we have the assessments here from 1909, 10 just to give the complete history of the assessment, and in 1924 it was the same as 1922, and does this agree with yours: Lands \$163,050, and buildings \$17,200? A. Yes sir. That makes a total of \$180,250.

Q. Then there is a business assessment based on that and that assessment stood at that amount from 1922 onward. At 1921 the land was \$141,720, the buildings the same; in 1918 the land was \$120,450, with the buildings the same; in 1915 the land was \$120,450 and the buildings \$17,000.

BY HIS LORDSHIP: Q. The lands back to the Old Windmill Line? A. No sir, that is the whole of the lands.

MR. HELLMUTH: No, it isn't. I was going to call attention to the fact 20 that does not touch the water lot at all.

WITNESS: Yes, that includes the water lot.

MR. HELLMUTH: No, pardon me.

WITNESS: Yes, it makes a total width of 213 feet and the depth given in that assessment is 1,015 feet, that is down to the New Windmill Line.

MR. HELLMUTH: Oh, I see.

EXHIBIT 51: Statement showing assessment of property in question in various years from 1909 onward.

Q. You don't know what effort the assessor used to fix the value of the property? A. No. Under the Act he was to value the property—

30 MR. HELLMUTH: The Act speaks for itself, my Lord.

MR. OSLER: Nobody knows better than this witness that the Act was not in force.

MR. HELLMUTH: This list I have goes up to 1922 only.

MR. TILLEY: Mr. Osler has pointed that out to me and if there are any additional we will add to that.

MR. HELLMUTH: I am informed there is a change in 1926, which is an important year if it has any bearing.

HIS LORDSHIP: That is the one, if I pay any attention it will be to the 1926 one.

40 MR. TILLEY: We will complete that if it is incomplete.

BY MR. TILLEY: Q. Then, Mr. Poucher, you have given the valuation. The rent that was being paid was \$6,000 a year? A. Yes sir, ground rent.

BY HIS LORDSHIP: Q. And taxes? A. And taxes.

BY MR. TILLEY: Q. Yes. I don't know whether we have in evidence what the owners got the first year when the lease fell in. Do you remember, 1917, was that put in evidence? A. Yes, I believe Mr. Boulton gave that.

MR. HELLMUTH: Yes, it was.

MR. TILLEY: I think it was \$4,000 for the first year.

MR. HELLMUTH: \$4,500, \$5,000 and \$6,000. It is in the evidence.

Q. And that would be four percent say on \$150,000? A. Yes.

Q. Or a valuation of about \$735 a foot frontage? A. Yes.

HIS LORDSHIP: Four percent on \$150,000, that is \$6,000, and then there were some thousands of dollars of taxes.

MR. TILLEY: The tenant paid them.

MR. HELLMUTH: \$6,000 is quite right; four percent is \$6,000, on \$150,000.

MR. TILLEY: And whether it was four or four and one-half percent I don't know. 10

Q. What was the interest on ground rentals at that time? A. Well for renewal rentals up to 1917 they were generally fixed on a basis of four percent. Just about that time when interest rates advanced on other securities owing to the war, from that time on the general custom has been to fix renewal rates at four and one-half percent. New leases have been fixed at five percent by the Harbor Commissioners for any of their leases.

Q. Well then you referred to the lease; I think it is in; and it has in the provisions an increased rental from time to time. The renewal rental was to be such increased amount as might be fixed reasonably? A. Yes.

Q. Now then, Mr. Poucher, will you just tell us what occurred with, 20 regard to properties that helps you to form a conclusion as to the value of this property? A. Yes.

There were transactions along the waterfront with Harbor Commissioners' property and east of Yonge Street of private property that I knew of and I had in mind when I made my valuation.

This is a plan which was prepared by the Harbor Commissioners (producing) to show the transactions that they have had on their property, mostly west of Yonge Street.

Q. You mean a list of transactions, is there? A. Yes sir, a list of transactions is on the corner of the plan and shows the price at which each of their 30 properties was sold.

BY MR. HELLMUTH: Q. Have you a copy of that plan? A. Mr. Dempsey I think has a copy.

BY HIS LORDSHIP: Q. And upon that plan is a list of all properties that have been sold? A. A list of properties that have been sold on the inner harbor and along the marginal way; it doesn't show all the properties.

Q. And the prices are there, are they? A. Yes.

Q. Do you know of your own knowledge those are the properties and the prices got or is that a matter of comparison? A. All those prices have been under review by me, or practically all of them. 40

BY MR. TILLEY: Q. Does that include not only properties sold but leased? A. Yes.

Q. And gives the basis on which the lease was made out? A. Yes.

MR. HELLMUTH: I think the witness said the Harbor Commissioners' leases were based on five percent.

WITNESS: Yes. I was speaking of renewals when I mentioned four and one-half.

BY MR. HELLMUTH: Q. Yes, of four percent to 1917 and then four and one-half percent for renewals and then five for the new leases made by the Harbor Commission? A. Yes.

Q. So I mean we can make the calculation if it is not there? A. Yes. Five percent. All these leases are made on the basis of five percent.

BY MR. TILLEY: Q. Yes. Mr. Poucher, you might identify the property sufficiently so that we can follow it as we go along, we will have the copies. A. Well then starting at Yonge Street and going westerly the first transaction was a sale to the Canada Steamship Company Limited of their
10 new site. They had a frontage along the south side of the Queen's Quay and a depth out into the lake of about 600 odd feet.

Q. You didn't say the frontage? A. No. I will have to get that from this other plan. (Producing). A frontage of 550 feet on Queen's Quay with an average depth of about 607 feet, and consisted of 7.67 acres, which included the slip. The slip was 175 feet wide by 376 feet long. Now this was sold to the Canada Steamship Company on the basis of \$100,000 per acre or about \$2.30 per square foot. That was early in 1927. The next property west of that—

Q. Just before you pass away from that, you have given the year?
20 A. Early in 1927.

Q. Without buildings? A. Without buildings. I was asked by the Harbor Commissioners to advise them what I thought that property was worth at that time and I fixed it at \$100,000 an acre.

BY HIS LORDSHIP: Q. And that is what it was sold for? A. Yes.

Q. The depth 607 feet? A. About an average of 607, my Lord. And then west of that there was a property, just west of Bay Street.

Q. Excuse me. This Canada Steamship property, how far distant is that from this Church Street property?

BY MR. TILLEY: Q. At the foot of Bay, is it not? A. Well the
30 distance from Church Street to Yonge Street is about 904 feet.

MR. HELLMUTH: We start 700 feet.

WITNESS: You start about 700 feet.

MR. HELLMUTH: Yes, from Yonge Street.

BY HIS LORDSHIP: Q. And the next property? A. The next property west of that was sold to the Canada Steamship Company at the same time. That had a width of about 125 feet by a depth of about 617.

MR. OSLER: Will you speak a little louder, Mr. Poucher; it is a little difficult to follow.

WITNESS: The property immediately west of the first one I gave and
40 on the west side of the Bay Street slip, it had a width of 125 feet by a depth of about 617 feet, and that was sold to the Canada Steamship on a basis of \$70,000 per acre.

Q. That adjoins the property on the west? A. Well the Bay Street slip in between, my Lord, 200 feet wide.

Q. \$70,000 per acre? A. Yes, my Lord.

Then immediately west of that are docks leased to the City of Toronto for the ferry docks; that property has a width of about 374 feet by a depth of

about 300. That is leased to the city on a basis of \$60,000 per acre. Then there is a dock west of that, being on the east side of the York Street slip, and that is a similar dock to the one I mentioned, being No. 2, and that was leased on a basis of \$60,000 per acre.

BY MR. HELLMUTH: Q. What is the name of that one? A. Canada Steamship.

BY HIS LORDSHIP: Q. Still at the Canada Steamship? A. Yes. Then there is the York Street slip and west of the York Street slip is the property which was leased to the Canadian Rail & Harbor Terminals Company, sold to them at least, in 1924, and they had a frontage along the Queen's Quay of 1,073 feet 6 inches and varying depths, on the east limit of 644 feet 8 inches, at the west limit 539 feet 9 inches; that sold for \$50,000 per acre. 10

Q. In 1924? A. Yes, my Lord.

Then there is a slip about 200 feet wide, and these are properties all the way from there to Bathurst Street on the waterfront that have been sold and leased from about 1925 onward at prices varying from \$35,000 to \$55,000 per acre depending upon location; they are all in detail on that plan.

BY MR. TILLEY: Q. And what have you east of Yonge Street? A. Well east of Yonge Street—

MR. HELLMUTH: I cannot follow that without the plan. 20

WITNESS: Then going east from Yonge Street the first sale that I considered was the sale of the old Canada Steamship site in 1909. There was a sale from the Freeland Estate to Osler. That property was at Yonge Street with a width along the Esplanade of about 211 feet, an actual width, and a total depth at the New Windmill Line of about 960 feet less the width of Lake Street; the westerly portion of the land was freehold, the easterly portion with a width of about 87 feet 2 inches was leasehold from the city and the land, building and improvements and leasehold—

BY MR. HELLMUTH: Q. Just a moment. Had you anything to do with that sale? A. No. 30

MR. HELLMUTH: I object to any evidence as to that.

MR. TILLEY: We can put in all the documents if you want them; we had them in the other arbitration, every person knows about them. Do you want that?

HIS LORDSHIP: Was this evidence given in the other arbitration?

MR. TILLEY: Yes.

HIS LORDSHIP: I don't suppose there is any way we could have that evidence?

MR. TILLEY: We had that before all the agreements and everything.

MR. OSLER: Had you anybody who knew anything about the trans- 40
action?

MR. HELLMUTH: I don't think so. I suppose the documents would prove themselves. I don't think there was.

MR. TILLEY: Let us understand the objection. Is the objection that you want the documents?

MR. HELLMUTH: I want someone who knows, who can be cross-examined about the circumstances of the sale.

MR. TILLEY: I am not bound to give that. I am simply putting it in as a transaction that took place.

HIS LORDSHIP: If he puts in the original record I think that is enough.

MR. HELLMUTH: The deed, my Lord? I would submit, not, my Lord.

HIS LORDSHIP: It may not be any value but he is putting it in for what it is worth. If you wish to take advantage on cross-examination or put in some witness you are permitted to do that.

MR. HELLMUTH: I think it is not prima facie evidence.

MR. TILLEY: I will call Mr. MacLennan if you wish. I didn't object
10 to a single transaction you referred to. I didn't know they were taking these objections.

MR. HELLMUTH: Of course, my Lord, they were going back to 1909 and this is a transaction in 1926, I submit, that would not throw much light on it.

MR. TILLEY: The question is what is my learned friend's objection? If he is raising objection to my proving transactions in the way he proved them then I will have to reshape myself.

MR. HELLMUTH: I didn't think there were any that I proved that way. I think Mr. McBrien gave transactions because he knew about them and knew the sales and had taken part in them. But however I don't know
20 whether that makes much difference, a 1909 transaction.

MR. TILLEY: Are you withdrawing it or are you technically standing on it?

MR. OSLER: It isn't a technical objection.

MR. TILLEY: Well then you object to it?

MR. OSLER: Yes, I think so.

BY MR. TILLEY: Q. Well then, Mr. Poucher, we will have to call witnesses to prove that. We will call Mr. MacLennan or some person to prove the document. Now what is the next one? A. Well the next property that
30 I had to do with was the property immediately west of the Boulton property, extending from the Boulton property to Scott Street, lots 32, 33, 34 and 35 on plan 5A and the water lots in front. In August, 1928, I was appointed by agreement as sole Arbitrator to settle the value of the above lots and the various parts of those lots on account of the division of ownership between the Canadian Pacific Railway Company, the Toronto Terminals Railway Company, the Toronto Harbor Commissioners, the Hydro Electric Power Commission of Ontario, the Toronto Hydro Electric Commission, and the rearrangement of ownership, and I settled the value for the rearrangement of ownership of these various parcels and of course the values were accepted.

BY HIS LORDSHIP: Q. Mr. Poucher, just a moment. This is west of
40 Boulton and east of Scott Street? A. Yes.

Q. The properties you are now talking of? A. Yes. Extends from Boulton to Scott Street.

MR. HELLMUTH: My Lord, I understand that this Arbitrator is going to give the result of what he fixed as Arbitrator on these.

HIS LORDSHIP: Yes.

MR. HELLMUTH: Then I would like to take the position that has been

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taken in every Arbitration, I don't know that an Arbitrator can give the values that he fixed as any indication of what some Arbitrator might find.

WITNESS: I was appointed valuator.

MR. HELLMUTH: He said Arbitrator.

HIS LORDSHIP: I have no doubt he will follow this up by saying whether or not that was the true value.

MR. TILLEY: And they accepted it.

WITNESS: There was no Arbitration held; I was appointed valuator to fix that.

MR. HELLMUTH: You said Arbitrator. 10

MR. TILLEY: Can we get on? I didn't bother my friend by these trifling things when he was giving his evidence.

MR. HELLMUTH: You call them trifling.

MR. OSLER: We have an objection to any other Arbitration being brought in in that way, and the witness said it was.

MR. TILLEY: You know very well what the transaction was; it was an adjustment made between the various interests.

MR. OSLER: As he put it in I supposed it to be the fact and I don't know anything about it.

BY MR. TILLEY: Q. Then it wasn't an Arbitration? A. No. I was appointed by agreement the sole valuator to fix the value and they acted on that. 20

HIS LORDSHIP: He changed the word.

Q. Now you may go on, Mr. Poucher. We are wasting a lot of time. A. Well the various parties acted on my valuation. It involved an exchange of titles totalling over \$344,000.

BY HIS LORDSHIP: Q. What was the total frontage? From Boulton to the easterly limit of Scott Street? Because I understand that that is the area you are now taking? A. Yes. I will have to get the plan.

Q. Or does it make any difference? A. I have got it here, my Lord. 30
The total frontage involved was about 328 feet.

Q. And the depth back? A. The depth was from the south limit of the Canadian Pacific right of way, which was not as wide at that point as it is in front of the Boulton, out to the New Windmill Line, about 1,040 feet, including Lake Street.

Q. Including Lake Street? A. Yes, my Lord.

HIS LORDSHIP: Now we have the frontage and the depth.

BY MR. TILLEY: Q. Yes. You haven't got the valuation yet? A. In fixing the valuation for the various parts I placed a value on the portion immediately adjoining the Boulton at \$1,125 per foot for that width, but I would point out that the property was filled, all of this property was filled, practically all of it, to over half way out from the Old Windmill Line to the New Windmill Line. 40

Q. Farther south than Lake Street? A. Yes, considerably south of Lake Street; about 355 feet I think south of Lake Street. I placed a value on that, on the parcels immediately adjoining Boulton, the inside property, of \$1,125, including the total filling.

Q. \$1,125 per what? A. Per foot frontage or width.

And for the other parcel to the west or the corner of Scott Street \$1,300 per foot frontage by reason of it being on the corner of Scott Street.

Q. Yes. Well what do you say as to whether that value for each parcel was fair? A. I think they were fair. They were fair in my opinion, I was only trying to arrive at what was a fair figure as between these different companies and had to start at the value that I thought was a reasonable and fair value of the property.

10 Q. As of what time? A. As of 1926, and it ties in, in my opinion, with, and justifies my valuation on the Boulton property.

MR. OSLER: The value was actually made in 1928?

Q. What year did you make that value? A. In August, 1928.

Q. As of 1926. Have you the copy of the valuation? A. No. The valuation didn't give the rate that I arrived at; I am showing how I arrived at it; and the valuation simply said that This parcel of land between these two companies so much money, This parcel as between these two companies so much money. That is all I showed in the valuation. I haven't got a copy of it here.

Q. And that is the way you figured that out? A. Yes.

20 BY HIS LORDSHIP: Q. Any question of buildings taken into consideration? A. No sir. There was a sale east of Church Street from the Wilmot Chapman to the Toronto Terminals Company.

Q. Where did you say that was? A. On the south side of Esplanade east of Church Street, Chapman to the Toronto Terminals Company, lot 25, a width of 67 feet by a depth of about 1,100 feet to the New Windmill Line, and filled out to about the Old Windmill Line, sold in May, 1926, for \$50,000.

BY MR. TILLEY: Q. That is what per foot frontage? A. About \$746 per foot front.

30 MR. TILLEY: I see this plan is Exhibit 15 already and we needn't file it again.

MR. HELLMUTH: Oh no.

MR. CASSELS: It has just been marked I believe as Exhibit 52.

MR. TILLEY: We will change that.

Q. Now you are referring to the Chapman property? A. Yes. I had just finished referring to that. And then there was a property on the south side of the Esplanade, lot No. 20, just east of Jarvis Street, that was sold in 1920 from the Brook Estate to the Belle-Ewart Ice Company Limited, had a width of about 67 feet 7 inches by a depth of about 1,100 feet to the New Windmill Line. That sold in 1920 for \$42,000, that is about \$636 per foot
40 frontage.

BY MR. HELLMUTH: Q. Was that to the New Windmill Line or the old? A. The New Windmill Line.

BY HIS LORDSHIP: Q. 1,100 feet? A. Yes, my Lord.

Then there was a property on the south side of the Esplanade at the east corner of George Street; it had a width of 70 feet 6 inches and a depth to the New Windmill Line and that depth was about 1,150 feet, because it included all property right up to the Esplanade instead of up to the south limit of the

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C.P.R. right of way, a property that was leased by the Canadian Pacific Railway Company from the Munro Estate, and when the lease came due, I think it was 1924 the existing period for that lease expired, I was asked to act on behalf of the Canadian Pacific Railway Company; Mr. Charles Millar acted on behalf of the Munro Estate; to endeavor to negotiate a renewal. Well the straight renewal rental was fixed at four and one-half percent. on a valuation of \$737 per foot frontage. That was a corner property and it formed part of a total property of about 211 feet in width, because the Canadian Pacific Railway Company owned the freehold of the land to the east.

BY MR. TILLEY: Q. Well do you make any point of that? A. Well 10
not particularly.

Q. I mean on the question of values? A. But it was part of a larger parcel, it was all under the same holding, the C.P.R.

Then there was a purchase by the Toronto Terminals Railway Company in 1926 of the Polson property at the foot of Frederick Street, a part of lots 11, 12, 13, 14.

BY HIS LORDSHIP: Q. Is that the present Terminals? A. Well that is where they were. They were taken, this portion, by the viaduct; the Toronto Terminals purchased that.

Q. The Polson property is where? A. Parts of lots 11, 12, 13 and 14, 20
and the waterlot in front, and part of the west half of lot 10, and a leasehold interest in the east part of lot 10. The total width is about 333 feet by a depth of something over a thousand feet to the New Windmill Line. I made a valuation of that property for the Toronto Terminals Company in January, 1925, and my valuation amounted to \$313,550. The Terminals Company purchased it about a year and a half later for \$318,000.

BY MR. TILLEY: Q. What do you say as to that being a fair value? A. Well I think it is a fair value. I think it confirms my judgment on it. There is just a difference of \$5,000 between my valuation and what they had to pay for it and they were buying under compulsory purchase, they had to 30
have it.

BY HIS LORDSHIP: Q. Any buildings on this property? A. Yes, my Lord, there were buildings on there.

Q. That had value? A. That had some value. Some of them had practically very little value. Some frame buildings. But they had a building with a steel frame which was a large machine shop, almost suitable for any business. It had been a ship yard during the war, building some small boats there. Of course most of this land was filled right out to the New Windmill Line, and I placed the land which was filled out to the New Windmill Line at \$900 a foot frontage, and the other about \$700 a foot frontage; and then I 40
placed some value on the leasehold that they had, a leasehold interest in one-half lot in the neighboring property; \$20,000 on the buildings; they were assessed at \$86,000.

BY MR. TILLEY: Q. Anything else that you wanted to say about that? A. Well in addition to this I think I know practically all the sales, every sale that has been made on the Esplanade or waterfront properties, the last fifteen

or twenty years. Those are the most recent ones that had been sold on the Esplanade up to the time of expropriation.

Q. Now, Mr. Poucher, were you going to refer to any other specific things? A. No. As part of my qualifications I was going to mention I was appointed with two other valuers by the Grand Trunk Railway Company in 1920 to value all of their properties from the Mimico Yards to East Toronto in connection with the taking over by the government, and that involved a value on some Esplanade property but no waterfront property, we didn't have any waterfront property there.

10 Q. But you did have some properties on the Esplanade at that time?

A. Yes.

Q. I think Mr. McBrien referred to one of them as a sale, but it was only a valuation for that purpose, wasn't it? A. Yes. The Fruit Market property was a valuation. I don't know of any time that it has been sold.

Q. And when you come to deal with the Fruit Market on the north side of the Esplanade is that comparable property to property at the south side of the Esplanade? A. No, I don't think it is; suitable for different purposes. You take the north side of the Esplanade was always considered more valuable than the south side. Suitable for different purposes, different types of ware-

20 houses.

Q. And I think it has a highway all around it? A. Yes.

Q. And light all around it? A. And the railway was on the side and streets in rear, had very good railway accommodation.

Q. These cars could come right off the Esplanade? A. Yes. We considered its relation in value to the other parcels in that block extending from the Esplanade to Front Street and along the Esplanade a better type of property at that time. Of course we placed values on that would be higher than we would place on in 1926, because my experience would be that all of these properties east of Yonge Street, all these warehouse properties, have been

30 steadily depreciating in value.

Q. What warehouse properties? In what district? A. Well I would say all business properties east of Yonge Street and south of Queen have been steadily depreciating in value ever since I have been in business.

Q. Due to what cause? A. Well due to this general movement westward, newer development going west, and they have been the most difficult properties to dispose of or to handle. We sold a property on the south side of Front Street this year close to Yonge, No. 9 Front Street East, with a frontage of about 33 feet, a four storey brick warehouse on it, which was assessed last year for \$31,000, and I got it reduced to \$29,000. I sold that—

40 MR. OSLER: Is a sale in a period of depression like this any evidence?

HIS LORDSHIP: I would consider all that in my mind.

WITNESS: I sold this property for \$22,500 this year; I think the owner was very fortunate to get it.

Q. Well, now, why? Is it something that relates to that particular piece of property only or generally in that locality? A. Generally in that locality. I think he was lucky to be able to sell this property even at \$22,500.

BY HIS LORDSHIP: Q. Well what would that property be worth in 1926? A. Well it would have been considered worth probably close to \$30,000.

BY MR. TILLEY: Q. What would it have sold for? A. There wasn't very much market for it. I don't know that you could have sold it for more than about \$25,000 in 1926. There has not been a market for these properties generally speaking since about 1912, for business properties east of Yonge Street all the way south of Queen.

Q. And north of the Esplanade? A. North of the Esplanade.

Q. And what about south of the Esplanade, what is the character of the properties down there? A. Well south of the Esplanade all these properties included the waterlots, or most them had access to the water, and they were subject to Railway Board order made in 1913 and there wasn't very much change in their value from then on. I wouldn't say they decreased in value like the other properties to the north of them, but they didn't increase in value between 1913 and 1926, because even in the best parts of the downtown district, or almost the whole of downtown Toronto, there was no increase in value between 1913 and 1926, excepting certain properties on Yonge Street and perhaps a few on Bay. Outside of that there was a very poor market for any type of downtown property in the whole City of Toronto.

Q. Now before dealing with that, because we will come back to it, apart from what you say as to the general trend of values in downtown Toronto, what had been the character of the properties of which the Boulton property was one, in that neighborhood, for some years back?

HIS LORDSHIP: You mean north of the Esplanade?

MR. TILLEY: South of the Esplanade, Boulton and along there.

A. There had been no new development south of the Esplanade east of Yonge Street since I knew it. Since thirty-five or forty years ago there was practically no new building except that the Verralls, the storage men, they put some new buildings on part of the C.P.R. property. And I think this machine shop was built on the Polson property at the time they started to do ship building, but apart from that they were old buildings and old piled wharves and unattractive in appearance, they were difficult of access and without any new development to speak of for a great many years.

Q. Suitable for any special business? A. Yes, I think they were. East of Scott Street they were practically all suitable for the same type of business, that is heavy manufacturing or any business that could use the water to any advantage: Ship yards there, there were one or two flour mills and some steel people, Reid & Brown, the steel people, and some coal wharves; of course at Scott Street there was the Hydro Electric, the old Toronto Railway Company's power house; between Scott and Yonge Street was given up pretty well to passenger business, passenger business and package freight by the Canada Steamship Company; but east of Scott Street or east of the buildings of the Toronto Hydro Electric or the old Toronto Railway Power House they were a poor class of buildings, dilapidated old buildings, a poor looking lot of wharves, old piling wharves.

Q. What do you say as to their access from the north, from the Esplanade? A. The access was bad. It was interfered with by all the tracks one had to cross from the Esplanade to get into these properties, and they were subject to delays by passing trains and that sort of thing; their surroundings were not attractive, I mean if you compared them to properties that the Harbor Commissioners have dealt with as shown on this plan west of Yonge Street with attractive surroundings and the best kind of access, good publicity, street car service right to the doors. At this sale No. 1, that is west of Yonge Street, the Canada Steamship site, the street cars go right to the door. On the old conditions at the old steamship site, or following along the Esplanade, the nearest street car track was on Front Street.

10 Q. Corner of Front and Yonge? A. Corner of Front and Yonge, at Yonge Street, and following along on Front Street. Take it from the standpoint of publicity, Fleet Street in 1926 was the second greatest artery for outgoing and incoming traffic of downtown Toronto in the whole city; University Avenue was No. 1. Fleet Street might almost be No. 1 now, I haven't had any check taken of that, but they had the surroundings and they had access and publicity which you couldn't get east of Yonge Street in anything like the same degree.

20 Q. Now what do you say of the business section downtown? Has it been shifting? A. Yes.

Q. In what direction? A. Shifting westerly.

Q. And what do you describe as the center now? A. Well, I would think that the downtown section, so far as financial business was concerned, I would fix it at the corner of Bay and King Streets at the present time. Of course in 1926 it was pretty well fixed at Yonge Street and we thought it was fixed there for some time, but there was no lightening of the market for downtown property until the Canadian Pacific Railway Company bought the site for the Royal York Hotel in the early part of 1927; that seemed to give a fillip to some portions of downtown Toronto. Following that there was an increase in values up Bay Street and in that district, King Street west of Bay started to develop to some extent, but it didn't help things east of Yonge Street. Even the east side of Yonge Street has been going down for the last number of years. But up to 1926, from 1913 to 1926, practically no increase and no market for downtown properties except the one or two properties on Bay Street and perhaps a few on Yonge Street.

40 Q. And where have improvements taken place in the way of new buildings? A. They are all west of Yonge Street; most of them on Bay Street and west of Bay Street. There has only been one new office building erected east of Yonge Street since about 1920 I think, and that is the Metropolitan Building on the corner of Adelaide and Victoria Streets. There have been one or two additions to other buildings: The Imperial Life made an addition to their building on Victoria Street and the Imperial Oil Company made an addition to their building at the corner of Church and King Streets. But of all the office buildings erected for rental in the last seven or eight years in Toronto there has only been one in the east of Yonge Street, the Metropolitan Building; the rest of the buildings are on Bay Street and west of Bay.

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Q. Well you have had extensions to buildings east? A. Yes.

Q. Such as what? A. Well there is the Imperial Life on Victoria Street.

BY HIS LORDSHIP: Q. Imperial Oil? A. Imperial Oil. The National Trust Company made an extension to their building in order to house them for the time being, but it was more or less of a stopgap, an extension of the old building to tide us over for a few years until we got in a position to build a new building and select a new site.

BY MR. TILLEY: Q. Some reference was made to a valuation made by you and Mr. Bosley? A. Yes. Mr. Bosley was associated with me in making a complete valuation of all the Harbor Commissioners property at the end of 1926. 10

Q. I think Mr. McBrien rather criticised that valuation. Now will you just tell us about it? A. Well I used all the experience I have had in waterfront properties—

BY HIS LORDSHIP: Q. What year did you say that was? A. That was at the end of 1926, my Lord. I have had experience with these waterfront properties since about 1910 or 1911 and I had taken a trip away, as I said a little while ago, to Chicago, Milwaukee, Detroit, Toledo, Cleveland, and considered values and all the information we could get as to values in those places as to waterfront properties, sites on the water, passenger terminals, and we used the best judgment we could in endeavoring to arrive at fair values at that time. Of course any valuation won't stand forever. Shortly after that, early in 1927, after the purchase of the Royal York Hotel site and one or two sales following that along Fleet Street why the Fleet Street values started to increase and Fleet Street was in a rising market right up to almost the present time, and some of the properties along there were sold at higher figures than we placed on them, particularly during 1928 and 1929; some of them were sold at the same prices we placed on them and one or two slightly less. And in the eastern industrial area some of the properties were sold at our figures; in fact in 1927 the total sales made by the Harbor Commissioners, sales and leases, was slightly less than the total figures we had placed on the properties. 20 30

BY MR. TILLEY: Q. Well that might be so and still there might be quite a spread as to individual properties? A. Yes. And then in addition to that of course, we naturally had to value in fairly large parcels and there were some small sales where we valued a whole block 600 or 700 feet long on three streets and somebody came in and took the cream out of it, the best portion, a corner or a small site in the center; naturally that would sell for a larger price than we valued the whole larger block for. 40

And then in regard to the eastern industrial area, I analyzed the sales during 1927, 1928 and 1929 and some of them, or in 1928 and 1929 the most of them were somewhat higher than our valuation, because 1929 particularly the oil companies started the race to compete for sites down in the eastern harbor district or eastern industrial district for waterfront property and there were a number of sales there made to the oil companies at higher prices than we had placed on them.

Q. For waterfront properties? A. Yes, for waterfront properties, and the area behind; and I don't know whether I can say anything more about our valuation. We used the best judgment we had when we made it and I think it was borne out by all the information that we did have before we made it and afterwards.

Q. Then Mr. McBrien referred to one or two transactions on the east of Yonge that indicated higher values than you had placed on the property.

A. Well he mentioned one or two sales on the north side of the Esplanade. The north side of the Esplanade has never been actually compared with the
10 south side, but the sales he mentioned, the one in particular at the corner of Frederick Street to the Taylor Safe Works was a sale from the city of a parcel part of which was under lease to the Taylor Safe Works previously, and adjoining that they had a very large area that they had under lease and were buying about the same time from the Ryerson Estate, so that it was part of the larger holding, and that was sold for \$1.41 a square foot I think.

He referred to another sale at the northeast corner of Princess Street from Firstbrook to the Imperial Oil, and I knew about that sale at the time and it was generally considered to be a particularly high price, because the Imperial Oil almost had to have the property; they had no right to expropriate, they
20 had a lease of the property immediately adjoining to the east from the city on a basis of property slightly less than a dollar per square foot, and on that property they had tanks and they had a special right to have a pipe line from that property to Ashbridge's Bay to pipe oil, and then when they wanted to extend the only property available was this property of Firstbrook and they paid this large price of \$75,000 for that property which amounted to over \$2 a square foot, but it is not a fair indication of what the land was worth, in my opinion.

Mr. McBrien mentioned a sale on the corner of Fleet Street and George Street from the Harbor Commissioners to the British-American Oil Company,
30 but that is a small parcel.

Q. Have you that on your plan there?

BY HIS LORDSHIP: Q. That is down on Fleet, isn't it? A. It is not on Fleet, my Lord. It is the corner of George. It is not on this plan, because the sale was not completed when this plan was made; I don't know if the sale has actually been made yet, but it is arranged. Of course that was only a small site for a filling station and the Harbor Commissioners under their policy have limited the number of stations on that street, with all the traffic expected on it, to three, and of course they would sell those three filling stations at high figures.

40 BY MR. TILLEY: Q. Now, Mr. Poucher, Mr. McBrien said that they put values on these properties higher than yours and I think he said that their prices were realized? A. Well they were not in all cases. Mr. McBrien I think said that there weren't any properties dealt in after he placed certain figures on them, later in 1927 at prices that were any less than the figures he placed on them. Well you asked me to look into that and I made a list of the properties sold in 1927, 1928 and 1929 at prices that are less than the figures placed on them by Mr. McBrien.

Q. Have you that list? A. Yes. (Produced).

Q. Have we a copy of that for Mr. Osler? A. Yes.

During those three years the Commissioners only dealt with thirty-eight properties and this list shows ten, or something over twenty-five percent, dealt in at less than Mr. McBrien's figures. Most of the others were higher than my figures, or a number of these were higher than my figures that I put on sometime previously, and some of the sales were higher than either of our figures, considerably higher, because Fleet Street as I said was in a rising market, and on the corner of York Street my valuation in 1926 was about \$250 a foot—

Q. York and Fleet? A. Yes sir, the southwest corner, Mr. McBrien's figure, I believe, shown on his plan was about \$275 a foot, and they succeeded in selling it for over \$400.

Q. When? A. In 1929.

EXHIBIT 52: "Memorandum re "Toronto Viaduct;" list of properties sold or leased by Harbor Commission from 1927 to 1929 at lower prices than prices placed on them by Mr. McBrien in 1927; filed by Mr. Poucher.

Q. Now would you anticipate changes of that kind to take place from your valuations of 1926? A. Oh yes.

Q. Would that surprise you or is that what you would hope for? A. No. I would expect they would increase, all the values of all the properties, particularly in that area from Yonge Street west to Bathurst which was being developed, and as each was sold and industry established it would make the other properties more valuable and more attractive.

BY HIS LORDSHIP: Q. How far north are you putting in that area when you say west of Yonge Street? A. I was speaking particularly of the Harbor Commissioners' area.

Q. I know? A. But there was a general increase in values in about the fall of 1927 up until the end of 1929 in that district south of Queen Street and as far west perhaps as York to Simcoe Street; there were certain sections where there was a particular increase, like University Avenue and College and Yonge, Bloor Street between Yonge and Bay, and Bay Street particularly, any part of Bay Street, and some parts of King Street west of Bay, that is where the movement took place in between 1927 and the end of 1929.

BY MR. TILLEY: Q. That movement took place but in addition you are pointing out that the development below Front Street was coming in and people were buying and that all gave added value? A. Yes.

Just at the time we made our valuation Crosse & Blackwell went in with their factory at the corner of Jarvis and Fleet Streets; they were about the first people, and they started a building and there was quite a bit of publicity about them going in there; and then following that Loblaw's went in and built a big warehouse on the north side.

Q. Of what? A. Of Fleet Street, at the northeast corner of Bathurst Street; and then they got these other industries in there, the Tip Top Tailors—

Q. You said Jarvis; you meant Bathurst, did you? A. Bathurst.

The Tip Top Tailors, a large tailoring establishment, went in there, on the south side of the Boulevard Drive west of the baseball ground.

On the north side west of Bathurst there were the radio companies went in and built one or two large factories and east you had other establishments, Reid & Brown, the steel people.

Q. They were transferring themselves? A. They were taken out from the Esplanade east of Church Street. And all the way down. At York Street we have Yardley's, the English people, soaps and perfumes, they bought the southwest corner of York and Fleet. Then on the waterfront you have
10 at the same time some sales that have pretty well taken up all the available waterfront property now from Yonge Street to Bathurst.

—1.00 p.m. arbitration adjourned until 2.15 p.m.

—2.15 P.M. (WEDNESDAY, MAY 25TH, 1932)

RESUMED—ALL PRESENT:

FRANK B. POUCHER Continued:

EXAMINATION IN CHIEF RESUMED BY MR. TILLEY:

MR. TILLEY: My Lord, I find that the Assessment for 1925 and 1926 was the same as 1924, so that on the Exhibit, if Your Lordship approves, we will just mark at the end: 1924, 1925 and 1926 the same as for 1924.

20 MR. HELLMUTH: That is not with buildings. That is just for land.

MR. TILLEY: Lands and buildings are the same.

HIS LORDSHIP: In 1924 the lands were given \$163,000 and buildings \$17,200.

MR. TILLEY: And that continued down to and including 1926.

MR. HELLMUTH: Yes. Well I mean the \$163,000 is for the land, and the buildings are separate at \$17,200.

MR. TILLEY: I did not say anything about amounts at all; I said continued the same down to 1926.

30 Mr. Hellmuth and Mr. Osler I think both agree now we can get over the difficulty if we produce the deeds from the Registry Office from the Free-lands with reference to their transaction.

Q. What was the price for the Canada Steamship property on the southeast corner of Yonge and Esplanade? A. \$270,000.

Q. \$270,000 in 1909? A. Yes sir.

Q. And what was the trend from 1909 to 1913? A. Well there was an increase between 1909 and 1913 generally.

Q. About what, would you say? A. I Wouldn't like to give a percentage.

40 Q. There was increase during that period; was there any increase afterwards, in your view? A. No, from 1913 on I don't think there was any increase to speak of.

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Q. You haven't any percentage you could give us of what it was for those four years? A. I don't know; I wouldn't like to go into that. I hadn't thought of it, Mr. Tilley.

Q. Well then there was one other property that you said that Mr. McBrien referred to that you didn't touch on? A. Mr. McBrien mentioned the sale of the dockage on the north side of Keating Channel from the Harbor Commissioners to the British-American Oil Company at \$64,000 per acre for the full depth of sixty-eight feet. If you take off the railroad siding easement that went across the north end of the property it was something more than that. I knew about that transaction and it was part of a deal whereby the Oil Company was purchasing from the Harbor Commission immediately across the street a block of land consisting of over eight acres at \$22,500 per acre and in rear of that they bought something over six acres at \$10,000 per acre. It was all the one transaction, all in one deal. 10

Q. What do you mean by that then? A. I mean I don't think they could have obtained the same price from anybody else that they got from the British-American Oil people when they took that site; they wouldn't have obtained the same price from anybody who didn't own the property at the north side of the street.

Q. Then was there anything else? Did you have anything to do with valuing the property that was referred to this morning, the National Iron Works? A. Yes sir. I was asked to value that before the Harbor Commissioners purchased it. About 11.365 acres, I valued it in 1930. The way I valued it was to complete the wall in one block instead of creating slips into it like Mr. Cousins developed it afterwards, and I valued it as a completed proposition at about \$40,000 an acre. It would cost about \$14,500 per acre to build a wall and put in some filling, and I deducted that and arrived at the price slightly more than what they paid for it. The reason it was slightly more than they paid for it, I allowed something for interest while the work was going on. 20 30

Q. What do you say as to the price they paid? Was it a fair value? A. Yes, it was a fair value as of that time, yes.

Q. And would it be altered for 1926? A. No.

MR. TILLEY: That is all, thank you.

CROSS-EXAMINED BY MR. HELLMUTH:

Q. Mr. Poucher, this is—you can correct me if I am wrong—the third arbitration for the Toronto Terminals in which you have appeared as the expert real estate valuator for them? A. Yes sir.

Q. That is the Canada Steamship, the Ewart and now the Boulton? A. Yes. 40

HIS LORDSHIP: Was that an arbitration, the Ewart?

MR. HELLMUTH: Yes, before Mr. Justice Middleton.

HIS LORDSHIP: Was it reported?

MR. HELLMUTH: No.

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Q. Then I notice one of the last things you said was that from 1913 on there had been little or no appreciation in the value of properties south of the Esplanade. Am I correct in that? A. I think that is right, yes.

Q. Well your view apparently was not shared at all by the Assessment Commissioner of the City of Toronto? A. Oh, he increased the assessment.

Q. Yes. That is to say I find that in 1913 the assessment for the land of the Boulton property, Exhibit 51, was \$65,550 and that in 1914 that was increased on the land to \$97,500. That is a very considerable increase, is it not, in assessment from 1913 to 1914? A. Yes.

10 Q. And then I find that in 1915 it was increased again to \$120,450, so that they seem to be going up instead of a stagnation or depreciation in values, so far as assessment was concerned? A. Yes, the assessment was increased.

Q. And then when we come to 1918 the \$120,450 has gone up to \$141,750, and that is again for the land alone? A. Yes.

Q. Still showing a further idea in the city's mind at all events, that that property was increasing in value? A. Either increasing in value or else the original assessments were too low.

Q. Well yes.

MR. TILLEY: Or some arbitrations coming on.

20 A. And in 1922 that \$140,000 odd had increased to \$163,050, so that either the assessments as you say have always been too low or there has been an appreciation in the value of the property in the opinion of those at the City Hall who assess, one or other? A. Apparently, yes.

Q. So that the view at all events is not stagnation, at the City Hall?

A. Well, or else they considered that the assessment was never high enough previously.

HIS LORDSHIP: Did you ever know stagnation to exist at the City Hall in assessment?

30 MR. HELLMUTH: No, my Lord, they generally try to increase the assessment when the land will warrant increase.

Q. In 1909 I see that the property was assessed at only \$27,690. Well let us try another way? A. If you will pardon me I would say of course the Assessment Commissioner would feel quite sure there would not be many appeals against the assessment with the expropriation overshadowing this property.

Q. Oh but he went ahead increasing it from \$27,000 in 1909 to in 1910 \$42,600? A. Yes.

40 Q. And in 1911 to \$62,835, so that there was apparently a steady increase in the assessment from 1909 up to 1922, at which figure it remained in 1926.

Now you I suppose are quite aware that that property in 1896 was leased for some \$2,000? You found that out by the lease? A. 1896?

Q. In 1896? A. I think so, yes.

Q. And in 1920, as of 1917 that property was leased for \$6,000, practically three times that, although certain pieces had been taken out by the expropriation by the railway? A. Of course there was a very considerable increase from '96 on to 1913.

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Q. But I thought you said for thirty or forty years there had been very little appreciation?

A. No sir, I didn't. I said there had been practically no development.

Q. Yes? A. I didn't say there hadn't been any appreciation.

Q. But at all events you recognize, do you not, that from '96 in the twenty-one year period the rent had trebled? A. Apparently, yes.

Q. That showed a property at all events that could be rented, and that was an agreement between owner and tenant without arbitration? A. Yes.

Q. So that apparently the tenant was willing to treble his rental? A. 10
Oh, from 1906, yes.

BY MR. TILLEY: Q. From 1896? A. From 1896, I can show you properties that have increased twenty times in that.

BY MR. HELLMUTH: Q. Quite so. I am not putting this twenty times, I am putting it three. And have you taken into consideration that in the next twenty-one years it might have again trebled? A. Oh that is too much in the nature of a prophecy for me.

Q. Then you haven't taken the potentialities of this property into consideration? A. Yes, I have taken all its potentialities and all its possibilities.

Q. What did you think that property might rent for in 1938? A. 20
A. It is difficult to say. I can tell you what it ought to rent for in 1926.

Q. No, no, I am asking you in 1938?

HIS LORDSHIP: That he couldn't tell you. A. I can't tell you. That is making prophecies. I am not guessing what will happen ten years from now.

Q. But that is a potentiality? A. We might have another world war.

HIS LORDSHIP: How could he tell what it would rent for in 1927, one year after? If he can give you any information all right. He says he can't, as I understand it. 30

Q. Then you can give me no idea what that property would be likely to rent for, I am speaking without any harbor development at all, without this particular scheme, in 1938? A. No sir. It might appreciate in value or may depreciate in value. Nobody can tell.

Q. You don't know? You can't tell? A. No sir.

Q. Well now in the arbitration that took place by the Steamship Company there were 211 feet of freehold frontage, were there not? A. Yes.

Q. And the leases were not taken into consideration because they had run out, isn't that right? A. I think that is right.

MR. TILLEY: By whom? By the Arbitrator? 40

MR. HELLMUTH: By the Arbitrator.

MR. TILLEY: The Reasons do not say that; the witness cannot say.

MR. HELLMUTH: If he knows he can explain it.

WITNESS: I can speak of my own figures.

Q. Well you valued the freehold? A. Yes.

Q. And what did you value the frontage of that 211 feet? A. \$2,000 a foot, I think, from memory.

Q. Yes, and the value per square foot was how much? A. Oh, I have forgotten that now. I couldn't tell you. I might have it here.

Q. Perhaps I can remind you if you don't remember. I will remind you from your evidence there. I thought you said you had put a value on the Old Steamship, this morning, per foot frontage, at the foot of Yonge Street? A. I am saying now I valued it in the arbitration at \$2,000 a foot.

Q. Yes. A. Yes.

Q. But didn't you say that you put a square foot value on? A. This morning? No.

10 Q. You didn't mention that? A. No. I mentioned the new site.

Q. Well the old you didn't mention? A. I didn't mention a square foot value on the old, no.

Q. Would you be surprised if your total valuation there was, less that \$50,000 for filling, \$372,000 as the value of that property? A. I think that is right, after taking off the value of the filling.

HIS LORDSHIP: The 211 feet at what?

MR. HELLMUTH: 211 feet frontage at \$372,000.

Q. That would be \$1.96 a foot frontage, wouldn't it? A. You mean a square foot.

20 Q. A square foot, quite right? A. I haven't figured it out.

Q. Have you any doubt that that would be so, if you put the \$372,000—? A. Well I would have to check it up and make sure. If you say so, if you have got it figured—

Q. Well I have it figured but I may be wrong of course? A. I suppose it would be somewhere in that neighborhood, \$1.96.

Q. So that we have that valued in two ways if we like to take it, or the one method, which works out \$2,000 a foot frontage and \$1.96 a square foot; about, I am saying, if my calculation about that is correct? A. Somewhere close to \$2 a square foot.

30 Q. And in 1926 I think you said that was the peak of that class of property on the water south of the Esplanade, that was the highest price, for that site? A. I said that that was the most valuable site at that time.

Q. Now will you tell me the percentage by which you decrease the value as you go east? First of all we have this property extending 211 feet at the foot of Yonge Street frontage and then the next property with its leasehold property carries it up to Scott Street, doesn't it? A. Yes.

40 Q. Now what percentage do you decrease, because you say you do decrease the property as you go east, by what percentage do you decrease it from Scott Street, we will say, to Church Street, that is the next street? A. Well I didn't value the west side of Scott Street. My valuation on the Boulton is—

Q. I don't want that, Mr. Poucher; I want to know what percentage would be fair to decrease the value from Scott Street up to say the old Canada Steamship property? What percentage would be fair from Scott Street to Church Street? A. I never placed a value on the west side of Scott Street. I don't like dealing in percentages. I believe they are sometimes misleading.

Q. I want you do it, if you will, because I think—? A. I valued the

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east side of Scott Street for a width of about 250 feet at \$1,300 a foot filled out nearly to the New Windmill Line—

BY HIS LORDSHIP: Q. How much? A. The east side of Scott Street, my Lord, filled out more than half way between the old and the New Windmill Lines I valued in that rearrangement of ownership I made \$1,300 per foot frontage.

BY MR. HELLMUTH: Q. And that property abuts upon the Boulton property? A. No sir.

Q. Doesn't it? A. No.

Q. What is there? A. Then the next parcel to the east of that corner 10 piece I valued at \$1,125. That adjoins Boulton and is filled out farther.

Q. Can't you give me the percentage of what the decrease is when you value it at that? A. Well it can be figured out. Do you want between the east corner of Scott Street and the Boulton property?

Q. Yes?

MR. TILLEY: And the west side of the Boulton property, is that what you want?

Q. I want to know what is the percentage that you decrease your \$1.96 or \$2 a square foot or your \$2,000 a foot frontage between Scott Street which it runs up to and the other side of Scott Street? A. It didn't go to Scott 20 Street. The property I valued at \$2,000 a foot didn't go within ninety feet of Scott Street.

Q. It didn't go within ninety feet? A. No.

Q. Then how did you come to make this decrease? On what principle, I want to know, if it wasn't on a percentage basis? A. I didn't work that out on a percentage basis, I took each property as I found it, what I thought it was suitable for and what its reasonable value was, in conjunction with my experience and knowledge of transactions that have taken place.

Q. Is that the best you can give me as to the manner in which you valued it, just without any theory at all about a percentage decrease as you 30 went farther east? A. No, I didn't use a percentage basis; I took each site as it stood there and placed a value on it.

Q. So we get no percentages from you then? A. That can be worked out between Church Street, Scott and Boulton's, if you want it, but I never valued the west side of Scott.

Q. You never valued the west side? A. No.

Q. Was that a leasehold? A. Yes.

Q. What difference did you make between the property on the west side of Church Street and the property on the east side of Church Street? Was there any drop there? A. I increased the property on the west side of 40 Church Street to the extent of \$50 per foot frontage.

Q. Was that the whole difference that you made. One property was 266 or 270 feet east of the Boulton property and the only added amount was \$50 a foot frontage added to the Boulton? A. No, they are immediately across the road, 66 feet between them.

Q. Yes, but I mean one is where it begins 270 feet farther west than

where the other begins, isn't that so? A. Yes. If you start at the beginning, 270 feet, yes.

Q. You made a difference of only \$50 in that? A. \$50. They are immediately across the road and suitable for the same purpose.

Q. Yes, I understand that. Do you make any difference at all when you begin to get farther east? A. Farther east?

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Q. Yes? Where do you begin to make any considerable change? A. Well I took the sale of the property, the third property east of the Ewart property was sold at about \$740 a foot and they gradually depreciate from
10 there easterly except for the influence of corners.

Q. And would you tell me, valuing the Yonge Street old Steamship property at \$2,000 a foot, when you get down, or how far you have got to get down to when you get \$500 or \$600 a foot frontage? A. Well I don't know how far you get down to \$500 or \$600 a foot; that would be down near Berkeley Street if we got that low at all, but they are properties suitable for entirely different purposes.

Q. Is it a steady decrease? A. No.

Q. Or a quick drop? A. I think it is a quick drop after you leave the property on the corner of Yonge Street, it is a fairly quick drop. After you
20 get east of Scott Street it is a fairly steady decline from the Boulton property easterly.

Q. A fairly steady decline from the Boulton property easterly? A. Yes.

Q. You could not put that of course in a percentage at all? A. Oh no. I don't think percentage is the proper way to deal with it.

Q. You also valued, didn't you, in 1920, the right of way of the old Grand Trunk when it was being taken over? A. Yes. I mentioned that this morning.

Q. You took that in sections, didn't you? A. Yes.

Q. And the first section you took was from Yonge Street to Scott Street?
30 A. Yes, I think so.

Q. And that, am I right in saying, you valued at \$4.75 a square foot?
A. Yes.

Q. Then you took the next strip from Scott Street to Church Street, this side of Church Street, that is the west side of Church Street? A. Yes.

Q. And then you dropped to about \$4 a square foot? A. Yes.

Q. That would be about a sixteen percent drop? Sixteen percent drop from the other, would it not be, from \$4.75 to a trifle under \$4? A. Yes, about that I should think.

Q. And then when you cross Church Street you drop to \$2.85? A. Yes.
40 That extended all the way to Jarvis Street.

Q. I know, but you took that from Church Street to Jarvis Street at a value of \$2.85, so that that was a longer stretch than the other, because the others were two very short stretches? A. Fairly short.

Q. Well we will get the exact distance: The part that was valued by you at \$4.75 was from Yonge Street to Scott. How many feet, can you tell me, would that be?

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HIS LORDSHIP: Does this old right of way of the Grand Trunk run south of the Esplanade?

MR. HELLMUTH: It runs along the Esplanade.

WITNESS: Really the southerly part of the Esplanade, my Lord. The Esplanade was 400 feet wide.

MR. OSLER: The north end of all these properties.

MR. HELLMUTH: Yes, until the C.P.R. came and took another bit off.

Q. If you could, give me that distance, please, Mr. Poucher, from Yonge to Scott first—from the east side of Yonge to the west side of Scott? A. About 300 feet.

Q. That was \$4.75 per square foot. Now from the east side of Scott to the west side of Church? A. About 530 feet.

Q. And then from the east side of Church to Jarvis, did you say? A. Jarvis, yes.

Q. How far? A. About 620 feet.

Q. Now you don't show anything like the same proportion of depreciation to that from \$4.75; the drop in that case is one in which the Boulton property is situated, that is from Scott to Church; you show only a depreciation of some sixteen percent. Why would you have a different proportion in the land south of it than in that particular strip? I am not taking that the values might not be quite different for the large property and the small? A. Oh yes, the values are entirely different.

Q. Why did you? A. I will tell you why: In part of that strip from Yonge Street to Jarvis that right of way was suitable for a use for the same purposes, we considered it to any person, as property on the north side of the Esplanade, they both faced on a paved street and were both suitable for the type of warehouse that you would get north of the Esplanade. On the south of the Esplanade the difference between Yonge Street and the properties easterly was that the property at Yonge Street was suitable for an entirely different purpose than the property east of it.

Q. Haven't you said already that both the Boulton and Ewart properties were suitable for warehouse sites, passenger and freight terminals and that? Haven't you already said so? A. No. I said the difference is that the property at Yonge Street was suitable for an entirely different purpose than the property at Church Street. We took this property of the right of way in continuous strips and if we had been valuing the 200 feet on either side of Church Street the property would not have made any more difference than I have made now.

Q. Well, Mr. Poucher, you were asked in the Canada Steamship Arbitration this question, at page 73 of the copy I have:

"Q. Now would you say, Mr. Poucher, there was anything comparable in that property in that situation east of Church Street to a passenger terminal at the foot of Yonge Street? A. It was west of Church Street, Mr. Rowell." You were referring to the Boulton property.

"Q. West of Church Street? A. Oh I think it may be comparable, yes; there was a property with a width of over 200 feet extending from the Esplanade to the New Windmill Line.

“Q. The Old Windmill Line you said? A. Well the whole property extended to the New Windmill Line; this renewal of lease specifically only describes the land to the Old Windmill Line but the lessees are still using the whole of the property.

“Q. We are dealing with the lease, Mr. Poucher? A. But that property as a whole in my opinion could be compared to the corner of Yonge and Esplanade.

10 “Q. As a passenger site? A. Yes. If the corner of Yonge Street and Esplanade was not available for passengers for any reason why I don't see why they couldn't be placed at Church Street just the same as the Canada Steamships now are doing business at York Street instead of Yonge.”

Did you make these answers? A. Yes. Of course if Yonge Street weren't available passenger traffic might have gone to Church Street, but with Yonge Street available there was no demand for it.

Q. You say no demand for it, but what you say is those properties are comparable? A. Yes.

20 Q. They are comparable for that purpose; that is to say if anyone wanted to come in, any rival wanted to come in of the Canada Steamship's, that as a property it might be used for that purpose? A. It might have been used if Yonge Street were not available.

Q. I mean if a competition arose in the steamship business, leave out all these new improvements and everything, if a competition arose there, you have said and you still say that that is a property that could be used for that purpose? A. If that is so, yes—at a price.

Q. So that you don't put it down in the class that could be used only for a coal dock? A. No. I didn't say that.

30 Q. No, of course you didn't? A. It all depends on the demand, but in my opinion there wasn't any demand for further passenger terminals and was not likely to be.

Q. I understand that. Then do you not say again that there are many purposes to which this property could be put outside of a passenger terminal or a freight terminal, or are there not many many kinds of work for which this site would be suitable? A. Under old conditions there were a number of purposes for which it could be used, yes.

Q. Under old conditions, quite so, and of course we are dealing with this under old conditions. You haven't valued this on the basis of taking into account the Harbor Commission's scheme, surely, you valued it as of 1926? A. Oh absolutely.

40 Q. Without taking into account anything connected with the Harbor Commission's Scheme? A. Well I don't know what you mean by not taking it into account. I knew at that time in 1926 the Harbor Commission had developed property west of Yonge Street entirely independent to this and they had developed a property in the eastern industrial district entirely independent of this and they were on the market in 1926.

Q. Yes. And were you taking into account that this property was either

improved or depreciated by reason of this scheme? A. No, I didn't consider it that way.

Q. Then did you consider it as though conditions remained as they were prior to the expropriation, that they had a right to use this property irrespective of anything that the Harbor Commissioners might do? That is that they were just as much masters of it as they had ever been? A. Yes.

Q. Well now then I see that in the Ewart Arbitration at page 378 you say this, that all these properties are about suitable for the same class of business? A. All those east of Scott Street I think I said.

Q. That is right, of course, it is east of Scott Street: "But after all apart 10 from a passenger terminal there are none of these properties east of Yonge Street including the properties on Church Street that are not—they are all about suitable for the same class of business; some more valuable than others, but they would be suitable for manufacturing sites, warehouse sites and that sort of thing?" A. Yes.

MR. OSLER: He said east of Yonge Street. He qualified that just now.

Q. East of Church Street now? A. No, I said east of Scott Street.

Q. "East of Yonge Street?" A. Yes, after you get past the Yonge Street site.

Q. You didn't say that then? A. Well that was quite obvious, I was 20 mentioning the Yonge Street site. I never suggested those properties were suitable for the same purpose Yonge Street site was suitable for.

Q. We were comparing them here? A. Of course you compare them. I put one at \$2,000 a foot and the other at \$1,050 a foot.

Q. That figure of \$2,000 a foot you put on it was not the accepted figure, was it? A. Accepted by whom?

Q. By the Arbitrator? A. No.

Q. He put \$3,081 a foot, didn't he, on it? A. I don't know what he put on it now. I don't remember that. He had a lot of other matters to consider beside what I had. 30

Q. What is that? A. He had other matters to consider beside what I had to consider.

Q. He had to get the value of the land, hadn't he? That was what the Arbitrator had to do? A. Oh yes. He was to get the compensation the Canada Steamships were to be paid for the taking of their property.

Q. Yes. That was for the value of their land, just the same as Boulton is here to be paid for the value of his land? A. Oh I suppose so, yes.

Q. And do you know that the value, as against your \$372,000, that was put on it by the Arbitrator was \$650,000?

MR. TILLEY: On the land? 40

MR. HELLMUTH: On the land.

Q. Or \$3.42 per square foot? Did you never have the curiosity to find that out? A. Oh I read it at the time.

Q. Yes. Would you question those figures? A. Question them?

Q. I mean do you question that those are what the Arbitrator found?

A. Well if it is in the award why no, how could I question it?

Q. Well then you don't of course agree with that at all? A. No.

Q. No, of course you don't; he has given more than fifty percent over your \$372,000? A. Yes. He went a long way past what I thought the property was worth.

MR. TILLEY: What was a poor Arbitrator to do, he said.

WITNESS: The Arbitrator in the Ewart property immediately across the road—

Q. We will come to that in a minute, I am going to give you the benefit of the Ewart just as I gave you, if it may be said so, the detriment of the other. But even in the Ewart case you put \$200,000 was the total, in the Ewart case?

10 A. I beg your pardon?

Q. You put \$200,000 as what you called a generous price in the Ewart case? A. A general price?

Q. A generous price? A. Generous, yes.

Q. Didn't you? A. Yes.

Q. And \$235,000 was what the Arbitrator found there? A. Yes. He stated he awarded something—in his award—that he allowed something more than the value of the land.

Q. Did he? A. He gave something for forcible taking.

20 Q. Oh, you have allowed nothing at all for our being dispossessed in this case, for forcible taking? A. I am leaving that to His Lordship.

Q. You are not allowing anything for forcible taking here, you are just taking as if it were a willing sale between vendor and purchaser I assume?

A. A fair generous value of the property.

Q. As generous as the other? A. Yes.

Q. Both in the Steamships and in the Ewart? A. They are all based on that same basis, as a result of my experience and my knowledge.

Q. I see, I understand.

30 Now in Mr. Boulton's evidence we have what the Canadian Pacific Railway paid for the first strip that they took off that property. You will remember that? A. Yes.

Q. Do you remember what that was per square foot? A. No.

Q. You remember in the Ewart case that they also had a bit taken off their property by the C.P.R.? A. Yes, Mr. Hellmuth.

Q. There were two strips taken off; in 1887 they expropriated a strip of 28 feet in width.

HIS LORDSHIP: The Ontario and Quebec.

MR. HELLMUTH: Yes, at the northerly end of the lands.

40 Q. And they paid \$45 per foot of frontage, paying \$9,585 for that, and we needn't bother although they didn't pay the interest for a long time. Do you know whether that was reduced, or have you got what that was in square feet?

A. No sir. I didn't pay any attention to that. I don't think it has any bearing on the value of the property.

Q. Then you paid no attention whatever to what they paid for that property or that piece of property in 1887? A. Not the slightest. There would be severance to be taken into consideration there and possibly buildings for all I know.

MR. TILLEY: That award was because they made the property so undesirable in 1926.

MR. HELLMUTH: No, I don't think so, because there was another piece taken.

Q. And in 1919 there was another strip of 24 feet taken. The other was 28 feet, so it would be a little larger.

HIS LORDSHIP: I have it 54 feet. Is it only 24?

MR. HELLMUTH: The whole, altogether; the two strips are 54, but the second strip taken in 1919 was only 24 feet.

WITNESS: 24 feet 6 inches. 10

MR. HELLMUTH: 24 feet 6 inches, covering an area of 5,218½ square feet, and for that, which was a smaller piece than the first for which they had paid \$9,000, they paid \$17,000 more.

Q. Did you take that into account? A. No. There was further severance.

Q. But wouldn't that show an increase between the 1887 price, how it had gone up in proportion to what it had been? A. Not altogether. I think we all admit there was a big increase—

Q. Why didn't you take it into consideration? A. It hadn't the slightest bearing on the value of this property, what a railway company would have to pay to come along and cut off the whole frontage in the first instance and lay tracks on it and pay for severance, possibly for buildings; then they came along again and took another bite, laid more tracks to interfere with the entrance to the property, create further severance, and their interference with the access has absolutely no bearing on the property at all in my estimation. 20

Q. And no bearing as to the proportion by which it had been increased? A. No.

Q. And you paid no attention to it whatever in your valuation? A. Not the slightest.

Q. All right. In the fall of 1926 you made a valuation with Mr. Bosley of the Harbor Commission's properties and placed a valuation upon those properties? A. Yes. 30

Q. And in the spring of 1927 Mr. McBrien, who had gone upon the Board of the Harbor Commission, made a revaluation of that? A. Sometime early in 1927, Mr. McBrien said; I didn't know about his revaluation till he mentioned it here the other day.

Q. So you hadn't kept in touch with that at all? A. No, not with his revaluation.

Q. But he did make a revaluation in 1927? A. Well Mr. McBrien said so; I couldn't find any trace of it in the Harbor Commission office. 40

Q. You haven't seen that map at all? A. I saw the maps he put in here showing some of the properties with the prices he placed on them.

Q. And did you hear him say that those valuations he had put averaged thirty-three and a third percent above the valuations you had made? A. He said that, yes.

Q. You heard him say that? A. I think so.

Q. Have you examined that at all to see whether it is correct or not?

A. No, because there is no record of Mr. McBrien's complete valuation in the Harbor Commissioners' office.

Q. No complete valuation? A. No.

BY HIS LORDSHIP: Q. Was he authorized by the Commission to revalue it? A. I don't know that, my Lord. I didn't know anything about his revaluation. I understood shortly after our valuation was made, when things began to move a little, in 1927, that the Commissioners increased the prices over and above the figures we had placed on for the working prices or sale
10 prices of their property, and then when I came here I found Mr. McBrien states that he made a complete valuation of the property, and of course I have to accept that, but I don't know anything about it.

BY MR. HELLMUTH: Q. Well may I assume that the valuations that you put on the property at that time in 1926 were to the best of your opinion correct valuations at prices that it might be expected that they would be sold at?

MR. TILLEY: Just a moment, that is two questions in one: Is that your valuation at the prices at which you might expect they would be sold? I don't know which he is to answer.

20 Q. First of all was yours supposed to be a fair valuation? A. Yes.

Q. And was it at prices that you expected might be realized? A. At that time and when we went on are different conditions.

Q. I am asking only one question at a time, please. A. Well, but, Mr. Hellmuth, nobody could expect to sell twenty-four or twenty-five million dollars' worth of property over the next six months; the valuation that I placed on at that time I considered to be fair and I would expect as conditions changed, your market improved in certain districts, why you would expect to get higher prices in selling the property than our valuation over a course of time.

30 Q. And how many hundred acres were there, or thousands? A. Oh I couldn't tell you.

Q. But a great many, weren't there? A. Yes.

Q. And there might be no demand whatever for them? That was a possibility? A. Yes. Some of the properties I valued then would be difficult to sell at the valuations I placed on them at that time.

Q. So that take it by and large what you were putting was your honest opinion of what those properties might realize at that time, what they were worth at that time?

40 MR. TILLEY: If they had been sold. A. What they were worth at that time.

Q. And as a matter of actual fact within a very short time, within 1928 and 1929 very considerably increased prices were received from some of these properties? A. Oh yes from some of them, quite naturally.

Q. For instance did you value the property that was subsequently sold to the Toronto Elevators Limited close to the foot of Spadina and the Bay? Did you value those two and one-quarter acres at \$35,000 per acre? A. Thirty-nine?

Q. \$35,000 per acre? A. At the foot of Spadina Avenue, did you say?

HIS LORDSHIP: Toronto Elevators property.

Q. There were two and one-quarter acres sold and two and one-quarter acres leased on the same valuation. I think your valuation of that was—?

A. I will have to look it up here.

Q. All right. A. (After referring to a plan). I valued part of the property at \$35,000 per acre and part of it at forty.

MR. TILLEY: It is just east of Spadina.

WITNESS: East of Spadina on the south side of the Queen's Quay.

Q. How much of that did you value at thirty-five and how much at 10 forty? A. I valued 3.02 acres at thirty-five and 1.29 acres at forty.

Q. And was that sold and leased on the basis of \$50,000 an acre in 1928? A. In March, 1928, yes, \$50,000 per acre.

Q. At \$50,000 an acre? A. Yes.

BY HIS LORDSHIP: Q. You valued it at thirty-five and forty and it was sold for how much? A. Fifty.

Q. In 1928? A. Yes, at the 1st of April, 1928.

HIS LORDSHIP: Of course in 1928 we were coming into a very high valuation for everything, which we all know.

MR. HELLMUTH: I think 1929 was the top. 20

HIS LORDSHIP: Well no, that was the top.

MR. HELLMUTH: That was the ridge.

HIS LORDSHIP: As I remember it.

MR. HELLMUTH: Well we might have sold our property in 1928 or 1929.

HIS LORDSHIP: Prices change with conditions. It depends on the state of trade generally, unless it is some particular piece of property that some person wants for some particular thing.

MR. HELLMUTH: Your Lordship, I would like to give a few more of these:

BY MR. HELLMUTH: Q. Dominion Timbers, do you know that property, 30 on the north side of the ship channel, about half a mile east of Cherry? A. Yes, that is west of the turning basin I think.

Q. Yes? A. We valued these properties in accordance with these plans—

BY HIS LORDSHIP: Q. Where is Cherry Street there? A. Cherry Street, my Lord, is down here (indicating); this is the eastern industrial area.

Q. Where is Mr. Hellmuth asking about now? A. This property is here, down near the turning basin; I haven't got an exact map here; we valued these properties in accordance with these plans supplied us at the time and afterwards some of them were sold in accordance with different plans, 40 other streets were closed.

BY MR. HELLMUTH: Q. What did you value it at? A. Dominion Timbers, yes, you want to know what we valued it at?

Q. Yes? A. I can't tell exactly, because it wasn't sold in the same way as we valued it, the same layout.

HIS LORDSHIP: We are just asking what you valued it.

Q What did you value the 3.385 acres at? A. I don't think I can tell you from these plans. I might have something else I can tell you from. Because the property was not sold the way it was originally valued on these plans.

Q. You valued it at so much per acre here; then you can tell me whether that is correct? A. It was valued on the waterfront at \$25,000 per acre and the inside land ran about \$12,500 per acre.

Q. Will you tell me on the whole 3.385 acres what the value of that was by adding those figures together? A. No, it would take some working out.
10 I may have it here for you. I am not sure. Because it was not sold in the same way it was valued; it was a different layout. I may have it here.

Q. I am told, and you can tell me whether I am right, that there were 3.385 acres altogether in that property and that the whole of it was valued by you? A. Yes, it was valued by me; at least the same land was valued by me, but with different type of layout. For instance I am not sure how much waterfront property went with that 3.385 acres, because it doesn't show on these plans.

Q. But doesn't it show your total valuation for the three acres odd adding them together? A. No, because it was, the 3.385 acres, valued on a different
20 layout to what it was sold; it was a different 3.385 acres to what we valued.

Q. You say then that the 3.385 acres that you valued was not sold to the Dominion Timbers? A. We valued it in one way or another but we didn't value it in that 3.385 acres.

Q. Did you not value the 3.385 acres? A. I don't know that I did. Part of it was street I think when we made our valuation.

BY HIS LORDSHIP: Q. Did you make the final valuation for the Dominion Timbers purchase? A. Well I would know about it.

Just a second, I may have something here, but there are a lot of these properties down there were not sold on the same layout that we valued them.

BY MR. HELLMUTH: Q. What do you mean by the same layout, because
30 I would like to know? A. We valued them in accordance with certain plans; then when they would come to sell they would close some streets and open others, so that we didn't value the 3.385 acres in the same way as the property was sold and there would be perhaps more waterfront given with that 3.385 acres than there was with the land that we valued. It was sold at \$75,944.80.

Q. I am told that your valuation of that was, on that 3.385 acres, \$15,000 per acre? A. No. Part of it was \$25,000 per acre.

Q. I know that, but others were down at eleven or twelve, and bringing the whole amount which was actually sold in one block to a total of \$15,000
40 per acre. Will you say that is incorrect? A. I don't think it is. I couldn't tell you without taking a plan of exactly what they got and comparing it with the property I have valued.

BY MR. TILLEY: Q. You said "I don't think it is." My friend asked you if his information was incorrect? A. I don't think mine was valued at \$14,000.

BY MR. HELLMUTH: Q. I thought you said you were in touch with all the transactions that had taken place on the harbor front? I certainly took

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that down? A. That is quite right; that is the reason I can tell you the price that property was sold at.

Q. But can't you tell me what you valued it at? A. No, because I have told you it was valued on a different basis and on a different layout.

Q. I don't care what the basis was. Was 3.385 acres that was subsequently sold to the Dominion Timbers valued by you on any basis whatever?

A. Yes. Part of it was valued at \$25,000 per acre and part of it at \$12,500 per acre.

Q. And same layout? A. No.

Q. Will you say then that your total valuation of that property didn't average \$15,000 an acre? A. I can't tell. I would have to compare the plans of the two properties, the two holdings. 10

Q. Do you know what your valuation of the whole was, adding them together? A. No, because I didn't value that exact 3.385 acres; it was laid out in a different manner when I valued it to what it was sold at.

BY MR. TILLEY: Q. Is that the same identical parcel? Do you mean it is not the same parcel? A. It is not the same identical parcel.

Q. Do you mean that? A. We didn't value it on the same basis, according to the same plan on which it was sold.

Q. Is it the same 3.385 acres that was sold to the Dominion Timbers that you placed a valuation upon? 20

HIS LORDSHIP: Never mind about the conditions.

WITNESS: Well, my Lord, I can't—

Q. Yes, you can tell him that it was sold differently to 3.385 acres which—
A. I can't tell; it is part of a large block of property.

Q. That is all right. A. You see, my Lord, I will tell you a number of reasons: We valued the waterfront property with a certain depth and then when it was sold, for instance right in that district, whether it is the same property or not I can't remember exactly where they went in that district, we valued land 200 feet back from the face of the dock wall at \$25,000 per acre and the inside at \$12,500 per acre; well when they came to sell that property they sold the wharfage for a depth of only 150 feet at \$42,000 an acre and the inland at fifteen. Now you see that to make a calculation between the difference of placing 200 feet of depth on the dockwall at the high price and placing 150 feet in depth at the high price you would have to find what they actually bought. And then there was a street in there that was closed. That 3.385 acres very likely includes a street that we didn't value at all, naturally, because it was a street on our layout. That exact 3.385 acres may not have been valued at all; part of it was street when we valued it. 30

HIS LORDSHIP: I think we have that pretty clearly established. 40

BY MR. HELLMUTH: Q. Do you know the Reid & Brown property near Bathurst? A. It is on Fleet Street.

Q. Yes, on the south side of Fleet Street? A. Yes.

Q. Did you value that property at \$37 per foot frontage? A. I valued it at \$25,000 an acre.

Q. \$25,000 an acre? It was 670 feet by 62, wasn't it? A. 64.

Q. Well did you value on a foot frontage basis? A. No.

Q. Never? A. No.

Q. You valued it on acreage basis? A. Yes.

Q. Of \$25,000? A. Yes.

Q. It sold for \$50,000, didn't it? A. I couldn't say.

Q. \$50,250?

BY HIS LORDSHIP: Q. These are 1926 valuations? A. That was my valuation in 1926 on an acreage basis; I don't know what it comes out to on a foot frontage.

BY MR. HELLMUTH: Q. Just double what your valuation was, or very
10 nearly so? A. I couldn't say. I would have to figure it out.

Q. Well just do so, please?

HIS LORDSHIP: Does this help me very much, Mr. Hellmuth? I don't want to interfere. But a property purchased in 1926 for \$25,000 or so and in 1928 it may be sold for \$50,000 or \$75,000; it all depends upon conditions.

MR. HELLMUTH: Quite so, my Lord, but I am now showing, or endeavoring to show that this witness minimized values in 1926.

HIS LORDSHIP: I would like to know what object he would have in doing it in 1926. What object would he have in minimizing values?

MR. HELLMUTH: I am attacking his judgment first of all.

20 HIS LORDSHIP: You are comparing his judgment on conditions in 1926 to what property which he valued in 1926 sold for in 1928.

MR. HELLMUTH: Yes. Well, my Lord, now I am challenging his values on our property in 1926.

HIS LORDSHIP: What your own property is worth to you. Take any property, a man might buy in 1926 for \$2,000 an acre and sell it in 1928 for \$4,000 an acre.

MR. HELLMUTH: I am going on to sales in 1930 and 1931.

HIS LORDSHIP: I am willing to listen to them but I am just wondering how this is going to assist me.

30 MR. HELLMUTH: Your Lordship will have to judge I take it between the evidence of these values given by Mr. McBrien and the evidence given by Mr. Poucher so far as values are concerned.

HIS LORDSHIP: Absolutely.

MR. HELLMUTH: Now if Mr. Poucher's figures that he placed on these properties are not the figures that were realized and the figures that Mr. Poucher placed on these properties were not followed it shows—I don't want to argue the case—a pessimistic or erroneous view of the values of these properties and in that way I submit these matters, my Lord.

40 HIS LORDSHIP: Very well, I will not interrupt any more; I just wanted to see how it was going to assist me.

WITNESS: No, it is quite explainable; these properties in Fleet Street were rising in value rather quickly at that time. In addition to that the property was limited—

Q. I wasn't asking you that.

MR. TILLEY: Let him answer.

MR. HELLMUTH: No, he is not answering my question, I am not going

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to let him answer. I am going to ask questions and not have speeches from the witness.

Q. I am asking about that property did you value it at \$25,000 and was it sold in 1928 for \$50,000? A. Yes, I find approximately that is right, but there is another reason for that.

Q. I don't want the reason.

HIS LORDSHIP: Just answer his questions, Mr. Poucher.

Q. Yes, just answer my questions, please.

HIS LORDSHIP: That is the Reid & Brown.

MR. HELLMUTH: That is Reid & Brown, yes. 10

Q. Then the Victoria Paper & Twine on Fleet Street near John, it is near the center of the block, also 1928, that is 84 feet, was sold on the foot frontage basis. Did you value that in 1926 at \$150 per foot frontage? A. A short distance west of York Street I believe. No, my valuation was \$200 a foot.

Q. And did it sell for \$275 per foot frontage? A. \$275 in 1928, yes.

BY MR. TILLEY: Q. And what did you value it? A. I valued it in a large block, Mr. Tilley, at \$200, 554 feet \$200 per foot; this company bought 84 feet of that and paid \$275 a foot a year and a half later.

BY MR. HELLMUTH: Q. Now will you look at Yardley's, 80 by 130, sold 20 in 1929, on the corner of York and Fleet Streets. What was your valuation of that? A. \$250 a foot.

Q. And did it sell for \$425? A. \$425, corner of York Street. There was a new condition had entered into it there.

Q. You may give those later; I just want to get your valuations, please, at present? A. Yes.

Q. Then do you know the Samuel Benjamin Limited property, Fleet Street on the south side, near Bathurst, 300 feet frontage with a 90 foot average depth and on lease? A. That is called the King-Spadina Company.

Q. Samuel Benjamin Limited? A. Was that in 1929, Mr. Hellmuth? 30

Q. Yes? A. It is not under that name here.

Q. Do you know the property? A. I think I know about where it is.

Q. Fleet Street south side near Bathurst; east of Reid & Brown? A. A. Oh yes, there is a small parcel there broken in two by railroad sidings apparently.

Q. Yes? Well did you value it? A. We valued it at \$25,000 an acre.

Q. Well did you value any of it on a \$43 a foot frontage basis? A. No. I don't think it can be— Oh, east of Reid & Brown, I beg your pardon; yes. 40 We valued a block there 780 feet long part of it at \$25,000 an acre and part of it at \$150 a foot at the corner of Spadina and these people bought 400 feet I believe, I presume the westerly 400 feet, at \$125 a foot in 1929.

Q. Did you value any of that at \$43 a foot? Does that work out at \$43 a foot frontage? A. Oh I couldn't tell you.

Q. Do you say you can't tell me, with your experience you can't tell me

whether you valued some of that at \$43 a foot frontage that sold at \$125? A. I can work it out for you.

HIS LORDSHIP: Just while he is working it out, Mr. Hellmuth, it was 780 feet, was it?

WITNESS: The parcel we valued was 780 feet.

HIS LORDSHIP: And how much was sold?

MR. HELLMUTH: 300 feet frontage was sold with a 90 foot average depth; sold, I have, at \$125 a foot frontage and valued I take it at \$43 a foot frontage.

10 WITNESS: The sale doesn't jibe with what I have got. I have here that they bought 400 feet frontage, the list of sales from the Harbor Commission.

Q. Have you that now? A. The quickest way to work it out, take 400 feet sold for \$37,500 and that is about three-quarters of an acre and we valued about \$20,000 I would say and it sold for \$37,500.

Q. All right, thank you. That will do? A. In 1929.

BY HIS LORDSHIP: Q. This was sold in 1929? A. Yes.

BY MR. HELLMUTH: Q. There is one other in 1929: Do you know the Parker Pen Company Limited? A. Yes.

Q. Fleet Street between York and John? A. Yes.

20 Q. What did you value that at a foot frontage? \$150? A. I don't know the exact location; we valued some of the land along there at \$150 and some of it at \$200.

Q. And it sold at \$350, didn't it? A. I don't recall. No, that was in 1930.

Q. Well I have 1929; perhaps I am wrong about the date? A. In 1930 sold for \$350.

Q. Yes, I see. And what do you say you valued it at? Some at \$150 and some at \$200? A. I think that piece we valued at \$200.

30 Q. And it sold for \$350. Well now in 1930 have you the British-American Oil Company Limited, sold in November 1930, a dock site on the Keating Channel 600 feet by 68? A. Well that was sold with considerable other property.

Q. But you remember that particular piece there was a value placed on that by you? A. Yes, it was a part of the one deal.

Q. Yes, but the value placed by you on that was at \$43.20 per foot or \$50,000? 1,156 feet at \$50,000, isn't that right? A. My valuation was \$50,000.

Q. On 1,156 feet I think? A. Yes. That is the 1926 valuation.

Q. Yes. And that was sold for \$60,000? A. Yes, in 1931.

Q. In 1930, November 1930? A. Well it didn't go through till 1931.

40 Q. Half of it, 600 feet by 68, was leased on a basis of \$60,000 for that, and you valued the whole property twice its size at \$50,000? A. No, per acre.

Q. Well I know, and one-half of an acre was leased on a basis of \$60,000? A. Per acre, yes. I valued it at fifty in 1926; it was leased to British-American Oil in 1931 on the basis of sixty thousand an acre.

Q. Let us understand this quite clearly, please, because I don't want myself to be confused, nor do I want you to be confused: I understand that

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you valued 1,156 feet at \$50,000 and that about one-half of that, 600 feet, was leased on a basis of \$60,000 for that 600 feet? A. No, you are wrong.

Q. All right, correct me; I want you to give me the figures then? A. I will try and find them for you. No, it was \$50,000 per acre.

Q. You valued it at \$50,000 per acre? A. Yes.

Q. And half an acre was sold, or what was equivalent to half an acre was leased on a basis of sixty thousand for that half acre, isn't that right? A. No.

Q. What was leased? A. There was a piece leased to the British-American Oil on a basis of about \$64,000 an acre in 1931, the same property.

Q. \$64,000 an acre? A. Yes, the same property we valued in 1926 10 at \$50,000 per acre.

Q. Then it is incorrect to say that there was 600 feet by 68 leased at a basis of a value of \$60,000? A. Yes. \$100 a foot. That was about sixty-four thousand per acre; we valued it at \$50,000 per acre.

Q. Is your valuation by acre? A. Yes.

Q. There is no valuation of foot frontage? A. No.

Q. On yours? A. Per acre. We valued the property immediately adjoining it at fifty thousand per acre.

Q. What would your valuation of fifty thousand per acre work out at on a foot frontage for that property? 20

HIS LORDSHIP: On the 1,156 feet?

MR. HELLMUTH: No, it was only 600 feet by 68 that was sold.

Q. I am told the 1,156 feet were valued at \$50,000? A. Well that is incorrect. It was \$50,000 per acre.

BY HIS LORDSHIP: Q. One-half was leased on a basis of \$64,000? A. Per acre.

MR. TILLEY: Mr. Hellmuth, you are figuring 68 by 600 as being half an acre, are you?

MR. HELLMUTH: No.

MR. TILLEY: It is pretty close to an acre. 30

MR. HELLMUTH: But the block I have that he valued was not 600 by 68 but 1,156 by 68 at \$50,000, which would be an acre, and I am instructed that 600 feet or about one-half of that, a little more than a half, sold alone for \$60,000.

HIS LORDSHIP: Sixty-four thousand.

MR. HELLMUTH: No. That is what the witness was saying; I am asking him to check it.

Q. You said it was leased on a basis of a hundred a foot front? A. That is what it was leased at.

Q. Well then 600 by 68, wouldn't that—? A. Our valuation was 40 nearly \$80 a foot frontage; sold on a basis of a hundred dollars.

Q. I can't see that, Mr. Poucher, and I would like you to just explain it to me. 600 feet by 68 feet would be about half an acre, would it not? A. No.

MR. TILLEY: Almost an acre, Mr. Hellmuth.

WITNESS: Three-quarters to an acre. There are 40,800 square feet in 68 by 600 and 43,560 feet in an acre, so there is very nearly an acre.

Q. And you valued that you say at what? A. \$50,000 an acre.

Q. And it was sold at what? A. About \$64,000 per acre.

BY HIS LORDSHIP: Q. And that was sold in 1930? A. 1931, my Lord; early in 1931.

BY MR. HELLMUTH: Q. Then you have the British-American Oil Company sold in 1931 on the corner of Fleet and George, 70 feet by 150? A. Yes.

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Q. Was that valued by you at \$1 per square foot? Is that right? A. No, it was valued a little higher. At the southeast corner of George. Or 10 which corner is it?

Q. Corner of Fleet and George? A. Yes, the north side, we valued that at a dollar a square foot.

Q. And it sold for \$2.50 per square foot, didn't it? A. Yes, for a filling station.

Q. Yes, but it did sell for that price? A. Well the deal hadn't gone through yet; I imagine it is through now. It has been arranged.

Q. Now you refer to the price at which the new Canada Steamship site was sold by the Harbor Commission to the Canada Steamship. \$1,000,000 wasn't it? A. \$1,000,000. That is for the site and the shed to the west of 20 it.

Q. And all the dock walls included? A. Well, they had the use of the dock wall, yes.

Q. Do you know at all what the cost of those dock walls ran to or was that a part that you knew of the transaction? Did you know that the site with its improvements had cost over the million dollars? A. No, it hadn't cost anything of the kind.

Q. What had it cost? A. The million dollars that it cost to put those walls in there would have to be partly absorbed by the land which was retained to the north, including the street and the industrial sites to the 30 north.

Q. Do you know what it cost to put those there? A. Put the walls there?

Q. Yes? A. Well those particular walls have a cost somewhere between \$250 and \$300 a running foot.

Q. And how many feet were there, over 3,300 feet?

MR. TILLEY: Including the slips?

MR. HELLMUTH: Yes, I am talking of the slips.

Q. Well these walls would have cost \$990,000 alone, wouldn't they? A. Probably, yes, but then you can't absorb that in the site, because those 40 walls helped to retain all the land to the north that was made marketable on all the streets.

Q. I know, but the Canada Steamship paid only, for the use of those docks and slips and the land that they had; they paid only \$1,000,000? A. Yes. That included a shed too.

Q. And there was a shed thrown in as well? A. Well it wasn't thrown in, they paid a good value for a storage shed, I believe.

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Q. Was the storage shed worth \$125,000 or thereabouts? A. Well, considerable value; I have forgotten the figure.

Q. Would you say that that was a ridiculous value to put on, \$125,000?

A. Oh I don't remember. There was a value placed on it but I don't remember what it was.

Q. So then as a matter of fact the Harbor Commission at all events spent more money upon the property that went to the Canada Steamship than the Canada Steamship actually paid them for, is that it? A. No, nothing of the kind. The money that was spent on that, property which had to be sold to the north to the extent of several hundred feet, the streets and everything to be created, had to absorb the cost of that wall which retained the land. 10

Q. But the land which was actually conveyed to them, with the wall and everything that went to the Canada Steamship, all that was conveyed to them, except the strip around the front of I forget how many feet or inches, which they kept themselves as a bulkhead, so that it was for that money had been spent? A. Yes, the money had been spent not only for that purpose but for the purpose of creating a large amount of land behind, including Fleet Street, Queen's Quay, railroad siding property, properties all the way from Queen's Quay up to the viaduct, but due to the fact the retaining wall had been put in there you can't charge those walls against that particular site. 20

Q. Then the walls which the Canada Steamship has an absolute right to use you say should not be charged against the Canada Steamship? A. No, I didn't say that. I say that it should not be charged against the actual amount of land sold in that transaction, because part of it must be absorbed in the value of the land which was retained behind it.

Q. Oh, well, somebody else has to pay for that, haven't they? A. The Toronto Harbor Commissioners got the advantage of having all this land created to the north which they could sell or lease to other interests.

Q. But if the Canada Steamship were now about to sell the property which they purchased from the Toronto Harbor Commission do you suppose that they would sell it for anything like a million dollars? A. They might be lucky to get that, in this market. 30

Q. Oh then, do you think property is going down all the time? Are you a pessimist? A. No, but we had a very considerable increase up to 1929 and part of 1930; at the present time you have got a very poor market for any class of property.

Q. Are you serious when you say that that property which they got they could have constructed for anything like a million dollars? A. No.

Q. If they had had to do it? A. No, I don't think they could, no. 40

Q. No? A. Which just goes to prove all these individual properties cannot be properly developed and properly retained and with a proper dock wall at a price that it is prudent to do it at, unless it is done as part of a large scheme; it all depends on the magnitude.

Q. But people have been making money and having their rents increased and deriving considerable benefits from their properties in Toronto on the waterfront for long before the Harbor Scheme came into effect at all; Boulton

had been getting three times his rent from 1896 up to 1917 without this wonderful scheme of the Harbor Commissioners at all, his property had been distinctly improving in value to him? A. Oh yes.

Q. What? A. Yes. Take the rental fixed on my valuation, it will be considerably higher than that again.

Q. Take what? A. Give him the rental based on my valuation, it will be considerably higher than that again, what he was receiving.

Q. Yes. So that you look at that property then as an improving property, not as a depreciating property? A. I didn't say it was depreciating;
 10 I said that there was not very much change in value from the time the viaduct order was issued in 1913 until it was expropriated.

Q. Why? A. Well the viaduct order of course created a sort of a cloud and it didn't completely stop the sale of all property down there but would more or less, probably more, prevent anybody going in and putting any large development on.

Q. But, Mr. Poucher, Mr. Boulton in 1920 as of 1917 got this increased rent so surely his property must have been improving? A. He didn't get as of 1917.

Q. Yes? A. Because he took a smaller rent between 1917 and 1920.
 20 Q. I know he took a smaller rent, but the lease reads as from 1917?
 A. Yes.

Q. And he waived that? A. Yes.

MR. TILLEY: It dates from an earlier date.

MR. HELLMUTH: From 1917.

MR. TILLEY: He didn't get \$6,000 a year.

MR. HELLMUTH: No because he waived as he says the extra rent during the period while they were trying to settle; he got \$4,000, \$4,500 and \$5,000 and eventually \$6,000.

Q. Well now how is the state of the property at present west of Yonge?
 30 Is it empty or is it pretty well filled up? A. Well the waterfront property? is pretty nearly all disposed of. There is still considerable property on Queen's Quay and Fleet Street to sell.

Q. Then the future development will have to be east of Yonge, is that it?
 A. Yes. The Harbor Commissioners have prepared for that; they have left the bulkhead wall east of Yonge Street and when the time comes for further wharves they will create them there.

Q. That is to say the development in the future will be east of Yonge, not so much west, because that is taken up, is that right? A. Pretty well taken up, yes, on the waterfront.

40 Q. I am speaking of the waterfront? A. Yes.

Q. Of course this was waterfront property with riparian rights, you appreciate that, the Boulton property? A. Yes, it was waterfront property, surely.

Q. Now you spoke of the Polson property, Mr. Poucher. Did I get the right figure, that the price paid for that was \$970 a foot frontage? A. I didn't figure out the price paid per foot frontage. It was sold for \$318,000.

Q. What would that figure out at that rate per foot frontage? A. Well it is hard to say on the leasehold property. There was 333 feet of freehold, most of it filled out to the New Windmill Line, and then there was the interest in the leasehold, and the buildings, all sold for \$318,000. I don't know that that was ever definitely divided. I valued the land filled out to the New Windmill Line at \$900 a foot.

Q. Front? A. The part that was filled out.

Q. Yes. Will you tell me how far in actual feet and yards that Polson property is from the Boulton property? A. From the west side of Church Street? 10

Q. Yes. No, you are taking it from the west side of Church Street, aren't you? A. Yes, from the west side of Church Street.

Q. I want you to take it of course from the same way. If you take it from the east side of our property, take it to the east side of the Polson property, or take it from the west side of our property to the west side of the Polson, I don't care which you take, only take the same basis.

HIS LORDSHIP: It would be only about 66 feet difference, wouldn't it?

MR. HELLMUTH: Oh no, my Lord, if you take it from the east side of our property it would be 200 feet.

WITNESS: Well the Polson property is 333 feet wide. 20

Q. Take it from the west side of our property?

MR. TILLEY: We can take the distance they are apart and then you can add in what you like. A. From the west side of Church Street to the Polson property is about 1,430 feet.

Q. Where it touches the first west bit of the Polson property? A. Yes.

Q. Now you have to add 200 feet, to the west of our property? A. If you want to take the west of your property it would be 200 feet more.

Q. How much would that be? A. That would be 1630 feet.

Q. How does property fall? A. Pardon?

Q. Would the Boulton property be as valuable in your opinion if it were 30
down where the Polson property is? A. No.

Q. Nothing like it? A. No.

Q. And there would be fifty or seventy-five percent drop in values from that property of Boulton's west of Church Street over and above the Polson property, where it is? A. Now I wouldn't deal in percentage. I put the Boulton property at nearly \$1.70 a square foot for filled land and the Polson property at about ninety-eight cents.

Q. Well that is less than fifty percent, isn't it? A. No. I say approximately \$1.70 for the filled land on Boulton and about ninety-eight cents for the filled land on Polson, that is about two-thirds, the Polson being about 40
two-thirds the value of the Boulton.

Q. Well now is there any dock on the Polson? A. Yes. They were filled out to the New Windmill Line.

Q. I know, but I didn't ask that. Had they any docks there? A. Yes. They were engaged in ship building, they had the use of the Sherbourne Street slip. The front of their property and the Frederick Street slip and the front

of their property and Sherbourne Street slip, both sides of the Sherbourne Street slip, for part of the distance.

Q. Do you say there was a dock in front of their property as there was on the Ewart or the Boulton? A. Yes, similar type of piling. I don't know what you mean by dock; there was piling.

Q. Similar to what was on the Ewart? A. Yes, similar type of piling.

Q. Now let me see: You said that you valued the Boulton land at about \$1.70 per square foot? A. Yes.

Q. And you gave your valuation for the waterlot making a total of some
10 \$214,000. Is that the value that you would put upon it without any buildings on it at all? A. Yes.

Q. What? A. Yes.

Q. So that that property stripped of all buildings in your opinion would be worth \$214,000 odd? A. Yes.

Q. The buildings not adding anything to it in your opinion? A. No.

Q. And have you anything to say as to the advantage or disadvantage it would be to the owner to have those buildings off, in your opinion? A. Well if the property would be used to the best advantage I don't think the buildings would have any value.

20 Q. So that you are taking it and attaching no value whatever to those buildings? A. No. I think the property would sell for just as much with the buildings off as with them on.

Q. I want to get this quite clear: You have added not one copper to the value of that property by reason of there being any buildings on? A. That is right.

Q. You have simply valued so much filled land and so much waterlot?
A. Yes.

Q. Now that property in some respects resembled the Ewart property, did it not? It was about the same size roughly speaking? A. Roughly, yes.

30 Q. The Boulton having slightly more frontage? A. Just slightly more property, but not any less filled land in proportion.

Q. Now— Mr. Poucher, can you give me the assessments of the Ewart property? I think you have them there, haven't you? A. I may have. I am not certain.

Q. You know them anyway; you did know them before? A. Well we had them in the Ewart Arbitration. I don't know whether I have now. Yes, the valuation of the Ewart property.

Q. The assessment you mean? A. I mean the assessment, was, land
\$148,000.

40 Q. No, not in 1926? A. Yes, I think so.

Q. No, \$135,422; it was \$148,000 in 1924, and kept that in 1925, but in 1926—I am not desiring to contradict, I have just got the statement before me here—it was dropped to \$135,422. Have you 1925 there? A. That was supposed to be 1926, it was accepted in the Ewart valuation as being the assessment?

Q. I don't think, with great respect, Mr. Poucher, we put in the assess-

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ment in the Ewart Arbitration; I have gone over it? A. I remember distinctly you asked me, Mr. Hellmuth.

Q. Well I have gone over your evidence? A. You asked me what the assessments were in Ewart and I have got these figures.

Q. I would rather get the right figures.

MR. TILLEY: You can check them but you don't know which are right yet.

MR. HELLMUTH: No, but we will find out.

WITNESS: There may have been something there in the taking off of the Ewart property earlier the northerly portion for a street which might have made a difference, but when the whole property was assessed in 1925 for 1926 I am satisfied the land was \$148,000, the buildings were \$3,500, the total assessment \$151,500. That was put in on the Arbitration, sir, I remember distinctly. 10

Q. Well all right, it is not worth bothering about, if you are satisfied that that is right? A. Yes.

Q. Now then that property as you have told us was valued by you on the Arbitration at \$200,000, was it not? A. \$200,000.

Q. Although in that case the last lease of the property was for only \$3,200 if my memory is correct? A. Well I don't know what it was. It wasn't a ground lease, it was an ordinary lease to— 20

Q. Oh no, there was a ground lease at the time? A. No, that has not been on ground lease to my understanding, Mr. Hellmuth; it was an ordinary lease to the Conger Coal Company which they gave up about 1918.

Q. Yes, in 1918. And that property was valued at \$230,000, was it not, by the Arbitrator? A. No. In his award he gave something for forcible taking.

Q. Are we coming back to that? The land that was taken from us, forcibly if you like, he gave \$230,000, did he not, or \$235,000? A. No, he gave \$235,000 for compensation for taking that land from the Ewart-Primrose Estate and he mentioned in his award— Well you can read the reasons. 30

Q. At all events that was some \$30,000 or \$35,000 above your valuation? A. Yes, he gave \$35,000 above my valuation to cover the additional compensation for the taking of the property.

Q. Well you know full compensation is what we are entitled to? A. Yes. But—

Q. And that land was vacant at the time and had been for a long time vacant, for years? A. Yes, except some small rentals, temporary rentals.

Q. Yes, but I mean it had been vacant for a number of years? A. Yes. From 1918 except for some temporary rentals, some small buildings. 40

Q. So that practically the amount of the award was close onto \$100,000 over the assessed value, isn't that a fact?

MR. TILLEY: Can't we figure it out afterwards ourselves? A. Well the difference between \$151,500 and \$235,000.

Q. \$148,000? A. There was \$3,500 building assessment on it.

Q. I don't find that here at all.

MR. TILLEY: It is not necessary that you should. A. The total assessment was \$151,500; at the same date that I took the Boulton assessment; the award was \$235,000 including everything.

Q. That is \$84,000 then instead of a hundred? A. Pardon?

Q. That is \$84,000 more than the assessment? A. No, the award was \$35,000 more than my valuation.

Q. And it was \$84,000 more than the assessment? A. Yes, eighty-four — \$83,500, to be correct.

Q. How did you consider any value as attaching to the Boulton property
10 by reason of its having absolute riparian rights, always access to the water?

A. Yes, I valued it as having access to the water.

Q. The access to the water that couldn't be taken away? A. Yes, I realized that.

Q. You realized that? Is there any property now under the Harbor Commission in which there is absolute access to the water in fee? A. In fee?

Q. Yes? A. Well only by the Harbor Commissioners.

Q. Not by anyone who buys or leases from them? A. No, they reserve the space that the wall is built on and they give that for 999 years at the rental of a dollar a year.

20 Q. Yes, quite so? A. And the owners have all the access to the water that anybody could use.

Q. And you made no distinction between absolute ownership of riparian rights and the right of a tenant under a 999 year lease to get to the water? You made no distinction between that? A. No. I don't think there is any, although I don't know where I have been asked to make any distinction on properties similar. But I will say this, that when I valued the Toronto Rail & Harbor Terminals site west of York Street that the Harbor Commissioners sold at \$50,000 per acre, in the first place I was asked to value as if they were buying the whole thing, structures and all, and I placed \$50,000 per acre on it.

30 Then I was asked to value on the basis of selling them the land and giving them a 999 year lease at a dollar per year of the structure, and I placed the same value on it; I didn't see any difference.

Q. You didn't see any difference? A. No.

Q. I understand the total area of the old Canada Steamship site was 189,900 square feet as compared to our 210,000; ours was a larger property than the old freehold property of the Canada Steamship by half an acre?

A. I couldn't say. I would have to check that point in some way. I haven't got the figures here, I don't think.

40 Q. You have a plan there I think. Have you figured that? A. The filled land shown on the plan of the Canada Steamship property was 64,130 square feet I think, the land covered by water was 127,566 square feet exclusive of Lake Street; that was about 4.41 acres altogether.

Q. Well that apparently would show, Mr. Poucher, that we had a great deal more land filled than the Canada Steamships if those figures are correct?

A. Yes, you have got more land filled. You have 92,000 feet of filled land as against 64,130.

- Q. Yes, and we have land covered with water 118,000 square feet odd?
A. Yours is 118,016.
- Q. And the Canada Steamship was what? A. 127,566.
- Q. Therefore they had more water than we have? A. Yes.
- Q. And taking the two together we were the larger by about half an acre I should think, taking filled land and water? A. Well they had 4.41 acres and you have 4.82, which is about four-tenths of an acre more you had.
- Q. I said nearly half; five-tenths would have been half? A. Yes.
- Q. Then you make the statement, as I understood, that practically 10 with the exception of one office building nothing had gone up east of Yonge Street in recent years? A. I said no office buildings.
- Q. Well do you know that the Excelsior Life Building went up? A. Oh well that was long before that. I said in the last eight or nine years. The Excelsior Life Building was built about 1920.
- Q. I think you said 1920? A. I don't think so.
- Q. I think you said from 1920 that there had been nothing doing? A. Well I didn't intend to say that. What I intended to say was that the recent development in the erection of office buildings which has taken place in the last six or seven years, there has only been one of them erected east of Yonge 20 Street.
- Q. Well wasn't there that annex erected for the King Edward Hotel?
A. Yes.
- Q. That is within recent years? A. Yes.
- BY HIS LORDSHIP: Q. That is twenty years ago, isn't it?
MR. HELLMUTH: Oh no.
- A. Not the new one, my Lord. I said office buildings, but the new wing of the King Edward was erected there about six years ago.
- BY MR. HELLMUTH: Q. Yes, five or six years ago. And then what about the Customs Building? Is that west of Yonge Street? A. West of 30 Yonge Street.
- Q. On the corner of Yonge; is it the west corner of Yonge? A. Southwest corner of Yonge and Front Streets.
- Q. Just adjoining Yonge Street? A. Yes.
- Q. It is on Yonge Street? A. West of Yonge Street.
- Q. It is on Yonge Street? A. It is on the corner, yes.
- MR. HELLMUTH: I gave you page 73, Your Lordship, but I am reminded that in the full volume it is 523 or 524, of the Canada Steamship evidence.

CROSS-EXAMINED BY MR. OSLER:

- Q. You expressly limited your reference to buildings to office buildings, 40 Mr. Poucher. I suppose you had in mind the building of the new Arena and the development of the shopping district up there? A. There is no development of any shopping district east of Yonge Street at the Arena— Oh there are two or three around Yonge Street, yes. Most of the stores in the Arena are vacant.

Q. I think that is probably so, but when they were building that building they didn't think it was necessary to go west of Yonge Street, or desirable?

A. Well they arranged to get a desirable site there and no doubt a desirable site for an Arena.

Q. Then you said something, if I took you down correctly, to the effect that the buildings had some value to cover the carrying charges until expropriation? A. That is what I had in mind, yes, that they may have had some value up to the date the property was taken, because it wouldn't

10 have been perhaps quite prudent for anybody to attempt any private development of the land up to that date; they hadn't decided whether it was going to be expropriated or not.

Q. In other words you knew that an expropriation was coming? A. Well I wasn't certain; I knew there was an order made in 1913 that would probably result in expropriating these properties.

Q. And did you take that into account as depreciating the value of that land? A. No.

Q. You knew that a profitable and important business had been carried on on these lands?

MR. TILLEY: Would he know whether it was profitable?

20 MR. OSLER: I don't know. I am asking the witness and I would rather not be interrupted.

MR. TILLEY: I will have to interrupt when you put a question to the witness whether he knew the business was profitable.

MR. OSLER: I can surely ask that without my friend's protection to the witness.

HIS LORDSHIP: I don't understand the witness giving any evidence to that effect.

MR. OSLER: Not yet, my Lord; I am putting the question to him.

30 Q. Did you or did you not know, Mr. Poucher, that there had been a profitable business carried on for many years? A. No, I knew there was a business carried on there, the business of the Standard Fuel Company; I couldn't tell you whether it was profitable or not.

Q. You knew that in the business that had been carried on there for a great many years those buildings were in active use? A. They had been in active use.

Q. And were still being used when the expropriation took place? A. Yes.

Q. And yet you say that you attribute to them no value whatever?

A. No. No commercial value whatever to them.

40 Q. So that may we say that in dealing with the whole matter you assumed that this arbitration was coming? A. No, I would say in the market. If I were asked to place a value on that property at what it would sell for in the open market I would say the land was worth so much money and the buildings would not be worth anything. I find every day far better buildings than these being torn down just simply because they have been an operating loss.

Q. Does that mean then that you excluded every consideration except what you could go out and sell that property for the next day? A. Not the next day. I think that was a fair value to place on that property as to what it should sell for within a reasonable time. It is not a property you could sell over night.

Q. How long? A. Well I would say it ought to sell within six months and if it didn't why then whoever was carrying it on was going to lose interest all the time it was being carried until it could sell at that figure.

Q. Well then may we say that you made this valuation on the footing of being able to discontinue the business that was being carried on there and sell that property within six months? A. I made my valuation on the— 10

Q. Answer the question, please; this is a plain question? A. Sell the property within six months which may or may not have included the — It would include the closing of that business if it were sold to somebody else who might want to buy the property.

Q. Can you answer that question that I put to you, Mr. Poucher? A. Well I think, yes, that is right.

Q. That was the basis upon which you approached it? A. The basis of the fair market value of the property.

Q. Regardless of the use that it was being put to by the Standard Fuel Company? A. Yes. I couldn't tell whether this was a profitable use and I didn't take that into consideration. 20

Q. Did you assume that the coal business was not a suitable business for that site? A. No, but I assumed that there is no man could afford to take that property at my valuation and continue on for any business with the type of buildings on that property when I value it over \$200,000.

Q. Did you assume that the coal business would have to leave that site? A. I assumed they would have to leave those buildings sooner or later.

Q. Answer the question, please: Did you assume that the coal business would have to leave the site? You knew that that was not the question. A. I 30 I figured it might be valuable for a coal site, a coal dock.

Q. You figured that? A. Yes, I considered that one of the uses it could be put to, a modern coal dock.

Q. And if it were put to use as a coal dock they had practically the only available site in the center of the city to serve the office buildings? A. No, not in 1926. The Milnes people, in just two properties removed.

Q. Quite a long way by road? A. No, the Milnes property was adjoining the Ewart property on the east, on the south side of the Esplanade.

Q. How big was the Milnes property? A. I think about 90 feet wide.

Q. Not big enough to establish substantial storage sufficient for the service of a large coal business to serve the downtown area? A. Well not 40 sufficient to store as much coal as the Boulton property, but I don't know what might be sufficient or what might not be.

Q. You say you don't know and pass it over in an airy way, Mr. Poucher, but did you consider that or did you not? A. I considered that the Boulton property had a larger area than the Milnes property and for that reason was more valuable proportionately, and also that it was a corner property.

Q. And did you consider at the time that we are speaking of in 1926 the use of the Standard Fuel business as a coal property? A. Not their business, no. I considered—

Q. Did you consider the use of the property as a coal property? A. I considered that as one of the uses it could be put to, yes.

Q. And did you ever compare that to other similar coal properties? A. Well I don't know that I did in a specific way, but in a general way.

Q. Did you or did you not, I am asking you, specifically, because if you didn't tell me so? A. No, I didn't compare it specifically with other coal
10 businesses, no.

Q. But did you compare it at all? A. I had in my mind general knowledge—

Q. Mr. Poucher, please answer the question.

MR. TILLEY: Is he not to be allowed to answer?

MR. OSLER: Yes, he is going to and he is going to be required to, if His Lordship allows me to. The difficulty is the witness tries to make a speech every time.

HIS LORDSHIP: Just try and answer the questions asked.

WITNESS: Yes, I will, my Lord.

20 Q. Did you specifically compare this property as a coal property to any other properties that were available for use as coal properties? A. Not specifically.

Q. Did you generally? A. Yes, with the general knowledge I had in my mind as to properties that would be suitable for a coal business.

Q. In your general consideration of it did you consider the Milnes property? A. No.

Q. Then why did you refer to the Milnes? A. Well I did in a general way, but I mean not specifically.

Q. Let us not quibble, Mr. Poucher? A. I don't want to quibble.

30 Q. You either had the Milnes property in your mind or you had not it in your mind. Had you or had you not? A. I knew it was there.

Q. That is not an answer to my question, Mr. Poucher? A. Well I said I didn't compare any specifically, and I knew of my general knowledge Milnes was there; Rogers was down there.

Q. You speak of your general knowledge. Did you have it in your mind at that time? A. The existence of Milnes' yard? Yes.

Q. As a comparable site to the Boulton site? A. It was suitable for the same purpose but it wasn't as good a site as the Boulton site.

40 Q. And do you mean to say that in your general consideration of them you took that into account at that time? A. I took into—

Q. Did you or did you not? A. Well I don't know— I said I didn't specifically. I knew Milnes was there, I knew the use of all the properties on the south side of the Esplanade, and how much of that general knowledge I used in making my specific valuation I can't tell you.

Q. But apart from the Milnes there was no other place where any coal site could be established until you got east at Cherry Street? A. Oh yes.

Rogers had a yard at Berkeley Street under the same conditions as the Standard Fuel, it was under a lease from the city.

Q. But, Mr. Poucher—are you putting that forward seriously?

My learned friend need not suggest, if he pleases.

Dealing with the Rogers, that was on a lease that was terminated, Mr. Poucher? A. It was terminated by these same proceedings.

Q. It was not a perpetual lease? A. I beg your pardon, sir, it was a lease in perpetuity; the city had the right to cancel at the end of each term I believe.

Q. Yes, and in this case the Boultons hadn't the right to cancel? A. 10
Well possibly there is that difference.

Q. Well don't you think there is a difference between a lease where there is a right to cancel at the end of a term and where there isn't?

MR. TILLEY: Pardon me just one moment: On what do you base the statement that Rogers' could be terminated?

WITNESS: I am not certain.

MR. OSLER: Surely my learned friend cannot interrupt.

MR. TILLEY: It is a document and we want to have that document.

HIS LORDSHIP: I would like to have it cleared up and we may as well have it cleared up at the moment as to their rights under that document. 20

BY HIS LORDSHIP: Q. Have we the document? A. No.

Q. Do you know of your own knowledge? A. The Rogers property, no.

Q. We are talking about the rights under the Rogers lease? A. I couldn't be certain whether the city had the right to cancel it or not. The lease would show.

BY MR. OSLER: Q. Then you didn't know when you were considering the Rogers property whether it was comparable to the Boulton property? A. Well I knew as a site it was comparable whether it was on lease or freehold.

Q. Did you compare that? A. I had it in my mind, I didn't compare 30
it specifically.

Q. Did you have it specifically in your mind or only generally in your mind, Mr. Poucher? A. Oh generally, I suppose.

Q. Now you said that you didn't think there was any difference between a 999 year lease at a dollar a year and a fee simple? A. I didn't think there was enough difference—

Q. You have had a great deal of experience in real estate transactions? A. Well but I didn't say that, Mr. Osler, no.

Q. That is the way I took you down? A. No, pardon me, in a lease of that kind where the lessee owns all the usable land the question of whether 40
he gets a title to this structure or a lease of the structure surrounding his own land that he is buying for 999 years I don't think it would make any difference.

Q. Did you consider the terms of the lease and the conditions of it? A. Yes, I knew the conditions of it at the time.

Q. What conditions were there which should lead us to believe that? A. Well he would have to use the property to conform to the Harbor Commission's regulations, I think was one term. Another term was to the effect

that the Harbor Commissioners would keep the property outside dredged to the full depth of the western channel at their own expense, and there were other conditions I suppose.

Q. And if the lessee made default in any of the conditions binding on him he would risk forfeiture of the lease, I suppose it contained that term?

A. I suppose. I don't think there is very much in that. If he had a mortgage on his property and defaulted in that he would lose his property.

Q. And do you think that would be as desirable a foundation for an issue of bonds to provide any financing as a fee simple? A. Well I would think so. I am not a financial man but I know the Toronto Rail & Harbor Company, they took fourteen acres of land on that basis and had no trouble raising four or five million dollars of bonds on their proposition.

Q. But do you mean to tell me that merely because people with leasehold interest have succeeded in raising bonds it is not well recognized in real estate business that a leasehold interest is a difficult thing to finance with and that it is not done? A. An ordinary leasehold. This is not an ordinary leasehold, it is the fee which finances the bonds, on the fee of that property plus a leasehold of the structure around it for 999 years. I am quite willing to admit, and there is not any question about it, that an ordinary leasehold on a whole property, on that type of property, is difficult to finance maybe; this is a fee with the lease of a structure around it for practically forever, so far as we are interested, for a dollar a year, but the ordinary leasehold is difficult to finance on.

Q. Yes. Well then with regard to that old Toronto Electric Light property, just tell me again who were the parties interested and among whom your division was to be made? A. There was the Canadian Pacific Railway Company, Toronto Terminals Company, the Toronto Harbor Commissioners, the Hydro Electric Commission of Ontario and the Toronto Hydro System.

Q. And except for the two Hydro Commissions all parties were in 1928 interested in the various expropriation arbitrations that were then proceeding? A. Interested in this viaduct scheme?

Q. And in the arbitration proceedings that were then proceeding? A. I don't know that the Harbor Commissioners were interested.

Q. Don't you know that the Harbor Commissioners were interested in the result of these proceedings? A. Well they are a party to the viaduct agreement and they have to purchase from the Toronto Terminals the land south of the viaduct, but whether they would be interested in the award or the prices paid for the properties or not I am not certain.

Q. And as a matter of fact that was a division of the properties rather than a division of prices? A. Yes. It was a rearrangement of ownership and the prices to be fixed to rearrange the ownership on.

Q. So that no actual money was to pass? A. Oh yes. Oh yes, money was spent, \$300,000 odd.

Q. No money was to pass from one to the other though? A. Oh yes.

Q. One was to convey part to the other and vice versa, wasn't it? A. No no. There were large amounts of money passed.

The Canadian Pacific Railway Company, or rather the Toronto Terminals Company bought from the Harbor Commissioners a viaduct right of way; they paid \$107,615. The Terminals Company bought from the Hydro Electric Power Commission of Ontario part of the property and paid \$84,406. The Hydro Electric Power Commission bought from the Harbor Commissioners, not the Terminals Company, part of the property that they had formerly leased and they paid \$46,000 for it. The Toronto Electric Commissioners bought from the Canadian Pacific a small parcel on the north end and paid \$14,406. The Toronto Electric Commissioners bought from the Hydro Electric Power Commission of Ontario a part of the property and paid \$21,576. Those assets all changed hands, because the Terminals Company were buying, they weren't selling anything, and the C.P.R. was selling, it was not buying. The Harbor Commissioners both bought and sold. 10

Q. You didn't mention the lease, Mr. Poucher; the Toronto Electric Company had a lease from the Harbor Commission? A. Yes, for part of the property.

Q. And that lease had already expired at that time? A. Possibly, I wasn't asked to take that into consideration, just to value the land without the buildings.

Q. Regardless of the leasehold rights in it and so on? A. Yes. 20

Q. Well then let me ask you generally about your 1926 valuations of the waterfront: Were they made for the purpose of enabling the Harbor Board to set the prices that it should ask for the sale of this property? A. Well partly. They were made as a basis upon which to base those prices, but the primary reason for the valuation was to make as good a showing before His Honour Judge Denton as they possibly could with regard to the assets they had created there during—it must have been during the previous Commissioners' administration.

Q. And the Harbor Board had a very large acreage of property? A. Oh yes. 30

Q. And you couldn't hope to sell that within six months as you said with regard to the other? A. No.

Q. And use your valuation for the purpose of setting prices that the Harbor Board ought to set over the next few years? A. No. The valuation was for the purpose of placing before His Honour Judge Denton the results of the labors of the Harbor Commissioners and how much they had created of an asset, that was the first reason for the valuation, but then from then on when they were selling land they would refer to the valuation, they would consult with me, consult with Mr. McBrien when he was on the Board, and consider whether this property should sell at higher than my valuation or lower or at the same figure, and some of them sold higher, some of them sold lower and some of them sold at the same figure. 40

Q. And I suppose you were handicapped to some extent by the fact owing to the acquisition of these properties by the Harbor Board and the delay in carrying out its plan new industries were only just beginning to look on these locations as feasible sites? A. Well no, it depends on what locations

you mean. In the eastern harbor district there had been industries located there since 1918?

Q. Yes? A. And along the waterfront west of Yonge Street from about 1923 on.

Q. But the movement so far as actual transactions are concerned was slow? A. Oh yes.

Q. And you gave full effect to that in your valuation? A. Well, no, we were asked to place what we considered a fair value on the property at that date, considering that the whole scheme was completed. Away down at the eastern end where it was even covered by water we were asked to consider what it was worth properly retained and filled and then the Harbor Commissioners' engineers took away from my value the cost of finishing their work.

RE-EXAMINED BY MR. TILLEY:

Q. Then, Mr. Poucher, you were asked about available coal sites. What had the Ewart property been used for when it was in use? A. It was used by the Conger Coal Company up till about 1918.

Q. And then the owner chose not to make a new lease to them? A. Or else they didn't want a new lease.

Q. Yes, one or the other, but was that an available coal site? A. Yes.

Q. How did it compare to the Boulton in size? A. In size it was very slightly smaller but a little more filled land in proportion.

Q. And how far from the Boulton? A. Right next to it, just across the street.

Q. Across Church Street? A. Yes.

Q. Then you were asked about the Arena and you said you thought it was considered a desirable site for an Arena? Does that aid at all in considering what is desirable from a commercial aspect? A. No.

Q. What is the point on an arena? A. Oh, ease of access from different sections of the city and keeping away from a main traffic artery like Yonge Street as much as possible to get a little quieter district where they could park their cars and that sort of thing, so long as they were close to the central portion of the city.

Q. Yes? A. And they went in there because there was one place where there was a site that large available, and it was difficult to find that either east or west of the city and they had to take what was available of that size.

BY MR. OSLER: Q. And it indicated that the central part of the city was still there? A. Still close to Yonge Street.

BY MR. TILLEY: Q. Central from a geographical standpoint is one thing; is it central from a commercial standpoint? A. No. Not only from the geographical but fairly central from the standpoint of the center of population.

Q. Then I don't know that there is much else. You were asked about certain properties, and I don't know what you meant to say about certain comparisons that were made; I believe there were nine or ten in all; in order

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to show your value and the prices at which properties were sold a year or two later? A. Yes.

Q. Would you like to say anything about any of those? A. Oh there was just one or two cases, Mr. Tilley, that were mentioned: For instance the Reid & Brown site on the south side of Fleet Street, the long narrow site six or seven hundred feet long, from memory, and about 64 feet deep. Now when we valued in 1926 we had to realize that it would be difficult to find someone that could use that property to advantage with its peculiar shape, with this long frontage and its short depth, and we placed a reasonably low valuation of \$25,000 per acre. Afterwards when Reid & Brown were taken out 10 from the Esplanade—they are structural steel people—they picked on this site as being fairly ideal for their business, whereas on the general market it would not be ideal, any general business, because they could use their cranes coming along this long narrow frontage. They came along and negotiated for the site, the Harbor Commissioners realized they had somebody who could use this site to advantage and they got a good price for it. But when there is a valuation made you can't realize there is an industry of that kind may come along and use a property of that unusual dimension.

Q. Then the other, the Victoria Paper & Twine, anything to say about that? A. Well, they were increasing values all along Fleet Street and then 20. about 1928 or 1929 there was a change in the whole situation by the diversion of Fleet Street. The New Fleet Street was diverted there just west of York Street and run on closer to Front Street and that made a change in conditions, it concentrated a lot of traffic close to York Street; and of course I wouldn't place the valuation on Fleet Street today and consider that the owner would come along and sell it a year or year and a half from now without coming in and consulting me about it, because you don't know how things are going to change or how your market is going to change.

Q. Well now I think we have in mind that you have given general considerations of that kind some thought. Was there anything you wanted 30 to say about these in particular, Dominion Timbers, Toronto Elevator, Yardley's, Samuel Benjamin? A. I don't know. Samuel Benjamin, it was another somewhat similar to the Reid & Brown, a property of unusual dimensions.

BY HIS LORDSHIP: Q. You have already told us about that? A. Yes.

BY MR. TILLEY: Then you were asked about the awards in the two other cases; I don't know whether it is material to have the awards but I would rather have the reasons than your interpretation of them. I think the award in the Canada Steamship, both the original award and the Court 40 of Appeal decision, will be found in 36 Canadian Railway Cases at page 301, and that can be referred to, if there is any question arises as to the basis of the award.

Now unless there is something, Mr. Poucher, that you want to say by way of explanation to anything you have given, I think that is all? A. I don't think so, Mr. Tilley.

MR. TILLEY: All right, thank you.

—4.45 p.m. arbitration adjourned until 10.30 a.m. Thursday, May 26th, 1932.

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—10.30 A.M. THURSDAY, MAY 26TH, 1932,

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No. 18
Albert Edward
Nash
Examination

RESUMED—ALL PRESENT:

No. 18.

ALBERT EDWARD NASH Sworn:

EXAMINED BY MR. TILLEY:

Q. You are a member of the Clarkson, Gordon & Dilworth firm, Toronto?

A. Yes sir.

10 Q. And you examined the books of the Standard Fuel Company to see to what extent they had information there on which to base the statement that they filed with regard to haulage and that sort of thing, extra haulages, that came up before? A. Yes sir.

Q. Now would you just say first what you found to be the fact with regard to the books? Were they kept in a scientific way to be able to compute savings and losses with respect of such matters? A. No. I wouldn't want to attack the method of bookkeeping, it may be a perfectly useful and proper method for their business, but it was not separated in such a way as to show the differences in the costs of various parts of their business, such as the cost of handling separately from the cost of bagging and the cost of loading in trucks and such things, it isn't possible to separate their costs in a scientific way.

Q. Then are their records completely available or are some of them not now available? A. No, not now available, some of the earlier years particularly the records are not available at the present time.

Q. Then you did though make some check on the accuracy of some of the figures in their statements? A. Yes. We went through the claim and compared it wherever it was possible.

HIS LORDSHIP: The claim put in as Exhibit 19.

30 MR. TILLEY: Exhibit 19.

WITNESS: That was the exhibit I thought in your hands.

Q. Just tell us what you found. Just tell us in your own way? A. Well just if I may do that, the first thing we found, that they had based their claim 4A—the claim 19 was divided up into sections 1, 2, 3, 4, 5 and 6, and we were particularly dealing with 4A, B and C—

Q. Yes? A. And the first thing I noticed was that the claim 4A was based on a seven year average of sales from 1921 to 1927 inclusive.

Q. That item was extra cost due to railway transport of fuel from April 1927 to June 1931? A. To June 1931, and it was based on a seven year

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average from March 1921 to March 1927 including two heavy years of shipments in the first two years and some very light years of shipment in some of the later years.

Q. Yes, I think we noticed that. The totals are shown at page 3 of their Exhibit? A. Yes.

Q. The first two years were 36,117 and 29,339 tons respectively? A. Yes sir.

The point I am making is they are not averaged—you take whether it is two, three, four or five years or more the result of whatever number of years you take is very marked; the amount that they claim varies from what they stated in their claim to a very small amount if you take a different average. 10

Q. That is the last two years are twelve and fifteen thousand respectively? A. Yes.

Q. And the first two are thirty-six and twenty-nine? A. Yes.

Q. So that what you are pointing out is that something depends on whether you take two years to average or three or seven or whatever you take? A. Yes, quite so.

Q. A considerable change results? A. A considerable change results.

Q. Well then did you go back of 1921? A. No, we couldn't go back of 1921; the records were not available. We did accept these figures from 20 1921 to 1926.

Q. Yes? A. Well then the second thing we noticed was, and we pointed this out to them, when we found it, that there was an error in computing the cost of bringing anthracite coal in by water.

Q. A mistake of what? A. A mistake of eight cents.

BY HIS LORDSHIP: Q. Where is that eight cents shown in the statement? A. Oh, the eight cents is not shown in their statement; one item is wrong.

BY MR. TILLEY: Q. Which item? A. The cost of bringing anthracite coal in by water. 30

Q. Yes, I know that? A. The item is on page 3 of their claim and amounts to \$3.40 per ton.

Q. But which of the items is wrong? Is it the addition? A. No, the cargo freight, sixty-six cents, is wrong to the extent of 8.43 cents.

BY HIS LORDSHIP: Q. Wrong to the extent of what? A. It is not only eight cents in that one item, because there are some minor differences in others. The freight, mines to port of shipment, \$2.59, is correct; their item of cargo freight of sixty-six cents should be 73.97 cents.

Q. Well now I haven't got this. I have page 3, cargo freight, they have it per ton .66? A. .66, yes; that should be .73.97; and the next item, insurance, .03 should be .0346. Those are the only two differences, and the result of those differences is that the delivery cost F.O.B. dock Toronto would not be 3.40 but 3.48.42. 40

BY MR. TILLEY: Q. Well that is a clerical error? A. A clerical error purely, but that error is carried into the difference between water and rail cost and applied on the average of the seven years.

Q. Well then what else did you notice? I think you already covered it, but was it possible to check up the difference in cost of unloading as between boat and rail? A. No, it wasn't possible.

Well then I noticed, Mr. Tilley, that the company had based this claim 4A on the total tonnage of coal coming into the Church Street dock by water without any deduction for transfers to other yards after it arrives.

Q. Can you tell from the books whether the transfers were from Church Street to another yard or were they taken from Church Street and delivered directly to the consumer? A. Both, but I would say more directly to the
10 consumer than to the yards.

Q. Some was handled one way and some was handled another? A. Some was handled one way and some was handled another.

Q. Were you able to tell from the books whether for that transfer to another yard it was bagged before being taken? A. No. I don't think so.

Q. All right? A. So that there again the amount that the company bases its claim on in 4A is in excess or greatly in excess of what it would be if the transfers to other yards were deducted.

Q. If the transfers were deducted or the extra cost of handling it from one yard to the other were made a charge? A. If the transfer from Church
20 Street to other yards were made a charge.

Q. Then you have the extra handling, this was reflected in their books? A. But not separated.

Q. Not so that you could figure it out? A. No, not so that I could figure it out.

Q. Yes? A. Well then the only other difference in 4A that we found was that the company claimed one-third of a year for the three months period to the 30th June, which is not a very big item, but the point is—

BY HIS LORDSHIP: Q. What page are you at now? A. I am at their page 4, sir. They are claiming extra cost paid for anthracite coal or equivalent
30 during the four years in question, four navigation seasons, and for the months of April, May and June one-third of a year.

BY MR. TILLEY: Q. Yes? A. Well my point is this, that the company brought this claim up to the 30th June and has extended the three-month period from 1st April to 30th June as one-half the navigation season but on that they have only claimed for one-third of a year. But the records for 1924, 1925 and 1926 showed a total of thirty-nine cargoes received by boat, fourteen were received prior to the 30th June, and on this basis, on the basis of ending 30th June—

Q. That is to say I think Mr. Marshall said the cargoes came in by boat
40 more in the latter part of the year? A. More in the latter part.

Q. And you confirm that, do you? A. I confirm that. In that case the claim would be a little higher in that respect.

Now then 4B: The claim itself is only for some five thousand but it is important because the calculations that are used in computing the amount under 4B are carried into 4C, which is a very much larger claim, and so there again it is important to know whether the calculations in 4B are reasonably accurate.

The next I would point out there is that the company has used estimates which cannot now be accurately checked, at least I couldn't check them, and the books wouldn't reflect them; it might be capable of being checked but it is difficult. For instance, the extra distance involved in delivery is estimated and stated there by the company. The average speed of trucks, they take an average speed; I cannot check that average speed; it is a matter of estimate. The average number of miles a truck goes in a year, they say 7,500; I can't check that.

Q. Nothing in their books to check it by? A. Nothing in their books to check it by, but the important part is if it wasn't 7,500, but 15,000, it would make a very great difference to the ultimate calculation if some part of the overhead that that included is not applicable. 10

Q. What do you mean by that? A. That claim with the overhead includes such things as interest three percent, depreciation, gasoline and oil, tires, and repairs; well all those things depend so much upon the accuracy of their claim as to the average distance the truck goes, on whether the depreciation will fluctuate; the interest would remain constant; because if you have to buy more trucks over the same period and so on, that it is not possible to verify those figures and I think it is very difficult to make an accurate calculation. 20

Q. You can't get at that from the books? A. No. I think that is about all in 4B, Mr. Tilley.

Q. Well then 4C? A. Then 4C; on page 10 they set forth an average of the tonnages; the average tonnage has been previously determined; that is they have taken transfers to other yards into this claim and the delivery costs and the estimated cost, they follow the calculation made in claim 4B, so that whatever effected a change in calculation of 4B would have on that a similar effect only on a larger amount, in 4C.

Q. And you can't tell what the change ought to be? A. No.

Q. Or you can't tell anything about that from the books? A. No. 30
 Even the books wouldn't give that information.

Q. Item 5? A. Item 5 there is clearly something that is not capable of being verified as I see it, especially in relation to the estimated increase of business.

Q. There is nothing in the books that would help you? A. Nothing in the books that would help us.

Q. Then I needn't bother you about that, Mr. Nash. Then were you able to make any sort of investigation into degradation by boats compared to rail? A. Yes, we were, Mr. Tilley, able to do something in that respect. We took off the tonnage handled, that is sold or transferred to yards, accepting the company's figures, for the year 1925-1926—that is the year ending 31st March, 1926—and for the year ending 31st March, 1927, and we checked that by grades of coal so that we were able to determine the screenings. 40

Q. Mr. Nash, let me ask you, do the records show whether different grades would come in in the same cargo, in the same boat? A. Different grades would come in by the same boat.

Q. Yes? A. And we were able to determine the sales of screenings throughout those two years as compared with the sales of all other kinds of coal.

Q. Were you able to determine what screenings would be on hand at the beginning of the period and what on hand at the end of the period? A. Not at the time, the inventories were not available to us except for some few years, but we were able to determine that the screenings on hand was not any very large amount, would not affect these figures very seriously, and to find that according to these two years' records the average degradation on water shipments was 5.18 percent. Now we took the same records for the dock yard and all other yards for the years 1927-28 and 1928-29 and it wasn't possible to make an exact comparison of the same years on operating figures perhaps, but any comparison may be a fair one because of handling coal this way all these years; based on the same method of calculation the average degradation on rail shipments was 2.02 percent.

Q. That is if I understood you correctly that of the coal that would come in 2.02% of it would be turned into screenings by degradation? A. Yes, according to these records.

Q. Now can you give us any further light on what that means? A. Well no, I think the figures speak for themselves. There would be a difference of 3.16 percent of the cost of that coal brought in by water would be lost except to the extent that there is a residual value of the screenings of approximately one-third of the selling price of the coal, screenings being sold for \$5 approximately and other coal for fifteen.

Q. And then in addition to that in order to get at what it means to the owner or proprietor one could but take in I suppose such features as cost of handling? A. Quite so.

Q. And that you can't get at? A. That we cannot get at.

Q. So that all you can do is to indicate the result as you get it from the books and you don't profess to make up a complete statement as to what it means to a company to bring in by water—to this company I mean—as compared to bringing in by rail? A. No.

Q. The items of handling and all that sort of thing are not so reflected that you can help us about them? A. No.

MR. TILLEY: I think that is all, thank you, Mr. Nash.

CROSS-EXAMINED BY MR. OSLER:

Q. You did not prepare a statement summarizing what your conclusions are? A. Well I prepared one for my own use only, Mr. Osler; I didn't prepare one that I am submitting.

Q. Now supposing you took only an average of five years instead of seven years from 1921 to 1927, the last five, that would give you an average tonnage of approximately seventeen or eighteen thousand tons, as against twenty-one that was used? A. Yes, it would. Quite approximately seventeen thousand.

Q. So that the difference would be the limit of your criticism there with regard to the average tonnage? A. If I took an average of five years?

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Q. Yes? A. Of course I am not agreeing that five years would be a proper average to take; I agree with your figure that it would give the result of 17,000 tons, that is all I can say.

Q. And when you are taking the average of the business I suppose the usual practice is to get the average for the longest period for which the figures are available, that is your usual accounting practice? A. Well it depends what you want to average for, Mr. Osler. I have never before had to average for a firm as to the fair average of coal that is handled for a year, I have never done that for coal companies; I have taken out averages for Arbitrations and so forth but of course that is quite different. 10

Q. But as a matter of fact in the coal business the amounts vary from various causes, such as strikes and so on? A. Yes, they vary by strikes. Strikes are one of the risks of the business they have to take into consideration. I am not necessarily criticising the average, I am merely pointing out if it was in a different term you would get a different result.

Q. Then you have said that the difference in your calculation of the cost of water transport was eight cents, and that applied to the twenty-one thousand odd tons taken by the company would amount to something under \$800 or \$900? A. No, it would amount to eight cents on 21,000 tons, or \$1,600.

Q. \$1,600? A. Yes. 20

Q. And what would be the amount of the difference by taking an average based on the cargoes received before and after June? You suggest it was two-sevenths against a third, was it? A. That item is a small item.

Q. Really trifling? A. To the whole sum, yes. I haven't made these calculations; I haven't attempted to.

Q. And while you haven't been able to check the matters which are stated to be matters of estimate there is no reason to question those estimates? A. Well they are clearly estimates.

Q. They are estimates? A. I cannot prove them to be correct.

Q. You haven't been able to prove them mathematically? A. No. 30

Q. But you haven't been able to criticise them as estimates? A. Except as to the extent that you might criticise any estimate.

Q. And of course you haven't been in that business so that I don't suppose you are really qualified to criticise them as estimates? A. No, I am not qualified.

Q. And then you said you found different grades of coal coming in on the same boat. Did you find any record as to the separation of the different grades of coal in the boats, or was that only by finding that out of a given cargo there was in fact so much of this grade and so much of that? A. I couldn't remember, Mr. Osler, whether I did or not. I don't recollect that point. All I know is we didn't pay very much attention to that, we didn't think we were very much concerned in that particular claim, but we did notice that the boats brought in different classes of coal. 40

Q. And then did you notice that the screenings in the years 1924 and 1925, ending March 1924, and 1925, were all sold to the T. Eaton Company? A. I don't recollect that. It may be so. I don't recollect the name of the purchaser.

Q. My instructions are that in the one year ending March 31st, 1924, there were 840 tons of screenings sold to the T. Eaton Company and in the following year 960 tons. Does that jibe with your figures? A. Would you just go over that?

Q. The year ending March 31st, 1924—? A. I cannot check you in your 1924 because the records are not now available; the only records we had by which we could take off the sales in the different years of coal and screenings commenced in April, 1924, and ended in March, 1925.

10 Q. And how much was it in that period? A. In March, 1925, the screenings sold included in total tons were 1,150 tons.

Q. And you knew of course that the business was moved from these yards in April, 1927, except for the small part that was carried on at the north end? A. I was informed of that.

Q. That is the business was cleared out of the sheds where the main part of the anthracite was handled? A. I didn't know that detail, no.

Q. Did you make any allowance for the general cleaning up of the yard when it was moved out? A. Yes, I did.

20 Q. What allowance did you make for that? A. There was an inventory on hand I think giving us the quantity of screenings that they should have out there and we followed that inventory back the following year and found out when it was sold.

Q. That is you found the inventory at the time they moved out in April, 1927? A. Yes. It may not be an accurate inventory but we estimated, and the figures were submitted by the accountant.

Q. But you didn't have any means of checking what the inventory of screenings was at the beginning of that year? A. No.

30 Q. Or the beginning of the previous year? A. No, but the inventory was not great enough at the end to substantially change the percentages. Even if you had taken no inventory at the beginning and no inventory at the end it wouldn't have changed the percentages very substantially.

Q. Have you had any experience in coal company yards? A. In a general way, yes.

Q. And you would normally expect a considerable accumulation of screenings towards the end of an operation when a company was cleaning out? A. Yes. Of course some companies clean out their screenings every year, but some do allow them to accumulate.

Q. And you were not able to check these calculations of yours as against previous years? A. No.

RE-EXAMINED BY MR. TILLEY:

40 Q. Mr. Nash, you were asked about taking an average. We have had evidence about it here so that I don't know that we need to bother about it, but were you able to tell whether the anthracite business at the Church Street dock seemed to be on a down grade as to amount? A. Yes, it did seem to be in 1926 and 1927, the chart which was submitted by the company is part of Exhibit 19.

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BY MR. OSLER: Q. Excuse me a moment; that was new, perhaps I might ask another question: The coke business was supplemented? A. Yes, the coke was supplemented.

HIS LORDSHIP: You started to bring in coke if I remember correctly in 1926 and brought in by water 5,000 tons.

MR. TILLEY: No coke brought in by water.

WITNESS: There is no reference in the books of coke being brought in by water.

HIS LORDSHIP: I think there was a reference to that. Are you sure of that, because I had in mind some person said, if I recollect correctly, they 10 started to bring in coke in 1926.

MR. OSLER: Not at that time, my Lord, the coke came in by rail.

Q. But the point is that the combination of coke and anthracite was about the same tonnage as the anthracite before? A. Well you have just got that.

Q. In other words you saw in this Exhibit the amounts shown of anthracite? A. Yes.

Q. And the amounts shown of coke? A. Yes. You are looking at page 6 of that?

Q. Yes. But the fact of course is that coke was taking the place of 20 anthracite to some extent and being burned in the furnaces?

MR. TILLEY: Mr. Nash is only on the figures; he is not burning it in the furnaces.

HIS LORDSHIP: Unless he could discover it in the books he couldn't answer that.

WITNESS: No, I am afraid I can't.

Q. But you did find quantities of coke coming in? A. Yes, we found approximately the quantities stated in this Exhibit.

MR. TILLEY: That is all, thank you, Mr. Nash. I think that is all.

HIS LORDSHIP: Any reply?

MR. HELLMUTH: I have no reply.

30

REPLY.

No. 19.

Claimant's
Evidence in Reply
No. 19
Martin Waldie
Examination

MARTIN WALDIE, Sworn:

EXAMINED BY MR. CASSELS:

Q. What is your occupation, Mr. Waldie? A. Master of a steam vessel.

Q. And where do you reside? A. Buffalo, New York.

Q. And how long have you been engaged in that business or occupation?

A. Been a master twenty-six years.

BY HIS LORDSHIP: Q. What does a master mean, of a vessel? A. Captain.

BY MR. CASSELS: Q. And prior to that? A. Ordinary seaman, mate and second mate thirteen years.

Q. And then on what waters have you spent most of your time during your trips? A. On the upper lakes.

Q. Meaning by that Lake Erie—? A. Lake Huron.

Q. Superior and Michigan? A. Yes.

10 A. Q. And may I say you have spent practically your life on the upper lakes? A. Yes sir.

Q. And have you gone from seaman up to Captain or Master? A. Yes.

Q. And through the various ranks between the two? A. Yes sir.

Q. And for twenty-six years you say you have been Master? A. Yes sir.

Q. And by whom are you employed at the present time? A. Boland & Cornelius, Buffalo.

BY HIS LORDSHIP: Q. What do they do? A. Vessel owners.

BY MR. CASSELS: Q. They were referred to, my Lord, in Mr. Cousins' evidence. They are the owners, I understand, of the Steamship Dow Chemical? A. Yes sir.

20 Q. Have you in the course of your employment by them sailed that vessel? A. Yes sir, for a short period.

Q. And have you sailed other vessels of comparatively the same size as the Dow Chemical? A. Yes sir.

Q. And others smaller than that? A. Others smaller and larger.

Q. You have had a varied experience, have you? A. Yes sir.

Q. Then are you familiar with the Toronto Harbor? A. Not very much.

Q. Do you know approximately the size of it? A. A rough guess, yes.

30 Q. I would, subject to correction, say it is possibly two to three miles long and perhaps three-quarters of a mile wide? A. Yes sir.

Q. I am told approximately two and a quarter by three-quarters wide, and completely enclosed except for two comparatively narrow entrances, one at the west end and one at the east end? A. Yes.

Q. And in the course of your occupation as Master of vessels—I understand they have all been freight vessels, is that right? A. Yes sir, all in the coal trade.

Q. And I suppose that has involved taking vessels into various harbors on the lakes? A. Yes, sir.

40 Q. Then what would you say as to the minimum width of a slip into which you could take a vessel say having a beam of 54 feet?

MR. TILLEY: I object to the evidence. My friend has had all his experts; he has produced his plan of what he conceived to be a proper dock arrangement and if he intended to support the width of the slip by evidence as to its sufficiency and so on by those who are competent to speak he should have done it in chief, and certainly he cannot enlarge his experts by bringing them in in reply. If this were possible we could have enlarged ours by several persons, had it been necessary.

HIS LORDSHIP: Well this has regard to the evidence you put in in relation to the slip. There is evidence as to one 55 feet or something like that and the other 80. That evidence you gave, of the difficulties to a boat coming in; now this witness is called in reply and you say he is an expert and they have exhausted their number.

MR. TILLEY: Yes.

MR. CASSELS: We have not exceeded our number; we have called only two experts, as far as that is concerned.

MR. OSLER: Mitchell and Wilson.

MR. TILLEY: You called Mitchell and Wilson and Mr. McBrien. 10

MR. CASSELS: We didn't call Mr. McBrien.

MR. TILLEY: The claimants called those.

HIS LORDSHIP: Oh well, this is a different branch, isn't it.

MR. TILLEY: No, my Lord, it is not a branch. There is no authority under the Dominion Railway Act to split it into branches or split it as to claims. They are here as claimants, they are parties to the proceedings making a claim and I want to put our position quite clearly on that.

HIS LORDSHIP: For instance could they give three experts on the question of the value of the buildings?

MR. TILLEY: No, my Lord, I submit not. 20

HIS LORDSHIP: I think they could bring three experts on the three different branches.

MR. TILLEY: Not under the Dominion Railway Act, whatever it may be under others. The Dominion Railway Act expressly limits the number of experts.

MR. OSLER: To be called by each party.

MR. TILLEY: It doesn't say each party.

MR. CASSELS: My Lord, the position is that the compensation to which the owner of the land is entitled is to be ascertained by Your Lordship, and also the compensation to which the tenant or lessee is entitled. Now as an 30 matter of convenience to all parties it was agreed that insofar as the land values were concerned the landlord and the lessee should be treated as the owner, and that being so I would agree with my friend's submission that insofar as that feature of the case is concerned we would not be each entitled to call three expert witnesses.

HIS LORDSHIP: Not more than three experts?

MR. CASSELS: I say we would not each be entitled to call three expert witnesses on the land, that we would not be entitled to call more than three as we are treated as one party, but for the purposes of the other feature of the case, with which my friend Mr. Hellmuth's client has nothing to do, we 40 are surely entitled to.

HIS LORDSHIP: I will have to be very careful about this. I understood under the Act, I have not consulted it, that only three experts could be called.

MR. HELLMUTH: It is section 224, my Lord, of the Railway Act, because this Arbitration is under the Railway Act, "The Arbitrator shall examine on oath or solemn affirmation such witnesses as appear before him, but no more than three expert or opinion witnesses shall be called in behalf of

any party.” Now my friends are drawing I think the distinction that as to the value of the land is one party, but certainly I am not a party to the value of the buildings or the disturbance.

MR. CASSELS: We are certainly a separate party to the landlord.

HIS LORDSHIP: When there are three distinct items to be valued in Arbitration does that mean you may not have three experts on each item?

MR. TILLEY: Oh certainly, I don't think there is any question about that.

10 MR. HELLMUTH: I don't think there is any question about that; I agree with my friend Mr. Tilley.

MR. CASSELS: There are certainly two parties; Mr. Boulton is one party and the Standard Fuel Company is another party.

HIS LORDSHIP: Well then you are advancing as one of the reasons for that that you could have extended this business out.

MR. CASSELS: Yes, my Lord.

20 HIS LORDSHIP: And Mr. Tilley says if you extend this business out there will be all this expense and all that kind of thing which he points out; you would construct a slip there of 54 or 55 feet and Mr. Tilley says with his experts that that would not do and it would have to be shown. Now you want to call a witness to substantiate the 54 or 55 feet.

MR. CASSELS: Yes, my Lord.

HIS LORDSHIP: Mr. Tilley says you have had your number of experts. As to whether that is so or not I don't just know.

MR. CASSELS: I would submit with regard to the words “any party” in the section that we are clearly not the same party as my friend Mr. Hellmuth.

HIS LORDSHIP: Well that was bothering me, “Any party.” We have two parties here in one sense, we have the owner and we have the tenant, the tenant on two branches and the owner on one.

MR. CASSELS: Yes.

30 HIS LORDSHIP: I will have to consider this thing, I don't want to make a mess of it on that point now.

MR. TILLEY: Oh we will have to have an argument. I don't know whether my friend is arguing it or blocking me from arguing.

MR. CASSELS: No, I am making a submission there are two parties here, there is Boulton and the Standard Fuel, and the Standard Fuel has not called three experts.

HIS LORDSHIP: Didn't this point come up in that Steamship Arbitration?

MR. CASSELS: I couldn't speak as to that.

MR. TILLEY: Yes, my Lord.

40 HIS LORDSHIP: You were in that.

MR. TILLEY: Yes.

HIS LORDSHIP: What was the decision of Mr. Justice Orde in that?

MR. TILLEY: The decision in that was that a party under this section is a party claimant or a party resisting. I don't want to interrupt my friend; I would rather hear all he is going to say about it.

MR. CASSELS: I haven't a lot to state, only that a landlord and a lessee having different interests are having their rights determined in the same

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Arbitration. If they were separate Arbitrations of course there would be no question about it, that they would each be entitled to call their three witnesses.

HIS LORDSHIP: Now you have had Mr. Mitchell and you have had Mr. Wilson.

MR. CASSELS: And my friend Mr. Hellmuth called Mr. McBrien, those are the three expert witnesses who have been called.

MR. TILLEY: Then you are not relying on Mr. McBrien.

MR. CASSELS: Yes.

MR. TILLEY: Then you are calling three.

MR. CASSELS: His evidence is in on the one branch of the case. 10

HIS LORDSHIP: Mr. Mitchell and Mr. Wilson were called by you.

MR. CASSELS: They were called by us.

HIS LORDSHIP: Mr. Hellmuth called Mr. McBrien and Mr. Tilley says you have had your three. Have you anything more to say?

MR. CASSELS: No, my Lord.

MR. TILLEY: My friend has his three, no matter how he figures this out my friend has had his three, and Mr. Hellmuth is not interested in this branch and is not calling the witness. My friend has had his three, because he says that We are agreed on land values, our interests are united.

HIS LORDSHIP: Who are the three? 20

MR. TILLEY: McBrien, called for both, and my friend is relying on McBrien's evidence.

HIS LORDSHIP: Yes.

MR. TILLEY: And he examined McBrien before I cross-examined him and he was called for both.

MR. OSLER: I did ask him some questions.

HIS LORDSHIP: I think you did. Well then you have really exhausted your three experts.

MR. OSLER: I can cross-examine an expert called by another.

HIS LORDSHIP: Mr. Tilley says you are using his evidence. 30

MR. TILLEY: May I just put it a little broader than that, because this is an important question; I didn't allege in the Steamship case that there was any conflict so His Lordship didn't have to pass upon conflict, but I am putting it here that there is no conflict here; there is no conflict at all. My friend and Mr. Hellmuth are not opposed to one another here at all. Each of them is opposed to me but they are not opposed to one another, and they have told Your Lordship in the plainest possible terms that you need not be concerned with any question of division as between the landlord and the tenant, and they got benefit from that, because if we had been allowed to go into that there would have been questions raised as to the value of this property from a lease- 40
hold standpoint, what the owner could have got out of it and the class of people who have rented it. They have had their benefit of that, whatever it may be, and there are not three opposing parties.

Now if Your Lordship will just take the Act and look at the sections that are material; Section 215, "Preliminary to proceeding to Arbitration to fix compensation or damages the company shall serve upon the opposite party"

(now that is the definition of what the word "party" means; it is opposing party) "a notice, which shall contain" . . . and so on.

And then 216 refers to the surveyor's certificate.

And then at 217: "If the opposite party is absent from the district or county in which the lands lie, or is unknown, an application for service by advertisement may be made" . . . and so on. And then notice may be abandoned.

And then, my Lord, at 219:

10 "If within ten days after the service of such notice, or, where service is made by advertisement, within one month after the first publication thereof, the opposite party does not give notice to the company that he accepts the sum offered by it, either party may apply to the judge of the County Court of the county in which the lands lie, or, in the Province of Quebec or in any other part of Canada where there is no County Court, to a judge of the Superior Court for the district or place in which the lands lie, to determine the compensation to be paid as aforesaid.

"2. Ten days' notice of such application shall be given by the company to the opposite party, or vice versa.

20 "3. If the opposite party is absent from the district or County in which the lands lie, or is unknown,"
certain provisions follow.

And then section 220: (Reads)

Then 221, "The Arbitrator, in deciding on such value or compensation, shall take into consideration the increased value,"

Section 223: "The costs of the Arbitration shall be in the discretion of the Arbitrator and shall be paid by the party against whom he allows the same"

That shows again it is the opposite party.

30 Section 224: "The Arbitrator shall examine on oath or solemn affirmation such witnesses as appear before him, but no more than three expert or opinion witnesses shall be called on behalf of any party:"

Now, my Lord, those are the opposing parties and the opposing parties are the company and the claimant. Your Lordship will remember the old rule was that the Arbitrator was selected, not by this process but by appointment of the parties, with the result that the company appointed one, the opposite party appointed the other and then they chose a third. Well the opposite party had to consult two or three Arbitrators if there were two or three of them, because there was only one party and you had only one Arbitration and you had only one person represented. Now that part of it has been
40 cut out but we still have the same provision with regard to the opposite party.

Now then what have we here? First, it cannot be divided into sections. This is on the value of land I presume if it is on the value of anything. I don't know just how it could be split up but at any rate we are agreed on that now, and I put my objection on two grounds: First that they have exhausted on behalf of the opposite party to me their list of experts; they may have three and no more. The moment they decided to put in the evidence about the

proper kind of dock they knew that whatever they had to give with regard to it had to be given by people competent to speak and they chose to put it in, and, in my submission, it is the end of the matter. They have had their three now.

In addition to that there is this feature of it, they are trying to split up their expert evidence on this dock basis and they cannot split it up, they cannot put in part in opening and part in reply. Where does that land me? If they could do it by these means they could do it as to anything. They have called a man who was supposed to know—we will have something to say whether he did know anything about it—but they selected a man who was supposed to know and he came in and said that width of slip was sufficient. Now if they were going to prove that then was the time to prove it. They cannot say Now they have put in their evidence and we will swamp them with a dozen; they cannot set up their case and invite discussion of the site and then when it has been passed on say Then we will come down and deal with the specific things that have been mentioned. The size of that slip was directly in issue the moment they put Mitchell in the box, and they had Mitchell and I think they had Wilson on the same point, but at any rate they had these people, and now they give their evidence about it and they say we will get in some other evidence about it. I put it on two grounds, they have had their three, and secondly they cannot split it up.

MR. OSLER: Well, my Lord, I would say in regard to that—

MR. TILLEY: This is rather unusual, isn't it, for me to answer Mr. Cassels and then Mr. Osler get up to reply? If Mr. Osler wanted to take charge of the argument he could have at the beginning. This is a most peculiar proceeding.

MR. OSLER: I don't think so. My learned friend has stated his objection. Does my learned friend wish to have this decided without hearing my answer to his objection?

MR. TILLEY: Not at all.

HIS LORDSHIP: I will hear Mr. Osler.

MR. OSLER: My friend has had to find a case on the Statute to argue. As Your Lordship will notice he reiterates we are an opposing party, putting us in the same class with the landlord.

Now my learned friend refers to section 215 which says that the railway must serve the party and, as Your Lordship has before you this record, you will see he has served us and we are a party. He has also served Mr. Hellmuth and he is a party. He is choosing to bring the two parties into the same arbitration, and we have not objected to that, as Mr. Hellmuth explained in opening, but that does not deprive us of our statutory rights.

My learned friend suggested at one stage, but did not proceed, that Mr. Justice Orde had decided a similar matter in the Canada Steamship case.

MR. TILLEY: I have the report here, it is 35 Canadian Railway cases at page 238, where it is said:

“Having regard to the history of the Act, and to the type of matter which one has to deal with upon an arbitration of this sort, the word “party” as used in Section 224 of the Act, which refers to expert wit-

nesses, is intended to mean each of the opposing sides in the arbitration; and where the interests in a claim are, as they are here, all united in making the one claim, and there is no severance whatever in their respective interests as between themselves collectively on the one hand and the Terminals Company on the other, I must regard the four claimants as in effect one party," . . .

MR. OSLER: That is four in the one case.

MR. TILLEY: You have them all in the one case here against us.

10 May I just add to what I have said there, Your Lordship will appreciate the claim I made was that for the purpose of this arbitration before Your Lordship there was one person only running the business there. That was the agreement we made.

MR. OSLER: I think my learned friend has gone a long way beyond that, because my learned friend Mr. Hellmuth is not interested in the business and not interested in the buildings.

MR. HELLMUTH: I am not interested in disturbance and I am not interested in the value of the buildings. I have no interest whatever.

MR. TILLEY: He was interested in what he said he was interested in and I tried to make it very clear.

20 MR. OSLER: The two parties are interested in the value of the land which Your Lordship might fix but surely that does not deprive them of the right to call the witnesses which the Statute says they may call. For instance it is quite possible that Mr. Hellmuth might have called land value witnesses whose evidence I was not satisfied with; I might have called others, and it is surely pressing the Statute far beyond reason to say that because we are each interested in securing the highest award for the land therefore we should be limited to agreeing between ourselves as to how many witnesses we should call.

30 Could it be suggested that if Mr. Helmuth had called two witnesses with whose valuations or evidence I was dissatisfied that I was precluded, being a party to this arbitration, from calling a witness whom I chose to present my case?

HIS LORDSHIP: You mean to say that Mr. Hellmuth ought to call three witnesses on the value of the land?

40 MR. OSLER: I might well have called three, because I am entitled by the Statute to present my case, I am entitled to say to the Court These are the witnesses on whom I rely. The Statute is not "Any opposing party"; the Statute says "No more than three expert or opinion witnesses shall be called in behalf of any party;" Now it is a great extension of that to say that if two parties are in the same interest they must agree between themselves as to which witnesses they will call, and there is no foundation for my learned friend's argument, I submit, that will extend the application of the Statute. Section 215 doesn't help him, because there the party, as he points out, is defined by the notice of expropriation. Now we have a notice of expropriation and Mr. Hellmuth has a different notice of expropriation. My learned friend didn't serve only one notice of expropriation. If he had done that and if he had been able to do it within the terms of the Statute, which

I will submit he couldn't have, if he had attempted to adopt that procedure, then he might have said There is only one notice of expropriation and then everybody who was concerned in that notice of expropriation is the party, but my friend deliberately elected, as indeed I think he had to under the Statute, to serve a notice on me, which constituted me a party, and on Mr. Hellmuth, and that constituted him a party, and that being so, that I, being in that way constituted a party to this arbitration, if I am not allowed to call three witnesses I am deprived of my statutory right.

Now my learned friend took the other objection that this was a splitting up of our claim. I would have hardly thought it necessary to argue that. 10 We gave evidence as to this dock. Nobody could have dreamed that any practical person would come forward and criticise the width of the slip. It was not for me to anticipate what he might say in reply when he calls a witness in reply to that who says The method that you have suggested is defective in this respect or that respect.

HIS LORDSHIP: Well because it was a question of expense. You put in a slip 54 feet and that would cost so much less, a slip which Mr. Tilley's expert witness says is no good at all, in order to show that it wouldn't cost on the whole so much.

MR. OSLER: Now Mr. Tilley says I have put forward a slip that we say 20 is perfectly workable, Mr. Tilley has called a witness who says that slip is not workable for this specific reason. Surely it is a matter of reply to say that that particular reason that you suggest is without foundation. It seems to be the clearest possible kind of reply. I hadn't touched on this in chief.

HIS LORDSHIP: Is this witness an expert upon that particular point?

MR. OSLER: That is the point I am calling him on, to show that the criticism that my learned friend opened in his defence to the effect that the 54 foot slip was not practicable is without foundation, and I submit we are entitled to call the witness.

MR. TILLEY: Would Your Lordship permit me just one word: The 30 number of notices, whether they are given in separate notices or all in one, matters not. The question is this is one arbitration and we have to bring in the necessary parties.

Now I have been looking at the other point my learned friend raised: Where the question of design is one that an expert is called to prove Here is a proper design, here is as I would lay it out, and the question of slip and the width of it is all important, that is the main feature of it, then that is something that when they once deal with it they must deal with it for all purposes.

Then on the other point, I can't just put my hand on where I raised the question, because Your Lordship will remember that I was pressing about it 40 to the point that Your Lordship may have thought that I was too insistent as to just what the understanding was, about whether this was one arbitration or two, and it would affect my whole line-up of how I presented my case and it was important for me to know it, and in the plainest possible terms I was told, not once, but I was told two or three times, so that finally Mr. Hellmuth said it in a way which would be understood "Now that will surely satisfy this cantankerous man."

MR. HELLMUTH: I am sure I never said anything like that. That is not my line.

MR. TILLEY: Just in manner.

MR. HELLMUTH: Not my manner.

MR. TILLEY: And I think Your Lordship will find it very clear that I said We are here to have one arbitration with the owner of the land and the owner was carrying on the business.

HIS LORDSHIP: I remember that quite distinctly.

MR. HELLMUTH: Your Lordship will find I said I had nothing to do
10 whatever with the claims that the tenant made for disturbance or for buildings.

HIS LORDSHIP: We will find that in a moment. Mr. Tilley was not here at the beginning and the trouble arose later; I think Mr. Spence was appealed to if I recollect correctly as to whether he had agreed to a certain thing.

I must absent myself for a few minutes and perhaps you can find that.

—10.45 a.m., His Lordship having to appear in the Court of Appeal, an adjournment was taken until 11.00 a.m.

MR. TILLEY: Your Lordship will find it at the bottom of page 321, the beginning, and we were there discussing Mr. Marshall's claims and he was
20 putting forward the amount of his damage for business disturbance, and I asked him:

“Q. Now, Mr. Marshall, that was your view at any rate, \$250,000 out of \$400,000, and of course that would be for your leasehold interests apart from buildings and apart from anything connected with business disturbance? A. Yes.

Q. That is what you mean? A. Yes.

Q. I mean I want to be clear? A. Purely land and land covered by water and riparian rights.

Q. And you would agree I suppose that if the compensation were
30 less your interest would be proportionately less? You would agree with that?”

Now I was on the very point there as to whether there was a question of tenancy here that was different from the landlord, and then there is an objection and there is discussion, and I reframed the question at line 13:

“Q. Mr. Marshall, your agreement is not an agreement for a lump sum, it is an agreement between yourselves on a proportion basis, isn't it?”

And then it is discussed again, and then at the bottom, line 25, I say:
“I am trying to get as far as I can notwithstanding the ruling, I do admit that, and many times one has to do that. I am asking this witness whether
40 as between themselves it is on a proportion basis.”

And then there is an objection to that, and at line 10, page 323, I put it again:

“If my learned friend will put it that disturbance is to be based just on the view that the disturbance was to landlord and tenant without regard to one being a tenant and that that business was just a going

business on the property I will deal with it that way, then I am not embarrassed, but I don't want to be told when I come to the end of this thing that I am dealing with a tenant with disturbance only. If the claim is put forward that the disturbance to be considered is merely as a disturbance to the business on the property and the landlord and tenant's interests are not to be taken into account in that connection I can deal with it.

MR. HELLMUTH: Of course I cannot speak for my learned friend but I do understand that there is nothing being asked for the value that the tenant might have as a lessee under his lease in this beyond the disturbance"

And I asked, Your Lordship, at that time that that be carefully noted, because that wasn't answering my point at all:

"MR. TILLEY: I want that to be noted carefully, just what you are saying."

—Mr. Tilley then read the remainder of page 323, all of page 324, and the first four lines of page 325.

Then the next page, 326, at line 5, commencing with my remarks: "Well then Your Lordship does not understand my argument at present."

—Mr. Tilley reads remainder of page 326 and on page 327 the first six 20 lines, down to and including:

"MR. HELLMUTH: And in assent to that I say it doesn't make a particle of difference."

But he is assenting to it. Then Mr. Hellmuth goes on with some other matters.

Now, my Lord, my point is this, if there was to be a claim made here that made a different claim so that they were different parties I could have gone and had just as many experts as these combined landlords and tenants could have had. I commenced, but they stopped me with "What was the idea as to that? Why? Because there was only one claim and these two parties joined 30 in it, one contest, and no conflict between them." And this arbitration, whether it had been started that way or not I was quite prepared for it to start differently, I was quite prepared to have two claims here and if it had been put that way at the start I would have been dealing with it in that way and I think I would have got some advantage from it; my learned friends know very well the advantage which they got by making it one claim and getting together and telling me I needn't bother. They didn't do that just because they wanted to shorten up the Arbitration or anything of that kind, they wanted to get an advantage so that that phase of the matter as between landlord and tenant would not be discussed. Now I say to them If you are taking that position 40 at the beginning don't let me know about this at the end, I want to know now, I want to know whether I have two things, a tenant's claim here to be dealt with separately from the landlord's, and I was told No, you may treat the landlord as owning the property and owning the business and having one claim, and I proceeded on that basis. I don't want to use offensive words; it would be described if they did it deliberately as a trick on me, to have me present a claim as though I had three experts to deal with one claim and then when I have

done it, because one of my experts has in criticising what another expert has put forward as a better plan said something about using the slip, that they can go on then with two or three more than that, which would leave me in the position I was fighting at the beginning for fear I might be put in that position at the end. My learned friends now say We will have four or five experts. No, we have no contest but we are putting it forward as though it were the owner's business being carried on there and then when we have got the figure held down to three dealing with this scheme, having presented it differently, without any separate case to be considered, then we will bring on

10 the separate case and we will have some more experts to answer him.

HIS LORDSHIP: The point has given me considerable difficulty but this is the conclusion I have come to, Mr. Cassels, I cannot receive this evidence, you have exhausted your list of experts.

MR. CASSELS: Then may I ask the witness, sir, as to questions of fact?

HIS LORDSHIP: Questions of fact, yes.

Q. You say that you had twenty-six years as Master? A. Yes, sir.

Q. And you have been taking these vessels in which you have been Master into various ports on the upper lakes? A. Yes sir.

Q. Can you tell me what width of slips you have taken vessels into—?

20 MR. TILLEY: I submit we are not concerned with what this man has done. I haven't met him before, but we are not concerned with his past at all in this arbitration. The fact he has got into some other slip does not matter. We would have to go and see the slip and find out how the wind blows and what depth of water and a whole lot of things and I do submit it is under the guise of fact trying to evade Your Lordship's ruling.

HIS LORDSHIP: Isn't that really what you are trying to get at, Mr. Cassels, in a round about way?

MR. CASSELS: I wouldn't say that, in a round about way, my Lord.

30 HIS LORDSHIP: A question of fact, you are trying to get this evidence in which would make him in effect an expert witness.

MR. CASSELS: I thought a witness could give what his experience has been.

HIS LORDSHIP: I will confess to you according to my views in this arbitration so far that while I have to consider the evidence of these expert witnesses the point that there was so much trouble about now is not giving very much trouble. But if you are going to ask what this man did in some other wharf, whether he could get his vessel into a 55 foot slip, is that not a question of fact?

40 MR. TILLEY: I don't care what he could do anywhere else. If he says that he got in there and he could get in here then that is expert. We are not concerned with that. He isn't giving evidence as to any question of fact; if he says at Owen Sound I got into a narrow space, I put a 54 foot boat into a 54 foot slip, it wouldn't help us a bit.

HIS LORDSHIP: Conditions might have been different. As I understand what you are leading up to, you are going to ask this witness a question as to whether or not he had at some other port been able to take a boat of certain beam and so on into a slip of such a size, is that it?

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MR. CASSELS: Yes.

HIS LORDSHIP: I think that is really in an indirect way getting at what is objectionable.

MR. HELLMUTH: I don't want to interrupt, I have nothing to do with this, but I would like to submit to Your Lordship that Mr. Tilley has by no means read the whole of the statements that were made in regard to the position of the landlord and tenant in this case.

HIS LORDSHIP: Well we will hear that in argument at the end of the evidence.

MR. TILLEY: I knew I was having difficulty in getting an understanding, Mr. Hellmuth, but I didn't think it would turn out this way. 10

MR. OSLER: I am not questioning Your Lordship's ruling, but my learned friend put the matter in a way which was entirely unjustified; he himself was responsible for combining the two parties who are opposing him in this Arbitration; it was his intention to do that and not ours, and for him to get up and state there was a trick and that he had been tricked is I think without foundation.

HIS LORDSHIP: I am not hearing argument.

MR. OSLER: And the passage my learned friend read of course was not directed to this question at all but to the basis of damage. 20

HIS LORDSHIP: Now I am not going to hear argument.

MR. OSLER: I have two other witnesses.

MR. CASSELS: That is all, Captain.

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No. 20.

WILLIAM THOMAS JOHNSON Sworn:

EXAMINED BY MR. OSLER:

Q. Mr. Johnson, you are an employee of the Standard Fuel Company.

A. Yes sir.

Q. Employed at their present plant? A. Yes sir.

Q. Near Ashbridge's Bay? A. Yes sir. 30

Q. And did you count the times and take a note of the times on several days when the bridge across the new ship channel which gives access to their plant was taken up so that you could give evidence—?

MR. TILLEY: I object to that, my Lord.

MR. OSLER: I am asking him to say if he took a note of the times the bridge was up so that they couldn't get access.

HIS LORDSHIP: It is a swing bridge?

MR. OSLER: Yes. This is in answer to the evidence my learned friend gave as to interruptions by rail at the old site.

MR. TILLEY: Well I certainly did not on this one feature only compare 40 the two sites.

HIS LORDSHIP: I don't think it is evidence.

MR. OSLER: I would have thought so, my Lord. My learned friend giving evidence as to rail interruption of the old site, surely I can show that there were greater interruptions—

HIS LORDSHIP: You mean that the evidence was given by Mr. Mitchell and that other man as to trains passing and clogging it up, there was a detriment on that ground?

MR. OSLER: Yes.

HIS LORDSHIP: That is evidence as to detriment to the old site, and
10 you want to offset that by offering evidence that there was a detriment at the new.

MR. OSLER: Not detriment to the value of the property but to the conditions under which the business had to operate.

HIS LORDSHIP: You mean this is on the question of business disturbance.

MR. OSLER: Yes.

HIS LORDSHIP: Is this proper reply on the question of business disturbance?

MR. OSLER: Surely. My learned friend says there wasn't much disturbance at the new, but you had to go across railway tracks and there was
20 a certain amount of interference at the old, and the new site being compared to the old site, surely it is direct contradiction of that. I say the delays were greater at the new site than the old.

HIS LORDSHIP: Supposing the bridge were out for a month or two just for example, that is an added loss to you in business disturbance, is that what you mean?

MR. OSLER: No, my Lord, I am not putting it in that way, that there was an addition to the loss that we show, but I am putting it as if the interruption to the business were just as great at the new site as at the old site.

HIS LORDSHIP: But you are in a new site to stay there.

MR. TILLEY: For a year.

MR. OSLER: We have it for a year. I suppose we hope to stay.

HIS LORDSHIP: Is this reply?

MR. OSLER: With great respect I should have thought, my Lord, if my learned friend could attempt to minimize our business disturbance claim by saying that we were subject to interruptions in the site from which we were
30 ejected—

HIS LORDSHIP: That was obvious to any person without the evidence; we know trains come downtown and stop on crossings and so on and we know this didn't add to the value of the property. You are out on the new site and
40 you say there is a bridge down for periods of time and that inconveniences you and by this witness in reply you are attempting to show that the bridge was out.

MR. OSLER: I am affording Your Lordship a comparison between the interference at the new site which would result from the use of the bridge as compared to the use of the rails which affected the old site.

HIS LORDSHIP: The bridge was completed long ago.

MR. OSLER: Yes. I am not giving evidence, my Lord, as to interruptions during construction or anything of that sort. This is, my Lord, interruption by reason of the raising of the bridge in the ordinary course of business.

HIS LORDSHIP: I see. That will continue.

MR. OSLER: Absolutely. I wouldn't be bothering about it otherwise.

HIS LORDSHIP: What is going to happen to all these other men down there who are going to find that bridge open?

MR. OSLER: That is one of the disadvantages.

HIS LORDSHIP: That is one of the disadvantages of the site.

MR. OSLER: Yes.

MR. TILLEY: It is valued at a dollar a square foot.

MR. OSLER: That is one of the comparisons I am entitled to make, I think.

HIS LORDSHIP: I confess I don't think it is reply, but, as I said before, I have a wide discretion here; I will let it in subject to objection.

MR. TILLEY: Your Lordship sees what it leads to.

HIS LORDSHIP: I know.

MR. TILLEY: That is only one feature of the different ways which have to be entered into to find out the compensating features.

HIS LORDSHIP: I do not think that it is really reply in the strict sense of the word, but this is not expert.

MR. TILLEY: I wasn't thinking about reply, but it is not evidence that is material.

Q. Mr. Johnson, did you make a count of the times on certain days when the bridge was up? A. Yes sir.

Q. That was after the bridge was in ordinary operation? A. Oh yes.

HIS LORDSHIP: You got out of there in June 1931. Was the bridge up then?

MR. OSLER: The bridge was put up just about that time.

Q. Did you prepare this memorandum which I show you? A. Yes sir.

Q. And this shows: Wednesday, April 20th, 1932; Thursday, April 21st; Friday April 22nd and Saturday April 23rd; and you have written below it "Timed by yard foreman W. T. Johnson." Is that your signature? A. Yes sir.

Q. And under each date you have two columns, one "up" and the other "down," and then the figures following after that? A. Yes.

Q. Would you just tell His Lordship what that means? A. This here is the time the bridge went up, 941.

Q. The figures under the column "up?" A. And the time the bridge went down.

Q. And when the bridge is up it is out of use? A. Yes.

Q. Because vessels are going through the canal? A. Yes.

Q. And are all the columns made up on the same basis? A. Just the same basis.

Q. So that you can see the time of the various interruptions? A. Yes.

HIS LORDSHIP: I suppose this will go in as an exhibit?

MR. TILLEY: Subject to objection.

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HIS LORDSHIP: Subject to objection.

BY HIS LORDSHIP: Q. How did you come to make up this statement?
What did you make it from? A. From my watch.

Q. No no, but how did you come to have these dates? A. I was asked to get the number of lifts of the bridge.

Q. You mean on April 20th? A. On April 20th.

Q. Did you start then? A. Yes.

Q. Who asked you? A. My boss, Mr. Cuthbert.

MR. OSLER: One of the company's foremen.

10 Q. He asked you to keep a memorandum. Where is the book? A. The first day it was on a pad; I haven't got the first day. (Witness produces a pocket memorandum book).

Q. Then we will take the second day. Then you have made this statement up from this book? A. Yes.

Q. The page of Thursday the 21st: Under "up," that is 7.12, is it?
A. Yes sir.

Q. Well then it went down at 7.18? A. Yes sir.

Q. A question of six minutes? A. Yes.

20 Q. And all the way down. The next is 7.33, it was up 7.33 and down 7.37? A. Yes.

Q. So that it opened and shut on April 21st twelve times? A. Yes.

Q. Did you make these entries on the same date as they bear? A. Yes, just the same day.

Q. You did. Are they your figures? A. Certainly. They are my figures.

HIS LORDSHIP: Very well.

EXHIBIT 53: Above statement prepared by witness "Report of bascule bridge over channel," and above described.

30 Q. Who did you say asked you to make that statement up? A. Mr. Cuthbert, the yard manager.

Q. Did he give any reason for it? A. No more than just asked me to keep that on the bridge, the number of times it went up and down.

Q. And the length of time? A. And the length of time.

Q. You work for the Standard Fuel? A. Yes.

Q. And were there trucks standing there ready to go over when this bridge was out? A. Well there is trucks there all the time.

Q. How is that? A. There is trucks there mostly all the time.

Q. But the particular times mentioned in this statement do you pledge your oath trucks were there waiting to get through and couldn't get through?

40 A. I wouldn't say that, each time; I never counted the trucks.

Q. The bridge may have been up and down thirty times in a day and there might not be trucks there more than three or four times in a day ready and waiting to go over? Do you know anything about that? Did you keep track of trucks? A. No, I never kept track of them.

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Claimant's
Evidence in Reply
No. 20
William Thomas
Johnson
Cross-examination

CROSS-EXAMINED BY MR. TILLEY:

Q. Now just let us understand what was going on at this time of the year: Boats were being brought out that had been in there for winter storage?

A. Well with oil boats going out and coming in and other boats.

Q. But they store boats there during the winter, don't they? A. Yes sir.

Q. And that was at the time of the year they were bringing them out? A. They were bringing them out, yes.

Q. For the season's business; when they got out they wouldn't be going back. How many were stored there? A. I couldn't tell you. 10

Q. A lot of them? A. Yes.

Q. There is good winter storage berthing there for the whole winter? A. Yes.

Q. And this indicates when they came out in the spring? A. Yes, but that is not only for that; there is tugs going down there too.

Q. Do you have to lift it for a tug? A. Yes.

Q. How high? Does it go up the full height? A. No, it doesn't go its full height.

Q. Raises in a minute? A. Sometimes it raises in a minute and goes down. 20

Q. I am told it takes only a minute for it to go to the top? A. I couldn't say that. They only raise it halfway for a tug.

Q. You have in one case here on Monday April 25th, which I see is not on your list, it raised that day six times, and then you have something down below opposite three more "Bridge stuck." A. Well that was on the following.

Q. That was the following day? A. Yes. I kept it till then, I stopped taking the bridge.

Q. Why did you stop, because the boats had all got out? A. No, I was told to stop. 30

Q. Some person told you when to start and when to stop? A. Yes.

Q. And you like a good man did what you were told? A. Yes.

Q. But then I don't understand the bridge being stuck, because it shows here that it opened or raised at 1.40 and was down at 1.42; it couldn't have been stuck very long? A. They were working on it and it wouldn't raise only about a foot high and was holding it there. That is why I put that.

Q. That was just experimental work? A. Yes, just experimental work.

Q. They would experiment when there was no person wanted to go over I suppose? A. Yes. 40

Q. You say you were looking at the bridge and they were tinkering with it? A. Yes.

MR. OSLER: They weren't on one of the days that we referred to.

MR. TILLEY: No no, we didn't get to this day in the list.

Q. So that on this Monday in the regular way of business it opened only six times? A. Yes, that is up till that time.

Q. Well up to that time. Did you stop then? A. Stopped then.

Q. You didn't go on for the rest of the day? A. I didn't go on for the rest of the day.

Q. I see that ordinarily it opens and closes in about three or four minutes. I see one is Opened at 11.20, closed 11.23; that is pretty quick work, isn't it?

A. Yes.

Q. And a boat would go through? A. A boat would go through.

Q. It is a pretty excellent bridge, isn't it? A. Yes.

Q. If you were going to have any bridge between you and the other side that is the very best bridge you could get, isn't it? A. It is to lift up, yes.

Q. And then at other times it opens at 7.44 and closes at 7.47, three minutes; so that apparently a boat goes through in three minutes? A. Yes.

MR. TILLEY: Well that shows the spring traffic. That is all, thank you.

MR. OSLER: That is all, my Lord.

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Proceedings

Claimant's
Evidence in Reply
No. 20

William Thomas
Johnson
Cross-examination
—continued

HIS LORDSHIP: Well then shall we commence argument before lunch?

MR. HELLMUTH: Just as Your Lordship wishes.

HIS LORDSHIP: All right, I will hear you now and probably we can get through today.

20 —Evidence closed; counsel present argument.

No. 21

REASONS FOR AWARD

FISHER, J. A., Arbitrator; delivered September 30th, 1932.

I. F. HELLMUTH, K.C., and D. M. FLEMING, for Boulton.

GLYN OSLER, K.C., and R. C. H. CASSELS, K.C., for Standard Fuel Co., Claimants.

W. N. TILLEY, K.C., and J. D. SPENCE, K.C., for Toronto Terminals, Contestants.

No. 21
Reasons for Award
September 30th,
1932.

By an order of Chief Justice Sir William Mulock dated the 20th October, 1930, I was appointed the Arbitrator to fix the compensation to be awarded the claimants for certain lands expropriated by the Terminal Company under The Railway Act, 1919, now R.S.C. 1927, Cap. 170.

An Arbitration took place between the Canada Steamship Lines Limited and the Terminal Company in 1929 in connection with lands expropriated and situate at the foot of Yonge Street, Toronto, and as the late Mr. Justice

Orde,—the Arbitrator,—in his reasons (reported in Vol. 36 Canadian Railway Cases 301, et seq.) referred at length to the incorporation of the Terminal Company, its objects in acquiring land for a station, the viaduct agreement and the special legislative powers for carrying it out; the location of the old and new windmill lines, Lake Street which intersects the land expropriated (which was never opened or used as a highway); the history and scheme of extending the harbour front southerly and to the construction of piers, slips and wharfage, there is no necessity for any repetition by me.

By an agreement or arrangement entered into between counsel representing the owners and the tenants, my duties on this arbitration are to be confined only to the determination of what compensation the Terminal Company is to pay to the owners of the land and to the tenants

1. For the value to the owner of the lands expropriated.
2. The physical value of the buildings, plant, machinery and equipment situate upon the lands, and
3. Damages for business disturbance.

Notice of expropriation, (Exhibit 1) was given to the claimants on November 5, 1926, in which \$40,000 was offered to the tenants and \$160,000 to the owner of the lands in full compensation for all damages caused by the expropriation. These offers were refused and this arbitration followed, subject, as I have stated, to the agreement entered into between counsel.

The lands expropriated are shown in pink on the plan attached to the Notice of Expropriation being Lot 31 with a frontage of 213 feet and extending from the lands of the Canadian Pacific Railway Company southerly 280 feet to what is known as the Old Windmill Line and Lake Street and Parcel 9—a water lot—extending southerly from the south side of Lake Street to the new Windmill Line a distance of 568 feet and $7\frac{3}{4}$ inches on the east and 567 feet, $4\frac{1}{4}$ inches on the west and the frontage on the new Windmill Line being 206 feet $4\frac{1}{4}$ inches.

The lands between Esplanade Street and the northerly limit of Lot 31 as shown on the plan, are owned and occupied by the Canadian Pacific Railway Company and the Canadian National Railway Company for the purposes of their railways. The entrance to the owner's lands is from the Esplanade and over these railway tracks. Church Street runs from the north and intersects the Esplanade and adjoins this lot and parcel on the east down to the new Windmill Line.

I will note here, that as to Lake Street, which is 66 feet $7\frac{3}{4}$ inches in width, the owners have no title and it is excepted from the description of the lands expropriated and also that all the lands south of the old Windmill Line, including Church Street on the east, are covered by the waters of Lake Ontario.

An order for possession was issued November 24, 1926, and compensation is to be fixed as of October 4, 1926, the date of the registration of the plan, and again as arranged by counsel interest on all sums allowed is to run from the date of possession to be agreed upon.

The owner acquired these lands many years ago and they have been continuously under lease in the carrying on of a coal business with dock privileges. The Standard Fuel Company have been lessees since 1912 and at the time of the expropriation they had a renewable lease or agreement with the owner under which they were entitled to retain possession until the year 1928 (up to which date they are asking compensation for dispossession) at a rental of \$6,000 per annum and taxes. Upon Lot 31 there were erected many years ago four buildings consisting of:

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—continued

- 10 1. Office with scales and pits;
2. Garage and storehouse;
3. A boiler house;
4. A large coal shed.

In the coal yard the tenants had water supply, fixtures in connection with the yard lighting, drains and surfaced roads. The machinery and equipment used in connection with the operation of the plant consisted (amongst other things) of two boilers, one steam engine, shaftings, pulleys, conveyors, trucks, buckets, drums, coal hoist, cables, boom and trolley tracks, gas pumps and electrical equipment.

20 Under Sec. 164 of the Railway Act the claimants are entitled to be awarded full compensation for all damages sustained and as they have been deprived of the whole of their property no authorities need be cited in support of the statement that the claimants—owners and tenants—must be placed in as good a position as nearly as money will do it, as they were before the expropriation took place.

30 For years prior to the expropriation Marshall swore that the fuel company were doing a wholesale and retail business in coal and coke aggregating about 300,000 tons per year and of a value of between \$2,600,000 and \$3,000,000, and that the company had several branches or substations in different parts of the city; that the fuel company brought in by boat—varying from year to year—but on an average of about 20,000 tons of anthracite in the summer months and stored it in the large or main shed on the Church Street lot and sold it in the fall principally to their down town customers within or about the area of Spadina Avenue on the West, Bloor Street on the north and Broadview on the east; that in 1924 the Company started to bring in coke by boat; that about 50 per cent. of the anthracite coal was brought in by rail and this was taken to the different branches and from there sold; that bituminous coal was brought in by rail to Church Street and there unloaded, piled and delivered on and from a small part of the northerly end of lot 31 under some arrangement made with the railway company; that it was cheaper to bring in anthracite
40 coal by boat than by rail; that because of the risk of expropriation extending back for some years the company did not expend as much money in repairs to the buildings and plant as they otherwise would, but that they did expend moneys from time to time in overhauling the plant and in repairs for maintenance; that the company was unable to obtain a suitable site to carry on their business, other than at Ashbridge Bay, and that in July, 1931, they moved to and re-established a business on Cherry Street south of the ship canal

distant about 9,250 feet east of the Church Street lot, with water transport facilities.

At the close of the evidence, full and satisfactory argument by counsel representing all parties followed in which Mr. Hellmuth for Boulton, asked me to accept in its entirety the evidence of Mr. McBrien because of his connection with the Harbour Commission; the special knowledge he had of water front properties and that his estimate of the value and reasons therefor were entitled to more credence than that of Mr. Poucher called by the contestants.

Mr. Tilley was just as insistent as Mr. Helmuth that I should believe and I give effect to the evidence of Mr. Poucher because of his knowledge and vast experience in connection with water front properties, including this one and that he for that and other reasons was in a much better position to give a true estimate of the land value than Mr. McBrien, and Mr. Osler, representing the Standard Fuel Company, asked me to accept the evidence and estimates made by the witnesses called by the claimants, the Standard Fuel Company, as against the witnesses called on behalf of the contestants in connection with the value of the buildings and equipment and damages for business disturbance. 10

I now come to a consideration of the evidence, and first to the value of the lands. 20

Mr. McBrien valued the land to the owner on a square foot basis and frontage basis and gave many reasons, all of which I have seriously considered, for his estimate of \$395,939. McBrien in arriving at that sum admitted having paid little attention to the value of the buildings.

Mr. Poucher, whose evidence I have also seriously considered, was of the opinion that the value to the owner of the whole property, with all its advantages, was \$214,637; and in arriving at that price he placed no value whatever on the buildings.

It will be observed that there is a spread in value between these two experts of about \$182,000 and that Mr. Poucher's estimate of the value of the land exceeds the total amount for all damages offered by the contestants prior to the expropriation, by about \$14,000. 30

I see no necessity to refer specifically to the many reasons advanced by both experts or to the arguments by counsel in support of these respective valuations excepting that Mr. Hellmuth urged as one of the reasons for the acceptance of Mr. McBrien's estimate in preference to that of Mr. Poucher that Mr. McBrien in 1927 had revised Poucher's valuations made in 1926, of the properties of the Harbour Commission and it was found by subsequent sales that McBrien's valuations were more accurate than the values placed by Poucher. I see little, if any, force in that contention because of the fact that values made in 1926 might easily, owing to the change in values and general conditions existing in 1927, cause an advance in prices over the 1926 valuations made by Poucher. In a choice as between the valuations and the reasons and bases therefor made by Mr. Poucher and Mr. McBrien I prefer to and do accept, the estimates made by Mr. Poucher. 40

After careful consideration and weighing all the evidence relating to the value of the lots with all their advantages, my conclusion is, that the real value

of the land—separate and apart from the buildings is the estimate made by Mr. Poucher.

Interest at 5% on Poucher's estimate, will yield to the owner, upwards of \$2,000 per annum more than the rental to which reference has been made, and in my opinion a larger return than could reasonably be expected or secured in the future, whether the land continued as a coal property or was sold or used for any of the purposes for which it had a special adaptability.

10 In dealing next with the value of the buildings, machinery and equipment, it was argued by Mr. Tilley that they were of no value and should be considered only as scrap. I do not agree with that contention. The buildings and machinery served the purposes of the Fuel Company for many years and in November, 1926, constituted an asset belonging to them and by the expropriation taken away, and as the claimants must be compensated for all damages sustained, I do not understand why the Fuel Company is not entitled to whatever sum they were reasonably worth in November, 1926. If in October, 1926, the Fuel Company applied to a bank for credit or a loan, would not these buildings and machinery have been a real asset to pledge at whatever value they then had?

20 In arriving at a valuation consideration must of course be given to the evidence that the company had not in recent years, owing to expected expropriation, expended much money in repairs and maintenance. Mr. Hole, a witness called by the contestants, estimated the value of the various buildings designated in Exhibit 35 as "A," "B," "C," "D," and "E" and the yard services, after deducting for depreciation, at \$22,436.56 and for the machinery, and equipment designated in the same Exhibit in items Nos. 1-17, after depreciation, at 19,570.13 or a total of \$42,006.69

30 Mr. Hole also estimated the cost, new or replacement value of the buildings, etc., at \$61,074.85, and the cost new including a sum added for contingencies of the machinery and equipment at \$41,876.42. The value placed by the witness called on behalf of the claimants on the buildings and equipment after depreciation was \$92,000.

I think Mr. Hole was too low in his valuation and too drastic in his estimates of depreciation, and also that the claimant's witness was too high in his valuation and, after a careful consideration of all the evidence pro and con, my conclusion is that a fair and reasonable sum to allow the claimants for the buildings, machinery and equipment, is the sum of \$62,006.69.

40 In estimating the damage suffered by the Fuel Company for business disturbance and disorganization of business some comparison of the old and new sites must be considered. The evidence is that at the old site the Fuel Company had space for anthracite and a small space for coke; that they brought in about two-thirds of their bituminous coal by rail—costing .68 cents per ton in excess of water borne traffic—to the Church Street yard and for which they had no yard space; that the business for anthracite in the down town area in, and for some time prior to 1926 was suffering, and the use of bituminous coal increasing due to the erection of many large buildings in which bituminous was used in preference to anthracite; that with the opening

of the Welland Canal it would be impossible to bring in bituminous coal by water and sell it in competition with other companies at a profit unless new docks, wharfs, slips and structures, &c., were erected and if that was done it would require a large expenditure of money upon which interest would have to be charged. There is a difference of opinion as to the costs, but one expert witness, Couzens, for the contestants, swore it would cost about \$220,000 for completed docks, slips, &c., and 20 feet of water. Mitchell, an expert for the Fuel Company, placed the costs at a lower figure but Mitchell, if I recollect correctly, did not in his estimate include the cost of a retaining wall at Lake Street; that coal and coke, because of the location of the Church Street lot, could be delivered at less expense than from a site situate about a mile east, and also that there was a valuable good will attached to the old site. For the loss of all these advantages the Fuel Company are asking \$187,000. I will note here that the Fuel Company continued doing business at the Church Street site until April, 1927, and thereafter until June, 1931, used a small part at the north end of the lot, under some agreement with the Railway Company, for the storage and delivery to sub-stations and to customers of coal that came in by rail. On July 1st, 1931, the Fuel Company moved out to a new site on Cherry Street south of the ship canal about a mile east of the Church Street lot and re-established the business there. 10

The next enquiry is what kind of a business property did the Fuel Company get at the new site? The evidence, I think, suggests a finding that the Fuel Company got a new modern, up-to-date site with larger docks, wharfs &c., much deeper water for accommodation of larger boats bringing in coal in larger quantities than at the old site, including anthracite, bituminous, coke and Welsh coal and also new and up-to-date facilities for unloading the boats at much less expense, and the question is, is the new site, from a financial point of view, taking everything into consideration, an advantage or a disadvantage to the Fuel Company. Apart from the advantages at the new site to which reference has been made, it came out in the evidence—and is I think significant—that the Fuel Company for the first year did a tonnage business of 50,000 tons as contrasted with an average tonnage ranging of from 17,000 to 20,000 tons at the old site. I have not forgotten that the Fuel Company was put to the expense of \$6,000 for a motor used in connection with the handling of coal from boats at the new site and the use of it will add to the expense of the yard at the new site. So far as a business *location* is concerned, everything is in favour of the Church Street site, if a large sum of money be expended for new docks &c., deeper water obtained so that big boats could land because coal of all kinds and coke could be brought in and delivered to customers more economically than from the new site. My conclusion is, that the Fuel Company has suffered no substantial damage in locating at the new site but nevertheless must be paid a fair and reasonable sum for the extra costs of conducting their business at the old site from November, 1926, until they took possession of the new site in July, 1931. 30 40

It is impossible to fix accurately what that damage is but some evidence was tendered in support of a statement, Exhibit 19, prepared by Mitchell, and which I have considered along with all the other evidence. Considera-

tion must also be given to the fact, that for the period mentioned there was a serious disruption of the Fuel Company's business and also the expense and trouble of and incidental to changing from one site to another.

The claim for loss of good will I do not think can be seriously considered, because, as Mr. Tilley pointed out, and I agree, customers of a coal business in making purchases seldom if ever make a personal call as they do in many other kinds of business, as the orders are given by telephoning to the office and the office takes charge of the order and delivery. It may be that some customers of the Fuel Company doing business with them for so many years
 10 at a down town centre, might hesitate to continue when they knew that the company's new yards were moved about a mile away, but of course that objection is to some extent minimized by the fact, that the Fuel Company have substations down town and from that point can without delay supply coal to their customers. I find it difficult to determine with any certainty what sum for damages for business disturbance and disorganization should be allowed, but after careful consideration I think a fair and reasonable sum would be \$40,000.00.

In arriving at my conclusions relative to the value of the lands, the damage for business disturbance and disorganization and the value of the
 20 plants, buildings and equipment, I wish to emphasize the fact that I have considered amongst other factors the following:

- A. The importance of the location of the lots and waterborne coal traffic and the different uses the lots could be put to, apart from a coal business, and the riparian rights.
- B. The lessened expense of bringing in anthracite coal by water as contrasted with rail and also of coke and what the storage facilities for these were: also that all the bituminous coal came in by rail and was handled without storage.
- 30 C. The proposed extension had the Fuel Company continued and were not disturbed, of the business out to the new pier and the expense thereof including the cost and expense of the "fill" and the passage over or under Lake Street and the rights of closing that street, etc.
- D. The difficulties, delays and loss of time connected with the entrance to and from the Esplanade over the railway tracks to the Fuel Company's property caused by the frequent passing and repassing and the stoppage of trains on the streets.
- E. The changed and changing conditions of the down town area and the increased consumption of soft coal as against anthracite in heating, especially of large buildings.
- 40 F. The new site with an up-to-date dock, deeper water, larger boats and the new and less expensive method of unloading and the doing away with buildings for storage, etc.
- G. The increased cost to the claimants connected with the haulage and delivery of coal from the new site to the claimant's customers in different sections of the City.
- H. The probability of new customers arising in the area of the new site.
- I. The evidence of the experts called by the claimants and contestants

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No. 21
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—concluded

having reference to the value of the lot to the owner in 1926 and the comparisons in values of different properties situate here and there as outlined by the different witnesses and of the evidence given in connection with the values—having regard to the age and state of repair and their usefulness to the owners—of the buildings and machinery, plant and equipment.

The result of my conclusions is, that the claimant, the owner of the land, is entitled to the sum of\$214,637.00
The claimants the tenants for business disturbance, disorganization, etc..... 40,000.00 10
To the claimants the tenants the value of the buildings, plant and equipment, etc..... 62,006.69

I think the claimants, both owners and tenants, were entitled to be represented separately by counsel and as they have received more than was offered, I direct that the contestants shall pay their costs.

September 30, 1932.

“R. G. FISHER.”

No. 22
Award
September 30th,
1932.

No. 22.

AWARD.

THE HONOURABLE MR. JUSTICE FISHER, } FRIDAY, the 30th day of 20
J.A. Arbitrator. } September, 1932.

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, ROBERT GRANT FISHER, one of His Majesty’s Justices of the Supreme Court of Ontario, Appellate Division, send greetings this 30 day of Sept. 1932.

WHEREAS by an Order made by the Honourable Chief Justice Sir William Mulock, dated October 20th, 1930, under section 220 of The Railway Act, 1919, I was appointed the arbitrator to determine the compensation to be paid by the contestants The Toronto Terminal Company, hereinafter called the Company, to C. R. Boulton, owner of the lands described in the Notice of Expropriation, and to the tenants, the owners of the buildings, machinery and the business of The Standard Fuel Company and referred to in the Notice of Expropriation. 30

Now These Presents Witness that I, the said ROBERT GRANT FISHER, having taken upon myself the burden of the said reference, and having heard and considered all such evidence as has been produced before me, and having heard what was alleged on behalf of the respective parties, and having duly weighed and considered all the matters and things to me referred as aforesaid, do make and publish this my award which is as follows:

I DO AWARD AND DETERMINE that the sum of \$214,637.00 ought to be paid 40 by the Company to C. R. Boulton as compensation for the lands, together with interest at the rate of five per cent. from the 4th day of October, 1926, to such time as shall be agreed upon by counsel. (This being the agreement made by counsel before me).

AND I DO ALSO AWARD AND DETERMINE that the sum of \$102,006.69 be paid by the said Company to The Standard Fuel Company (tenants) as full compensation for the disturbance of business and disorganization thereof and for the value of the said buildings, plant, equipment, etc., together with interest at the rate of five per cent. from the 4th day of October, 1926, to such date as shall be agreed upon by counsel.

AND I DO FURTHER AWARD AND DIRECT that the costs of the arbitration, including fees, counsel fees and expenses, and the expense incurred in the employment of a stenographer, shall be paid by the said Company to the said claimants, the owner and tenants, and if not agreed upon to be taxed by the proper taxing officer.

"R. G. FISHER,"

Arbitrator.

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Proceedings

No. 22

Award
September 30th,
1932.

—concluded

No. 23.

NOTICE OF APPEAL

In the Court of
Appeal for Ontario

No. 23

Notice of Appeal
October 4th, 1932.

TAKE NOTICE that The Toronto Terminals Railways Company will appeal, and does hereby appeal, to the Court of Appeal for Ontario from that part of the award of the Arbitrator, the Honourable Mr. Justice Fisher, herein, dated the 30th day of September, 1932, by which he awarded to the claimants, The Standard Fuel Company of Toronto, Limited, the sum of \$62,006.69 for the value of buildings, plant and equipment, and the sum of \$40,000.00 for business disturbance, disorganization, etc., on the following grounds.

(1) The award in favour of the Standard Fuel Company Limited is as agreed on the arbitration and as shown by the award exclusive of the value of the land and all interests therein, and is against evidence and the weight of evidence and is based on a wrong principle.

(2) That there was no evidence on which to base an award of \$62,006.69 or any sum, except at most scrap value, in respect of the buildings, plant and equipment.

(3) That the learned Arbitrator erred in admitting and in basing his award on evidence as to reconstruction cost of the buildings, plant and equipment, with or without an allowance for depreciation.

(4) That there was no evidence of business disturbance or disorganization for which the claimants are entitled in law to compensation. The learned Arbitrator erred in allowing any sum for increased cost of carriage or haulage of coal or for inconvenience in carrying on business at the old site after November 24, 1926, or in any case after October 1, 1927. In any event the amount awarded is excessive and not supported by the evidence.

AND on other grounds appearing in the evidence and proceedings herein.

DATED this 4th day of October, 1932.

JOHN D. SPENCE,
Solicitor for the Appellants.

In the Court of
Appeal for Ontario
No. 23
Notice of Appeal
October 4th, 1932.
—concluded

To:
The Standard Fuel Company of Toronto, Limited,
Respondents.
and to
Messrs. Blake, Lash, Anglin & Cassels,
Their Solicitors.

No. 24.

In the Court of
Appeal for Ontario
No. 24
Reasons for
Judgment
Magee, J. A.
April 24th, 1933.

REASONS FOR JUDGMENT OF COURT OF APPEAL
(MULOCK, C.J.O., MAGEE and MIDDLETON, JJ.A.)
Delivered 24th April, 1933.

10

TILLEY, K.C., and J. D. SPENCE, K.C., for the Railway Company.
HELLMUTH, K.C., and D. M. FLEMING, for Boulton.
OSLER, K.C., and CASSELS, K.C., for The Standard Fuel Co. Ltd.

MAGEE, J.A.:—In this case of expropriation of property on the waterfront of Toronto harbour, the owner and his tenant and the expropriating Railway Company each appeal from the arbitrators' award of sums for compensation—the Railway Company objecting only to the amount awarded to the tenant. The notice of expropriation was given in November, 1926.

By renewal lease of 1 August, 1921, the owner, C. R. Boulton, demised the premises to the Standard Fuel Company of Toronto Limited for the term of 21 years from 1 August, 1917, at the yearly rental of \$6,000.00, the lessee paying the taxes, the lease to be perpetually renewable for successive terms of 21 years at such increased yearly rental as would be fixed by arbitration unless agreed upon, and to be fixed irrespective of the value of any buildings or erections above the surface level of the esplanade.

The lessor and lessee agreed before the arbitrator that their respective interests in the property other than buildings need not be separately valued on this expropriation. In asking that this be done they would seem to have been well advised—although the Railway Company expropriated when their interests were separate and should be separately compensated for. We have as a starting point that both lessor and lessee agreed (and as the lease states not by arbitration) in 1921 that \$6,000.00 was a fair annual return for the use of the land for 21 years from 1917 and that any rent thereafter was to be in increase at least.

The expropriation was only five years later, and developments since then can hardly on the evidence be said to have rendered the property though a valuable central one, more valuable relatively to other properties along the water front than previously. An income of \$6,000.00 with the possibilities of having to re-enter and of bankruptcy of a lessee would indicate even at 4 per cent. only a capital value of \$150,000.00—for the interest of the lessor. The interest of the lessee who would have to pay the just yearly value of the property he was to occupy can hardly be given any considerable marketable

value beyond that of his own buildings and improvements. It does not appear in what sums or shares the two parties have agreed to divide the compensation. It cannot, I think, be said that the arbitrator was pessimistic in his decisions on the evidence as to valuation of the property and I see no reason for increasing the amount he fixed.

At the same time I cannot say that the tenant should not receive compensation for his buildings, plant and equipment and on the evidence it cannot be said that they were only fit to be destroyed and had only scrap value. Notwithstanding changes in the coal business, there are no indications that the
10 tenant could not have continued to use them for its business for many years without much outlay for repairs or renewals, and without having to pay any rent for its own property. But the amount awarded on the evidence is, I think, too liberal and I would with deference consider that an allowance of \$50,000.00 to the tenant to include the business disturbance would be a proper and more just amount to be paid by the expropriator.

I would therefore dismiss the appeals of the owner and the tenant and allow that of the Railway Company to the extent of the reduction to the amount I have mentioned, and allow to the Railway Company the costs of the appeal.

20 MIDDLETON, J.A.:—Three several appeals by the Railway Company, by the owner and by the tenant from the award of the Honourable Mr. Justice Fisher, made on the 30th day of September, 1932, by which he awarded and determined that \$214,637.00 ought to be paid by the Railway to C. R. Boulton, together with interest at the rate of five per cent. from the 4th day of October, 1926, as compensation for the lands taken, and further that the sum of \$102,006.69 be paid by the Company to The Standard Fuel Company, tenant, as full compensation for the disturbance of business and disorganization thereof and for the value of the buildings, plant and equipment, together with interest from the same date, and that the costs of the arbitration be paid to
30 the owner and to the tenant.

On the 5th of November, 1926, a notice of expropriation was given by the Railway to C.R. Boulton, as owner, and The Standard Fuel Company, Limited, as tenant, expropriating certain lands near the foot of Church Street in Toronto, for the purpose of the construction of what is known as the Toronto Viaduct, under the terms of an agreement of 7th of November, 1924, which has been validated and confirmed by various statutes. By this notice of expropriation the Railway offered to pay \$160,000 to the owner and \$40,000 to The Standard Fuel Company as tenant in full compensation for the lands and for all damages caused by the exercise of the power of expropriation.

40 The owner and tenant being unwilling to accept the compensation offered such proceedings were taken that on the 20th of October, 1930, the Chief Justice of Ontario appointed the Honourable Mr. Justice Fisher as sole arbitrator under The Railway Act for the purpose of determining the amount of compensation to be paid.

The Honourable Mr. Justice Fisher entered upon the inquiry and heard the evidence adduced by the parties at great length, and after full argument made the award now appealed from. At the opening of the arbitration the

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No. 24
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April 24th, 1933.

In the Court of
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No. 24
Reasons for
Judgment
Middleton, J. A.
April 24th, 1933.
—continued

arbitrator was informed by counsel that an arrangement had been made between counsel representing the landlord and the tenant by which the arbitrator should not be called upon to apportion the amount which might be allowed as the value of the property taken between the landlord and the tenant, as an agreement had been arrived at between the landlord and the tenant as to how any sum which might be awarded should be divided. The arbitrator was only to find with regard to the land, what its value was as though held by one owner, either the landlord or the tenant, but the arbitrator should award to the tenant whatever sum he might be entitled to as representing the value of the buildings upon the land, and whatever sum he might be entitled to by reason of the disturbance to his business, and the arbitration proceeded upon that footing. 10

Notice of appeal was first given by the Railway Company on the 4th of October, 1932, and it complains of the award in favour of The Standard Fuel Company. This award of \$102,006.69 is made up of two sums, \$62,006.69 for buildings, plant and equipment, and \$40,000.00 for business disturbance, disorganization, etc. It is first said to be against the evidence and the weight of evidence and upon a wrong principle. It is then said that the sum allowed for the buildings is excessive as they had no value except at most as scrap. The third ground of appeal is that the value given to the buildings is erroneously based upon evidence as to reconstruction cost subject to an allowance for depreciation. And lastly that there is no evidence of business disturbance or disorganization for which the tenant would be entitled to any such sum as that allowed by the arbitrator. It will be seen that this appeal is confined to the amount allowed to the tenant only. 20

The second notice of appeal was served by the owner who complains that the amount allowed as the value of the land is inadequate, and that the arbitrator failed to allow anything in respect of the forcible taking of the land.

The third notice of appeal was given by the tenant and is in practically the same terms as the notice given by the land owner. 30

The award of the learned arbitrator was accompanied by full reasons explaining it.

It appears that Boulton acquired these lands very many years ago and they have always been under lease to tenants, The Standard Fuel Company holding under a lease since 1912, paying a rental of \$6,000.00 per annum. Upon the land there was a large coal shed and some subsidiary buildings, an office, a garage and a boiler house. There was in addition to this machinery used in connection with the hoisting and storage of the coal. Upon the expropriation taking place this company had to provide another yard and secured premises upon the ship channel leading into the turning basin, formerly Ashbridge's Bay. 40

With reference to the value of the lands taken evidence was given by two real estate valuers, Mr. Poucher called by the Railway Company, and Mr. W. C. McBrien called by the claimants. As usual in such cases the evidence of these two valuers cannot be reconciled. In the result the arbitrator expressed his preference for the evidence given by Mr. Poucher and accepted

his estimate as to value, and accordingly awarded for the interests of both the landlord and tenant in the land \$214,637.00.

On the appeals of the owner and the tenant strenuous attack was made upon this valuation. To this we listened with great care and have since further considered the matter in the light of the evidence and of the memoranda referring to that evidence supplied by counsel. We can see no ground whatever for interfering with the view taken by the arbitrator with respect to this matter. On the contrary I would independently have arrived at the conclusion that Mr. Poucher's evidence is the more reliable.

10 In estimating the future and potential values of land I am inclined to the view that most valuers are too optimistic and fail to take into consideration that the problem really involves four dimensions and the time factor is generally too little regarded. This is particularly the case when the valuation is made based upon the experience gathered during a period of prosperity. These periods of prosperity do not last forever and though on the whole there is perpetual advance the periods of depression must be reckoned with and during these periods there is the ever growing burden of municipal taxation to be reckoned with. It is quite uncertain when any piece of land will realize what may be described as its potential value. In the meantime its actual
20 earning is based upon some considerably smaller estimate and it may have to be carried for many years upon this footing so discounting to a very great degree the potentiality presented to the eyes of the optimistic valuator. To illustrate the rental here payable, \$6,000.00 is four per cent. on \$150,000.00 or five per cent. on \$120,000.00. The award is approximately \$215,000.00. I imagine that it will be very many years before any such price can be realized in the market, and the difference in the income of the owner in the meantime would then have to be taken into account.

We could not interfere with the opinion formed by the arbitrator unless clearly convinced of error. Had I been acting as arbitrator in the first instance I
30 might have been inclined to add something to Mr. Poucher's figures to counterbalance any unconscious bias in his evidence. The learned arbitrator saw no trace of this and no need of departing from his figures, and I cannot see that he has erred. In fact it appears to me that the award as it stands in this respect is ample.

The appeal of the Railway Company although presented in many ways is placed in the first place upon this aspect of the facts. The value attributed to the land is as a potential site for a factory or some other industry. It far exceeds any possible value as a coal yard. That factory site value cannot be realized unless and until the owner of the land is in a position to deliver it to
40 such a purchaser as would use it for the erection of a factory building or other factory purposes. This implies the demolition of all the existing buildings and structures now upon the land and reducing it to a vacant building lot. In other words the existing business and the buildings in connection with the existing business are such a detriment to the value of the lot that unless and until they are removed its full value as a potential factory site cannot be realized. Any purchaser for these purposes would regard the existing business and the existing buildings as a detriment and would abate the price accord-

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No. 24
Reasons for
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Middleton, J. A.
April 24th, 1933.
---continued

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No. 24
Reasons for
Judgment
Middleton, J. A.
April 24th, 1933.
---concluded

ingly. To allow this increased factory site price and then to allow a price for the detrimental building and business removal is in effect to make the purchaser pay twice.

This was illustrated recently in many instances in this city where residences upon sites offered for sale for factory and office building purposes, were destroyed and completely removed before it was attempted to sell the lands. A purchaser for any such purpose would not give a farthing more for the land by reason of the existence of these undesired buildings. They must be treated as scrap and a nominal sum only paid as representing the scrap value.

This view appears to me to be sound. As a coal yard this property was not worth two-thirds of the price awarded. The additional sum is by reason of its possible use for business or building purposes involving the removal of the business and the destruction of the buildings, and so I think the award made to the tenant cannot be sustained. The tenant however should, I think, be allowed something for the forcible taking and for the expense cast upon him at this present time by the change he has had to make, and I would allow to the tenant in addition to that which he will receive as his due share of the sum given for the land which includes its potential value, the sum of \$20,000. In this I feel I am erring considerably on the side of liberality, but there are factors in the case which I think make it reasonable that this sum should be paid.

I may say that it appears to me that the amounts allowed both for buildings and for business injury and disturbance are very much larger than the evidence warrants. I refrain from entering upon a discussion of the amount that should be allowed because in the view I take of the appeal it is not material.

In the result the land owner's and tenant's appeals are dismissed and the Railway Company's appeal is allowed to the extent indicated.

MULOCK, C.J.O.:—I agree.

No. 24
Mulock, C. J. O.
April 24th, 1933.

In the Court of
Appeal for Ontario
No. 25
Formal Judgment
April 24, 1933

No. 25.
FORMAL JUDGMENT.

Law Stamps, 30
\$2.40

IN THE SUPREME COURT OF ONTARIO.
IN THE COURT OF APPEAL FOR ONTARIO.

THE RIGHT HONOURABLE
THE CHIEF JUSTICE OF ONTARIO.
THE HONOURABLE MR. JUSTICE MAGEE.
THE HONOURABLE MR. JUSTICE MIDDLETON. } MONDAY, the Twenty-fourth
day of April, 1933.

IN THE MATTER OF THE RAILWAY ACT, 1919.
AND IN THE MATTER OF LOT 31, PLAN 5-A, and PARCEL
9-C, PLAN 153-E, SOUTH OF THE ESPLANADE, IN THE
CITY OF TORONTO.
AND IN THE MATTER OF AN ARBITRATION

BETWEEN:

C. R. BOULTON (Owner) and THE STANDARD FUEL
COMPANY OF TORONTO, LIMITED (Tenants).

—AND—
THE TORONTO TERMINALS RAILWAY COMPANY,
Claimants,
Contestant.

40

UPON motion made unto this Court the 17th, 18th and 19th days of January, 1933, by Counsel for the above named Contestant by way of appeal from and to set aside that portion of the award of the Honourable Mr. Justice Fisher, dated the Thirtieth day of September, 1932, whereby he awarded to the claimant, The Standard Fuel Company of Toronto, Limited the sum of \$102,006.69 and interest as in the said award set out, and upon motions made at the same time by Counsel for the above named Claimants by way of appeal from the said award to increase the sum of \$214,637.00 thereby awarded as compensation for the lands taken by the Contestant, and upon reading the said
10 award, the proceedings and evidence had and taken upon the arbitration before the said Arbitrator and the Exhibits therein referred to, and upon hearing counsel for all parties and this Court having been pleased to direct that the said several appeals should stand over for judgment and the same having come on this day for judgment:

1. THIS COURT DOTH ORDER that the appeals of the said Claimants against the said award be and the same are hereby dismissed with costs to be paid by the said Claimants to the said Contestant forthwith after taxation thereof.

20 2. AND THIS COURT DOTH FURTHER ORDER that the appeal of the said Contestant against the said award be and the same is hereby allowed to the extent and in the manner following, namely:—That the award of \$102,006.69 to the said Claimant The Standard Fuel Company of Toronto, Limited, Tenant, together with interest thereon as in the said award set out, be and the same is hereby set aside and that there be awarded to the said Claimant, The Standard Fuel Company of Toronto, Limited, the sum of \$20,000.00 and interest thereon at the rate of five per cent. per annum from the twenty-fourth day of November, 1926, to be paid to it by the Contestant in full of all compensation to the said last mentioned Claimant other than any share to which it may be entitled of the sum of \$214,637 above referred to.

30 3. AND THIS COURT DOTH FURTHER ORDER that the said Claimant The Standard Fuel Company of Toronto, Limited, pay to the Contestant the Contestant's costs of its said appeal forthwith after taxation thereof.

“D'ARCY HINDS,”

Registrar, S.C.O.

Entered 13, 6, 33.

“V.S.” “H.F.”

“V.C.”

ORDER ADMITTING APPEAL TO HIS MAJESTY
IN HIS PRIVY COUNCIL.
IN THE SUPREME COURT OF ONTARIO.
IN THE COURT OF APPEAL FOR ONTARIO.

THE HONOURABLE THE CHIEF JUSTICE OF ONTARIO. THE HONOURABLE MR. JUSTICE RIDDELL. THE HONOURABLE MR. JUSTICE MIDDLETON.	}	WEDNESDAY, the 1st day of November, 1933.
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IN THE MATTER OF THE RAILWAY ACT, 1919. 10

AND IN THE MATTER OF LOT 31, PLAN 5-A, and PARCEL
9-C, PLAN 153-E, SOUTH OF THE ESPLANADE, IN THE
CITY OF TORONTO;

AND IN THE MATTER OF AN ARBITRATION

BETWEEN:

C. R. BOULTON (Owner), and THE STANDARD FUEL
COMPANY OF TORONTO, LIMITED (Tenant),

Claimants;

—AND—

THE TORONTO TERMINALS RAILWAY COMPANY, 20
Contestant.

UPON MOTION made unto this Court on the 5th day of October, 1933, by Counsel for the above named Claimant, The Standard Fuel Company of Toronto Limited, pursuant to leave to appeal granted by The Honourable Mr. Justice Middleton, in presence of Counsel for the above named Contestant, by way of appeal from and to set aside the order made herein by the Honourable Mr. Justice Masten in Chambers on June 30th, 1933, and for an order admitting the appeal of the said Claimant to His Majesty in His Privy Council from that part of the judgment pronounced herein by the Court of Appeal for Ontario on the 24th day of April, 1933, whereby the amount allowed to the said Claimant as tenant by the learned Arbitrator, the Honourable Mr. Justice Fisher, was reduced from \$102,006.69 to \$20,000.00, and allowing the security given by the said Claimant in regard to the costs of the said appeal; upon hearing read the notice of motion, the said order, the award of the said Arbitrator, the judgment of the Court of Appeal for Ontario dated April 24th, 1933, and other proceedings in this matter, and upon hearing what was alleged by Counsel aforesaid, and it appearing that the said Claimant has under the provisions of The Privy Council Appeals Act, being Chapter 86 of the Revised Statutes of Ontario, 1927, a right of appeal to His Majesty in His Privy Council and it further appearing that the said Claimant has paid into Court the sum of \$2,000.00 as security for the costs of the proposed appeal, this Court was pleased to direct that the said motion should stand over for judgment, and the same having come on this day for judgment: 40

1. THIS COURT DOTH ORDER that the said appeal from the order of the Honourable Mr. Justice Masten in Chambers, dated June 30th, 1933, be and the same is hereby allowed and that the said order be and the same is hereby vacated and set aside.

2. AND THIS COURT DOTH FURTHER ORDER that the appeal of the said Claimant to His Majesty in His Privy Council from that part of the judgment pronounced herein by the Court of Appeal for Ontario on the 24th day of April, 1933, whereby the amount allowed to the said Claimant as tenant by the learned Arbitrator, the Honourable Mr. Justice Fisher, was reduced from
 10 \$102,006.69 to \$20,000.00, be and the same is hereby admitted, and that the said sum of \$2,000.00 paid into Court by the said Claimant be and it is hereby approved and allowed as good and sufficient security that the said Claimant will effectually prosecute its appeal to His Majesty in His Privy Council from the said judgment of the Court of Appeal for Ontario and will pay such costs as may be awarded in case the judgment appealed from is confirmed.

3. AND THIS COURT DOTH FURTHER ORDER that the Contestant do pay to the said Claimant the costs of this appeal, including the costs of the application for leave to appeal, in any event of the said appeal to His Majesty in His Privy Council, and that the costs of the motion before the Honourable Mr.
 20 Justice Masten be costs in the said appeal to His Majesty in His Privy Council.

“D’ARCY HINDS,”
 Registrar, S.C.O.

Entered O.B. 137, page 179 and 180.
 November 8, 1933.
 “V.C.”

In the Court of
 Appeal for Ontario

No. 26
 Order admitting
 Appeal to His
 Majesty in Council
 November 1, 1933.
 —concluded

PART II

EXHIBITS

No. 5

LEASE JOHN BOULTON TO STEPHEN NAIRN

THIS INDENTURE made the first day of August in the year of Our Lord One Thousand Eight hundred and Seventy-five.

IN PURSUANCE of the Act respecting Short Forms of Leases.

BETWEEN

JOHN BOULTON of the City of Toronto in the County of York and Province of Ontario, Esquire, hereinafter called the Lessor

10

of the first part.

—AND—

STEPHEN NAIRN of the said City of Toronto, Esquire, hereinafter called the Lessee

of the second part.

WITNESSETH that in consideration of the rents covenants and agreements hereinafter reserved and contained on the part of the said Lessee his executors administrators and assigns to be paid observed and performed. He the said Lessor hath demised and leased and by these presents doth demise and lease unto the said Lessee his executors administrators and assigns ALL THAT PARCEL or tract of land and premises situate lying and being in the City of Toronto and described as follows:—

ALL AND SINGULAR that certain parcel or tract of land and premises containing by admeasurement Thirteen Thousand Four hundred and ten square feet be the same more or less being composed of part of the following water lots, namely, of lot Number Thirty-one granted to the City of Toronto, part of Water lot "A" granted to one William Cooper and part of a certain Water Lot granted to one William Bergen and which said parcel or tract of land and premises may be more particularly known and described as follows that is to say: Commencing at a point on the northern limit of Esplanade Street which is distant eighty-three feet and ten inches westerly of the western limit of Church Street. Thence north sixteen degrees west parallel to Church street Two hundred and nine feet. Thence in a south westerly direction parallel to Esplanade street Forty-five feet to the eastern limit of the brick building now in occupation by the Vine Growers Association, thence south sixteen degrees east following the eastern limit of the said brick building and the production thereof southerly a distance of forty-eight feet to the southerly limit of a lane twenty feet in width now or hereafter to be opened from Scott

Exhibits

No. 5

Lease John Boulton
to Stephen Nairn,
1st Aug., 1875
(Filed by Claimant,
Boulton)

to Church Street, thence westerly following the southerly limit of the said lane Twenty-five feet. Thence southerly parallel to Church Street being along the eastern boundary of a certain property now or heretofore in possession of B. Homer Dixon, Esquire, One hundred and fifty-nine feet and four inches more or less to the northern limit of Esplanade Street. Thence easterly following the northerly limit of Esplanade Street seventy feet more or less to the place of beginning.

Exhibits

No. 5
Lease John Boulton
to Stephen Nairn,
1st Aug., 1875
(Filed by Claimant,
Boulton)

—continued

SAVING AND EXCEPTING such part of the foregoing described property as may hereafter be used in opening the said lane Twenty feet in width
10 referred to aforesaid. The dedication of the said lane through the said property being as follows:—To extend eastward from the termination of the lane now opened with a width of Twenty feet to Church Street and on a course at right angles to the said street.

ALSO THAT CERTAIN other parcel or tract of land and premises and land partly covered with the waters of the bay being composed of part of water lot Number Thirty-one (31) granted to the City of Toronto and part of that certain water lot granted to William Bergen and which said parcel or tract of land and premises and land partly covered with the waters of the said bay may be more particularly known and described as follows that is to say:—

20 COMMENCING at the southerly limit of the Esplanade and at the intersection thereof with the western limit of Church Street produced thence westerly following the southerly limit of the Esplanade two hundred and thirteen feet to the existing boundary line between Water Lots Numbers Thirty-one and Thirty-Two thence south sixteen degrees east following the said boundary line between the said water lots Four Hundred and ninety feet more or less to the Windmill Line, thence north sixty-five degrees east following the Windmill line, Two hundred and thirteen feet more or less to the western limit of Church Street produced. Thence north sixteen degrees west following the produced
30 western limit of Church Street five hundred and twenty-one feet more or less to the place of beginning and containing by admeasurement, One hundred and two thousand five hundred and fifteen square feet be the same more or less. Together with the appurtenances.

TO HAVE AND TO HOLD the said demised premises for and during the term of twenty-one years to be computed from the first day of August One Thousand Eight hundred and Seventy-five.

YIELDING AND PAYING therefor unto the said Lessor his heirs and assigns the clear yearly rent or sum of One Thousand Eight hundred and Forty dollars of lawful money of Canada in gold or its equivalent for and during the portion of the said term now next ensuing and up to the first day
40 of May One Thousand Eight hundred and eighty-two and from and after the said first day of May A.D. 1882, for and during the residue of the said term such increased rent as shall be fixed by arbitration as hereinafter provided. Such rent to be paid in equal quarterly payments on the first day of February May August and November in each and every year during the said term

Exhibits
 No. 5
 Lease John Boulton
 to Stephen Nairn,
 1st Aug., 1875
 (Filed by Claimant,
 Boulton)
 —continued

without any deduction defalcation or abatement whatsoever. The first of such payments to be made on the first day of November A.D. 1875. The aforesaid increased rent to be paid by the said Lessee his executors administrators or assigns from and after the first day of May A.D. 1882 for and during the residue of the said term is to be determined by three indifferent and disinterested arbitrators to be appointed as follows one by the said lessor his heirs or assigns another by the said lessee his executors administrators or assigns and the third arbitrator to be appointed by the two arbitrators to be appointed by the said parties.

THE SAID PARTIES or their representatives shall appoint their respective arbitrators in writing and shall also notify each other of such appointment in writing at least thirty days before the said first day of May A.D. 1882 and the third arbitrator shall be appointed within one week after the appointment of the other two and the award of the majority of the said arbitrators shall be final provided the same be made in writing ready to be delivered to the said parties or their respective representatives on or before the first day of June A.D. 1882. 10

PROVIDED that in case either of the said parties or their representatives shall neglect or refuse to appoint an arbitrator on his or their behalf and to give notice thereof as aforesaid at least thirty days before the said first of May A.D. 1882 it shall thereupon be lawful for the arbitrator appointed by the other party to appoint two other arbitrators and the award of the three so appointed or of the majority of them shall be made within the time and in the manner above mentioned be valid and binding upon the said parties and their representatives. 20

PROVIDED ALSO that if the said parties or their representatives or either of them shall be under legal disability the Court of Chancery may appoint an arbitrator on behalf of such party.

PROVIDED ALSO that if such arbitration shall fail and no award or no binding award shall be made within the time limited for that purpose the former rent shall continue to the end of the term. 30

AND, IT IS HEREBY agreed and declared that in determining such increased rent the arbitrators are to value the said premises as if the filling in hereby agreed and stipulated to be done prior to said first day of May A.D. 1882 were actually done even if the lessee his executors administrators or assigns may have failed or neglected to do the same or any part thereof and the arbitrators are to consider the said part of the said premises so to be filled in as aforesaid as solid ground durably protected against the waters of the Bay and not as crib-work or piling and in the event of the Lessee his executors administrators or assigns having filled in a greater extent than hereby agreed to be done then such excess is not to be considered by the arbitrators in determining the said rent. 40

AND the said Lessee for himself his heirs executors administrators and assigns hereby covenants with the said Lessor his heirs and assigns to pay rent and to pay taxes.

AND the said Lessee for himself his heirs executors administrators and assigns further covenants with the said Lessor his heirs and assigns that he will within three years from the date hereof fill up that part of the demised premises now covered with water under the Dock or Wharf now erected on the said premises in a substantial and durable manner with good solid earth as high as the level of the Esplanade and that he will before the first day of May A.D. 1882 fill up all that other part of the said premises which is covered with water extending from the Esplanade southerly to the distance of one hundred feet in a like substantial and durable manner with good solid earth as high as the level of the Esplanade, and also that he will if he shall see fit before the expiration of the said term of twenty one years fill up the remainder of the said premises in a like substantial and durable manner and with the like material as high as the level of the Esplanade aforesaid.

10

AND THAT he the said Lessee his executors administrators and assigns will accept and take a new lease and all further renewals thereof perpetually at the times upon the terms and conditions and at the rental hereinafter provided and will in every case execute such new lease and renewal.

PROVISO FOR RE-ENTRY by the said Lessor on non-payment of rent or non-performance of covenants.

20 THE SAID LESSOR covenants with the said Lessee for quiet enjoyment.

AND ALSO that at the expiration of the term hereby granted the said Lessor his heirs or assigns shall and will at the costs and charges of the said Lessee his executors administrators or assigns grant unto the said Lessee his executors administrators or assigns at the expiration of the term hereby granted a new lease for a further term of twenty-one years to be computed from the end of the term hereby granted and at such increased rental per annum as the said hereby demised premises shall then be worth to be determined by the award of three indifferent and disinterested arbitrators or of the majority of them such arbitrators to be appointed and the award to be made in the same manner and within the like times as is hereinbefore provided with reference to the arbitration to be had in the year One Thousand Eight hundred and Eighty-two.

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AND IT IS AGREED and declared that in determining such valuation or increased rent the arbitrators are to value the said premises at such rate as the same would then be worth provided all the filling in with earth hereinbefore agreed upon to be done were actually done even although the said Lessee his heirs executors administrators or assigns may have failed to do the said work or any part thereof and the said arbitrators are to consider the said portion of the premises agreed to be filled in as aforesaid as ground well filled in and duly protected against the waters of the Bay and not as cribwork or piling.

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PROVIDED ALWAYS and it is hereby agreed that in estimating such rent the said arbitrators are not to take into consideration any buildings or erections then on the said premises above the level of the Esplanade.

Exhibits
No. 5
 Lease John Boulton
 to Stephen Nairn,
 1st Aug., 1875
 (Filed by Claimant,
 Boulton)
 —concluded

AND IT IS FURTHER AGREED that such new Lease shall contain all covenants and conditions and stipulations that are herein contained except the covenants as to filling in the said premises and provision as to increased rent during the part of the said term and to include a similar covenant for a further renewal for a like term of twenty-one years at such rent to be not less than the rent of the said premises for the then expiring term of twenty-one years as shall be fixed by arbitration it being the meaning and intention of the said parties that these presents shall be perpetually renewable at the end of each successive term of twenty-one years at rent to be fixed by arbitration as hereinbefore provided. 10

AND IT IS HEREBY AGREED and declared that it shall and may be lawful for the Lessor his heirs or assigns at any time to take possession of that part of the demised premises lying to the north of the lane which runs in the rear of the Front Street lots.

AND UPON PAYMENT to the Lessee his executors administrators or assigns of the value of any buildings erected by him or them thereon to use occupy and retain the same.

AND THE SAID Lessor is to allow the said Lessee thereafter to deduct from the rent such sum as may be determined by arbitration (such arbitration to be in form and manner hereinbefore provided for) to be a fair rent for the said piece of land. 20

AND THE SAID LESSOR for himself his heirs executors administrators and assigns doth hereby covenant with the said Lessee his executors administrators and assigns that he or they shall have the right to sub-let the premises hereby demised or any part thereof during the continuance of the term hereby demised or of any renewal thereof subject nevertheless to the covenants provisos conditions and other stipulations hereinbefore mentioned.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals the day and year first above written.

SIGNED, SEALED AND DELIVERED }
 in the presence of
 (sgd) Samuel Platt }

JOHN BOULTON [SEAL]
 STEPHEN NAIRN [SEAL]

30

LEASE M. R. BOULTON TO DICKSON AND EDDY

No. 6
 Lease M. R.
 Boulton to
 Dickson & Eddy,
 1st Sept., 1896
 (Filed by Claimant,
 Boulton)

THIS INDENTURE made the first day of September, A.D. 1896. In pursuance of the Act Respecting Short Forms of Leases:

BETWEEN,

MARTHA ROWAN BOULTON of the City of Toronto in the County of York, widow and Devisee of the late John Boulton, deceased, CHRISTOPHER ROBINSON BOULTON of the said City of Toronto, Esquire, MARY A. BOULTON, HERMANN BOULTON, GRACE BOULTON, AMY BOULTON, JOHN BOULTON, EDITH BOULTON and HILDA BOULTON, all of the said City of Toronto, ARTHUR BOULTON of the City of Chicago in the State of Illinois and LAURA GILPIN BROWN of the Town of Regina in the Territory of Alberta, wife of Captain Gilpin Brown, the said Christopher Robinson Boulton and those named after him being residuary devisees under the will of the late John Boulton, deceased,

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of the First part.

—AND—

JOSEPH B. DICKSON and JESSE L. EDDY of the City of New York in the State of New York, one of the United States of America, Sales Agents carrying on business under the firm name of Dickson & Eddy, hereinafter called the Lessees,

of the Second part.

—AND—

THE INCORPORATED SYNOD of the Diocese of Toronto, Mortgagees,

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of the Third part:

WHEREAS by Indenture of lease dated the first day of August, 1875 and made between the late John Boulton of the City of Toronto and one Stephen Nairn, the said John Boulton did lease to the said Nairn the land hereinafter described including the part excepted which has since been expropriated by the Ontario and Quebec Railway for a term of 21 years and upon the terms and conditions therein set forth.

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AND WHEREAS by certain mesne assignments of the said lease the said term has now come to and is vested in Joseph B. Dickson and Jesse L. Eddy both of the City of New York in the State of New York, trading under the name, style and firm of Dickson & Eddy.

Exhibits
 No. 6
 Lease M. R.
 Boulton to
 Dickson & Eddy,
 1st Sept., 1896
 (Filed by Claimant,
 Boulton)
 —continued

AND WHEREAS after the making of the said lease and on or about the 14th day of December 1882 the said John Boulton departed this life having first made his last will whereby the parties hereto of the first part became entitled to all the interests which the said John Boulton had in his lifetime in the said property subject to the said lease.

AND WHEREAS the Ontario and Quebec Railway Company did in or about the year 1887 take steps under the statutes in that behalf provided to expropriate a certain portion of the said demised premises being a strip 28 feet in width across the northerly end of the lands secondly herein described and by Indenture of assignment dated 8th October, 1888 and made between the Ontario Coal Company the then owners of the term of the one part and The Ontario and Quebec Railway Company of the other part the said Ontario and Quebec Railway Company acquired or intended so to do all the interest therein of the said Ontario Coal Company. 10

AND WHEREAS it was agreed between the parties hereto that the said lands so expropriated or intended so to be should be excluded from any renewal lease the said lessees surrendering their remaining interest therein (if any) to the said lessors.

AND WHEREAS it was in and by the said lease provided that the lessor his heirs or assigns would at the expiration of the said term thereby granted grant to the lessee his executors, administrators or assigns a new lease for the further term of Twenty-one years to be computed from the end of the term thereby granted and at such increased rental per annum as the said thereby demised premises should then be worth to be determined by the award of three indifferent and disinterested arbitrators or a majority of them, such arbitrators to be appointed and the award to be made in the manner set out in the said lease. 20

AND WHEREAS upon the expiration of the said term an arbitration was held pursuant to the provisions in the said lease contained to determine the rental to be paid for the renewal term and an award dated the eleventh day of August 1896 was duly made by James J. Foy and Charles H. Ritchie, Esquires, being a majority of the arbitrators appointed for the purpose of fixing such rent at the sum of Twenty-five hundred and eighty dollars. 30

NOW THIS INDENTURE WITNESSETH that in consideration of the premises and in pursuance of said award and of the rents covenants and agreements hereinafter reserved and contained on the part of the said Lessees, their executors, administrators and assigns to be paid observed and performed they the said Lessors have demised and leased and by these presents do demise and lease unto the said Lessees their executors, administrators and assigns ALL THAT PARCEL or tract of land and premises situate lying and being in the City of Toronto and described as follows:— 40

ALL and SINGULAR that certain parcel or tract of land and premises containing by admeasurement Thirteen Thousand Four Hundred and ten square feet be the same more or less being composed of part of the following

water lots, namely—of lot Number Thirty-One granted to the City of Toronto, part of Water lot "A" granted to one William Cooper and part of a certain Water Lot granted to one William Bergen and which said parcel or tract of land and premises may be more particularly known and described as follows, that is to say: Commencing at a point on the northern limit of Esplanade Street which is distant eighty-three feet and ten inches westerly of the western limit of Church Street. Thence north sixteen degrees west parallel to Church Street Two hundred and nine feet. Thence in a south-westerly direction parallel to Esplanade Street Forty-five feet to the eastern limit of the brick building heretofore in occupation by the Vine Growers Association, thence south sixteen degrees east following the eastern limit of the said brick building and the production thereof southerly a distance of forty-eight feet to the southerly limit of a lane twenty feet in width now or hereafter to be opened from Scott to Church Street, thence westerly following the southerly limit of the said lane Twenty-five feet. Thence southerly parallel to Church Street being along the eastern boundary of a certain property now or heretofore in possession of B. Homer Dixon, Esquire, One hundred and fifty-nine feet and four inches more or less to the northern limit of Esplanade Street. Thence easterly following the northerly limit of Esplanade Street seventy feet more or less to the place of beginning.

SAVING AND EXCEPTING such part of the foregoing described property as may hereafter be used in opening the said lane Twenty feet in width referred to aforesaid. The dedication of the said lane through the said property being as follows:—To extend eastward from the termination of the lane now opened with a width of Twenty feet to Church Street and on a course at right angles to the said street.

ALSO THAT CERTAIN other parcel or tract of land and premises and land partly covered with the waters of the bay being composed of part of water lot Number Thirty-One (31) granted to the City of Toronto and part of that certain water lot granted to William Bergen and which said parcel or tract of land and premises and land partly covered with the waters of the said bay may be more particularly known and described as follows that is to say:—

COMMENCING at the southerly limit of the Esplanade and at the intersection thereof with the western limit of Church Street produced thence westerly following the southerly limit of the Esplanade two hundred and thirteen feet to the existing boundary line between Water Lots Numbers Thirty-one and Thirty-two thence south sixteen degrees east following the said boundary line between the said water lots Four hundred and ninety feet more or less to the old Windmill line. Thence north sixty-five degrees east following the said old Windmill line, Two hundred and thirteen feet more or less to the western limit of Church Street produced. Thence north sixteen degrees west following the produced western limit of Church Street five hundred and twenty-one feet more or less to the place of beginning and containing by admeasurement, one hundred and two thousand five hundred and fifteen square feet be the same more or less save and except the part acquired by the Ontario and Quebec Railway Company before referred to having a frontage on the Esplanade

Exhibits

No. 6

Lease M. R.
Boulton to
Dickson & Eddy,
1st Sept., 1896
(Filed by Claimant,
Boulton)

—continued

of two hundred and thirteen feet by a depth of twenty-eight feet together with the appurtenances.

TO HAVE and TO HOLD the said demised premises for and during the term of twenty-one years to be computed from the first day of August one thousand eight hundred and ninety-six YIELDING and PAYING therefor unto the said Lessors their heirs and assigns the clear yearly rent or sum of two thousand five hundred and eighty dollars during the said term of lawful money of Canada in gold or its equivalent. Such rent to be paid in equal quarterly payments on the first day of November, February, May and August in each and every year during the said term without any deduction, defalcation or abatement whatsoever, the first of such payments to be made on the first day of November, 1896. 10

AND the said Lessees for themselves, their heirs, executors, administrators and assigns hereby covenant jointly and severally with the said Lessors their heirs and assigns to pay rent and to pay taxes.

AND the said Lessees for themselves their heirs, executors, administrators and assigns further covenant, jointly and severally with the said Lessors their heirs and assigns that they the said Lessees their executors, administrators and assigns will accept and take a new lease and all further renewals thereof perpetually at the times upon the terms and conditions and at the rental hereinafter provided and will in every case execute such new lease and renewal. 20

Proviso for re-entry by the said Lessors on non-payment of rent or non-performance of covenants.

The said Lessors covenant with the said Lessees for quiet enjoyment.

AND also that at the expiration of the term hereby granted the said Lessors their heirs or assigns shall and will, at the costs and charges of the said Lessees their executors, administrators or assigns grant unto the said Lessees their executors, administrators or assigns a new lease for a further term of twenty-one years to be computed from the end of the term hereby granted and at such increased rental per annum as the said hereby demised premises shall then be worth to be determined by the award of three indifferent and disinterested arbitrators or of the majority of them such arbitrators to be appointed as follows: one by the said lessors, their heirs or assigns, another by the said lessees their executors, administrators or assigns and the third arbitrator to be appointed by the two arbitrators to be appointed by the said parties. 30

The said parties or their representatives shall appoint their respective arbitrators in writing and shall also notify each other of such appointment in writing at least thirty days before the first day of August, A.D. 1917 and the third arbitrator shall be appointed within one week after the appointment of the other two and the award of the majority of the said arbitrators shall be final provided the same be made in writing ready to be delivered to the said parties or their respective representatives on or before the first day of September, A.D. 1917. 40

Provided that in case either of the said parties or their representatives shall neglect or refuse to appoint an arbitrator on his or their behalf and to give notice thereof as aforesaid at least thirty days before the said first of August, 1917 it shall thereupon be lawful for the arbitrator appointed by the other party to appoint two other arbitrators and the award of the three so appointed or of the majority of them shall if made within the time and in the manner above mentioned be valid and binding upon the said parties and their representatives.

10 Provided also that if the said parties or their representatives or either of them shall be under any legal disability the High Court of Justice for Ontario may appoint an arbitrator on behalf of such party: And it is agreed and declared that in determining such valuation or increased rent the arbitrators are to value that part of the said premises lying to the south of the Esplanade at such rate as the same would then be worth if duly filled in and protected in accordance with the terms of the said recited lease from John Boulton to the said Stephen Nairn.

Provided always and it is hereby agreed that in estimating such rent the said arbitrators are not to take into consideration any buildings or erections then on either of the said demised premises above the level of the Esplanade.

20 AND it is further agreed that such new lease shall contain all covenants, conditions and stipulations that are herein contained and to include a similar covenant for a further renewal for a like term of twenty-one years at such rent to be not less than the rent of the said premises for the then expiring term of twenty-one years as shall be fixed by arbitration it being the meaning and intention of the said parties that these presents shall be perpetually renewable at the end of each successive term of twenty-one years at rent to be fixed by arbitration as hereinbefore provided.

30 AND it is further agreed and declared that it shall and may be lawful for the Lessors, their heirs or assigns at any time to take possession of that part of the demised premises lying to the North of the land which runs in rear of the Front Street Lots.

AND upon payment to the Lessees their executors, administrators or assigns of the value of any buildings erected by him or them thereon to use, occupy and retain the same.

AND the said Lessors are to allow the said Lessees thereafter to deduct from the rent such sum as may be determined by arbitration (such arbitration to be in form and manner as hereinbefore provided for) to be a fair rent for the said piece of land.

40 AND the said Lessors for themselves, their heirs, executors, administrators and assigns do hereby covenant with the said Lessees their executors, administrators and assigns that they shall have the right to sublet the premises hereby demised or any part thereof during the continuance of the term hereby demised or of any renewal thereof subject nevertheless to the covenants, provisos, conditions and other stipulations hereinbefore mentioned.

Exhibits

No. 6
Lease M. R.
Boulton to
Dickson & Eddy,
1st Sept., 1896
(Filed by Claimant,
Boulton)

—continued

Exhibits

No. 6
Lease M. R.
Boulton to
Dickson & Eddy,
1st Sept., 1896
(Filed by Claimant,
Boulton)
—concluded

AND it is hereby agreed that the words Lessors and Lessees respectively wherever used in these presents shall include the heirs, executors, administrators and assigns of the Lessors and Lessees respectively.

AND the Incorporated Synod of the Diocese of Toronto as mortgagees hereby consent to this lease and agree to postpone any mortgage or other lien they may have upon this property or any part of it to the said lease and agree that the said mortgage or mortgages shall be considered for all purposes as if made subsequent to the making thereof.

This lease being a renewal of the lease of the 1st August 1875 it is covenanted and agreed by and between the parties hereto their respective heirs, executors, administrators and assigns that the execution and acceptance of this lease by the lessees shall not alter or interfere with the right (if any) to remove fixtures which the lessees and their executors administrators and assigns may have had under the said lease of the 1st August 1875 which right (if any) is continued under this lease.

IN WITNESS WHEREOF the said parties hereto of the first and second part have hereunto set their hands and seals and the said Synod has set its Corporate Seal the day and year first above written.

SIGNED, SEALED AND DELIVERED					
in the presence of,					
Thomas G. Pratt as to Joseph B. Dickson and Jesse L. Eddy.	}	M. R. BOULTON	[SEAL] 20		
		C. R. BOULTON	[SEAL]		
		M. A. BOULTON	[SEAL]		
Charles Noble as to J. D. Boulton	}	H. E. BOULTON	[SEAL]		
		GRACE BOULTON	[SEAL]		
		AMY BOULTON	[SEAL]		
		J. D. BOULTON	[SEAL]		
		E. A. BOULTON	[SEAL]		
		H. K. BOULTON	[SEAL]		
		A. St. G. BOULTON	[SEAL]		
P. C. Goldingham as to: M. R. Boulton C. R. Boulton M. A. Boulton H. E. Boulton Grace Boulton Amy Boulton Edith Boulton Hilda Boulton A. St. G. Boulton, by his attorney, C. R. Boulton Laura Gilpin Brown.	}	By his attorney	30		
		C. R. BOULTON			
		LAURA GILPIN BROWN	[SEAL]		
		JOSEPH B. DICKSON	[SEAL]		
		JESSE L. EDDY	}	[SEAL]	
				ARTHUR TORONTO	
		Laura Gilpin Brown.	David Kemp	PREST. OF SYNOD	[SEAL]

SURRENDER DICKSON AND EDDY TO M. R. BOULTON et al.

No. 7
Surrender Dickson
& Eddy to M. R.
Boulton, et al.
31st Dec., 1901
(Filed by Claimant,
Boulton)

THIS INDENTURE made in triplicate the 31st day of
December, A.D. 1901:

BETWEEN:

JOSEPH B. DICKSON and JESSE L. EDDY, of the City
of New York in the State of New York, one of the United
States of America, Sales Agents, carrying on business under the
firm name of Dickson & Eddy,

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of the FIRST PART,

MARTHA ROWAN BOULTON, of the City of Toronto
in the County of York, Widow and Devisee of the late John
Boulton, deceased, CHRISTOPHER ROBINSON BOULTON,
of the said City of Toronto, Esquire, MARY A. BOULTON,
HERMANN BOULTON, GRACE BOULTON, AMY BOUL-
TON, JOHN BOULTON, EDITH BOULTON and HILDA
BOULTON, all of the said City of Toronto, ARTHUR BOUL-
TON, of the City of Chicago in the State of Illinois and LAURA
GILPIN BROWN, of the Town of Regina in the Territory of
Alberta, wife of Captain Gilpin Brown, the said Christopher
Robinson Boulton and those named after him being residuary
devisees under the will of the late John Boulton, deceased,

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of the SECOND PART,

—AND—

JOHN GAMBLE GREY, also of the said City of Toronto,
Manufacturer,

of the THIRD PART:

WHEREAS by Indenture of Lease dated the first day of August, 1875,
John Boulton of the City of Toronto did demise and lease unto one Stephen
30 Nairn the lands and premises therein described for a term of twenty-one years
upon the terms and conditions therein mentioned:

AND WHEREAS by Indenture of Lease dated the twelfth day of October,
1882, the said Stephen Nairn did sublet to William Greey and John Gamble
Greey the lands and premises hereinafter particularly described, being that
part of the lands firstly described in the above recited lease upon the terms
and conditions therein set forth:

AND WHEREAS the reversion in the said lands comprised in the said
lease of the first day of August, 1875, is now vested in the said parties of the
Second Part:

40 AND WHEREAS by various mesne assignments the said lease is now held
by the parties of the first Part:

Exhibits
 No. 7
 Surrender Dickson
 & Eddy to M. R.
 Boulton, et al,
 31st Dec., 1901
 (Filed by Claimant,
 Boulton)

—continued

AND WHEREAS by Indenture of Lease dated the first day of September, 1896, the said parties of the Second Part did in pursuance of a covenant for renewal contained in said lease of the first day of August, 1875, lease to the said parties of the First Part the lands comprised therein for a further term of twenty-one years:

AND WHEREAS by various mesne assignments the said sublease became vested in the said John Gamble Greay:

AND WHEREAS by Indenture dated the thirtieth day of March, 1897, the said parties of the First Part did in pursuance of the covenant for renewal contained in the said sublease, lease to the said John Gamble Greay the lands 10 and premises therein comprised for a further term of twenty-one years:

AND WHEREAS the said John Gamble Greay has contracted with the said Martha Rowan Boulton to purchase the reversion in fee in the said lands comprised in the said sublease, and has applied to the said parties of the First Part to surrender whatever remaining interest they have in the said lands, which they have agreed to do, provided that the yearly rental payable under the said lease of the first day of August, 1875, or the renewal thereof, be hereafter reduced by the sum of four hundred and twenty dollars:

NOW THIS INDENTURE WITNESSETH that in consideration of the premises and of the sum of one dollar now paid by the parties of the Second 20 Part to the said parties of the First Part, the receipt whereof is hereby acknowledged, the said parties of the First Part hereby assign and surrender unto the said parties of the Second Part all that part of the said hereditaments and premises in the said lease of the first day of August, 1875, firstly described and being ALL THAT PARCEL or tract of land and premises, situate, lying and being in the City of Toronto and described as follows:—

ALL AND SINGULAR that certain parcel or tract of land and premises containing by admeasurement Thirteen Thousand Four hundred and ten square feet, be the same more or less, being composed of part of the following water lots, namely:—of Lot Number Thirty-one granted to the City of 30 Toronto, part of Water Lot "A" granted to one William Cooper and part of a certain Water Lot granted to one William Bergen and which said parcel or tract of land and premises may be more particularly known and described as follows, that is to say: Commencing at a point on the northern limit of Esplanade Street which is distant eighty-three feet and ten inches westerly of the western limit of Church Street. Thence north sixteen degrees west parallel to Church Street Two hundred and nine feet. Thence in a south-westerly direction parallel to Esplanade Street Forty-five feet to the eastern limit of the brick building heretofore in occupation by the Vine Growers Association, thence south sixteen degrees east following the eastern limit of the said brick 40 building and the production thereof southerly a distance of forty-eight feet to the southerly limit of a lane twenty feet in width now or hereafter to be opened from Scott to Church Street, thence westerly following the southerly limit of the said lane Twenty-five feet. Thence southerly parallel to Church

Street being along the eastern boundary of a certain property now or heretofore in possession of B. Homer Dixon, Esquire, One hundred and fifty-nine feet and four inches, more or less, to the northern limit of Esplanade Street. Thence easterly following the northerly limit of Esplanade Street seventy feet, more or less, to the place of beginning; to the intent that the residue of the said term of twenty-one years now current and all other the estate and interest of the said parties of the First Part in that part of the said premises under or by virtue of the said Indenture and of the said renewal thereof may be merged and extinguished in the reversion and inheritance of the same premises.

AND the said parties of the First Part for themselves, their heirs, executors, administrators or assigns, do hereby covenant with the said parties of the Second Part, their heirs, executors, administrators and assigns, that they now have in themselves good right, full power and absolute authority to assign and surrender the said lands and premises in manner aforesaid, and that they have not at any time done or executed any act, deed, matter or thing (save the said sublease above recited) whereby the said lands and premises or any part thereof is, shall or may be in any wise charged or encumbered:

AND THIS INDENTURE FURTHER WITNESSETH that the said recited lease of the first day of August, 1875, and all the terms, conditions and provisions thereof and of the renewal of same granted the first day of September, 1896, shall as to the remaining lands demised thereby and not hereby surrendered be in no wise impaired or affected by reason of the execution of these presents, but shall as to the said remaining lands be and remain in as full force and effect as if these presents had not been executed:

PROVIDED HOWEVER that the rental hereafter payable under the said lease for the balance of the current term of twenty-one years shall be the sum of two thousand one hundred and sixty dollars, instead of the sum of two thousand five hundred and eighty dollars named therein:

AND the said John Gamble Greey in consideration of the premises and of the sum of one dollar now paid to him by the said parties of the First Part, the receipt whereof is hereby acknowledged, hereby assigns and surrenders unto the said parties of the First Part the said sublease above recited and all the lands and premises therein contained, to the intent that the residue of the said term of twenty-one years granted thereby and all other the estate and interest of the said John Gamble Greey under or by virtue of the said Indenture and of the said renewal thereof may be merged and extinguished in the reversion and inheritance of the same premises.

AND the said parties of the Second Part hereby for themselves, their heirs, executors, administrators and assigns, accept the said surrender of the lease of the first day of August, 1875, and the renewal thereof, so far as it respects the land and premises intended to be hereby surrendered upon the terms hereinbefore set forth, and do hereby release the said lands from the operation of the said lease.

Exhibits
 No. 7
 Surrender Dickson
 & Eddy to M. R.
 Boulton, et al,
 31st Dec., 1901
 (Filed by Claimant,
 Boulton)
 —concluded

AND the said parties of the First Part hereby for themselves, their heirs, executors, administrators and assigns, accept the said surrender of the lease of the twelfth day of October, 1882, and the renewal thereof, and do hereby release the said lands from the operation of the said lease.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals.

SIGNED, SEALED AND DELIVERED
 in the presence of
 T. R. Cornwall
 B. G. Teeter
 Joseph S. Dunn
 Notary Public
 Ashton A. Winter as to signature of John G. Greey.

 Eustace H. Cave-Browne-Cave
 as to signature of G. Boulton
 and Laura Gilpin Brown.

 as to signature of John Boulton
 E. W. Wand

JOSEPH B. DICKSON	[SEAL]	
JESSE L. EDDY	[SEAL]	
JOHN G. GREEY	[SEAL]	10
M. R. BOULTON	[SEAL]	
C. R. BOULTON	[SEAL]	
M. A. BOULTON	[SEAL]	
H. E. BOULTON	[SEAL]	
GRACE BOULTON	[SEAL]	
AMY BOULTON	[SEAL]	
EDITH A. BOULTON	[SEAL]	
A. St. G. BOULTON	[SEAL]	
HILDA BOULTON	[SEAL]	
LAURA GILPIN BROWN	[SEAL]	20
J. BOULTON	[SEAL]	

No. 22
 Assignment of
 Lease, Dickson &
 Eddy to Standard
 Fuel Co.,
 21st May, 1912
 (Filed by Con-
 testant).

No. 22

ASSIGNMENT OF LEASE DICKSON AND EDDY TO STANDARD FUEL COMPANY.

THIS INDENTURE made the 21st day of May, A.D. 1912

BETWEEN

JOSEPH B. DICKSON, and JESSE L. EDDY, both of the City of New York in the State of New York, one of the United States of America, carrying on business under the Firm name of Dickson & Eddy, hereinafter called the Assignors,
 OF THE FIRST PART

—AND—

THE STANDARD FUEL COMPANY of Toronto, Limited hereinafter called the Assignee,

OF THE SECOND PART:

WHEREAS by an Indenture of Lease bearing date the First day of September one thousand eight hundred and ninety six made between Martha

Rowan Boulton, Widow and devisee of the late John Boulton and Christopher Robinson Boulton and others, being residuary devisees under the Will of the late John Boulton, deceased, the said Lessors therein named did demise and Lease unto the said Lessees therein named (the parties hereto of the First Part) their executors, administrators and assigns inter alia ALL AND SINGULAR that certain parcel or tract of land and premises and land partly covered by the waters of the Bay, situate, lying and being in the City of Toronto and being composed of part of Waterlot Number thirty one granted to the City of Toronto and part of that certain water lot granted to William

10 Bergen and which said parcel or tract of land and premises and land partly covered with the waters of the said Bay may be more particularly known and described as follows, that is to say: COMMENCING at the southerly limit of the Esplanade and at the intersection thereof with the western limit of the Church Street produced: THENCE WESTERLY following the southerly limit of the Esplanade two hundred and thirteen feet to the existing boundary line between waterlots numbers thirty one and thirty two: THENCE SOUTH sixteen degrees east following the said boundary line between the said water lots, Four hundred and ninety feet more or less to the old windmill line: THENCE NORTH sixty five degrees east following the said old windmill line

20 Two hundred and thirteen feet more or less to the western limit of Church Street produced: THENCE NORTH sixteen degrees west following the produced western limit of Church Street five hundred and twenty one feet more or less to the place of beginning, and containing by admeasurement one hundred and two thousand five hundred and fifteen square feet be the same more or less, save and except the part acquired by the Ontario and Quebec Railway Company having a frontage on the Esplanade of two hundred and thirteen feet by a depth of twenty eight feet together with the appurtenances.

TO HOLD THE SAME with the appurtenances unto the said Lessees from the first day of August one thousand eight hundred and ninety six for

30 and during the term of twenty-one years from thence next ensuing, and fully to be completed and ended, at the yearly rent of Two thousand five hundred and eighty dollars and under and subject to the Lessees covenants and agreements in the said Indenture of Lease reserved and contained.

AND WHEREAS by Indenture by way of sub-lease bearing date the 10th day of June A.D. 1910 and made between the herein named Assignors and The Canadian Pacific Railway Company, they the said herein named Assignors did demise and lease unto the said The Canadian Pacific Railway Company that portion of the hereinbefore described lands and premises particularly described as "a strip of land, part of said Water lot Number Thirty-

40 one, the northerly boundary of which is a line drawn parallel to the southerly limit of the Esplanade and distant twenty eight feet southerly at right angles therefrom and the southerly limit of which is a line drawn parallel to the said southerly limit of the Esplanade and distant fifty two feet and six inches at right angles therefrom and extending across the full width of said waterlot number thirty-one: TO HOLD the said demised premises unto the said The Canadian Pacific Railway Company its successors and assigns for a term to

Exhibits
 No. 22
 Assignment of
 Lease, Dickson &
 Eddy to Standard
 Fuel Co.,
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 (Filed by Con-
 testant).

—continued

be complete and ended on the 30th day of July, A.D. 1917 and subject to the covenants, provisoes and conditions particularly set forth and contained in said sub-lease.

NOW THIS INDENTURE WITNESSETH that in consideration of the sum of TWENTY SIX THOUSAND DOLLARS of lawful money of Canada now paid by the Assignee to the Assignors (the receipt whereof is hereby acknowledged) they the said Assignors do hereby grant bargain, sell, assign, transfer and set over unto the Assignee ALL AND SINGULAR the said parcel or tract of land, and all other the premises comprised in, and demised by the said hereinbefore in part recited Indenture of Lease TOGETHER with the said Indenture of Lease, and all benefit and advantage to be had or derived therefrom and together with all benefits and advantages to the said Assignors under or by virtue of said herein in part recited sub-lease: TO HAVE AND TO HOLD the same together with all houses and other buildings, easements, privileges and appurtenances thereunto belonging, or in any wise appertaining unto the said assignee from thenceforth for and during all the residue of the said term granted by the said Indenture of Lease, and for all other the estate, term right of renewal (if any) and other the interests of the assignor therein. SUBJECT to the payment of the rent and the observance and performance of the Lessees covenants and agreements in the said Indenture of Lease contained. 10

AND the said Assignors do hereby for themselves, their and each of their heirs, executors and administrators covenant promise and agree, to and with the said Assignee its successors and assigns, in manner following, that is to say:

THAT notwithstanding any Act of the Assignors the said hereinbefore in part recited Indenture of Lease, is at the time of the sealing and delivery of these presents, a good and valid and subsisting lease in the Law, and not surrendered, forfeited or become void or voidable, and that the rent and covenants therein reserved and contained have been duly paid and performed by the Assignors up to the day of the date hereof. 30

AND that notwithstanding as aforesaid the said Assignors now have in their good right, full power and absolute authority to assign the said lands and premises in manner aforesaid, and according to the true intent and meaning of these presents.

AND THAT subject to the said rent, and the Lessees covenants and agreements to the said Lessee contained, it shall be lawful for the assignee to enter into and upon and hold and enjoy the said premises for the residue of the term granted by the said Indenture of Lease, and every renewal thereof (if any) for its own use and benefit without the let, suit, hindrance, interruption or denial of the said assignors or any other person whomsoever; and that free and clear and freely and clearly acquitted, exonerated and discharged or otherwise, by and at the expense of the said assignor well and effectually saved, defended and kept harmless of, from and against all former and other gifts, grants, bargains, sales, leases and other incumbrances whatsoever, save 40

and except the hereinbefore mentioned sub-lease granted by the herein named assignors to the Canadian Pacific Railway Company.

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testant).

—concluded

AND THAT the said assignors their and each of their heirs, executors, administrators and assigns and all other persons claiming any interest in the said premises shall and will from time to time and at all times hereafter, at the request and costs of the said assignee its successors or assigns, make, do and execute or cause and procure to be made, done and executed all such further assignments and assurances in the law of the said premises for more effectually assigning and assuring the said premises for the residue of the said term, and every renewal thereof as by the said Assignee its successors or assigns or its or their counsel in the law shall be reasonably advised or required.

AND the said Assignee doth hereby for itself and its assigns covenant, promise and agree to and with the said Assignors their and each of their executors and administrators, that it the said assignee and its assigns, shall and will, from time to time, during all the residue of the said term granted by the said Indenture of Lease and every renewal thereof, pay the rent and perform the Lessees covenants and agreements therein respectively reserved and contained and indemnify and save harmless the said assignors their and each of their heirs, executors and administrators therefrom and from all actions, suits, costs, losses, charges, damages and expenses thereof.

THIS indenture shall extend to and be binding upon the heirs, executors, administrators and assigns of the parties hereto of the First Part and the successors and assigns of the party of the Second Part.

IN WITNESS WHEREOF the said parties hereto of the First Part have hereunto set their hands and seals and the said party of the Second Part has hereunto set its corporate seal over the hands of its duly authorized officers.

SIGNED, SEALED AND DELIVERED }
in the Presence of } JOSEPH B. DICKSON [SEAL]
30 William T. Hepper } JESSE L. EDDY [SEAL]

[Seal of] STANDARD FUEL CO. OF TORONTO LIMITED
NOEL MARSHALL,
President.

AGREEMENT,

C. R. BOULTON ET AL AND STANDARD FUEL COMPANY.

MEMORANDUM OF AGREEMENT made this 20th
 day of May, 1918.

BETWEEN:

CHRISTOPHER ROBINSON BOULTON, and ARTHUR
 ST. GEORGE BOULTON, both of the City of Toronto, in the
 County of York, Trustees, (hereinafter called the "LESSORS")
 OF THE FIRST PART, 10

—AND—

THE STANDARD FUEL COMPANY, OF TORONTO,
 LIMITED, (hereinafter called the "LESSEES")
 OF THE SECOND PART:

WHEREAS John Boulton, late of the City of Toronto, but now deceased,
 did on or about the first of August, 1875, lease to Stephen Nairn, the land
 hereinafter described (including the part excepted which has since been expro-
 priated by the Ontario & Quebec Railway) for a term of twenty-one years
 upon the terms and conditions and with the rights of renewal as set out in the
 said lease; 20

AND WHEREAS the above-named Lessors, being two of the devisees
 under the Will of the said John Boulton deceased, did join with the other
 devisees and with the late Martha Rowan Boulton, widow of the said John
 Boulton deceased, in an Indenture dated the first day of September, 1896,
 whereby the said above-named Lease of the first day of August, 1875, was
 renewed for a period of twenty-one years from the first day of August 1896 to
 Joseph B. Dickson and Jesse L. Eddy, who were assignees of the rights of the
 said Stephen Nairn under the said original Lease;

AND WHEREAS the said Dickson and Eddy did, on the 21st day of
 May, 1912, assign to the Standard Fuel Company of Toronto, Limited, all 30
 their rights under the said renewal Lease;

AND WHEREAS the said renewal Lease expired on the first day of
 August, 1917;

AND WHEREAS the legal estate in and title to the said lands of all the
 devisees of the said John Boulton deceased are now vested in the said Lessors
 to whom the lands in question have been conveyed by Deed of Conveyance
 dated the tenth day of May, 1918, and registered the 17th day of May, 1918,
 as Number 45089-S, as Trustees for the several persons interested in the
 reversion therein;

AND WHEREAS the Ontario & Quebec Railway Company has taken steps, under its Statutes and the Provisions of the Railway Act, to expropriate a certain portion of the said demised premises and has expropriated two strips of land being part of the original demised premises which may be described as follows: **FIRSTLY**: A strip running across the whole width of the demised premises and having a frontage of two hundred and thirteen feet more or less on the southerly limit of the Esplanade by a depth of twenty-eight feet more or less measured at right angles to said southerly limit, and, **SECONDLY**: another strip across the whole width of the said lot immediately

10 to the south of the firstly above excepted strip and having a depth of twenty-four feet six inches more or less measured at right angles to the said southerly limit of the Esplanade, the said two strips together forming a strip having a frontage on the southerly side of the Esplanade of two hundred and thirteen feet more or less by a depth of fifty-two feet six inches measured at right angles to the southerly limit of the Esplanade;

AND WHEREAS it has been agreed between the parties hereto that the said land so expropriated should be excluded from any renewal lease to the said Lessees, a formal surrender of the said excepted strip to be executed by the Lessees if required;

20 AND WHEREAS it has been agreed between the Lessors and the Lessees that the said lands in respect of which the said renewal lease is to be granted may be described as follows, that is to say: **THAT** certain parcel or tract of land and premises and land partly covered with the waters of the bay being composed of part of water lot Number Thirty-one (31) granted to the City of Toronto, and part of that certain water lot granted to William Bergen, and which said parcel or tract of land and premises and land partly covered with the waters of the bay may be more particularly known and described as follows, that is to say: **COMMENCING** at the southerly limit of the Esplanade and at the intersection thereof with the western limit of Church

30 Street produced thence westerly following the southerly limit of the Esplanade two hundred and thirteen feet to the existing boundary line between Water Lots Numbers Thirty-one (31) and Thirty-two (32); Thence south sixteen degrees east following the said boundary line between the said water lots four hundred and ninety feet more or less to the old Windmill line; thence north sixty-five degrees east following the said old Windmill line two hundred and thirteen feet more or less to the western limit of Church Street produced; thence north sixteen degrees west following the produced western limit of Church Street five hundred and twenty-one feet more or less to the place of beginning, save and except the parcels of land heretofore acquired by The Ontario and

40 Quebec Railway Company before referred to, and which together make up a strip of land having a frontage on the Esplanade of two hundred and thirteen feet more or less by a depth of fifty-two feet six inches measured at right angles to the said southerly limit of the Esplanade. **SUBJECT**, however, to any amendments which it may be found necessary to make in the said description in the event of the same being found inaccurate, the question of inaccuracy to

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No. 8

Agreement, C. R.
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—continued

be settled by a qualified Provincial Land Surveyor in the event of the parties being unable to agree as to the same;

AND WHEREAS the said Lessors are the persons entitled to the reversion of the said lands and premises, and the said Lessee, as assignee of the above-mentioned Lease, is entitled to receive a renewal of the said Lease for a term of twenty-one years from the first of August, 1917, in accordance with the terms of the original hereinbefore mentioned Lease and Renewal;

AND WHEREAS the parties have agreed to an arbitration to fix the yearly rent to be paid by the Lessee or its assigns to the Lessors or their assigns in accordance with the terms of the said renewal lease of the first of September, 1896, but subject to the variations of the said terms as contained in this Agreement; 10

NOW, in consideration of the premises and of the mutual covenants, promises and provisoes, on behalf of the respective parties, hereinafter set forth and contained, the said parties have agreed together as follows:

THE LESSORS hereby appoint Harton Walker, of the City of Toronto, as their arbitrator, and the Lessee appoints Frank McLaughlin of the said City of Toronto as its arbitrator. The said Walker and McLaughlin are to meet and, if possible, to agree upon the rent to be paid by the Lessee during the renewal term. If they do so agree all parties are to be bound by their figures, and their agreement is to be carried into effect by a formal appointment of a third party as third arbitrator, a formal sitting of the board, formal evidence, and an award fixing the figure so agreed upon as the yearly rent to be paid for the renewal term of twenty-one years from the first of August 1917, and the same shall be carried into effect by the execution by the parties of a lease for twenty-one years from the first of August 1917, in accordance with the terms of the original lease and renewal thereof, and at the rent so fixed by the said arbitrators. 20

IF the said Walker and McLaughlin shall not, within one month from the day on which they shall be asked by either party to fix said yearly rent, have been able to agree upon the amount of the yearly rent to be paid for the said renewal term of twenty-one years the said Walker and McLaughlin shall, within ten days from the date upon which the said Walker and McLaughlin shall notify the parties hereto of their failure to agree, appoint a third arbitrator for the purpose, in conjunction with the said Walker and McLaughlin, of determining the yearly rent to be paid for the term of the said renewal lease. IN the event of the said Walker and McLaughlin not being able to agree upon the said arbitrator the Lessors and Lessees are to join in an application to a Judge of the Supreme Court of Ontario for the appointment of the third arbitrator, and the said Judge shall make such appointment. 30 40

ON THE ARBITRATION to be held under the provisions of the next preceding paragraph of this agreement the parties agree that no oral evidence shall be offered but that each party may submit documentary evidence relative

to the case, either by way of original documents of title, including leases, assignments and renewals relating to the property in question, or certified copies of any registered instruments without formal proof thereof; and that similar documentary evidence relating to other properties bearing upon, or affording some guide to, the value or rental value of the property in question may likewise be put in as evidence without formal proof thereof; and also, that with a view to avoiding expense, either party may make verbatim extracts from any such registered documents, or from the books of the Assessment Department of the City of Toronto, and submit same to the Solicitor for the other side at least seven days before the first day appointed for the sitting of the arbitrators, and if no exception is taken to such extracts within four days thereof such extracts may be put in before the arbitrators as evidence of the contents of the document, or of the entries in the books of the said Assessment Department from which they were copied without formal proof thereof, and without further proof of the correctness of said extracts.

THE PARTIES may also file, without proof, any original plans or certified copies or blue prints thereof, the originals or certified copies of the Windmill Line Agreement, or any other agreement relating thereto, or to the changes or proposed changes in the waterfront, and also the plans and printed publications issued by the Harbour Commissioners.

IT IS FURTHER AGREED that the Lessees, if so advised, may put in for the consideration of the three arbitrators, if appointed, statements shewing the profit made by them in the operation of the said leased premises each year since the Lessees took over the Lease, the said statements to shew the number of tons of coal handled, the costs of handling and the profit per ton, the Lessors to have the right to check up the Lessees' figures, and for that purpose to be allowed to inspect the Lessees' books by themselves or their agents, and the Lessees agree to furnish full information and explanation as to how their figures are arrived at. The Lessors may place before the said three arbitrators such criticisms as they may see fit, together with their reasons for the same.

AND AFTER THE ARBITRATORS are satisfied that they have before them all the evidence and information they desire to enable them to deal with the points submitted to them, they shall give an appointment for argument by counsel representing the Lessors and Lessees respectively, and on the return of such appointment the respective parties may be so represented by counsel who may present their views orally or, if counsel agree, they may submit written arguments to be put in on behalf of the respective parties and filed with the arbitrators.

IT IS, however, distinctly understood that the above limitations and restrictions as to the evidence to be offered on the said arbitration shall not prevent the arbitrators or a majority of them from calling for or taking evidence upon any point, on which they may deem it necessary or advisable to take evidence, in order to enable them to arrive at the true value of the property; and the said arbitrators may view the property in question and any other property as they see fit.

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 Agreement, C. R.
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 (Filed by Claimant,
 Boulton)

—concluded

AND IT IS HEREBY DECLARED to be the desire of the parties and they do respectively agree, that such arbitrators shall act as valuers rather than as arbitrators in the strict sense of the term; and that the said arbitrators shall, in determining the said renewal rent, be at liberty to act upon any information which they may have acquired, and generally upon all those considerations which are ordinarily taken into account by valuers in making a valuation of real estate for the purpose of fixing rental thereof; and the documentary evidence to be offered, as above set forth, is agreed to be produced with a view of placing before the arbitrators in a convenient form evidence and facts proper for their consideration, but not with the intention 10 of excluding any other evidence or any facts which the arbitrators may consider will be of material assistance to them in determining the renewal rent as aforesaid.

NOTWITHSTANDING anything in the foregoing clause contained it is distinctly understood and agreed that the persons appointed pursuant to this agreement for the purpose of fixing said yearly rent shall for all purposes be deemed to be arbitrators within the meaning of the original and renewal leases, hereinbefore referred to, and of The Arbitration Act.

BOTH PARTIES bind themselves not to appeal against the Award on any formal or technical ground. It is understood that the arbitrators of the 20 respective parties are not to be debarred from communicating with their respective clients during the progress of the arbitration.

IT IS FURTHER AGREED that no account shall be taken by the said Walker and McLaughlin or by the Board of three arbitrators of the land covered by water in front of the property herein described and being part of the added lands referred to in the Windmill Line Agreement dated the 15th March, 1888, a copy of which is referred to in Chapter 70 of the Ontario Statutes of 4 Edward VII assented to on the 25th April 1904; but the parties are to be left to their rights with regard thereto unaffected by these proceedings 30 or by the renewal of the lease.

THIS AGREEMENT is to extend to, and be binding upon the heirs, executors, administrators and assigns of the respective parties.

IN WITNESS WHEREOF the Lessors have hereunto set their hands and seals, and the Lessee has affixed its Corporate Seal attested by the hands of the President and Secretary-Treasurer.

SIGNED, SEALED AND DELIVERED
 in the presence of:
 Dyce W. Saunders as to the execu-
 tion by C. R. Boulton and A.
 St. G. Boulton.

C. R. BOULTON [SEAL]
 A. ST. G. BOULTON [SEAL]

40

THE STANDARD FUEL CO., OF TORONTO, LIMITED [SEAL]
 N. C. MARSHALL,
 Vice-President.
 JAMES A. GLOVER,
 Sec'y-Treasurer.

AGREEMENT C. R. BOULTON ET AL AND STANDARD FUEL COMPANY

MEMORANDUM OF AGREEMENT made in duplicate this seventeenth day of June, A.D. 1918.

BETWEEN:

CHRISTOPHER ROBINSON BOULTON, and ARTHUR ST. GEORGE BOULTON, both of the City of Toronto, in the County of York, Trustees, (hereinafter called the "LESSORS")

OF THE FIRST PART:

10

—and—

THE STANDARD FUEL COMPANY OF TORONTO, LIMITED (hereinafter called the "LESSEES")

OF THE SECOND PART:

WHEREAS the parties hereto are respectively the Lessors and Lessees of certain water lots lying south of the Esplanade, in the City of Toronto, under a certain Lease dated 1st September, 1896, for a term of twenty-one years which expired on the 1st August, 1917;

AND WHEREAS the said Lessees are entitled to a renewal of the said Lease for a further term of twenty-one years from the said 1st day of August, 1917, at an increased rental to be fixed by arbitration as provided in the original Lease;

AND WHEREAS negotiations have been in progress between the parties to fix the renewal rent for the said renewal term, and the parties have executed an Agreement dated the 20th day of May, 1918, providing for the fixing of the said renewal rent by reference to arbitrators as therein provided, but such arbitration has not yet been held;

AND WHEREAS the Lessees have represented to the Lessors that owing to the present exceptional conditions and situation affecting all financial and business relations caused by the present state of war, it would be unsatisfactory to proceed with the arbitration at the present time, and have requested the Lessors to fix a rental for the current year, namely from the 1st August, 1917, to the 1st August, 1918, to be paid by the Lessees as a fixed rent for the said period by quarterly instalments payable as in the original Lease set forth;

AND WHEREAS the Lessees have proposed to pay to the Lessors as such fixed rent for the year ending 1st August, 1918, the sum of Four thousand Dollars, and in addition to pay over to the Lessors any amounts paid to the Lessees by the Canadian Pacific Railway Company by way of occupation, rent or otherwise for the strip of land taken and used by that Company across the northerly part of the demised premises which has accrued since 1st August, 1917, or which may hereafter accrue;

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Exhibits

No. 9

Agreement, C. R.
Boulton et al and
Standard Fuel Co.
17th June, 1918
(Filed by Claimant,
Boulton)

—continued

AND WHEREAS the Lessors have agreed to the said proposal upon the terms and conditions hereinafter expressed, which are agreed to by both parties.

NOW THEREFORE THIS AGREEMENT WITNESSETH that the rent for the premises for which the said renewal Lease is to be made pursuant to the Agreement of 20th May, 1918, shall, for the year ending 1st August, 1918, being the first year of the renewal term, be Four thousand Dollars, payable quarterly as in the said Lease is provided: and that the Lessees will in addition pay over to the Lessors as and when received all moneys paid to them by the Canadian Pacific Railway Company in respect of rental or otherwise for the strip of land occupied by that Railway and accruing since 1st August, 1917; 10

AND THIS AGREEMENT FURTHER WITNESSETH that notwithstanding anything herein contained the said Agreement of 20th May, 1918, shall remain in full force and effect and shall not be deemed to have been in any wise altered or otherwise affected by these presents:

AND FURTHER that this Agreement as to the amount of rental to be paid for the year ending 1st August, 1918, or for such further period as may be agreed upon between the parties is made merely as a temporary arrangement owing to the unusual conditions at present prevailing, and consequently it is distinctly understood that the acceptance of said rental for such limited period is not to be considered as an admission or evidence that the same is considered in any wise as being an adequate rental to be paid under the renewal lease; the intention being that the said arbitrators, upon proceeding to fix such rental under the renewal lease shall not be in any way influenced by the sum herein agreed to be accepted as rental for such limited period, but such rental payable under the renewal lease shall be fixed by said arbitrators as if this Agreement had never been made and executed; And the said arbitration may be proceeded with at the instance of either party at any time; 20

AND THIS AGREEMENT FURTHER WITNESSETH that if the parties shall hereafter so agree the said rent may be fixed for a further term of one year, and in that event this Agreement shall be deemed to be continued in force and to cover the rent payable up to the 1st day of August, 1919, without any further evidence of such agreement beyond an endorsement of such extension upon this agreement signed by the parties hereto or their Solicitors; 30

AND IT IS FURTHER UNDERSTOOD AND AGREED that the Lessors are entitled to and may, at any time, negotiate with the Canadian Pacific Railway Company with regard to the compensation payable for the strip of land taken by that Company across the northerly end of said Water Lots, it being understood that such strip is not included in the land covered by the proposed renewal lease, and that the Lessees are liable to pay to the Lessors in respect of such strip only such sums as may be paid to them by the Canadian Pacific Railway Company. 40

IN WITNESS WHEREOF the parties hereto of the first part have hereunto set their hands and seals, and the parties hereto of the second part have hereunto affixed their Corporate Seal attested under the hands of their proper officers in that behalf.

Exhibits
No. 9
Agreement, C. R. Boulton et al and Standard Fuel Co. 17th June, 1918 (Filed by Claimant, Boulton)
—concluded

SIGNED, SEALED AND DELIVERED }
in the presence of } C. R. BOULTON [SEAL]
Dyce W. Saunders as to the execu- } A. ST. G. BOULTON [SEAL]
tion by C. R. Boulton and A. }
St. G. Boulton. }

10 THE STANDARD FUEL CO., OF TORONTO, LIMITED. [SEAL]
N. C. MARSHALL,
Vice-President.
JAMES A. GLOVER,
Sect.-Treasurer.

No. 10

No. 10
Lease, C. R. Boulton to Standard Fuel Co., 1st Aug., 1921 (Filed by Claimant, Boulton)

LEASE C. R. BOULTON TO STANDARD FUEL COMPANY.
THIS INDENTURE made in triplicate the first day of August, A.D. one thousand nine hundred and twenty one IN PURSUANCE OF THE SHORT FORMS OF LEASES ACT:

20 BETWEEN:

CHRISTOPHER ROBINSON BOULTON of the City of Toronto in the County of York, Trustee, hereinafter called the Lessor,

OF THE FIRST PART,

—AND—

THE STANDARD FUEL COMPANY OF TORONTO LIMITED, hereinafter called the Lessees:

OF THE SECOND PART.

30 WHEREAS John Boulton, late of the City of Toronto but now deceased, by Indenture dated 1st August, 1875, leased to Stephen Nairn the lands hereinafter described (among other lands since excluded from the said lease by agreement of the parties hereto or their predecessors in title as hereinafter set forth) for a term of twenty one years from the said 1st day of August, 1875, upon the terms and conditions therein set forth.

AND WHEREAS by certain mesne assignments of the said lease the said term became vested in Joseph B. Dickson and Jessie L. Eddy, both of the City of New York in the State of New York, trading under the name, style and firm of Dickson and Eddy.

Exhibits
 No. 10
 Lease, C. R.
 Boulton to
 Standard Fuel Co.,
 1st Aug., 1921
 (Filed by Claimant,
 Boulton)
 —continued

AND WHEREAS the said John Boulton departed this life on or about the 14th day of December, 1882, having first made his last will whereby all his estate and interest in the said lands and in the said lease became vested in his widow, Martha Rowan Boulton, and in his children, as residuary devisees.

AND WHEREAS by Indenture dated the first day of September, 1896, the said Martha Rowan Boulton and the children of the said John Boulton, deceased, pursuant to the covenants for renewal in the said Indenture dated 1st August, 1875, did demise and lease to the said Dickson and Eddy as assignees of the said Stephen Nairn under the said original lease, certain of the lands described in the said original lease dated 1st August, 1875, including the lands hereinafter described for the term of 21 years from the 1st day of August, 1896. 10

AND WHEREAS it was in the said Indenture of 1st September, 1896, provided that the lessees would accept and take a new lease and all further renewals thereof perpetually upon the terms and conditions and at the rental as therein provided, and that the lessors would at the costs and charges of the lessees grant a new lease for a further term of 21 years at such increased rental per annum as the said demised premises should then be worth to be determined by the award of three arbitrators or a majority of them as therein provided; and that such new lease should contain all covenants, conditions and stipulations contained in said lease including a similar covenant for a further renewal for a like term of 21 years at an increased rental to be fixed by arbitration as therein provided. 20

AND WHEREAS the lands demised under the said original lease to Stephen Nairn dated 1st August, 1875, included certain lands north of the Esplanade which were sublet by the said Stephen Nairn to John Gamble Greay, who subsequently purchased the reversion therein from the lessor or his predecessors in title, and the said Dickson and Eddy by Indenture, dated 31st December, 1901, assigned and surrendered to the said Lessor or his predecessors in title all their right, title and interest in the said lease and sublease insofar as the same affected the said lands lying to the north of the Esplanade. 30

AND WHEREAS the Ontario and Quebec Railway Company under the powers contained in the special acts relating to that Company and in the Railway Act took certain proceedings to expropriate two strips of land being portions of the said premises included in the said leases dated the first day of August, 1875, and the first day of September, 1896, respectively, and which said lands so taken are part of waterlot Number Thirty One, originally granted to the City of Toronto, and part of that certain waterlot granted to William Bergin and which may be more particularly described as follows: 40
 FIRSTLY: A strip running across the whole width of the said Lot number Thirty One, and having a frontage of Two Hundred and thirteen feet on the southerly limit of the Esplanade by a depth of twenty eight feet more or less measured at right angles to said southerly limit; and

SECONDLY: Another strip across the whole width of the said water lot number Thirty one immediately to the south of the strip firstly above described and having a depth of twenty four feet and six inches more or less measured at right angles to the said southerly limit of the Esplanade; the said two strips together forming a strip having a frontage on the southerly side of the Esplanade of two hundred and thirteen feet more or less by a depth of fifty two feet six inches measured at right angles to the southerly limit of the Esplanade.

Exhibits
No. 10
Lease, C. R.
Boulton to
Standard Fuel Co.,
1st Aug., 1921
(Filed by Claimant,
Boulton)

—continued

AND WHEREAS the Lessees have agreed to surrender all their right, title and interest under the said lease in respect of the said two strips of land
10 which have been conveyed to the said Ontario and Quebec Railway Company.

AND WHEREAS the said Dickson and Eddy by Indenture dated 21st May, 1912, did assign to the Standard Fuel Company of Toronto, Limited, the above named lessees, all their rights under the said Indenture of lease dated 1st Sept. 1896.

AND WHEREAS the said term of 21 years granted by the said Indenture of Lease dated 1st September, 1896, expired on 1st August, 1917.

AND WHEREAS the legal estate and title of the devisees of the said John Boulton, deceased, in and to the lands still remaining subject to the said original lease and renewal lease have become vested in the lessor above named
20 as trustee for the several persons beneficially interested in the reversion therein by virtue of a deed of conveyance dated 10th May, 1918, and registered on 17th May, 1918, the other grantee and trustee named in the said conveyance, namely, Arthur St. George Boulton, having since died.

AND WHEREAS the said Lessor being the person entitled to the reversion of the said lands and premises remaining subject to the said original lease and renewal lease, and the said lessees being the persons entitled to a further renewal of the said lease for the term of twenty one years from the said first day of August, 1917, have agreed that the lands and premises still remaining subject to the said original lease and renewal lease in respect to
30 which this renewal lease is granted are the lands and premises hereinafter more particularly described.

AND WHEREAS the parties hereto have agreed that the rental to be paid in respect of the premises hereby demised for the said renewal term shall be fixed at the sum of \$6,000 per annum, and have consented and agreed that the said sum shall be the annual rental for said premises hereby demised for the said renewal term which shall be payable in equal quarterly payments on the first days of November, February, May and August, in each year during the said term notwithstanding that the amount of said rental has been fixed by agreement between the said parties and not by arbitration as provided by
40 the said Indenture of lease and renewal as aforesaid, and have further agreed that all covenants, provisoes and conditions in said lease and renewal lease with respect to the said rental for the said term of 21 years shall apply to the said rental so fixed notwithstanding that the same has been fixed by agreement and not by arbitration as provided by the said lease and renewal;

Exhibits

No. 10

Lease, C. R.
Boulton to
Standard Fuel Co.,
1st Aug., 1921
(Filed by Claimant,
Boulton)

—continued

NOW, THEREFORE, THIS INDENTURE WITNESSETH that in consideration of the premises and of the rents, covenants and agreements hereinafter reserved and contained on the part of the said lessees their successors and assigns to be paid, observed and performed, the said lessor hath demised and leased and by these presents doth demise and lease unto the said lessees, their successors and assigns:

ALL AND SINGULAR that certain parcel or tract of land and premises composed of part of Water Lot number Thirty-one (31) granted to the City of Toronto and part of that certain water lot granted to William Bergin, and which said parcel or tract of land and premises may be more particularly known and described as follows, that is to say: 10

COMMENCING in the westerly limit of Church Street at the point of the intersection thereof by the southerly limit of the lands heretofore expropriated by and conveyed to the Ontario and Quebec Railway Company, the said point of intersection being at the distance of fifty-two feet and six inches southerly from the southerly limit of the Esplanade measured at right angles therefrom; thence westerly along the southerly limit of the said strip of land heretofore conveyed to the Ontario and Quebec Railway Company and parallel to the southerly limit of the Esplanade, and at the distance of fifty-two feet and six inches from the said southerly limit measured at right angles therefrom 20 two hundred and thirteen feet (213') to the existing boundary line between water lots numbers thirty-one (31) and thirty-two (32); THENCE South sixteen degrees East following the said boundary line between the said water lots four hundred and thirty-seven feet six inches more or less to the Old Windmill Line; THENCE North sixty-five degrees East following the said Old Windmill Line two hundred and thirteen feet more or less to the Western limit of Church Street produced; THENCE North sixteen degrees West following the produced western limit of Church Street, four hundred and sixty-eight feet six inches more or less to the place of beginning, which said demised lands and premises are hereinafter referred to as the premises hereby demised, 30 together with the appurtenances.

TO HAVE AND TO HOLD the said premises hereby demised for and during the term of twenty-one years to be computed from the first day of August One thousand nine hundred and seventeen: YIELDING AND PAYING THEREFOR unto the said lessor his heirs and assigns, the clear yearly rent or sum of Six Thousand Dollars during the said term of lawful money of Canada in gold or its equivalent, such rent to be paid in equal quarterly payments on the first days of November, February, May and August in each and every year during the said term without any deduction, defalcation or abatement whatsoever. 40

AND the said lessees for themselves, their successors and assigns hereby covenant with the said lessor HIS HEIRS AND ASSIGNS: TO PAY rent, and to pay taxes.

AND the said lessees for themselves and their successors and assigns further covenant with the said lessor his heirs and assigns that they the said

lessees, their successors and assigns, will accept and take a new lease and all further renewals thereof perpetually at the times, upon the terms and conditions and at the rental hereinafter provided and will in every case execute such new lease and renewal.

PROVISO for re-entry by the said lessor on non-payment of rent or non-performance of covenants.

THE said lessor covenants with the said lessees for quiet enjoyment, and also that at the expiration of the term hereby granted the said lessor, his heirs or assigns, shall and will at the costs and charges of the said lessees, their
 10 successors or assigns, grant unto the said lessees, their successors or assigns, a new lease for a further term of twenty one years to be computed from the end of the term hereby granted and at such increased rental per annum as the said hereby demised premises shall then be worth to be determined (if the lessor and lessees cannot mutually agree thereon) by the award of three indifferent and disinterested arbitrators, or of the majority of them, such arbitrators to be appointed as follows: one by the lessor his heirs or assigns, another by the lessees, their successors or assigns, and the third arbitrator to be appointed by the two arbitrators to be appointed by the said parties.

THE said parties or their representatives shall appoint their respective
 20 arbitrators in writing and shall also notify each other of such appointment in writing at least thirty days before the expiration of the term hereby granted and the third arbitrator shall be appointed within one month after the appointment of the other two, and the award of the majority of the said arbitrators shall be final provided the same be made in writing ready to be delivered to the said parties or their respective representatives within three months after the appointment of the said third arbitrator, with power to the said arbitrators, or a majority of them, to extend from time to time the time for making said award for reasonable cause.

PROVIDED that in case either of the parties or their representatives
 30 shall neglect or refuse to appoint an arbitrator on his or their behalf and to give notice thereof as aforesaid at least thirty days before the expiration of the term hereby granted, then it shall thereupon be lawful for the other party to apply to a Judge of the Supreme Court of Ontario to appoint two other arbitrators and the award of the three arbitrators so appointed or of the majority of them shall, if made within the time or extended time and in the manner above mentioned be valid and binding upon the said parties and their representatives.

PROVIDED ALSO that if the said parties or their representatives, or
 40 either of them, shall be under any legal disability, the Supreme Court of Ontario or a Judge thereof may appoint an arbitrator on behalf of such party.

AND it is agreed and declared that in determining such valuation or increased rent the arbitrators are to value the said premises at such rate as the same would then be worth if duly filled in and protected in accordance with the terms of the said recited lease from John Boulton to the said Stephen Nairn.

Exhibits

No. 10
 Lease, C. R.
 Boulton to
 Standard Fuel Co.,
 1st Aug., 1921
 (Filed by Claimant,
 Boulton)

—continued

Exhibits
 No. 10
 Lease, C. R.
 Boulton to
 Standard Fuel Co.,
 1st Aug., 1921
 (Filed by Claimant,
 Boulton)
 —continued

PROVIDED ALWAYS and it is hereby agreed that in estimating such rent the said arbitrators are not to take into consideration any buildings or erections then on the said demised premises above the surface level of the Esplanade.

AND it is further agreed that except in so far as the parties hereto shall otherwise agree such new lease shall contain all covenants, conditions and stipulations that are herein contained and to include a similar covenant for a further renewal for a like term of twenty-one years at such rent to be not less than the rent of the said premises for the then expiring term of twenty-one years as shall be agreed upon by the lessor and lessees, or shall be fixed by arbitration, it being the intention and meaning of the said parties that these presents shall be perpetually renewable at the end of each successive term of twenty-one years at a rent to be agreed upon or to be fixed by arbitration as hereinbefore provided. 10

AND the said lessor for himself, his heirs, executors, administrators and assigns, doth hereby covenant with the said lessees, their successors and assigns, that they shall have the right to sub-let the premises hereby demised or any part thereof during the continuance of the term hereby demised or of any renewal thereof, subject nevertheless to the covenants, provisoes, conditions and other stipulations hereinbefore mentioned. 20

AND it is hereby agreed that the words lessor and lessees respectively wherever used in these presents shall include the heirs, executors, administrators, successors and assigns of the lessor and lessees respectively.

THIS lease being a renewal of the lease of the 1st August, 1875, it is covenanted and agreed by and between the parties hereto, their respective heirs, executors, administrators and assigns that the execution and acceptance of this lease by the lessees shall not alter or interfere with the right (if any) to remove fixtures which the lessees, and their executors, administrators and assigns, may have had under the said lease of the 1st August, 1875, which right (if any) is continued under this lease. 30

AND THIS INDENTURE FURTHER WITNESSETH and it is hereby agreed and understood by the parties hereto that these presents are not to be deemed or construed to be a lease of the land covered by water in front of the premises hereby demised and being part of the added lands referred to in the Windmill Agreement dated the 15th March, 1888, a copy of which is referred to in Chapter 70 of the Ontario Statutes of 4 Edward VII assented to on the 25th April, 1904; but the parties are to be left to their rights with regard thereto unaffected by these presents.

AND THIS INDENTURE FURTHER WITNESSETH that in consideration of the premises and of the sum of One Dollar now paid by the said lessor to the said lessees, the receipt whereof is hereby acknowledged, the said lessees hereby assign and surrender unto the said lessor, his heirs and assigns, all those portions of the said hereditaments and premises included in the said original lease of the first day of August 1875 and in the renewal lease 40

of the first day of September 1896 which have been conveyed to the Ontario and Quebec Railway Company as aforesaid, and being the two strips of land firstly and secondly above more particularly described.

IN WITNESS WHEREOF the party hereto of the First Part has hereunto set his hand and seal and the parties hereto of the Second Part have hereunto caused their Corporate Seal to be affixed under the hands of their proper officers in that behalf.

Exhibits

No. 10
Lease C. R.
Boulton to
Standard Fuel Co.,
1st Aug., 1921
(Filed by Claimant,
Boulton)

—concluded

10 SIGNED, SEALED AND DELIVERED {
in the presence of
Dyce W. Saunders, as to the execu-
tion of C. R. Boulton.
S. DICKSON. }

C. R. BOULTON
THE STANDARD FUEL CO.
OF TORONTO [SEAL]
K. R. MARSHALL, President.
JAMES A. GREEN, Sec.-Treas.
[SEAL]

NO. 4

ORDER-IN-COUNCIL

P.C. 1083

IH3 [SEAL] Privy Council of Canada.

No. 4
Order-in-Council,
13th July, 1926
(Filed by Claimant,
Boulton)

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 13th July, 1926.

20 RECORDED

Deputy Minister's
Office 15/9/26 N.T.

The Committee of the Privy Council have had before them a Report, dated 9th July, 1926, from the Acting Minister of Public Works, submitting as follows:

30 THAT the Toronto Harbour Commissioners have applied under section 7, Chapter 115, Revised Statutes of Canada, 1906—the Navigable Waters Protection Act—for the approval of a set of four plans of works known as rock levee and dock walls proposed to be built in Toronto Bay from a point at or near the foot of Church Street to the production of the easterly limit of Parliament Street, Toronto, and of the site thereof, according to the description attached.

That protests have been filed against the granting of the application by owners and tenants of lands and works on Toronto Bay in front of which the proposed rock levee and dock walls will be constructed; a hearing of the interested parties was held in the office of the Minister of Public Works on December 9, 1925, where the reasons advanced in support of the protests were presented, and subsequently submitted in writing. In brief, the protestants state that the proposed works will affect their rights as riparian owners and

Exhibits
 No. 4
 Order-in-Council,
 13th July, 1926
 (Filed by Claimant,
 Boulton)
 —continued

prevent access to navigable waters, which will greatly reduce the value of their properties.

That the District Engineer of the Department of Public Works at first recommended the approval of the application from the standpoint of navigation, which recommendation was concurred in by the Chief Engineer, but subsequently, in view of the protests received, he advised that the approval of the application be withheld until the owners of the properties adversely affected would be adequately compensated.

That the Deputy Minister of Public Works, taking into consideration the reasons advanced by the protestants at the hearing and in their written representations, and the final recommendation of the District Engineer, has suggested, as a solution of the matter, that the approval of the plans and site of the proposed works might be given on the express condition that before the works or any portion thereof shall be constructed so as to prevent access by water to and from any of the properties on which the works front, the applicant shall initiate proceedings by filing the necessary plans for the purpose of either acquiring such property or extinguishing right of access by water thereto. 10

That the site of the proposed works is still vested in the Crown as represented by the Dominion Government. The Department of Marine and Fisheries, however, which has jurisdiction over the land required as a site for such works, has advised that steps are now under way for the granting of the patent of the land in question, and that it has no objection to the approval of the application under section 7 of the Navigable Waters Protection Act. 20

That the Department of Justice has reported that all the requirements of section 7 of the Navigable Waters Protection Act have been complied with and that the application may now properly be submitted to the Governor General in Council for approval, subject to the condition that the applicants shall secure the land required as a site for the proposed works from the Department of Marine and Fisheries, advising at the same time that the further condition suggested above respecting the mode of compensation to be adopted for the settlement of the riparian claims may be imposed if so desired. 30

The Minister therefore recommends, under section 7, chapter 115, Revised Statutes of Canada, 1906—the Navigable Waters Protection Act—the approval of the annexed set of four plans of a rock levee and dock walls proposed to be constructed by the Toronto Harbour Commissioners in Toronto Bay from a point at or near the foot of Church Street to the production of the easterly limit of Parliament Street, Toronto, and of the site thereof, according to the description attached, the said approval, however, to be subject to the following conditions: 40

1. That the applicants shall secure from the Department of Marine and Fisheries the land required for the proposed works.
2. That before the works or any portion thereof shall be constructed so as to prevent access by water to and from any of the properties on

which the works front, the applicant shall initiate proceedings by filing the necessary plans for the purpose of either acquiring such property or extinguishing right of access by water thereto.

The Committee submit the same for approval.

“E. J. LEMAIRE,”
Clerk of the Privy Council.

Exhibits

No. 4
Order-in-Council
13th July, 1926
(Filed by Claimant,
Boulton)
—concluded

No. 18

ORDER-IN-COUNCIL.

P. C. 770

No. 18
Order-in-Council,
27th April, 1927
(Filed by Claimant,
Standard Fuel Co.)

10 Copy.

CERTIFIED to be a true copy of a Minute of a Meeting of the Committee of the Privy Council, approved by The Deputy of His Excellency the Governor-General on the 27th April, 1927.

The Committee of the Privy Council have had before them a report, dated 20th April, 1927, from the Minister of Public Works, submitting as follows:—

That the Toronto Harbour Commissioners have applied under section 7, Chapter 115, Revised Statutes of Canada, 1906—the Navigable Waters Protection Act—for the approval of the annexed set of four plans of a rock levee and dock walls, and of the site thereof, according to the description attached, proposed to be built in Toronto Bay, between Church Street and Yonge Street, from an angle at Church Street in the rock levee already authorized to the extremity of the dock wall now constructed at Yonge Street:

That the Chief Engineer of the Department of Public Works, on the report of the District Engineer, has recommended the approval of the application from the standpoint of navigation, and in this recommendation the Deputy Minister of Public Works has concurred:

That the Harbour Commissioners have filed with the Department of Public Works evidence showing that they have the right to use the land required as a site for the proposed work:

That the Department of Justice has reported that all the requirements of section 7 of the Navigable Waters' Protection Act have been complied with, and that the application may now properly be submitted to the Governor General in Council for approval.

Exhibits
 No. 18
 Order-in-Council
 27th April, 1927
 (Filed by Claimant,
 Standard Fuel Co.)
 —concluded

The Minister, therefore, recommends, under section 7, chapter 115, R.S.C. 1906—The Navigable Waters' Protection Act—for the approval of the annexed set of four plans of a rock levee and dock walls, and of the site thereof, according to the description attached, proposed to be built in Toronto Bay, between Church Street and Yonge Street, Harbour of Toronto, Ontario.

The Committee concur in the foregoing recommendation and submit the same for approval.

(sgd.) E. J. LEMAIRE,
 Clerk of the Privy Council.

The Honourable
 The Minister of Public Works.

10

No. 1
 Notice of
 Expropriation
 5th Nov., 1926,
 and Certificate,
 9th Nov., 1926
 (Filed by Claimant,
 Boulton)

No. 1

NOTICE OF EXPROPRIATION

NOTICE

To
 C. R. Boulton (Owner) and Standard Fuel Company of Toronto Limited,
 (Tenant)

6. Edw. VII. c. 170 TAKE NOTICE that the lands hereinafter described
 3 & 4 Geo. V. c. 11 are required from you by the Toronto Terminals
 4 & 5 Geo. V.c. 54 Railway Company for the purposes of the Toronto 20
 14-15 Geo. V.c. 70 Viaduct and works and for carrying out the agreement
 in respect thereof dated 7th November, 1924, namely: ALL AND SINGULAR
 that certain parcel or tract of land and land covered by water, situate, lying
 and being in the City of Toronto, in the County of York, which said parcel
 is more particularly described as follows: containing by admeasurement two
 hundred and nine thousand seven hundred and eighty one square feet (209,781
 sq. ft.) more or less, exclusive of that part of Lake Street hereinafter excepted,
 and being composed of all that part of waterlot 31, according to a plan fyled
 as number 5A in the Registry Office for the said City of Toronto, and now
 in the Registry Office for the Registry Division of Toronto, lying south of a 30
 line drawn parallel to the southerly limit of the Esplanade and distant fifty
 two feet and six inches (52' 6") southerly therefrom, measured at right angles
 thereto such parallel line forming the southerly limit of the lands used as right
 of way of the Canadian Pacific Railway; and of the waterlot known as Parcel
 9C granted under authority of order in council dated 12th June, 1893. Saving
 and Excepting thereout and therefrom all that part of the lands known as

Lake Street included within the limits of the said waterlot known as Parcel 9C; Together with all right, title interest, claim and demand, if any, now vested in or enjoyed by the said owners and tenants in respect of the lands contiguous to the westerly limit of the hereinbefore described part of said waterlot number 31; The said parcel being further shown in distinguishing colours upon a print of a plan of survey made by Ontario Land Surveyors, Speight & Van Nostrand, dated 12th July, 1926, and hereto attached.

Exhibits
 No. 1
 Notice of
 Expropriation
 5th Nov., 1926,
 and Certificate,
 9th Nov., 1926
 (Filed by Claimant,
 Boulton)

—continued

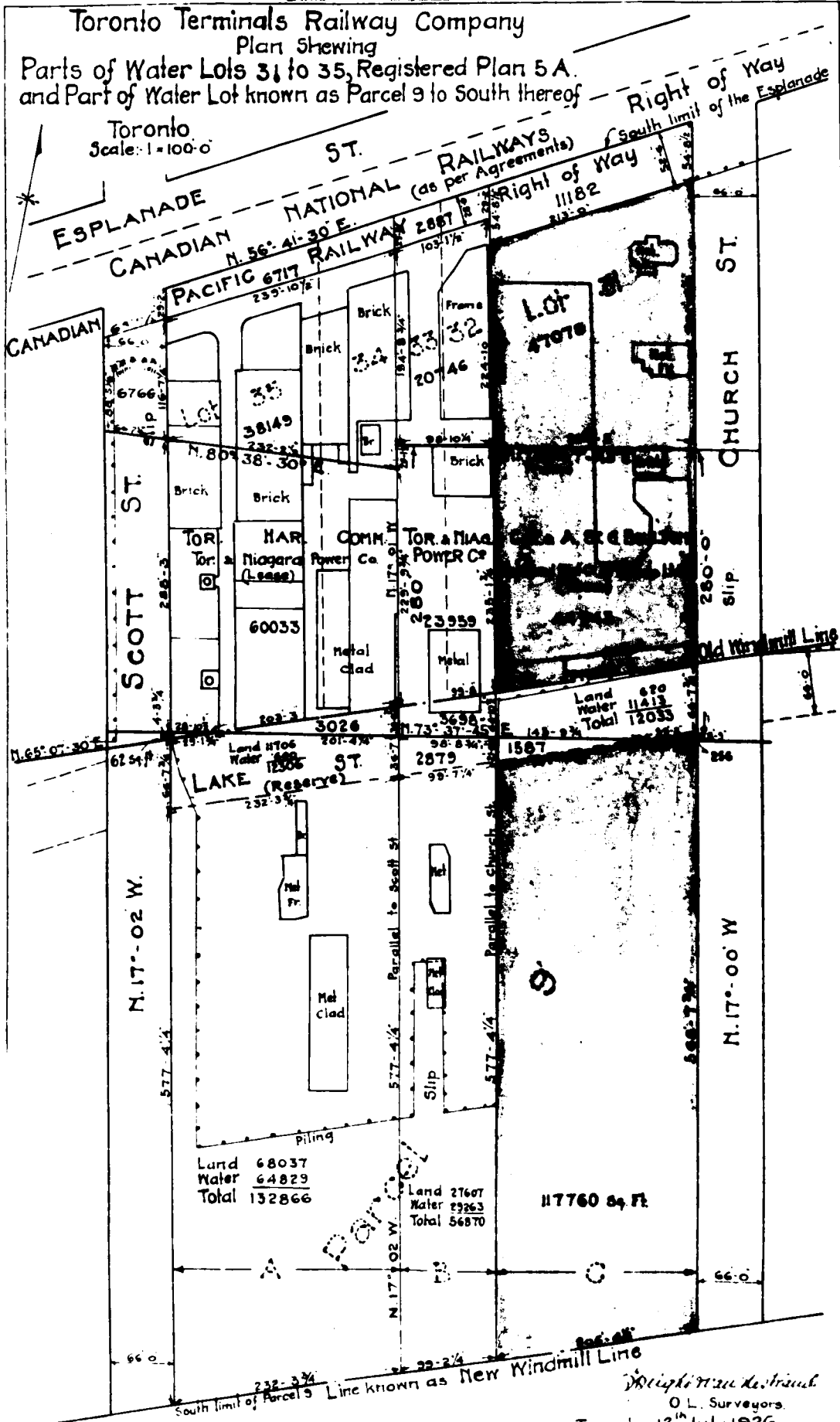
10 also as shown on the plans, profile and book of reference, duly certified copies whereof were deposited in the Registry Office for the Registry Division of East Toronto as Number 222 Ry. E. on 4th October, 1926, and sanctioned under section 170 of the Railway Act 1919, by the Board of Railway Commissioners for Canada, by Order No. 38190, dated 2nd October, 1926, and will be taken under the provisions of the said Act and the special Statutes marginally noted relating to the Toronto Terminals Railway Company, and of the said agreement providing for the construction of the Toronto Viaduct and works.

20 AND FURTHER TAKE NOTICE that the said Terminals Railway Company is ready and willing and hereby offers to pay the sum of \$40,000.00 to the Standard Fuel Company as lessee of a part of said lot 31 under lease dated 1st August 1921, from C. R. Boulton, and for their rights if any in said Parcel 9C under the Windmill Line Agreement dated 15th March, 1888 and the Act validating said agreement, or otherwise, and the sum of \$160,000.00 to C. R. Boulton as owner in fee of said part of Lot 31, and as beneficial owner of said Parcel 9C, subject only to the rights of the said Standard Fuel Company in said respective parcels as aforesaid, such payments respectively to be in full of compensation for the said lands and for all damages caused by the exercise of its corporate powers upon the said lands.

30 AND FURTHER TAKE NOTICE that if within ten days after service of this notice upon you, you do not give notice to the said Terminals Railway Company that you accept the sum offered by the said Company, either you or the said Company will be entitled to have the compensation fixed by arbitration as provided by the Railway Act, 1919.

DATED this fifth day of November, 1926.

MACMURCHY & SPENCE,
 Solicitors for the Toronto Terminals Railway Company,
 1308 C.P.R. Building, Toronto.



CERTIFICATE OF SURVEYOR

I, RALPH M. ANDERSON, of the City of Toronto, in the County of York, Ontario Land Surveyor, do hereby certify:

1. That I am a sworn surveyor of the Province of Ontario, and am disinterested in the matter herein referred to.

2. That the lands described in the foregoing notice of expropriation are required by the Toronto Terminals Railway Company for the purposes of the Toronto Viaduct and works in carrying out the agreement in respect thereof, dated the 7th November, 1924.

10 3. That I know the said lands and the amount of damages likely to arise from the exercise of the powers of the said Railway Company.

4. That in my opinion a fair compensation for the said land and damages aforesaid is the sum of \$210,000; the sum of \$160,000 for the interest of C. R. Boulton, and the sum of \$50,000 for the interest of the Standard Fuel Company, as described in the said notice of expropriation respectively.

Dated at Toronto this ninth day of November, 1926.

“R. M. ANDERSON”
Ontario Land Surveyor.

Exhibits
No. 1
Notice of Expropriation 5th Nov., 1926, and Certificate, 9th Nov., 1926 (Filed by Claimant, Boulton)
---continued

No. 2.

20

ORDER OF CHIEF JUSTICE

DOMINION OF CANADA
PROVINCE OF ONTARIO

The Honourable Sir William Mulock,
Chief Justice of the Supreme Court of Ontario } Monday the 20th day of October 1930

IN THE MATTER OF The Railway Act, 1919, The Toronto Terminals Railway Company,

Applicants;

—AND—

30

C. R. BOULTON (Owner) and the Standard Fuel Company Limited (Tenants),

Respondents;

AND IN THE MATTER of Lot 31, Plan 5A and Parcel 9C, Plan 153 E, South of the Esplanade in the City of Toronto.

Upon the application of Counsel for the Toronto Terminals Railway Company and in the presence of Counsel for C. R. Boulton (owner) and the Standard Fuel Company Limited (tenants) and upon reading the Notice of

No. 2
Order of Chief Justice, 20th Oct., 1930, (Filed by Claimant, Boulton)

Exhibits
 No. 2
 Order of Chief
 Justice,
 20th Oct., 1930
 (Filed by Claimant,
 Boulton)
 —concluded

Expropriation dated 5th November, 1926, and the Affidavit of Angus Mac-Murphy, and it appearing that it has become necessary pursuant to the proviso contained in sub-section 1 of Section 220 of the Railway Act to appoint a Judge to be arbitrator to determine the compensation to be paid by the Railway Company to the owner and tenants and Counsel consenting that the appointment be made of the Honourable Mr. Justice Fisher as arbitrator.

(1) Now I, the Honourable Sir William Mulock, Chief Justice of Ontario, by virtue of the authority in me vested by the provisions of the Railway Act, hereby appoint the Honourable Mr. Justice Fisher to be the arbitrator herein.

(2) AND I FURTHER ORDER that the making of this order shall 10
 not prejudice or affect the contention of the respondents that each of them is entitled to a separate notice of expropriation and to be dealt with separately in respect of their respective interests in the said lands or parts thereof.

(3) AND I DO FURTHER ORDER that the costs of this application be costs in the said arbitration.

“W. MULOCK,”
 C.J.O.

Approved
 “S.K.M. & P.”

Approved
 “R.C.H.C.”

20

No. 3
 Memorandum of
 Facts (Undated)
 (Filed by Claimant,
 Boulton)

No. 3.

MEMORANDUM OF FACTS.

RE: C. R. BOULTON, STANDARD FUEL CO., LTD. and TORONTO
 TERMINALS RAILWAY COMPANY

LOT 31, PLAN 5-A AND PARCEL 9-C, PLAN 153-E

Memorandum agreed upon by Counsel for the above parties with respect to matters affecting the lands in question in this arbitration.

1. The object of this arbitration is to determine the compensation to be paid with respect to the taking of the lands and premises known as Lot 31, Plan 5-A, and Parcel 9-C, Plan 153-E, as described in Notice of Expro- 30
 priation dated the 5th day of November, 1926, as of the said 4th day of October, 1926.

2. (a) Water Lot 31, Plan 5-A, comprising an area of 92,021 square feet south of the C.P.R. right of way was filled in to the northern limit of Lake Street (Old Windmill Line) and a triangular shaped portion of Lake Street comprising 620 sq. ft. was also filled in.

(b) Parcel 9-C comprising an area of 118,016 square feet covered with water extended southerly from the south limit of Lake Street to the New Windmill Line.

3. The Windmill Line Agreement March 15, 1888, provided for the issue of Crown Patents of the water lots lying between the Old and the New Windmill Lines in such manner that

“each such person or corporation who has then any estate, right, title or interest in any property abutting upon said Windmill Line shall have and be entitled to the same estate, right, title and interest in that part of the lands so to be granted as aforesaid, which lies in front of his said property, and is included within lines drawn parallel to the prolongation of the nearest city streets running north and south, and the city shall convey to them so much of the said lands as lie in front of their respective riparian properties or private riparian properties, as herein mentioned: and shall lease such portions thereof as lie in front of riparian property owned by the said corporation, but held under lease to the respective lessees or sub-lessees of such properties respectively, at a nominal rent for the unexpired term of such existing lease or sub-lease.

(a) The leases of such added lands shall be renewable from time to time at the option of the respective lessees, if the existing leases are renewable, and then on the same terms and conditions and with such covenant or covenants for renewal, if any, as are contained in the existing leases of the present riparian property as above respectively mentioned, provided always that in fixing the rent upon any such renewal, the tenant and his executors, administrators and assigns shall never be chargeable with rent in respect of any improvements made upon such property by or at the expense of any person other than the superior landlord; or in respect of the added lands, it being nevertheless distinctly understood that on the resumption of the land by the owner in pursuance of any term or condition of the lease in that behalf contained, the lessee shall not be entitled to any compensation in respect of the value of the added land, but only for or in respect of the lessee's improvements thereon or thereto, which said improvements are to include the proportionate part of any actual expenditure made or incurred by the lessee in making the new street herein provided for, due allowance being made for the lessee's use thereof.”

Paragraphs 3 and 6 (c) of the Windmill Line Agreement provided that grants of the said water lots were to be made to the City in trust for persons so interested, or in certain cases direct to the owners in fee upon certain terms as to filling, etc.

4. Patent of Parcel 9-C, Plan 153-E, was given by the Dominion Government to the City of Toronto as Trustee under date of 5th December, 1895.

5. C. R. Boulton, owner of the fee of Lot 31, Plan 5-A, did not obtain a patent from the Crown or conveyance from the City of Parcel 9-C, Plan 153-E. (See, however, 20 Geo. V. (Ont.) ch. 106, sec. 1).

6. Lake Street, which lies immediately south of the Windmill Line, now called the Old Windmill Line, is excepted from the patent to the City referred to above as follows:

Exhibits

No. 3
Memorandum of
Facts (Undated)
(Filed by Claimant,
Boulton)

—continued

“excepting therefrom a strip of land being 66 feet in width throughout measured at right angles to the said Old Windmill Line and lying immediately south thereof, which is reserved by Her Majesty as and for an allowance for a public highway.”

See sec. 4, Windmill Line Agreement, 15th March, 1888.

7. Sec. 5 of the Windmill Line Agreement provides that

“Upon such last mentioned allowance a street (commonly called Lake Street) is to be constructed (within fifteen years from the date of the patent to the City; or within such shorter period as the same may be petitioned for as hereinafter provided), that is to say: 10

1st. As to the portions thereof which are prolongations of the existing streets running southerly, by the City: and

2nd. As to the portions thereof between the said prolongations by the respective owners and lessees in proportion to their several and respective interests in the riparian property, etc., etc.”

The Windmill Line Agreement was validated by chap. 70 Ontario Statutes 1904, Sec. 1 (4) except as to the location of Lake St. and the laying of railway tracks thereon. The date within 15 years from which Lake St. was to be built, was declared by the Act to be the 18th day of December, 1893. Accordingly the time for building Lake Street expired on the 18th day of 20
December, 1908. Lake St. has neither been opened in fact (although it was filled in across some lots) nor used as a public highway east of Yonge Street. Except as stated in Paragraph 2, it was never filled in across Lot 31.

8. The patent to the City of Parcel 9-C is made

“upon the trust that they will carry into effect the provisions of said Memorandum of Agreement” (Windmill Line Agreement).

9. Grants to the City of Toronto were made of the street extensions to the Old Windmill Line and New Windmill Line, including Church Street, dated respectively 28th November 1894 and 16th March 1905, and on the same trust as the foregoing grant to the City of Parcel 9-C, Plan 153-E. 30

10. By Order No. 7200, dated 9th June, 1909, the Dominion Railway Board directed the elevation of the railway tracks upon a Viaduct 18 feet high, with the south limit of the Esplanade as its centre line. The Railway Companies contested the jurisdiction of the Board to make this order and litigation ensued. Their appeal was finally dismissed by the Judicial Committee (P.C.) on 10th May, 1911—See (1911) A.C. 461.

11. The Railway Companies then appealed to the Governor General in Council upon the merits: the appeal resulted in an agreement being made dated 29th July, 1913, between the City, the Harbour Commissioners and the Railway Companies, which provided for building the Viaduct upon a direct 40

route out in the waters of the Harbour from the foot of Parliament Street to the new Union Station between Bay Street and York Street. The location of the Viaduct occupied Lake Street from Frederick Street to Scott Street, to which the title has been acquired by the Toronto Terminals Ry. Co. from the Dominion, the remaining portions having been similarly acquired by the City, the Harbour Commissioners, the C.P.R. and C.N.R. upon which the lands of the parties respectively abut. (Sec. 14 Viaduct Agreement, 7th November, 1924).

Exhibits
No. 3
Memorandum of
Facts (Undated)
(Filed by Claimant,
Boulton)
—concluded

12. During the war period, 1914-1918, no progress was made with building the Viaduct, and matters were allowed to remain in abeyance.

13. The Toronto Terminals Railway Company, incorporated by Chap. 170, 1906 Dominion Statutes, to build the New Union Station was authorized by subsequent legislation (see 3-4 Geo. V. ch. 11; 4-5 Geo. V. ch. 54; and 14-15 Geo. V. ch. 70) to build the Viaduct and expropriate the lands from the railways' right of way to the New Windmill Line east of Yonge Street for Viaduct and works.

14. A second agreement was made for building the Viaduct dated 7th November, 1924, between the City, C.N.R., C.P.R. and Harbour Commissioners, validated by Chap. 70, 1924 Dom. Stats. and by sec. 1, Order No. 7200, all orders amending or supplementing the agreement of 29th July, 1913, and any orders of the Board relating thereto "are hereby annulled and declared to be of no effect, and no person shall have any claim or right of action for anything done or omitted to be done thereunder."

15. Plans, profiles and books of reference approved by the Board for expropriating the lands necessary for the Viaduct and works in carrying out the agreement of 7th Nov. 1924, was registered in the Registry Office for the City of Toronto on the 4th October, 1926, as No. 222 Ry. E.

16. On 4th Nov. 1925 the Toronto Harbour Commissioners obtained a patent from the Crown in the right of the Dominion to land covered with water south of the New Windmill Line to the Harbour Head Line between Yonge Street and Parliament Street as authorized by Order-in-Council No. P.C. 1079.

17. On November 24th, 1926, an order for possession of the said Lot 31 and Parcel 9-C was made by Rose, J. on terms as to time and otherwise agreed upon by the parties and set out in the order.

18. The payments provided for in the order of Rose, J. have been made by the Toronto Terminals Railway Company, which Company is entitled to receive credit therefor on account of the compensation to which the claimants shall ultimately be found entitled for the taking of the lands mentioned in the Notice of Expropriation.

Exhibits

No. 14
Letter, Valley-
Camp Coal Co. to
McBrien,
29th Jan., 1931
(Filed by
Contestant)

LETTER—VALLEY-CAMP COAL COMPANY TO McBRIEN
THE VALLEY CAMP COAL COMPANY

Cleveland, Ohio, Jan. 29, 1931.

Mr. W. C. McBrien, Manager,
Real Estate Department,
Sterling Trust Corporation,
Sterling Tower, Toronto,
Canada.

Dear Mr. McBrien,—

10

I attempted to communicate with you when in Toronto last Saturday in connection with a dock property, which I believe you discussed with Mr. Paisley. As I will not be in Toronto for some days I am wondering if you would be kind enough to send me particulars, together with a chart on any location you might have on Toronto Harbour suitable for a coal dock.

Very truly yours,

THE VALLEY CAMP COAL COMPANY
"E. G. Mathiott"

EGM.s.

No. 14
Letter, Valley-
Camp Coal Co.
to McBain,
29th Jan., 1931
(Filed by
Contestant)

LETTER—VALLEY-CAMP COAL COMPANY TO McBAIN
THE VALLEY CAMP COAL COMPANY

20

Cleveland, Ohio,
Jan. 29, 1931.

Mr. William McBain,
Sterling Tower,
Toronto, Canada.

Dear Mr. McBain,—

I thank you for your letter of Jan. 27th to Mr. Paisley.
I will communicate with Mr. McBrien at an early date. I attempted to reach him when in Toronto on Saturday, but unfortunately did not get to him. 30

Very truly yours,

THE VALLEY CAMP COAL COMPANY,
"E. G. Mathiott."

EGM.s.

LETTER—McBRIEN TO MATHIOTT

January 31, 1931.

Mr. E. G. Mathiott,
 Care The Valley Camp Coal Co.,
 Western Reserve Bldg.,
 Cleveland, Ohio, U.S.A.

Exhibits
 No. 14
 Letter, McBrien
 to Mathiott,
 31st Jan., 1931
 (Filed by
 Contestant)

Dear Sir,—

I beg to acknowledge receipt of your letter of January 30th in reference to a location for a coal business with dockage on the Toronto water front.

10 Coal sites on the Toronto water front are in a rather unsettled condition at the present time owing to the fact that the Toronto Harbour Commission, of which the writer was one of the Commissioners up until June of last year, are contemplating the moving of all coal businesses to a certain area so as to improve the general appearance of the water front, and all present tenants in the coal business are now only on one year leases. A new area is being opened up south of the ship canal by a bascule bridge which will be completed this spring. This area will be an exceptionally good one for the coal business owing to the fact that it will guarantee a short haul for the Toronto businesses with direct through streets to all sections of the City of Toronto.

20 It would be necessary for me to have some particulars regarding the amount of area required for your business, the dockage required and the area of storage space. If you will let me have this information at your earliest convenience I will secure for you a plan of the Toronto water front showing locations which in my opinion would be suitable for your business, together with approximate prices of leasehold and freehold.

The policy of the Toronto Harbour Commission is to either sell outright the rear land and lease the dockage, or lease for a period of twenty-one years both the dockage and the rear land renewable for a further term of twenty one years at an agreed or arbitrated value, the lessee paying taxes and a yearly
 30 rental of 5% on the value. You might also let me know whether you desire to buy outright or lease the proposed site.

I wish to thank you for this inquiry and will send you particulars immediately on receipt of this information.

Yours very truly,

Manager, Real Estate Department.

WCM/DS

No. 23a.

Exhibits
 No. 23a
 Lease, Toronto
 Harbour Commis-
 sioners to
 Standard Fuel Co.,
 1st March, 1932
 (Filed by
 Contestant)

LEASE TORONTO HARBOUR COMMISSIONERS TO STANDARD
 FUEL COMPANY

THIS INDENTURE made in duplicate this first day of
 March in the year One thousand nine hundred and thirty-two
 IN PURSUANCE OF THE SHORT FORMS OF LEASES
 ACT;

BETWEEN:

THE TORONTO HARBOUR COMMISSIONERS here-
 inafter called the LESSORS,

of the FIRST PART 10

—AND—

STANDARD FUEL CO., Limited, a Company in- KRM
 corporated under the laws of the Dominion of Canada, WAW
 having its Head Office in the City of Toronto, herein- KRM
 called the LESSEE, WAW

of the SECOND PART;

WHEREAS the Lessee has applied to the Lessors for a lease of the lands
 hereinafter described, and

WHEREAS the Lessors by Minute No. adopted by the Toronto
 Harbour Commissioners at their meeting held on the day of 1931 20
 have approved the granting of such lease on the terms and conditions herein-
 after set out;

NOW THIS INDENTURE WITNESSETH:

THAT in consideration of the premises and of the rents, covenants and
 agreements hereinafter reserved and contained on the part of the said Lessee,
 its successors and assigns, to be paid, observed and performed, they the said
 Lessors have demised and leased and by these presents do demise and lease
 unto the said Lessee, its successors and assigns—

ALL AND SINGULAR that certain parcel or tract of land situate
 lying and being in the City of Toronto in the County of York and in the 30
 Province of Ontario, being composed of parts of Blocks A and B according
 to Plan fyled as 675-E in the Registry Office for the Registry Division of
 Toronto, containing by admeasurement 5.51 acres more or less, and which
 said parcel is more particularly described as follows:

Premising that all bearings herein are astronomic and Commencing at
 the northeasterly angle of said Block B; THENCE bearing South thirty-eight
 degrees five minutes East (S. 38°05'E.) along the easterly limit of said Block
 B two hundred feet (200'); THENCE bearing South fifty-one degrees fifty-five
 minutes West (S. 51°55'W.) parallel to the southerly limit of said Blocks B
 and A one thousand two hundred feet (1200') more or less to its intersection 40

with a line drawn parallel to and distant four hundred feet (400') measured westerly from and at right angles to the westerly limit of said Block B; THENCE bearing North thirty-eight degrees five minutes West (N. 38° 05' W.) along said line drawn parallel to the westerly limit of said Block B, two hundred feet (200') more or less, to the northerly limit of said Block A; THENCE bearing North fifty-one degrees fifty-five minutes East (N. 51° 55' E.) along the northerly limits of said Blocks A and B one thousand two hundred feet (1200') more or less to the point of commencement and shown coloured pink on the attached print of Drawing Number 9671;

Exhibits
 No. 23a
 Lease, Toronto
 Harbour Commis-
 sioners to
 Standard Fuel Co.,
 1st March, 1932
 (Filed by
 Contestant)
 —continued

10 TO HAVE AND TO HOLD the premises hereby demised for and during the term of one (1) year to be computed from the first day of July 1931 and from thenceforth next ensuing and fully to be complete and ended on the thirtieth day of June 1932.

YIELDING AND PAYING therefor to the said Lessors, their successors and assigns, the clear sum of Ten thousand dollars (\$10,000.00) in the manner following, that is to say: In advance on each of the first day of July, October, January and April during the term hereby granted the sum of Two thousand five hundred dollars (\$2,500.00).

20 AND the Lessee covenants and agrees with the Lessors, their successors and assigns, to pay rent and to pay taxes, including local improvement assessments, whether municipal or parliamentary, water, gas and electric light rates, in connection with or assessed against the said premises during or on account of the occupancy thereof by the Lessee whether the said taxes or rates be assessed or fall due during or subsequent to the said occupancy.

AND to repair.

AND that the said Lessors may enter and view state of repair.

AND that the said Lessee will repair according to notice in writing

AND will not assign or sub-let without leave;

30 AND will not carry on or permit to be carried on upon the premises any business or occupation which shall be deemed a nuisance;

AND that it will leave the premises in good repair;

PROVISO for re-entry by the said Lessors on non-payment of rent or non-performance of covenants.

40 AND the Lessee for itself, its successors and assigns, covenants and agrees with the Lessors, their successors and assigns, that it will not add to or install any permanent fixtures whatsoever in, on over or upon the said premises without first having obtained the consent of the Lessors thereto in writing and will at or prior to the end of the said term of occupancy remove any temporary fixture and any permanent fixture, the erection of which has been consented to, all as the Lessors may require.

Exhibits
 No. 23a
 Lease, Toronto
 Harbour Commis-
 sioners to
 Standard Fuel Co.,
 1st March, 1932
 (Filed by
 Contestant)
 —continued

AND IT IS EXPRESSLY UNDERSTOOD AND AGREED that nothing herein contained shall in any way render the Lessors liable for any accident or damage which may happen to the Lessee or its employees or to any other person or persons using the said wharf property in connection with the business, occupation or usage of the said wharf or demised or adjoining property by the Lessee, and the Lessee hereby indemnifies the Lessors against any such claim, but this shall not make the Lessee liable to indemnify the Lessors against liabilities for accidents to persons other than those hereinbefore in this paragraph mentioned, except in cases where such accidents are occasioned by the negligence of the Lessee or its employees. 10

THE Lessee covenants to indemnify and save harmless the Lessors against and from any and all claims which may arise, or any actions which may be brought or any awards under the Workmen's Compensation Act, by reason of any accident, injury, loss or damage to any person, animal or thing whatsoever which may occur during the occupation or use of the said premises by the said Lessee, but not including any damage to any person or persons to which the Lessee's covenant of indemnity in the next preceding paragraph does not apply, except in those cases where such damage is occasioned by the negligence of the Lessee or its employees or persons on the said demised premises at the invitation of the said Lessee. 20

IT IS EXPRESSLY PROVIDED that the said Lessee accepts the said demised premises, including the wharf wall on the northerly limit thereof, in their present condition and the said Lessee covenants and agrees that it will so conduct operations generally as to prevent the damaging of the said wharf wall and that it will at its own expense maintain the said wharf wall in good repair to the satisfaction of the Chief Executive Officer for the time being of the Lessors. PROVIDED that if any such maintenance by the Lessee is not satisfactory to the Lessors or in the event of the Lessee failing to maintain the said wharf wall in good repair the Lessors by their agents or servants shall have the right to enter upon the demised premises from time to time and 30 with or without the necessary and convenient gear and equipment and themselves maintain the same and charge the costs thereof to the Lessee, which costs the Lessee agrees to pay forthwith upon demand and the certificate of the Chief Executive Officer of the Lessors as to such costs shall be final and binding upon the Lessee.

PROVIDED that no signs, notices or notice boards, painting, design or other device advertising any business, undertaking or scheme other than the legitimate business of the Lessee to be carried on upon the demised premises will be permitted or allowed without the consent of the Lessors in writing.

AND the Lessee covenants and agrees with the Lessors that it will at 40 all times keep the buildings (if any) and the surroundings comprising the said demised premises in a neat and clean condition satisfactory to the Chief Executive Officer, for the time being, of the Lessors, and that it will leave the said premises in a neat and clean condition satisfactory to the said Chief Executive Officer, and that it will have, if the Lessors so desire it, the said

lands fenced at points to be designated by the Lessors or their Chief Executive Officer.

10 THE said Lessee covenants with the said Lessors that in case the said Lessee shall make an assignment for the benefit of creditors or shall become bankrupt or insolvent or take the benefit of any Act that may be in force for bankrupt or insolvent debtors or commit an Act of Bankruptcy as defined by the Bankruptcy Act, or if the term hereby granted be at any time seized or taken in execution or in attachment, then at the option of the said Lessors this lease shall cease and be void and the term hereby created expire and be at an end, anything herein to the contrary notwithstanding; and the rent for the then next ensuing three months shall immediately become due and payable and the Lessors may re-enter and take possession of the premises and the term shall be forfeited and void.

THE Lessee covenants and agrees that it will so conduct operations on the demised premises as to prevent the escape into the waters of Toronto Harbour of any material or refuse of any kind.

20 THE Lessee consents to the Lessors at any time amending Registered Plan 675-E or amending plans in any way they deem expedient and agrees that it will from time to time as amendments (including the dedication of any street or streets) are necessary or desired by the Lessors immediately assent to the same in writing.

THE Lessee agrees to join with the Lessors in any application made to the City of Toronto by petition or otherwise for the construction of sewers (storm and sanitary), watermains, pavements, sidewalks, etc., under the Local Improvement Act or any other Act or power as the Lessors may request.

AND it is hereby declared and agreed by and between the parties hereto that these presents and everything herein contained shall respectively enure to the benefit of and be binding upon the parties hereto, their successors and assigns respectively.

30 IN WITNESS WHEREOF the Lessors and Lessee have hereunto affixed their Corporate Seals under the hands of their proper officers in that behalf.

SIGNED, SEALED AND DELIVERED }
in the presence of

THE TORONTO HARBOUR COM-
MISSIONERS
Chairman
Secretary

STANDARD FUEL CO., LIMITED

KRM
WAW

40

"K. R. Marshall,"
President
"W. A. Walker,"
Secretary

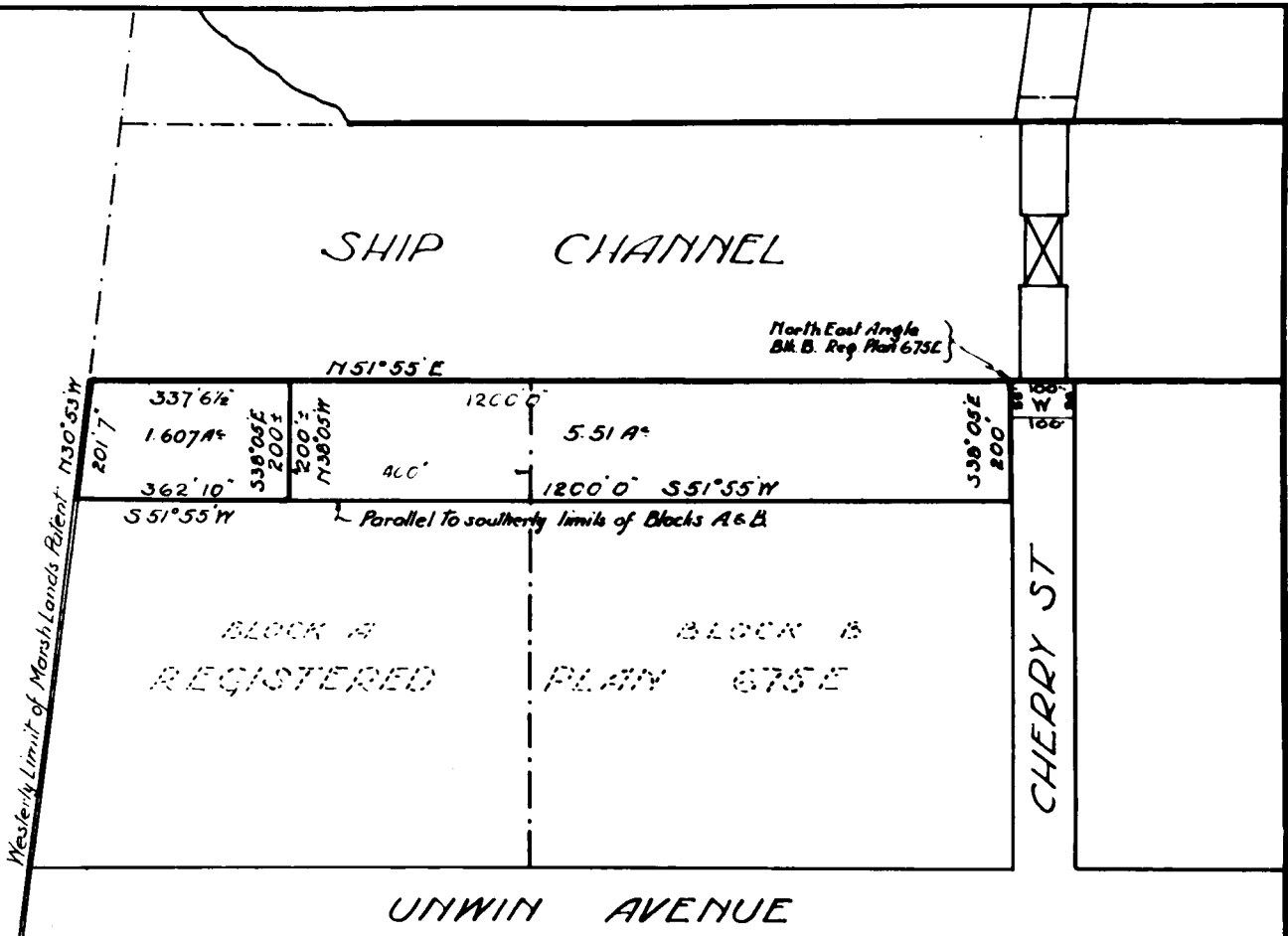
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Exhibits

No. 23a
Lease, Toronto
Harbour Commis-
sioners to
Standard Fuel Co.,
1st March, 1932
(Filed by
Contestant)

—continued

No. 23a
 Lease, Toronto
 Harbour Commis-
 sioners to Standard
 Fuel Co.,
 1st March, 1932.
 —concluded



THE TORONTO HARBOUR COMMISSIONERS
LEASE TO
THE STANDARD FUEL COMPANY OF TORONTO

16th February 1932

Scale 1" = 200'

W. Rest.
 Supt. Surveys & Lands

John P. ...
 Chief Engineer

Drawing N° 9671

File En. 7

LEASE TORONTO HARBOUR COMMISSIONERS TO
STANDARD FUEL COMPANY

No. 23b
Lease, Toronto
Harbour Commis-
sioners to Standard
Fuel Co.,
1st March, 1932
(Filed by Con-
testant)

THIS INDENTURE made in duplicate this first day of
March in the year One thousand nine hundred and thirty two
IN PURSUANCE OF THE SHORT FORMS OF LEASES
ACT

BETWEEN

10

THE TORONTO HARBOUR COMMISSIONERS here-
inafter called the "Lessors"

OF THE FIRST PART

—AND—

STANDARD FUEL CO., LIMITED, A Com- "K.R.M."
pany incorporated under the laws of the Dominion "W.A.W."
of Canada having its head office in the City of Tor- "K.R.M."
onto, hereinafter called the "Lessee" "W.A.W."

OF THE SECOND PART

WHEREAS by Indenture of Lease, dated the 1st day of March, 1932
and made between the Lessors and the Lessee herein the Lessors leased unto
20 the Lessee the lands therein described for the period of One (1) year from the
First July, 1931 to Thirtieth June, 1932, upon the terms and conditions
therein set out.

AND WHEREAS the Lessee has applied to the Lessors for the leasing
of the additional area hereinafter described lying immediately to the west
of the lands above mentioned.

AND WHEREAS the Lessors by Minute No. adopted by the Toronto
Harbour Commissioners at their meeting held on the day of
193 , have approved the leasing of such additional area on the terms and
conditions hereinafter set out.

30

NOW THIS INDENTURE WITNESSETH:

THAT in consideration of the premises, and of the rents, covenants and
agreements hereinafter reserved and contained on the part of the said Lessee,
its successors and assigns, to be paid, observed and performed, they the said
Lessors have demised and leased and by these presents do demise and lease
unto the said Lessee, its successors and assigns,—

ALL AND SINGULAR that certain parcel or tract of land situate,
lying and being in the City of Toronto, in the County of York, and in the
Province of Ontario, being composed of part of Block A according to a plan
filed as 675 E in the Registry Office for the Registry Division of Toronto, con-
40 taining by admeasurement 1.607 acres more or less and which said parcel is
more particularly described as follows:

Exhibits
 No. 23b
 Lease, Toronto
 Harbour Commis-
 sioners to Standard
 Fuel Co.,
 1st March, 1932
 (Filed by Con-
 testant)

—continued

PREMISING that all bearings herein are astronomic: COMMENCING at the north westerly angle of said Block A: THENCE bearing north fifty one degrees fifty five minutes east ($51^{\circ} 55' E$) along the northerly limit of said block, three hundred and thirty seven feet six and one half inches ($337' 6\frac{1}{2}''$) to its intersection with a line drawn parallel to and distant four hundred feet ($400'$) measured westerly from and at right angles to the easterly limit of said block: THENCE bearing south thirty eight degrees five minutes east (S. $38^{\circ} 05' E$) along said parallel line two hundred feet ($200'$) more or less, to its intersection with a line drawn parallel to the southerly limit of said Block A, from a point in the easterly limit of Block B, according to said Registered Plan, distant two hundred feet ($200'$) measured southerly along said easterly limit from the north easterly angle of said Block B; THENCE bearing south fifty one degrees fifty five minutes west (S $51^{\circ} 55' W$) along last described parallel line, three hundred and sixty two feet ten inches ($362' 10''$) to intersection with the westerly limit of said Block A: THENCE bearing north thirty degrees fifty three minutes west (N. $30^{\circ} 53' W$) along said westerly limit, two hundred and one feet seven inches ($201' 7''$) more or less to the point of commencement, and shown coloured pink on the attached print of Drawing Number 9671. 10

TO HAVE AND TO HOLD the premises hereby demised for and during the term of Seven (7) Months to be computed from the First day of December, 1931, and from thenceforth next ensuing and fully to be complete and ended on the 30th day of June, 1932. 20

YIELDING AND PAYING THEREFOR to the said Lessors, their successors and assigns, the clear sum of One thousand seven hundred and two Dollars and twenty four cents ($\$1,702.24$) in the manner following, that is to say: On the first day of December, 1931, the sum of Two hundred and forty three dollars and eighteen cents ($\$243.18$) and in advance on each of the first days of January and April 1932, the sum of Seven hundred and twenty-nine dollars and fifty-three cents ($\$729.53$). 30

AND the Lessee covenants and agrees with the Lessors, their successors and assigns, to pay rent and to pay taxes, including local improvement assessments, whether municipal or parliamentary water, gas and electric light rates, in connection with or assessed against the said premises during or on account of the occupancy thereof by the Lessee, whether the said taxes or rates be assessed or fall due during or subsequent to the said occupancy.

AND TO REPAIR:

AND that the said Lessors may enter and view state of repair:

AND that the said Lessee will repair according to notice in writing:

AND will not assign or sublet without leave: 40

AND will not carry on or permit to be carried on upon the premises any business or occupation which shall be deemed a nuisance.

AND that it will leave the premises in good repair:

PROVISO for re-entry by the said Lessors on non-payment of rent or non-performance of covenants.

Exhibits
No. 23b
Lease, Toronto
Harbour Commis-
sioners to Standard
Fuel Co.,
1st March, 1932
(Filed by Con-
testant)

—continued

10 IT IS EXPRESSLY UNDERSTOOD AND AGREED that the lands hereby demised are to be used by the lessee in conjunction with the lands demised by the said hereinbefore in part recited lease, dated 1st March, 1932, and that this lease is to run concurrently with the said lease, dated 1st March, 1932, and that in the event of the said lease, dated 1st March, 1932, being terminated by the Lessors under any of the provisions therein contained this lease shall also be terminated.

AND the Lessee, for itself, its successors and assigns, covenants and agrees with the Lessors, their successors and assigns, that it will not add to or install any permanent fixtures whatsoever, in, on, over or upon the said premises, without first having obtained the consent of the Lessors thereto in writing, and will at or prior to the end of the said term of occupancy, remove any temporary fixture and any permanent fixture, the erection of which has been consented to, all as the Lessors may require.

20 AND IT IS EXPRESSLY UNDERSTOOD AND AGREED that nothing herein contained shall in any way render the Lessors liable for any accident or damage which may happen to the Lessee or its employees, or to any other person or persons using the said wharf property in connection with the business, occupation or usage of the said wharf or adjoining property by the Lessee, and the Lessee hereby indemnifies the Lessors against any such claim, but this shall not make the lessee liable to indemnify the Lessors against liabilities for accidents to persons other than those hereinbefore in this paragraph mentioned, except in cases where such accidents are occasioned by the negligence of the Lessee or its employees.

30 THE Lessee covenants to indemnify and save harmless the Lessors against and from any and all claims which may arise, or any actions which may be brought or any awards under the Workmen's Compensation Act, by reason of any accident, injury, loss or damage to any person, animal or thing whatsoever, which may occur during the occupation or use of the said premises by the said Lessee, but not including any damage to any person to which the Lessee's covenant of indemnity in the next preceding paragraph does not apply, except in those cases where such damage is occasioned by the negligence of the Lessee or its employees, or persons on the said demised premises at the invitation of the said Lessee.

40 IT IS EXPRESSLY PROVIDED that the said Lessee accepts the said demised premises, including the wharf wall on the northerly and westerly

Exhibits
 No. 23b
 Lease, Toronto
 Harbour Commis-
 sioners to Standard
 Fuel Co.,
 1st March, 1932
 (Filed by Con-
 testant)

—continued

limits thereof in their present condition and the said Lessee covenants and agrees that it will so conduct operations generally as to prevent the damaging of the said wharf wall and that it will at its own expense maintain the said wharf wall in good repair to the satisfaction of the Chief Executive Officer for the time being of the Lessors. PROVIDED that if any such maintenance by the Lessee is not satisfactory to the Lessors or in the event of the Lessee failing to maintain the said wharf wall in good repair the Lessors by their agents or servants shall have the right to enter upon the demised premises from time to time and with or without the necessary and convenient gear and equipment and themselves maintain the same and charge the costs thereof to the Lessee which costs the Lessee agrees to pay forthwith upon demand and the certificate of the Chief Executive Officer of the Lessors as to such costs shall be final and binding upon the Lessee. 10

PROVIDED that no signs, notices or notice boards, painting, design or other device advertising any business, undertaking or scheme other than the legitimate business of the Lessee to be carried on upon the demised premises will be permitted or allowed without the consent of the Lessors in writing.

AND the Lessee covenants and agrees with the Lessors that it will at all times keep the buildings (if any) and the surroundings comprising the said demised premises in a neat and clean condition satisfactory to the Chief Executive Officer, for the time being, of the Lessors, and that it will leave the said premises in a neat and clean condition satisfactory to the said Chief Executive Officer, and that it will have, if the Lessors so desire it, the said lands fenced at points to be designated by the Lessors or their Chief Executive Officer. 20

THE SAID Lessee covenants with the said Lessors that in case the said Lessee shall make an assignment for the benefit of creditors or shall become bankrupt or insolvent or take the benefit of any Act that may be in force for bankrupt or insolvent debtors or commit an Act of Bankruptcy as defined by the Bankruptcy Act, or if the term hereby granted be at any time seized or taken in execution or in attachment, then at the option of the said Lessors this lease shall cease and be void and the term hereby created expire and be at an end, anything herein to the contrary notwithstanding; and the rent for the then next ensuing three months shall immediately become due and payable and the Lessors may re-enter and take possession of the premises and the term shall be forfeited and void. 30

The Lessee covenants and agrees that it will so conduct operations on the demised premises as to prevent the escape into the waters of Toronto harbour of any material or refuse of any kind.

THE Lessee consents to the Lessors at any time amending registered Plan 675-E or amending plans in any way they deem expedient and agrees that it will from time to time as amendments (including the dedication of any

street or streets) are necessary or desired by the Lessors immediately assent to the same in writing.

THE Lessee agrees to join with the Lessors in any application made to the City of Toronto by petition or otherwise for the construction of sewers (storm and sanitary) watermains, pavements, sidewalks, etc., under the Local Improvement Act or any other Act or power as the Lessors may request.

Exhibits
No. 23b
Lease, Toronto
Harbour Commis-
sioners to Standard
Fuel Co.,
1st March, 1932
(Filed by Con-
testant)
—continued

10 AND it is hereby declared and agreed by and between the parties hereto that these presents and everything herein contained shall respectively enure to the benefit of and be binding upon the parties hereto, their successors and assigns respectively.

IN WITNESS WHEREOF the Lessors and Lessee have hereunto affixed their Corporate Seals under the hands of their proper officers in that behalf.

SIGNED, SEALED AND DELIVERED
in the presence of

} THE TORONTO HARBOUR COM-
MISSIONERS
Chairman
Secretary

STANDARD FUEL CO., LIMITED "K.R.M."
"W.A.W."

20

"K. R. Marshall,"
President.

"W. A. Walker,"
Secretary.

[SEAL]

551

No. 21.

LETTER—K. R. MARSHALL TO BRIG.-GEN. LANGTON
STANDARD FUEL CO. LIMITED

Office of the President,
79 King Street East,
TORONTO 2
CANADA

Exhibits

No. 21
Two Letters,
K. R. Marshall to
Brig.-Gen. Langton
11th March, 1932
(Filed by
Contestant)

March 11th, 1932.

10 Brig. Gen. J. G. Langton,
General Manager,
Toronto Harbour Commissioners,
TORONTO, ONT.

Dear Sir,—

LEASES—SHIP CHANNEL

Adverting to your letter of June 11th, 1931. It now becomes necessary for us to consider our Dock facilities on the Main Channel, as our present short term lease expires June 30th next.

20 As you know, the introduction of the modern self-unloader boats has entirely altered the method of handling and storing water borne coal and coke. In fact conditions are altering so rapidly that one naturally hesitates to draw up definite dock plans for the next year or so. At the same time I think it may be stated that we are well satisfied with our position on the Main Channel as a general location.

In view of the above, our Board has authorized me to request an extension of our present short term leases on the Main Channel for a further period of one year commencing on the expiration of the present agreements.

If this is satisfactory to your associates, the leases referred to might be combined into one.

30 Hoping this application may receive consideration at the next meeting of the Commissioners.

Yours very truly,

(Sgd.) K. R. Marshall

KRM: AL

Exhibits

No. 21
Two Letters,
K. R. Marshall to
Brig.-Gen. Langton
11th March, 1932
(Filed by
Contestant)

LETTER—K. R. MARSHALL TO BRIG.-GEN. LANGTON

STANDARD FUEL CO., LIMITED

79 King Street East,
Toronto 2, CANADA,
March 11th, 1932.

—concluded

Brig. General J. G. Langton,
General Manager Toronto Harbour Commissioners,
TORONTO, ONT.

Dear Sir,—

Re: OPTION—SHIP CHANNEL

10

The option granted to our Company to enter into the 21 years renewable lease with a purchase clause of the 750 ft. frontage on the south side of the Ship Channel and running west from Cherry St., by a depth of 800 ft., together with a condition that during the life of the option it could be exchanged for an option on the Dock property adjoining to the west by the same depth and running to the end of the Dock, expires April 1st next.

We now request an option, with a purchase clause, on the property commencing at Cherry St., and extending to the westerly end of the Dock by a depth of 300 ft. or 400 if consistent with the plans of your Commissioners. The Dock frontage of this property is at present being occupied by us on the authority of two short term leases. The rental to be at the rate of 5% per annum on valuation of \$1.00 per sq. ft. on the area adjoining the Ship Channel and extending back an additional 150 ft. therefrom, and \$20,000 an acre for the balance of the property. The purchase clause to be exercisable at any time during the first five years of the term of the lease. 20

We feel sure the Commissioners appreciate the substantial expense that we are being put to in pioneering the property in question and that we will be treated with every consideration.

Yours very truly,

(Sgd.) K. R. MARSHALL 30

KRM:AL

REPORT OF WITNESS MITCHELL IN SUPPORT OF STANDARD FUEL COMPANY'S CLAIM, ITEMS 4, 5, AND 6. STANDARD FUEL COMPANY, LIMITED, TORONTO CLAIM RE DOCK PROPERTY

No. 19
Report of Mitchell in support of Standard Fuel Co.'s Claim, Items 4, 5 and 6 (undated) (Filed by Claimant, Standard Fuel Co.)

ITEM 4

EXTRA COST OF RAIL TRANSPORTATION TO JUNE 30TH, 1931 AND EXTRA COST OF DELIVERY FROM YARDS

10	(a) Extra cost due to rail transport of fuel from April 1st, 1927 to June 30th, 1931	\$ 64,322.79
	(b) Extra cost of delivery from outside yards to down town area from April 1st, 1927 to June 30th, 1931	5,717.61
	(c) Extra cost of delivery of fuel from Ashbridge's Bay to down town area from July 1st, 1931 to August 1st, 1938, based on average of tonnage previous to expropriation as at August 1st, 1931	57,086.74
		\$ 127,127.14

ITEM 4

20 EXTRA COST OF RAIL TRANSPORTATION TO JUNE 30TH, 1931 AND EXTRA COST OF DELIVERY FROM YARDS

The basis for this item in the claim is that from April 1st 1927, the beginning of the season immediately subsequent to expropriation, the Company could not bring in Anthracite Coal by water for supplying the market of the Down Town area normally supplied from the Church Street Dock; all fuel had to come in by rail and as the dock yard was being dismantled and all facilities for unloading and loading Anthracite were removed the Company handled as much Anthracite as possible in the limited space available for all fuel and the balance was supplied to Down Town customers from the Company's other yards at Parkdale, MacPherson Avenue, Morton Street and 30 Greenwood Avenue.

The Company was then compelled to pay the extra cost of rail hauled Anthracite and in addition the extra cartage from outside yards for a considerable portion of its Anthracite tonnage. This condition continued until June 30th, 1931, when the Ashbridge's Bay Yard was established.

Anthracite must be taken as a measure only as at this time Coke was being used to replace Anthracite to a considerable extent as a domestic fuel and the total tonnage herein as projected for the period since expropriation anticipates that Coke to a large extent replaces Anthracite.

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On July 1st, 1931 the Company moved the Yard to Ashbridge's Bay on Cherry Street, south of the Ship Channel, and thus re-established water transport but are now confronted with the greater cost of delivery from the more remote dock to customers in the Down Town area.

THIS ITEM IS COMPOSED OF THE FOLLOWING:

- (A) The extra cost due to rail transport on Anthracite or equivalent tonnage as Anthracite and Coke, from April 1st 1927 to June 30th, 1931.
- (B) The extra cost of delivery from outside sub yards to the Down Town area on Anthracite and Coke from April 1st 1927 to June 30th 1931.
- (C) Extra cost of delivery of fuel from Ashbridge's Bay to Down Town Area from July 1st 1931 to August 1st 1938 based on average of tonnage previous to expropriation.

THE ABOVE ARE DETAILED IN THE FOLLOWING:

A. THE EXTRA COST DUE TO RAIL TRANSPORT ON ANTHRACITE OR EQUIVALENT TONNAGE AS ANTHRACITE AND COKE FROM APRIL 1ST 1927 TO JUNE 30TH 1931.

This is computed from the extra cost per ton for rail transported coal multiplied by the yearly tonnage. The yearly tonnage is taken as the average 20 of the water transported Anthracite tonnage for the seven years preceding expropriation.

TONNAGE

The following is the tabulation of Cargoes and Tonnages for the respective years:

Year	No. of Cargoes	Total Net Tons
Ended March 31st 1921.....	35	36,117
" " " 1922.....	32	29,339 30
" " " 1923.....	9	9,620
" " " 1924.....	19	24,926
" " " 1925.....	23	25,129
" " " 1926.....	12	12,355
" " " 1927.....	14	15,315
" " " 1928-30.....	0	0
Total.....	144	152,801
Average.....	20	21,829

EXTRA COST FOR RAIL TRANSPORTATION

The cost of bringing Anthracite Coal by water to Toronto during the year ended March 31st, 1927, was as follows:

	Amount	Per Ton
Freight Mines to Port of Shipment.....	\$39,783.08	\$2.59
Cargo Freight.....	10,193.83	.66
Insurance.....	530.50	.03
Handling Cost at Port of Transfer.....	1,130.67	.08
10 Harbour Dues, Toronto.....	607.80	.04
	<hr/>	<hr/>
Delivery cost F.O.B. Dock Toronto.....	\$52,245.88	\$3.40

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The prevailing Freight rates during this period (and as at to-day) as obtained from the cost of rail shipments were as follows:

	Per Ton
Freight Mines to Black Rock.....	\$2.93
Freight Black Rock to Toronto.....	1.15
	<hr/>
Delivery cost siding, Toronto.....	\$4.08

The difference between water transported coal and rail coal is therefore shown to be \$0.68 per ton in favour of water.

20 EXTRA YEARLY COST DUE TO BRINGING IN ANTHRACITE BY RAIL:

21,829 tons per annum at an extra cost of \$0.68 per ton is a total extra yearly cost of \$14,843.72.

TOTAL CLAIMED AS EXTRA COST WHICH COMPANY HAS TO PAY FOR ANTHRACITE COAL:

The company claims for the extra cost paid for anthracite coal or equivalent in Anthracite and coke, during the four years from April 1st, 1927 to March 31st 1931, including four navigation seasons, and for the months of April, May and June, 1931 as one third of a year being approximately one
30 half of the navigation season for the year.

The yearly amounts are as follows:

To March 31st, 1928.....	\$14,843.72
1929.....	14,843.72
1930.....	14,843.72
1931.....	14,843.72
To June 30th, 1931.....	4,947.91
	<hr/>

Total for extra cost of Rail Transportation \$64,322.79

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B. THE EXTRA COST OF DELIVERY FROM OUTSIDE YARDS TO
 DOWN TOWN AREA ON ANTHRACITE AND COKE FROM
 APRIL 1ST 1927 TO JUNE 30TH 1931

This is computed by tonnage multiplied by extra cost of delivery per ton.

TONNAGE:

Tonnage for this computation is the actual tonnage to Down Town customers delivered from outside yards instead of from Church Street Dock Yard.

The difference in average yearly tonnage of sales of Anthracite and Coke before and after expropriation shows the lower tonnage delivered from Church Street Yard after expropriation. The increase in sales from the four outside yards after allowing for normal growth indicates that the tonnage not delivered by Church Street Yard was delivered to the Down Town area from the four outside yards. 10

The following figures for sales of Church Street Yard and the four outside yards are shown on a diagram. This diagram shows (a) that the average for the four years after expropriation exceeds the average of the four preceding years, (b) tonnages normally delivered from Church Street Yard were delivered subsequent to expropriation from outside yards and (c) that annual decreases in Church Street Yard deliveries had complementary increases in deliveries from the outside yards. 20

In addition to imports of fuel by water, Anthracite and Coke were brought in by rail and while between all yards there was a bulk transfer of fuel to accommodate individual yards due to temporary deficiencies in stocks the large stock in storage at the Church Street Yard particularly was used for transferring to other yards, these transfer tonnages do not appear as sales for Church Street Yard. The difference between imports and sales is taken as transfers.

There are four years of records of sales and deliveries from the Church Street Yard before and after April 1st, 1927 as follows: 30

Before Expropriation:

Anthracite	1924.....	18,475 tons	
	1925.....	22,491 "	
	1926.....	18,063 "	
	1927.....	10,641 "	
	Total.....	69,670 tons	
	Average.....	17,418 tons	
Coke	1924.....	3,005 tons	
	1925.....	2,564 "	
	1926.....	5,982 "	40
	1927.....	5,988 "	
	Total.....	17,539 tons	
	Average.....	4,385 tons	
Yearly Average of Anthracite and coke delivered before Expropriation.....		21,803 tons	

After Expropriation:

Anthracite	1928.....	5,592 tons
	1929.....	3,492 "
	1930.....	5,332 "
	1931.....	5,355 "
	Total.....	19,771 tons
	Average.....	4,943 tons

Coke	1928.....	7,943 tons
	1929.....	6,909 "
	1930.....	6,156 "
	1931.....	5,257 "
	Total.....	26,265 tons
	Average.....	6,566 tons

10

Yearly average of Anthracite and Coke delivered after expropriation..... 11,509 tons

Difference between average deliveries from Church Street Yard to down town area before and after expropriation:

Deliveries before 21,803 tons average per year
 " after 11,509 " " " "

20

Difference 10,294 tons average per year

The Company claims that the average of 10,294 tons per year was delivered from outside yards to the down town area after expropriation.

This tonnage was delivered from outside yards at an extra cost per ton and is for the period from April 1st 1927 to June 30th 1931.

EXTRA COST OF DELIVERY PER TON:

This is computed as extra distance multiplied by cost of delivery per ton mile.

EXTRA DISTANCE IN MILES

30 The distance from outlying yards to the Church Street Yard are as follows:

Parkdale Yard.....	3.1 miles
MacPherson Ave.....	3.1 "
Merton St.....	3.8 "
Greenwood Ave.....	3.8 "

It is .85 miles from the Church Street Yard to the centre of distribution of the area bounded by Spadina, Bloor and Broadview and includes south

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Rosedale. This centre is just below the intersection of Dundas and Yonge Sts. The average distance from the four yards to the Church Street Yard is 3.5 miles and approximately 2.85 miles average from the four outside yards to the centre of distribution. It is impracticable to arrive at a precise estimate of extra distance involved and as a fair figure for extra distance I have adopted .75 miles, or approximately one quarter of the above 2.85 miles as the extra distance or for the round trip 1.5 miles extra distance as an average.

COST OF DELIVERY PER TON MILE

Delivery trucking includes three items: Labour; Truck Costs; and Overhead.

LABOUR

10

The average speed of trucks is taken as 16 miles per hour. Wages for driver were 50 cents per hour. One and one half miles travel requires 5.63 minutes. Labour cost is then 4.7 cents. This is for two tons for 1½ miles. Labour cost is then 1.566 cents per ton mile.

TRUCK COSTS

Truck costs are based on 7,500 miles service per year per truck and are itemized as follows:

Interest 3%, Depreciation 14%, average 17% per year on \$1,750.00 the cost of a 2 ton truck in 1928, or \$300.00.	4.0c per mile	
Gasoline and Oil	2.62c " "	20
Tires and Repairs \$225.00 per year	3.0c " "	

Total for 2 tons 9.62c per mile
 or 4.81 cents per ton mile.

OVERHEAD

Overhead is inclusive of truck license, insurance, workmen's compensation, garage and one truck's share of 5% of total yard wages and expenses, \$350.00 per year, 4.66c per truck mile, or 2.33 cents per ton mile.

Total cost per ton mile is then:

Labour	1.566c per ton mile	
Truck costs	4.81c " " "	30
Overhead	2.33c " " "	

Then extra cost of delivery is 8.706c x 1½ miles = 13.06 cents per ton.

EXTRA YEARLY COST OF DELIVERY FROM OUTSIDE YARDS:

10,294 tons per year at an extra cost of 13.06 cents per ton is a total yearly cost of \$1,345.32 per year.

TOTAL CLAIMED FOR EXTRA COST OF DELIVERY FROM OUTSIDE YARDS:

The Company claims for the extra cost of delivery of fuel from outside yards from April 1st 1927 when they gave up use of the Anthracite and of the Dock Yard until July 1st 1931 when facilities were re-established at Ashbridge's Bay.

The yearly amounts are as follows:

	To March 31st 1928.....	\$1,345.32
	1929.....	1,345.32
10	1930.....	1,345.32
	1931.....	1,345.32
	To June 30, 1931.....	336.33

Total for the extra cost of delivery from outside yards... \$5,717.61

EXTRA COST OF DELIVERY OF ALL FUEL FROM ASHBRIDGE'S BAY TO DOWN TOWN AREA FROM JULY 1st 1931 ONWARDS TO AUG. 1st, 1938 BASED ON AVERAGE OF TONNAGE PREVIOUS TO EXPROPRIATION.

The average tonnages of fuel for the period previous to expropriation are taken as the basis for the computation of future extra costs of delivery from Ashbridge's Bay. The extra cost is determined from tonnage multiplied by extra cost per ton for delivery.

TONNAGES:

Anthracite and Coke average yearly tonnages have been previously determined herein as follows:

Anthracite.....	17,418 tons
Coke.....	4,385 tons

Bituminous Coal tonnages are averaged from sales from April 1st 1923 to March 31st 1927 as follows:

	To March 31st 1924.....	13,062 tons
30	1925.....	12,217 "
	1926.....	15,055 "
	1927.....	13,868 "
	Total.....	54,202 tons
	Average per year.....	13,550 tons

The average yearly total of all fuel in this period is then,

Anthracite.....	17,418 tons
Coke.....	4,385 "
Bituminous.....	13,550 "

Total..... 35,353 tons
 40 Extra cost of delivery is based on 35,353 tons of fuel per year.

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EXTRA COST OF DELIVERY PER TON:

This is computed by extra distance multiplied by cost of delivery per ton mile.

EXTRA DISTANCES:

The Ashbridge's Bay Site is 9,250 feet from Church Street Dock. 75% of the Down Town business is west of Church St. This distance is 1.75 miles or 3.5 miles extra for the round trip.

The remainder of the business, 25% centres on Parliament St. which is 3,680 feet greater in distance from Ashbridge's Bay than from Church St. This is .7 miles or 1.4 miles for the round trip.

The resultant extra distance based on 75% being 3.5 miles extra and 25% being 1.4 miles extra is an average of 3 miles (2.975 miles).

COST PER TON MILE:

This is computed as for cost per ton mile in determining extra cost of delivery from outside yards excepting that labour cost per ton mile is different. Labour costs for summer of 1931 onward are on the basis of 45c per hour for driver and 40c for a helper. On this service one half the deliveries require a helper so that the average cost for labour on trucks is 65c per hour, instead of 50c as previously used. Or instead of 1.56c per ton mile the labour cost is 2.03c per ton mile. With truck costs at 4.81c and overhead at 2.33c the total is 9.17c per ton mile and for 3 miles is 27.51 cents per ton.

Extra cost of delivery per ton is 27.51 cents.

EXTRA YEARLY COST OF DELIVERY FROM ASHBRIDGE'S BAY:

35,353 tons per year at an extra cost of 27.51c per ton is a total extra yearly cost of \$9,725.61.

TOTAL CLAIMED AS EXTRA AMOUNT WHICH COMPANY HAS TO PAY FOR EXTRA DELIVERY COST:

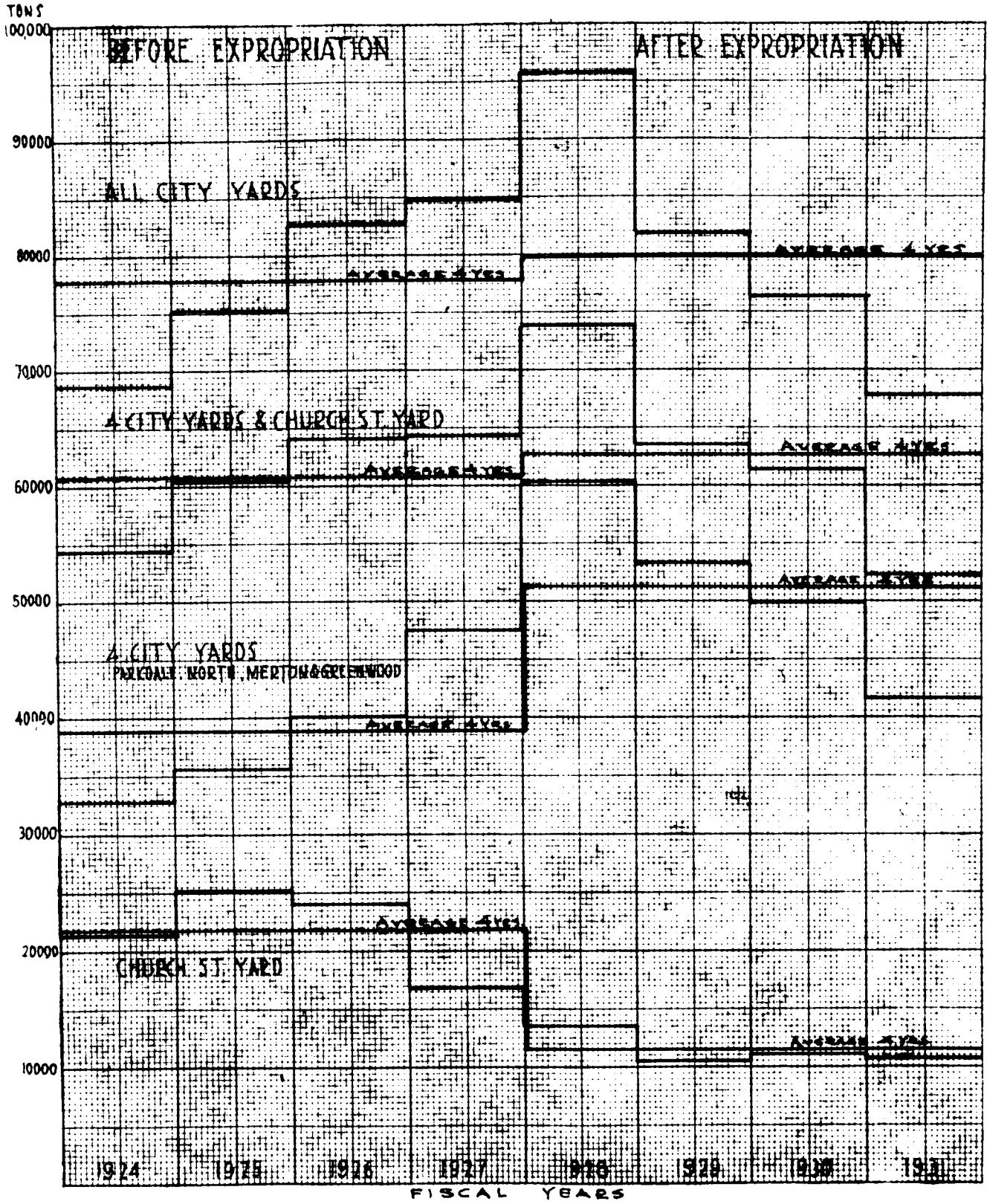
The Company claims for the extra cost of delivery from Ashbridge's Bay on tonnage of the amount handled previous to expropriation from Church Street Dock to the down town area for a period of 7 years and one month from July 1st 1931 to August 1st 1938 on which date the present 21 year period of lease would be complete.

The following are the costs for future years computed as at August 1st 1931.

One month July 1st to July 31st, 1931.....	\$	810.47
Seven years from August 1st, 1931 to August 1st 1938, present worth of 7 equal annual amounts of \$9,725.61 at 5% (multiplier is 5.7864 as at August 1st, 1931).....		56,276.27

Total.....	\$57,086.74	40
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Total for extra cost of delivery from Ashbridge's Bay on tonnages as previous to expropriation is \$57,086.74.



ITEM 5

BUSINESS DISTURBANCE

Nominal compensation for extra cost of delivery of increased tonnage due to normal growth. \$50,000.00

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BUSINESS DISTURBANCE

10 Item 4 of the claim is for extra cost of doing business after expropriation to an extent equal to sales from Church St. Yard in the period previous to expropriation in 1926. The Company claims that had they been left in possession of the dock and rights out to the New Windmill Line their business would have increased in the period subsequent to expropriation.

The Company claims for the extra cost of delivery of fuel from Ashbridge's Bay on further tonnages which would be due to normal growth and which they would have been handling since 1926.

Coke and Anthracite tonnages from April 1st 1927 to June 30th 1931 are considered to have continued only at the pre-expropriation rate but bituminous coal had an increased tonnage.

20 Bituminous coal sales at the Church Street Yard since expropriation while showing a considerable growth were limited by competition from other dealers who brought in Bituminous Coal to their docks by water and thus were able to offer coal of similar quality at a lower price.

Bituminous sales from Church Street Yard previous to expropriation were:

To March 31st 1924.	13,062 tons
1925.	12,217 "
1926.	15,055 "
1927.	13,868 "
	<hr/>
Total.	54,202 tons
Average.	13,550 tons

Bituminous sales from Church Street Yard after expropriation were:

30 To March 31st, 1928.	19,955 tons
1929.	23,398 "
1930.	20,483 "
1931.	16,510 "
	<hr/>
Total.	80,346 tons
Average.	20,086 tons

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Thus there was a gain in the period since expropriation represented by an average of 6,534 tons per year.

The Company claims that had they been left in possession of their dock and existing facilities which were available for bringing in Bituminous Coal both by rail and vessel that the average yearly tonnage from July 1st, 1931 to August 1st 1938 would be 15,000 tons above the average used. The Company then claims for the extra cost of delivery of this fuel from Ashbridge's Bay at the rate of 27.51 cents per ton as follows:

- A. 15,000 tons per year at 27.51 cents per ton extra cost of delivery from July 1st 1931 to Aug. 1st 1938, 7 years and 1 month at \$4,126.50 per year. Present value of amount as at August 1st 1931 \$24,221.45 10

The Company claims that had they been left in possession of their dock and rights on the waterlot that they would have extended their dock and facilities out towards the New Windmill Line by 1931 and thus would have handled a further business of Bituminous Coal and Coke to the extent of 20,000 tons average for the period from July 1st, 1931 to August 1st 1938. This tonnage at 27.51c per ton extra delivery cost from Ashbridge's Bay would total (B) \$32,295.27 as at August 1st 1931.

After August 1st 1938 the Company will be still faced with the extra 20 cost of delivery from Ashbridge's Bay and to the extent computed as:

Yearly tonnage before expropriation	41,245 tons	
“ “ Bituminous growth on Dock as existed	15,000 “	
“ “ Bituminous and Coke on extended dock	20,000 “	
	76,243 tons	
Total		

This at 27.51 cents totals an extra yearly cost of delivery from Ashbridge's Bay of (C) \$20,974.45.

The Company claims under the above items of "Business Disturbance" as follows:

- A. \$24,221.45 as at August 1st, 1931 30
- B. \$32,295.27 as at August 1st, 1931
- C. \$20,974.45 per year after 1938.

A and B total \$56,516.72 for the period up to 1938 and Item C is a yearly cost of \$20,974.45 after 1938.

The Company in presenting this claim shows the above as \$50,000.00 as a moderate compensation for extra cost of delivery of further tonnage due to normal growth.

ITEM 6

NET CREDIT

Credits and Debits on Rent, Taxes, Interest, Maintenance, Power, Cost of Coal and Yard Operation.

Excess of Credits..... \$20,843.40

In determining the greater or less cost of doing business from the date of expropriation onwards items of rent, taxes, capital and maintenance costs, etc. affect the total. The following items of credits and debits show an excess of credits which should be applied against the total claim.

10 The following show less costs:

(1) RENT AND TAXES TO JUNE 30TH 1931:

For the Church St. Yard from April 1st 1926 to June 30th 1931 (at which time occupation commenced at Ashbridge's Bay) with rent at \$6,000 per year and with taxes in 1926 and 1927 as were actually paid and on the basis of \$6,000 taxes for 1928 onward, the Company would then have paid \$62,067.36 for Rent and Taxes. In this period and to July 31st 1931, when the Company finally moved from Church St., due to expropriation and adjustments they paid only \$32,179.01 so that the charges for Rent and Taxes were less by \$29,888.35 than they would have paid had they continued without disturbance

20 at Church St.

(2) INTEREST AND MAINTENANCE:

The Company shows the true value of buildings and equipment as \$92,951.25. The buildings and equipment were for the most part removed and the remaining portions included in the rent paid to Terminals Railway. On a basis of 5% annual charges or \$4,647.56 plus maintenance of buildings and equipment at \$1,500 per year there is a saving of \$6,147.56 per year or for the period Nov. 24th 1926 to June 30th 1931, or say 4 years and 7.2 months, there is a saving of \$28,278.66.

(3) LIGHT AND POWER:

30 Light and Power for the four years up to March 31st 1927 averaged \$1,065.84 per year. For the 4 1-3 years from April 1st 1927 to July 31st 1931 the cost of power and light was \$301.43. At the previous rate it would have been \$4,618.63; there was thus a saving in the period of \$4,317.20.

The following show greater costs:

(4) RENT AND TAXES AFTER AUGUST 1ST, 1931:

40 For the period of from July 1st 1931 to Aug. 1st 1938 the Company will occupy a site at Ashbridge's Bay. The Company pays as rent and taxes for this property for the present year of from July 1st 1931 to June 30th 1932 at the rate of 50c per sq. ft. On an area equivalent to the 92,021 sq. ft. at the Church St. Yard the rent and taxes would then be \$4,601.05 and against the rent of \$6,000 and taxes of \$6,000 per annum, this will show a saving in the first year of \$7,398.95. In future years, however, the property will require

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rental of 87½c per sq. ft. plus taxes. The rent then will be \$8,051.83 per year and taxes will probably be \$6,000, the same as at Church St., that is, rent and taxes will be \$2,051.83 per year in excess of former Church St. rent and taxes. \$2,051.83 for a period of 6 years and one month will total \$12,481.96 and thus is \$5,083.01 in excess of the saving of \$7,398.95 on the 1931—2 year's operation.

The net result of considering differences in rent and taxes subsequent to July 1st 1931 and up to 1938 is that Ashbridge's Bay rental and taxes will be \$5,083.01 in excess of rental and taxes at Church Street.

(5) COST VARIATIONS DURING EACH SEASON: 10

Mr. Fielden of Vigeon and Company has prepared a statement that shows that the storage facilities at the Church St. Dock permitted purchase of coal stocks during the summer season with a net saving of 20c per ton.

On an average of 19,431 tons per year brought in by boat in the four seasons previous to expropriation there was then a yearly saving of \$3,886.20 This would apply to 4½ navigation seasons so that the saving would have been \$17,487.90.

(6) EXTRA YARD COST:

The loss of all facilities at the Church Street Dock entails an estimated extra expense of a nominal 10c per ton on all tonnage as actually handled. 20

Sales of all fuel at Church Street from April 1st 1927 to August 1st 1931 totalled 130,699 tons making an extra cost of handling of \$13,069.90.

(7) DIRECT CURRENT POWER:

At Ashbridge's Bay no Direct Current Power is available. Direct current is necessary for unloading equipment. Alternating Current must be converted to Direct by a motor generator set which requires 20% more power. Former power bills show 102 H.P. and approximately 1400 K.W. hrs. per month. Direct current would cost \$126.45 per month. Alternating current plus 20% more will cost \$135.18 or \$8.73 more per month or say \$100 more per year but requires a \$6,000.00 equipment for converting; this at 10% per year will total 30 \$600.00 alone or \$700.00 total per year extra.

On this item allow \$6,000.00 as representing future extra cost (this is equal to cost of equipment).

The above items show an excess on the credit side as follows:

Credit items 1	\$29,888.35	
2	28,278.66	
3	4,317.20	
Total Credit		\$62,484.21
Debit Items 4	5,083.01	
5	17,487.90	
6	13,069.90	
7	6,000.00	
Total Debit		41,640.81
Excess of Credit Items		\$20,843.40

40

STATEMENT BY HOLE AND MITCHELL

TORONTO TERMINALS RAILWAY COMPANY, PROPERTY
COMMISSION

Valuation of buildings, Permanent Improvements and other issues of the Standard Fuel Company premises upon Lot 31, Registered Plan 5-A, County of York, situated at the south west corner of Esplanade East and Church Streets, Toronto.

10 AGREED REPLACEMENT VALUE OF BUILDINGS, ETC., AS LISTED
HEREUNDER, AS OF NOVEMBER 24, 1926

Values checked up and agreed
upon, December 27, 1930

	Bldg "A" Office.....	\$3,070.00
	Scales and Pits.....	1,990.00
	Bldg "B" Garage, storehouse, etc.....	2,112.70
	Bldg "C" Boiler house.....	2,117.00
	Bldgs "D" & "E"	
	Large shed.....	\$34,509.50
	Hoppers or Pockets.....	10,460.00
20	Tower.....	1,722.25
	Dynamo House.....	268.52
	Car House.....	612.50
	Controller house.....	115.00
	Unloading Hopper.....	635.50
	Outside Trestles.....	899.36
	Outside Trestles (unused).....	470.00
	Open Bins in Yard.....	580.00
	Gasoline Tank and Pit.....	200.00
		<hr/>
		50,472.63
		<hr/>
30		\$59,762.33
	Yard Services:	
	Water Supply.....	\$312.50
	Yard Lighting (fixtures only).....	50.00
	Yard Drains.....	250.00
	Road Surfaces.....	700.00
		<hr/>
	TOTAL REPLACEMENT VALUE.....	\$61,074.83

"John Hole"
"P. H. Mitchell"

Exhibits

TORONTO TERMINALS RAILWAY CO. PROPERTY COMMISSION

No. 27
Statement by Hole
and Mitchell
(undated)
(Filed by Claimant,
Standard Fuel Co.)
—continued

Valuation of Fixed Mechanical Equipment (as separate from tools and small portable equipment which are not taken) of the Standard Fuel Company premises upon Lot 31, Reg. Plan 5-A, County of York, situated at south west corner of Esplanade East and Church Streets, Toronto.

Agreed replacement values of this equipment as listed hereunder, as of November 24, 1926.

Item	Article	Description	Values checked and agreed upon, January 30, 1931.	10
1	2 Boilers	1 Horizontal return tubular made by Polson Iron Works, lgth. 12'0", dia. 54", 64 tubes, 3" dia. pressure 90 lbs. per sq. in. Brickwork and erection of boiler	\$2,160.00	
		1 Vertical fire tube, hght. 4'0", dia. 24" 24 tubes 2" dia. pressure 65 lbs. sq. in	400.00	20
			\$2,560.00	
2	2 Gauges	1 Steam gauge 0-200 lbs. sq. in. single spring, made by Jas. Morrison Brass Works 1 Steam gauge 0-200 lbs. sq. in. made by A. R. Williams Machine Co. Ltd.	75.00	30
3	2 Gauges	2 Glass Water Gauges		
4	2 Valves	2 Safety Valves		
5	1 Pump	1 Steam driven duplex water pump made by Canada Steam Pump Machine Co. Ltd. No. 317, steam cyl. dia. 2", stroke 3", water cyl. dia. 3", stroke 3", suct. 1¼ disch. 1"	75.00	
6	1 Injector	"Penberthy" 1"	30.00	40
7	1 Inspirator	"Hancock" ¾"	50.00	

Item	Article	Description		
8	1 Steam Engine	Horizontal. No name (possibly Ideal) cy. dia. 12 $\frac{1}{4}$ " stroke 20" speed. 120 RPM, H.P. 45, Flywheel, dia. 8'0". Width 4" Hudson Ball Governor. Slide valve dia. shaft 4 $\frac{1}{2}$ " drive pulley dia. 32", face 14"	\$3,000.00	3,000.00
10	9 2 smoke stacks	1 steel plate 3'0" dia. 40' high. } 1 steel plate 9" dia. 15' high. }	205.00	205.00
10	1 Lubricator...	1 steam cylinder lubricator No. 560, made by T. McAvity & Sons, St. John, N.B.....	18.00	
11	Air Injector...	1 Karles combined air injector and exhauster. Forced draft on boiler.	55.00	
20	12 Steam line.....	3" pipe acro. fittings, lgth 33' }	128.50	
	13 Exhaust Line..	4" pipe acro. fittings, lgth 20' }		
	14 Blowoff Line...	3" pipe acro. fittings, lgth 31' }		
		84' }		
15	4 Valves.....	1 Jas. Morrison 3" Globe valve 1 Jenkins 3" Globe valve.... 2 Jenkins 3" Angle valves.... 1 Blowoff valve 2"		201.50
		Labour installing above equip- ment.....	650.00	650.00
30	16 Shafting.....	Steel shaft dia. 2 $\frac{1}{2}$ " Total lgth 434'	477.40	
17	Couplings.....	Steel shaft couplings dia. 10" keyed to shaft.....	255.00	
18	Bearings.....	33 Pillow Blocks.....	231.00	
		18 Hanging Bearings, special...	216.00	
19	Gears.....	1 pair bevel gears dia. 20".... } 1 pair bevel gears dia. 12".... }	150.00	
20	Sprocket wheels.....	4 18" dia. (2 with clutch).... } 1 24" dia. with clutch..... } 2 36" dia..... } 1 9" dia..... }	300.00	
40				1,629.40

Exhibits
 No. 27
 Statement by Hole
 and Mitchell
 (undated)
 (Filed by Claimant,
 Standard Fuel Co.)
 —continued

Item	Article	Description			
21	Pulleys.....	1 steel pulley dia. 18" face 11" with clutch.....	}	350.00	10
		1 steel pulley dia. 16" face 11" with clutch.....			
		1 splitwood pulley, dia. 24", face 12".....			
		2 splitwood pulleys, dia. 24" face 10".....			
		1 Steel pulley dia. 32", face 14".....			
		1 Splitwood pulley, dia 30", face 14".....			
		1 steel pulley dia 30", face 15".....			
		2 steel pulleys dia. 30" face 8".....			
		2 Splitwood pulleys, dia. 15" face 12.....			
		22				Sheaves.....	2 steel sheaves dia. 5'0".....	}	360.00	20
1 " " " 4'0".....					
1 " " " 3'6".....					
11 " " " 1'6".....					
6 " " " 1'0".....					
23	Chains.....	1 chain 9'0" long 3" wide.....	}	48.77	
		1 " 22'0" " 3" ".....			
		1 " 13'0" " 3" ".....			
		1 " 25'0" " 3" ".....			
		1 " 16'0" " 3" ".....			
24	Belts.....	1 leather belt 40' lg. 12" wide	}	500.00	30
		1 rubber fabric belt 40' lg. 8" wide.....			
		1 rubber fabric belt 60' lg. 12" wide.....			
		1 rubber fabric belt 40' lg. 12" wide.....			
		1 rubber fabric belt 50' lg. 12" wide.....			
		1 rubber fabric belt 35' lg. 12" wide.....			
			1,258.77	40	
25	Conveyors.....	4 Coal conveyors 46'0" long...	3,200.00		
26	Trucks.....	4 dump trucks on unloading system overhead.....	500.00		

Item	Article	Description		
	27	Bucket.....1	Hayward Bucket complete No. 5176, 1¼ tons, 38 C.F....	1,300.00
	28	Screen.....1	Revolving screen 5'0" dia. 12' long, 4 sections 2", 1" ½" ¼".....	600.00
				5,600.00
10	29	Hoisting Drums	2 Double Drum chain drive dia. drums 12", lgth 3'0" gears to drums dia. 2'2", F. 2".....	4,500.00
			2 Double drum chain drive, dia. drums 12" lgth. 3'0", friction wheels dia. 24", F. 6".....	4,500.00
20	30	Coal Hoist.....1	Maine Electric Co. (Portland, Me.) electric hoist No. a-352, 3 drums, 2 motors, 1 M.E. Co. D.C. Motor, No. 7020, 220 v. 88 K.W. 1 M.E. Co. D.C. Motor No. 5855 220 v. 88 K.W.....	9,500.00
				9,500.00
30	31	Electrical Equipment	1 Cutler Hammer switchboard No. 395633 100 H.P. 220 V. 350 A. 6 slate panels on steel L. frame.....	
			5 automatic starter breakers,..	
			5 resistance coils 2'0" x 10"...	
40			1 Cutler Hammer Circuit Breaker, No. 498676 100 H.P. 220 V. 350A.....	
			2 Sangamo Electric Co. cur- rent shunts Type B 1200 amp. No. 260871 Res. .000- 0638 OHMS. No. 260872 Res. .000063 OHMS.....	3,500.00
			1 Double Pole Knife switch 220 v. 350 A. slate base....	3,500.00
			1 Cutler Hammer Controller for 88 K.W. motor.....	
			1 Cutler Hammer Controller for 30 K.W. motor.....	
			2 Resistance coils 2'0" x 10"	
			1 Double Pole Knife switch, 220 V. 50 A. slate base.....	

Exhibits
No. 27
Statement by Hole
and Mitchell
(undated)
(Filed by Claimant,
Standard Fuel Co.)
—continued

Exhibits	Item	Article	Description			
No. 27 Statement by Hole and Mitchell (undated) (Filed by Claimant, Standard Fuel Co.) —concluded	32	Cable.....	1500 ft. No. 14 insulated wire installed (Electric light in Yard).....	175.00		
			1350 ft $\frac{5}{8}$ " steel cable.....	} 450.00		
			1600 ft. $\frac{3}{8}$ " steel cable.....			
			250 ft. $\frac{1}{2}$ in. steel cable.....			
			350 ft. 1" steel cable (on boom).....			
			2 $1\frac{1}{2}$ " pipe contro. rods 60' long each.....		10	
				625.00		
		33	Boom.....1	Boom on unloading tower, 2-15" spaced 2'0" apart, 56'6" long, laced on top with 2" x $\frac{1}{4}$ " flat steel.....	500.00	
		34	Trolley.....1	4-wheel trolley on boom, Trolley carries Hayward bucket.....	175.00	
					675.00	20
	35	Truck.....	2100 ft. 10 lb. steel rails spiked to timber runway, 8" x 8" B.C. fir included.....	1,575.00		
			Gasoline Pump in Yard (Tank already taken).....	100.00		
			Power cable from Toronto Hy- dro Electric Co's pole to Hoisting Tower.....	200.00		
				1,875.00		
			Erection costs on above.....	2,764.80	30	
				2,764.80		
				38,774.47		
			Add 8% to cover engineering costs, workmen's compensa- tion, sundries and contin- gencies.....	3,101.95		
				3,101.95		
			Estimated Replacement cost of Mechanical Equipment in 1926.....	\$41,876.42		

"John Hole"
"P. H. Mitchell"

STATEMENT SHOWING TRANSFERS OF COAL FROM
DOCK TO YARDS
ANTHRACITE COAL
DOCK TRANSFERS TO YARDS

Exhibits
No. 26
Statement showing
Transfers of Coal
from Dock to Yards
(undated)
(Filed by Claimant,
Standard Fuel Co.)

10	March 31, 1921.....	18,485 tons
	1922.....	no record
	1923.....	strike
	1924.....	8,105
	1925.....	8,223
	1926.....	3,973
	1927.....	3,441
	1928.....	2
	1929.....	12
	1930.....	16

STATEMENT SHOWING TRANSFERS OF ANTHRACITE COAL
FROM DOCK TO OTHER YARDS

No. 28
Statement showing
Transfers of
Anthracite Coal
from Dock to other
Yards (undated)
(Filed by Claimant,
Standard Fuel Co.)

THE STANDARD FUEL CO. OF TORONTO, LTD.

20 Transfers of Anthracite Coal from Dock to other yards during Financial
years ended March 31

	1921	1922	1923	1924	1925	1926	1927	1928	1929	1930
Merton.....	419	None	None	244	1140	639	749	..	6	1
Greenwood....	3560	..	..	1987	2435	1379	833	..	2	..
Parkdale.....	1838	Record	{Strike Year}	1250	899	459	498	..	4	15
Danforth.....	..	..	..	..	..	84	121	2	..	..
North.....	2488	..	..	1638	1496	374	287	..	..	..
Junction.....	444	..	..	701	1413	965	759	..	..	..
Leaside.....	..	..	..	..	..	73	..	..	..	..
Fairbank.....	..	..	..	..	..	..	103	..	..	..
Mimico.....	..	..	..	..	..	..	91	..	..	..
*East Yard (Rail)	5322	Sold after expropriated.								
**West Yard (Foot Spadina)....	4414	..	..	2285	842	Expropriated, July, 1925.				
	18485	..	..	8105	8225	3973	3441	2	12	16

*Hauled by East Yard, Cherry and Mill Streets, from Church St. Dock to customers.
**Hauled by West Yard, Spadina Ave., from Dock to customers.

Exhibits

No. 30
Statement of Estimated Cost of Dock prepared by Mitchell (undated) (Filed by Contestant)

STATEMENT OF ESTIMATED COST OF DOCK PREPARED BY MITCHELL

COST OF DOCK 325' x 150' = 48,750 SQ. FT.

A.	20 Caissons in place, \$1,200.00 each.....	\$24,000.00
B.	225' Intermediate cribbing at \$30.00.....	6,750.00
C.	Dredging, 60 cents per cub. Yd.....	1,400.00
D.	Diagonal tie rods in intermediate cribs.....	1,000.00
E.	Concrete Coping, 477 ft. at \$14.25.....	6,797.00
F.	Waling, 2 strips for 450' length at \$1.00.....	900.00 10
	Total, 477' wall at \$85.65 per Ft.....	\$40,847.00
	The above items include 25% added for Engineering, Overhead, Profit and Contingencies.	
G.	Fill, Dock south of Lake Street, 40,400 cub. yds. at 30c....	12,120.00
	TOTAL FOR DOCK.....	\$52,967.00
	Or \$1.08½ per Sq. Ft. of Dock.	

No. 32
Statement showing Cost of Dock for full Area, produced by Mitchell (undated) (Filed by Contestant)

STATEMENT SHOWING COST OF DOCK FOR FULL AREA PRODUCED BY MITCHELL.

COST OF DOCK FOR FULL AREA 577' 4¼" x 204' 5" = 118,016 Sq. Ft. 20

A.	40 Caissons in place, \$1,200.00 each.....	\$48,000.00
B.	524' Intermediate cribbing at \$30.00.....	15,720.00
C.	Dredging, 60c per cub. yd.....	2,900.00
D.	Diagonal Tie rods in Intermediate Cribs.....	2,100.00
E.	Concrete Coping 1024' at \$14.25.....	14,592.00
F.	Waling, 2 strips 800' length at \$1.00.....	1,600.00
	Total, 1,024' wall at \$82.92 per Ft.....	\$84,912.00
	The above items include 25% added for Engineering, Overhead, Profit and contingencies.	
G.	Fill, Dock south of Lake Street, 102,000 Cub. Yds at 30c..	30,600.00 30
	TOTAL FOR DOCK.....	\$115,512.00
	Or 97.8 cents per Sq. Ft.	

33 - Hydro-Electric Account

No. 33
Mitchell's Notes
on Cost of Motor
Generator Set
(undated) (Filed
by Contestant).

798-1-11-22
92-9-22-07310

D. C. POWER SERVICE: (T.N.A.)

SERVICE CHARGE BASED ON 102 H.P. @ \$1.50 PER H.P. PER MONTH 1530 K.W.H. 1428 40

TOTAL KILOWATT HOURS SUPPLIED: FIRST 3830 ALLOWATT HOURS: 95 75

METER NO. 3830

NET 524 13

DATE PAID AUG 30 1923

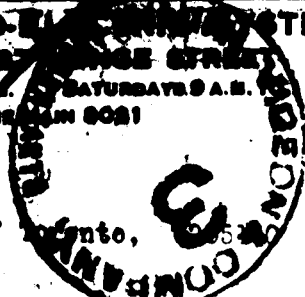
THE TORONTO HYDRO-ELECTRIC SYSTEM

225 YONGE STREET

IN ACCOUNT WITH

Standard Fuel Co. of Toronto,

79 King St. E.



THIS BILL IS DUE

AUG 30 1923

Re 3830

RECEIPT WILL BE DELIVERED WITH NEXT BILL. USE AND A STAMPED ENVELOPE IS FURNISHED FOR THE RETURN OF CHECKS. CHECKS TO BE MADE PAYABLE TO THE TORONTO HYDRO-ELECTRIC SYSTEM AT THEIR OFFICE, 225 YONGE STREET. STAMPS CANNOT BE ACCEPTED IN PAYMENT OF BILLS. FAILURE TO RECEIVE BILL DOES NOT ENTITLE CUSTOMER TO DISCOUNT. E. O. S.

THIS BILL COVERS 2³/₄ MONTHS

ELECTRICITY SUPPLIED FROM May 7 TO July 31

METER NUMBER	30048	30049			
PRESENT READING	5456	4975			
PREVIOUS READING	5226	4826			
DIFFERENCE	230	149			
CONSTANT	10	10	Est	Total	Cons.
KILOWATT HOURS	2300	1490	40	3830	

May 5 - May 7 Est. 40 = 1530 K.W.

THIS BILL MAY BE PAID AT ANY OF OUR SHOPS AS FOLLOWS:

225 YONGE ST.

12 ADELAIDE ST. EAST

Cor. YONGE & FRONT STS.

Cor. GERRARD ST. & CARLAW AVF.

33

- Hydro-Electric Account

No. 33
Mitchell's Notes
on Cost of Motor
Generator Set
(undated)
—continued

788-1-11-22
OH-2-22-97310

D. C. POWER SERVICE (T. N. P.)

SERVICE CHARGE BASED ON 102 H.P. @ \$6.50 PER H.P. PER MONTH \$ 392 50

TOTAL KILOWATT HRS. SUPPLIED	FIRST <u>550</u>	WARRANT HOURS @ <u>2</u>	\$ <u>13 75</u>
<u>550</u>	NEXT		
(SEE METER GRADINGS ON REVERSE SIDE)	REMAINDER		
			\$ <u>396 25</u>

PENALTY $\frac{1}{2}$ PER K. W. H. ADDED IF PAID AFTER

TORONTO HYDRO-ELECTRIC SYSTEM

OFFICES 225-227 YONGE STREET

OFFICE HOURS 9 A.M. TO 5 P.M. SATURDAYS 9 A.M. TO 1 P.M.

TELEPHONE MAIN 8021

IN ACCOUNT WITH

Standard Fuel Co. Ltd.,

255160

79 King St. E.

Y 1

~~Foot of Church St. Dock 26.~~

383

RECEIPT WILL BE DELIVERED WITH NEXT BILL UNLESS A STAMPED ENVELOPE IS FURNISHED FOR THE RETURN OF SAME. CHECKS TO BE MADE PAYABLE TO THE TORONTO HYDRO-ELECTRIC SYSTEM AT THEIR OFFICE, 225 YONGE STREET. STAMPS CANNOT BE ACCEPTED IN PAYMENT OF BILLS. FAILURE TO RECEIVE BILL DOES NOT ENTITLE CONSUMER TO DISCOUNT. E. & O. S.

ELECTRICITY SUPPLIED FROM July 31 to Dec 31

30041	30049			
5510	4976			
4156	4975			
2154	1			
10	10			
540	10			

THIS BILL MAY BE PAID AT ANY OF OUR SHOPS AS FOLLOWS:

- 225 YONGE ST.
- 12 ADELAIDE ST. EAST
- Cor. YONGE & FRONT STS.
- Cor. GERRARD ST. & CARLAW AVE.

MITCHELL'S NOTES ON COST OF MOTOR GENERATOR SET

MOTOR GENERATOR SET

Motors on tower = 200 H.P.

These can be operated by a 120 K.W. D.C. Generator with a 200 H.P. A.C. motor.

200 H.P. motor at \$12.00.....	\$2,400.00
120 K.W. generator at 30.00.....	3,600.00
	<hr/>
	\$6,000.00

10 These include starters and switchboard.

FUTURE POWER COSTS

	1400		
	21½		
D.C. 100 H.P. D.C. =	103.50 + \$35	=	\$138.50
	102 = 105.50		
	140.50		
	14.05		
	<hr/>		
	126.45		

	1400		
	1.5		
20 A.C. 100 H.P. A.C. =	102.50 + 21	=	123.50
	add 20% for M.G. set.....		24.70
	<hr/>		
	+2		148.20

= \$10.00 per month
Say \$100.00 per year
M.G. set for 150 H.P. = 5000.00
annual charge 500.00
= \$600.00 per year more

	M.G. set for 120 K.W. unit
	200 H.P. motor and control = 6000
30	150.20
	15.02
	<hr/>
	135.18
	Note—idling of M.G. set
	will require additional
	K.W. hrs = say 10% or 140 K.W. hrs
	at 1.5 = 2.10—say 2.00
	= 150.20
	15.02
	<hr/>
	135.18
	<hr/>
	123.50
	135.18

Exhibits

No. 33
 Mitchell's Notes
 on Cost of Motor
 Generator Set
 (undated)
 (Filed by
 Contestant)
 —concluded

TORONTO POWER RATES HYDRO.

A. C. Service charge—\$1.25 for 1st 10 H.P.
 1.00 for additional
 1st 50 hours—1.5 per K.W. hr
 2nd 50 “ .75 “ “ “
 Balance .40 “ “ “

Discount 10%

D. C. Service charge \$1.35 for 1st 10 H.P.
 1.00 “ additional
 1st 50 hours—2.5 per K.W. hr
 2nd 50 “ 1.25
 Balance .60

10

Discount 10%

Light and Power—

1924.....	1212.67		
25.....	1215.35	28.....	81.12
26.....	865.03	29.....	55.00
27.....	970.30	30.....	73.75
		31.....	70.26
	4 | 4263.35		20
	1065.84		4 | 280.13
			70.

1924..... 654.01 \$1000.00 per year
 1212.67
 1215.35 4 1/4 years..... 4,250.00

3 | 1065.84
 4

4263.35
 355.28

4618.63
 305.13

4,313.50

280.13 30
 4 mos. 25

305.13
 2.5 | 396 | 16
 25

146

ESTIMATE OF DOCK COST BY NORMAN D. WILSON.
STANDARD FUEL DOCK

April 4, 1932

Exhibits

No. 34
Estimate of Dock
Cost by Norman
D. Wilson,
5th April, 1932
(Filed by Claimant
Standard Fuel Co.)

(A) Development out to line of T.E.L. with 54' slip.

Caissons:

	60 Yds at \$8.00	\$4.80		Total wall—532'
	4000 Lbs iron at 3c	1.20		Total Filling—48,500 Yds.
	Forms 3060' at 5c	1.53		
10	Placing 60 cu. Yd. at 2.00	1.20		
		\$873		
	Launching Ways:			
	\$4,000—20	200		
	Launching and Placing	75		
		\$1148		
	Add 20%	229		
		\$1377		
	22 Cribs at \$1377		\$30,300	
	Intermediate Cribbing			
20	Estimate in wood 12" x 14"			
	Front—79,350' at \$45 in place	\$3,570		
	Rear—1/3 less, say	2,280		
		\$5,850		
	Add 20%	1,170		
		\$7,020	7,020	
	Diagonal Anchors			
	Dredging Crib Seat		500	
	4,000 Yds at 60c—2400		2,400	
	Levelling up Crib Seats			
30	Broken stone—30' x 9" x 540'			
	450 Yds	\$1,050		
	Spreading	300		
		\$1,350	\$40,220	
	Forward			

Exhibits
 No. 34
 Estimate of Dock
 Cost by Norman
 D. Wilson,
 5th April, 1932
 (Filed by Claimant,
 Standard Fuel Co.)
 —continued

Drilling and Inserting pins—2 per crib			
	22 Crib at \$20.....	440	
		<u>\$1,790</u>	
	Add 20%.....	360	
		<u>\$2,150</u>	2,150
			2
Mass Concrete Top			
	4' x 2'.....	8.00	
	7' x 2.75.....	19.25	
		<u>27.25</u>	
	Say 1 cu. yd. per foot at \$13.00.....	13.00	10
	Bollards, etc., \$80 per 80 feet.....	1.00	
	Waling—per foot.....	1.00	
		<u>\$15.00</u>	
	Add 20%.....	3.00	
		<u>\$18.00</u>	
	532' at 18.00.....		9,580
	Closures —44' at \$30.....		1,320
			<u>\$53,270</u>
Filling			
	Dredging entrance way & Slip 7000 cu. yd at 35c	\$2,450	20
	Filling 48,500 cu. yd.		
	Allow 30 weeks at \$100.....	3,000	
	Allow 3 mos int. on 60,000.....	900	
	Filling—8000 yds. extra cost at 50c.....	4,000	
		<u>\$10,350</u>	<u>\$10,350</u>
			<u>\$63,620</u>
	Add 10% for Engineering.....		6,362
			<u>\$69,982</u>
	Say \$70,000		30
	Or for 62,370 sq. ft.—\$1.1223 per sq. ft.		
	Representing—48,750' Reclaimed Waterlot....	\$54,700	
	13,620' Lake Street.....	15,300	
		<u>\$70,000</u>	
	Or for 80,050 sq. ft. of waterlot put to use—\$0.8745 per sq. ft.		
	Representing—48,750 Reclaimed Waterlot....	\$42,630	
	13,620 " Lake Street...	11,910	
	17,680 Improved Slip.....	15,460	
		<u>\$70,000</u>	

(B) Filling In of Entire Area

Total wall—1,036'
 Total Filling—102,600 Yards.
 West side—252'—4 $\frac{1}{4}$ '
 South " 206'—4 $\frac{1}{4}$ '
 East " 577'—4 $\frac{1}{2}$ '

1036

Cribs required—10 at 24' deep
 7 at 24
 10 10 at 24
 12 at 20

at 65 cu. yards.
 65 cu. yds at 8.00 520
 4200 # at 3c 126
 Forms 3340 at 5c 167
 Placing 65 at 2 130

 \$943

Launching ways 200
 Placing 80

 \$1223

Add 20% 245

 \$1468

39 Cribs at 1468 \$57,250

Intermediate Stop Log Construction

39 Cribs at 12' 468
 Total length 1036

 568

Inset in Cribs 39

607 ft. of stop log.

30 607 x 23 sticks x 14"—195,268 F.B.M.
 at \$45 \$8,898
 Add 2-3 for rear 5,865

 \$14,662

Add 20% 2,932

 \$17,594 17,600

Diagonal Anchors 1,000

Exhibits

No. 34
 Estimate of Dock
 Cost by Norman
 D. Wilson,
 5th April, 1932
 (Filed by Claimant,
 Standard Fuel Co.)
 —continued

Exhibits
 No. 34
 Estimate of Dock
 Cost by Norman
 D. Wilson,
 5th April, 1932
 (Filed by Claimant,
 Standard Fuel Co.)
 —continued

Dredging Crib Seats

7,500 Yards at 60c.....	4,500	
Levelling Up and Pinning Cribs.....	4,000	
Mass Concrete Top, etc. 1036' at \$18.00.....	18,650	
Closure—44' at \$30.....	1,320	
	<hr/>	
	\$104,320	

Filling

Dredging.....	Nil	
Extra Cost 16,000 Yds at 50c.....	\$8,000	10
Total Fill—102,600 75 weeks at 100.....	7,500	
Int. 6 mos. on 100,000.....	3,600	
	<hr/>	
	18,500	
10% Engineering.....	12,282	
	<hr/>	
	\$135,102	

Say \$135,000

Or 131,642 square feet—\$10,255

Representing 11,022 reclaimed Waterlot...	\$56,030	
13,620 reclaimed Lake St....	13,970	
	<hr/>	
	\$70,000	20

(C) If a slip constructed along east side.

Saving in Cost of Cribbing

at Windmill Line over New Windmill Line.

3 Cribs at \$200 each.....	\$600	
15' x 7' x 14"—1470 at 45 }.....	110	
Rear 980 at 45 }		
	<hr/>	
	\$710	

Time of filling—

 $\frac{1}{4}$ saved— $\frac{1}{4}$ of \$10,500.....

	2,625	
	<hr/>	
	\$3,325	
Additional dredging, 4700 yds at 35c.....	1,635	30
	<hr/>	
	1,690	

Add 10%.....	169	
	<hr/>	
	1,860 Saving	

Say \$2,000.

\$135,000 less \$2,000.....	\$133,000	
-----------------------------	-----------	--

100,222 sq. ft. of land reclaimed.....	\$1.32	
Representing—Reclaimed Waterlot 86,602 sq. ft.....		\$114,925
Lake Street 13,620 sq. ft.....		18,075
		<hr/>
		\$133,000
For 131,642 sq. ft. of entire water lot—\$101.03		
Representing—		
Private Land 86,602 sq. ft.....		87,500
Private Slip 31,414 sq. ft.....		31,740
Lake Street 13,620 sq. ft.....		13,760
		<hr/>
		\$133,000

Exhibits

 No. 34
 Estimate of Dock
 Cost by Norman
 D. Wilson,
 5th April, 1932
 (Filed by Claimant,
 Standard Fuel Co.)
 —concluded

“Norman D. Wilson”
 5/4/32

No. 35.

STATEMENT OF JOHN HOLE'S VALUATION OF BUILDINGS,
 WITH PLAN.

TORONTO TERMINALS RAILWAY COMPANY
 PROPERTY COMMISSION

No. 35
 Statement of John
 Hole's Valuation of
 Buildings, with
 Plan (undated)
 (Filed by
 Contestant)

Valuation, as of November 24, 1926, of Buildings, as physical structures, etc., and other issues of the Standard Fuel Company premises upon Lot 31, Registered Plan 5-A, County of York, situated at south west corner of Esplanade East and Church Streets, Toronto, disregarding whether they do or do not give any added value to the land.

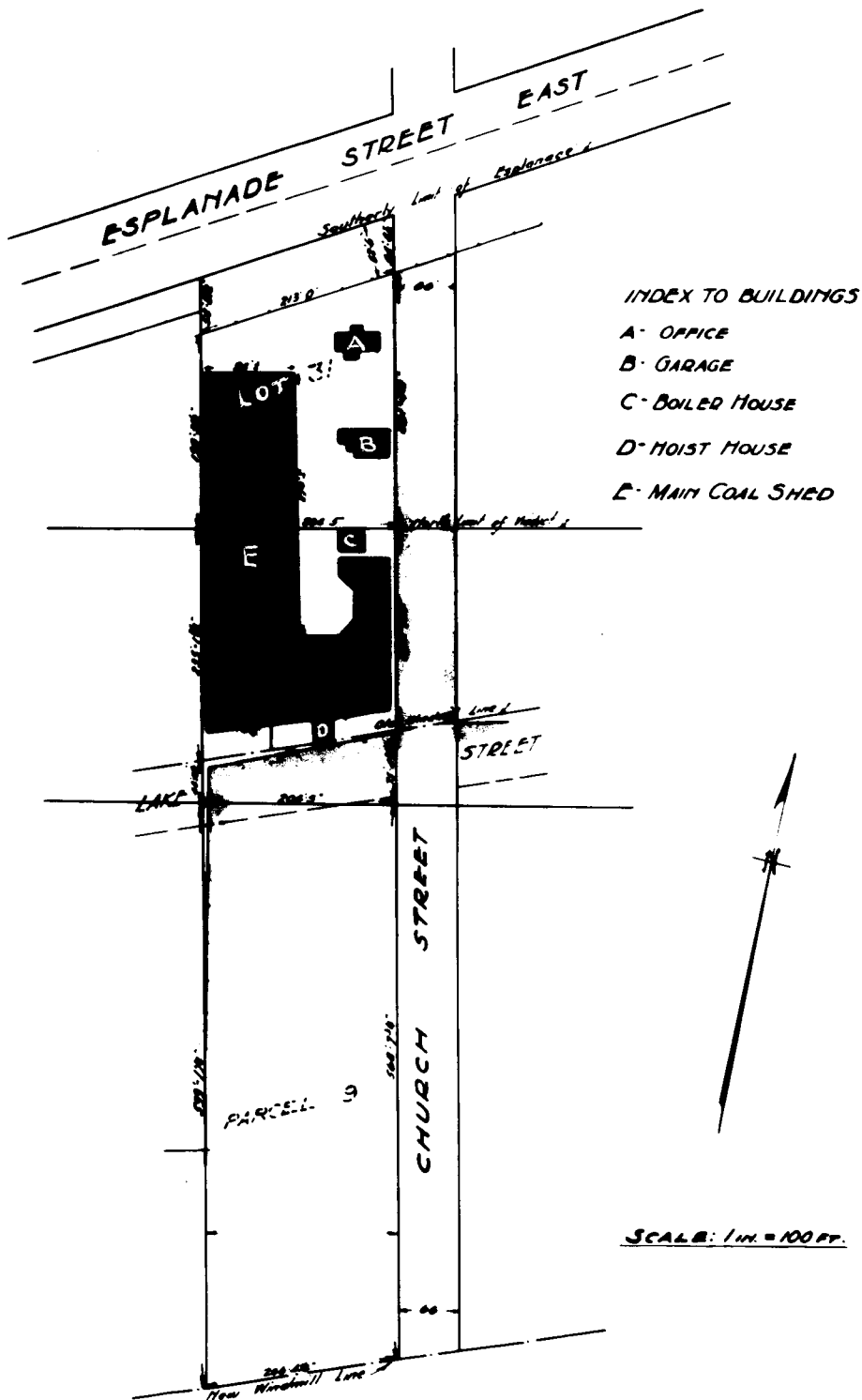
	Cost	Deprecia-	Residue
	New	tion	
Building "A"			
Office.....	\$3,070.00	60%	\$1,228.00
Scales and Pits.....	1,990.00	45%	1,094.50
Building "B"			
Garage, Storehouse, etc.....	2,112.70	50%	1,056.35
Building "C"			
Boiler House.....	2,117.00	40%	1,270.20
Buildings "D" and "E"			
Main Coal Shed.....	50,472.63	66.06%	17,131.26
	<hr/>		<hr/>
	\$59,762.33		\$21,780.31
Yard Services			
Water Supply.....	312.50	} 50%	656.25
Yard Lighting (fixtures only)....	50.00		
Yard Drains.....	250.00		
Road Surfaces.....	700.00		
	<hr/>		<hr/>
Totals.....	\$61,074.83		\$22,436.56

Exhibits
 No. 35
 Statement of John
 Hole's Valuation of
 Buildings, with
 Plan (undated)
 (Filed by
 Contestant)

EQUIPMENT, Etc.

		Cost New	Deprecia- tion	Residue	
Item 1	2 Boilers.....	\$2,160.00	60%	\$864.00	
		400.00	75%	100.00	
Item 2	Gauges, valves, pump, etc..	230.00	50%	115.00	
Item 3	1 Steam Engine.....	3,000.00	75%	750.00	
Item 4	2 Smoke Stacks.....	205.00	40%	123.00	
Item 5	Lubricator, Injector steam line, valves, etc.....	201.50		122.00	10
	Labour installing above equipment.....	650.00	50%	325.00	
Item 6	Shafting, couplings, bearings, gears, etc.....	1,629.40	50%	814.70	
Item 7	Pulleys, sheaves, chains, belts, etc.....	1,258.77	50%	629.39	
Item 8	Conveyors, trucks, buckets, screen, etc.....	5,600.00	50%	2,800.00	
Item 9	Hoisting drums.....	4,500.00	60%	1,800.00	
Item 10	Coal hoist.....	9,500.00	50%	4,750.00	20
Item 11	Electrical equipment.....	3,500.00	50%	1,750.00	
Item 12	Cable, electric light in yard..	175.00		100.00	
Item 13	Steel cables.....	450.00	50%	225.00	
Item 14	Boom and trolley.....	675.00	30%	472.50	
Item 15	Track.....	1,575.00	50%	787.50	
Item 16	Gasoline Pump in Yard (Tank already taken).....	100.00		60.00	
Item 17	Electric power cable.....	200.00		150.00	
	Erection costs on above.....	2,764.80		1,382.40	
		<u>\$38,774.47</u>		<u>\$18,120.49</u>	30
	Add 8% to cover engineering costs, Workmen's Compen- sation, Sundries and contin- gencies.....	3,101.95		1,449.64	
		<u>\$41,876.42</u>		<u>\$19,570.13</u>	

TORONTO - TERMINALS - RAILWAY CO.
SKETCH PLAN TO ACCOMPANY VALUATION, TO IDENTIFY
LOCATION OF BUILDINGS, REFERRED TO THEREIN ON
LOT 31, REG^d PLAN 5-A C^o OF YORK & OCCUPIED BY
THE STANDARD FUEL CO. LIMITED. TORONTO.



Revised March 26th 1932

John Hole M.E.C.
Architect & Engineer
Toronto Ontario

No. 38.

STATEMENT OF MOVEMENT OF C.P.R. TRAINS OVER
YONGE STREETCANADIAN PACIFIC RAILWAY COMPANY
REGULAR MOVEMENTS OVER YONGE STREET

Exhibits
No. 38
Statement of
Movement of
C.P.R. Trains over
Yonge Street,
20th March, 1929
(Filed by
Contestant)

	Engines	Passenger Cars	Freight Cars
July 1st, 1922			
17 regular movements of trains.	125	419	40
26 trains to place in station.			
10 26 trains to take to yard.			
34 passenger engine moves.			
8 freight engine moves.			
14 extra moves in passenger trains.			
<hr/>			
125			
July 2nd, 1923 (July 1st, Sunday)			
17 regular movements of trains.	125	424	43
26 trains to place in station.			
26 trains to take to yard.			
20 34 passenger engine moves.			
8 freight engine moves.			
14 extra moves in passenger trains.			
<hr/>			
125			
July 1st, 1924.			
19 regular movements of trains.	129	407	39
27 trains to place in station.			
28 trains to take to yard.			
33 passenger engine moves.			
8 freight engine moves.			
14 extra moves in passenger trains.			
<hr/>			
30 129			
July 1st, 1925.			
17 regular movements of trains.	125	414	42
25 trains to place in station.			
25 trains to take to yard.			
34 passenger engine moves.			
8 freight engine moves.			
14 extra moves in passenger trains.			
<hr/>			
123			

Exhibits
 No. 38
 Statement of
 Movement of
 C.P.R. Trains over
 Yonge Street,
 20th March, 1929
 (Filed by
 Contestant)
 —concluded

July 1st, 1926.

17 regular movements of trains.	126	435	39
26 trains to place in station.			
26 trains to take to yard.			
35 passenger engine moves.			
8 freight engine moves.			
14 extra moves on passenger trains.			

 126

July 1st, 1927.

17 regular movements of trains.	127	437	44 10
26 trains to place in station.			
26 trains to take to yard.			
36 passenger engine moves.			
8 freight engine moves.			
14 extra moves on passenger trains.			

 127

July 2nd, 1928.

17 regular movements of trains.	126	426	38
26 trains to place in station.			
26 trains to take to yard.			20
36 passenger engine moves.			
8 freight engine moves.			
14 extra moves on passenger trains.			

 127

Toronto, March 20th, 1929.

No. 39.

STATEMENT OF MOVEMENT OF C.N.R. TRAINS OVER
YONGE STREET.

CANADIAN NATIONAL RAILWAYS.

All Train Movements Over Yonge St. Crossing.

Exhibits
No. 39
Statement of
movement of
C.N.R. Trains over
Yonge Street
(undated)
(Filed by
Contestant)

	Date	Trains		Total
		Eastbound	Westbound	
	July 2nd, 1923			
	Freight.....	15	13	
10	Light Engines.....	13	12	
	Passenger.....	19	22	
	Switch movements.....	18	19	
		<u>65</u>	<u>66</u>	131
	July 1st, 1924			
	Freight.....	19	18	
	Light Engines.....	12	14	
	Passenger.....	19	19	
	Switch movements.....	18	19	
		<u>68</u>	<u>70</u>	138
20	July 1st, 1925			
	Freight.....	19	17	
	Light Engines.....	7	14	
	Passenger.....	18	19	
	Switch movements.....	18	19	
		<u>62</u>	<u>69</u>	131
	July 1st, 1926			
	Freight.....	23	20	
	Light Engines.....	8	12	
	Passenger.....	15	16	
30	Switch movements.....	18	19	
		<u>64</u>	<u>67</u>	131
	July 1st, 1927			
	Freight.....	15	17	
	Light Engines.....	4	5	
	Passengers.....	14	15	
	Switch movements.....	18	19	
		<u>51</u>	<u>56</u>	107
	July 2nd, 1928			
	Freight.....	9	12	
40	Light Engines.....	7	7	
	Passenger.....	16	21	
	Switch movements.....	18	19	
		<u>50</u>	<u>59</u>	109

COUSINS' ESTIMATED COST OF STUDY NO. 1.
STANDARD FUEL COMPANY

Plan of E. L. Cousins

Study No. 1.

54' 4½" slip with 18' x 20' x 100' cribs.

Wall

East side.....	335'	
South side.....	152'	
N. end of slip.....	54' 4¼"	10
	<hr/>	
	541' 4¼"	

Cost of Wall = 541' 4¼" x \$181.31 per L. ft. \$98,164.86

Dredging Slip— to 20' below, El. 245.00.

Av. depth 2.33' to dredge down to 20' below El. 245.00
and dredging from end of wall to North end of slip only.

Slip 54' 4¼" x 335' x 2.33'—1,573 cu. yds. at 50c. 786.50

Filling Back of Wall up to El. 251.50

Average depth of water below El. 245.00.	16.36
Elev. 245.00 to 251.50.....	6.50

22.86 20

Area to be filled $\frac{152' \times 335' \times 22.86'}{27} = 43,112$ cu. yds.

Less occupied by walls $\frac{541' 4¼" \times 414}{27} = 8,302$

Net fill. 34,810 cu. yds. at 50c. 17,405.00

\$116,356.36

Cost per sq. ft. for wall and reclamation—

= 335' x 152' = 50,920 sq. ft. $\frac{\$116,356.36}{50,920} = \2.285 30

Exhibits
No. 43
Cousins' Estimated
Cost of Study No. 1
(undated)
(Filed by
Contestant)

COUSINS' ESTIMATED COST OF STUDY NO. 2.
STANDARD FUEL COMPANY.
(E. L. Cousins' Plan).

Exhibits
No. 46
Cousins' Estimated
Cost of Study No. 2
(undated)
(Filed by
Contestant)

Study No. 2.

80' slip with 18' x 20' x 100' cribs.

Wall

10	East side.....	335'
	South side.....	126' 4 $\frac{1}{4}$ "
	North end of slip.....	80'
		541' 4 $\frac{1}{4}$ "

Cost of Wall—541' 4 $\frac{1}{4}$ " (lin. ft.) at \$181.31..... \$98,164.86

Dredging Slip to 20' below elev. 245.0

Average depth 2.33'

80' x 335' x 2.33'

Slip $\frac{\quad}{27}$ = 2,313 cu. yds. at 50c..... 1,156.50

Filling back of wall up to elev. 251.50

Av. depth of water..... 16.36

20 Elev. 245.0 to elev. 251.5..... 6.50

22.86

Area to be filled $\frac{126' 4\frac{1}{4}'' \times 335' \times 22.86}{27}$ = 35,837 cu. yds.

Less area occupied by walls and cribs

541' 4 $\frac{1}{4}$ " x 414 c. ft. 8,302

$\frac{\quad}{27}$ = Net fill = $\frac{\quad}{27}$ 27,535 cu. yds.
at 50c. 13,767.50

\$113,088.86

30 Cost per square foot for wall and reclamation

= 126' 4 $\frac{1}{4}$ " x 335' = 42,327 sq. ft.

\$113,088.86

$\frac{\quad}{42,327}$ = \$2.672.

42,327

Exhibits
 No. 48
 Cousins' Estimated
 Cost of Study No. 3
 (undated)
 (Filed by
 Contestant)

COUSINS' ESTIMATED COST OF STUDY NO. 3.
 STANDARD FUEL COMPANY.

(E. L. Cousins' Plan).

Study No. 3.

54' 4¹/₄" slip with 20' x 20' x 100' cribs to New Windmill Line.

Wall

East side.....	577' 4 ³ / ₄ "	
South side.....	152' 0"	
West side.....	248' 0"	
North end of slip...	54' 4 ¹ / ₄ "	10
	<hr/>	
	1,031' 9"	

Cost of Wall

1,031' 9' (l.f.) at \$192.11..... \$198,209.49

Dredging slip to 20' below el. 245.0

Average depth 2.4'.

54' 4¹/₄" x 577' 4³/₄" x 2.4'

slip $\frac{\text{---}}{27} = 2793$ cu. yds. at 50c..... 1,396.50

Filling back of wall up to elev. 251.50

20

Average depth of water..... 16.04'

Elev. 245.00 to El. 251.5..... 6.50'

22.54'

Area to be filled

577' 4¹/₂' x 152' x 22.54'

= 73,263 cu. yds.
27

Less area occupied by walls and cribs

1031' 9" x 454 c.f.

= 17,349

30

Net fill 55,914 cu. yds. at 50c..... 27,957.00

\$227,562.99

Cost per sq. ft. for wall and reclamation

= 577' 4¹/₂" x 152 = 87,760 sq. ft. \$227,562.99

87,760

= \$2.593.

Exhibits
 No. 51
 Statement showing
 Assessment of
 Property (undated)
 (Filed by
 Contestant)

STATEMENT SHOWING ASSESSMENT OF PROPERTY.

April 7th, 1932.

ASSESSMENT FROM 1909 TO 1913 INC.

1909

Assessment No. 33261.

Owner—Estate of John Boulton.

Lessee—Jos. B. Dickson and Jesse L. Eddy.

Assessment—

Land: 213 (cor.) x 1015 at \$130.....	\$27,690	10
Building.....	17,000	

 \$44,690

Business Assessment—\$13,407.

1910

Assessment No. 47485.

Owner same.

Lessee—same.

Assessment—

Land: 213 (cor.) x 1015 at \$200.....	\$42,600	
Building.....	17,000	20

Business Assessment—\$17,880.

1911

Assessment No. 42294.

Owner—same.

Lessee—same.

Assessment—

Land: 213 (cor.) x 1015 at \$295.....	\$62,835	
Building.....	17,000	

 \$79,835

Business Assessment—\$23,950.

30

1912

Assessment No. 44223.

Owner—same.

Lessee—same.

Assessment—

Land: 66 x 1015 at \$325.....	\$61,875	
Building: 147 x 1015 at \$275.....	17,000	

 \$78,875

Business Assessment—\$23,662.

597

1913

Assessment No. 45229.

Owner—same.

Lessee—Standard Fuel Company, Limited.

Assessment—

Land: 66 x 1015 at \$325}	}.....	\$65,550
147 x 1015 at \$300}		
Building.....		17,000

\$82,550

10 Business Assessment—\$24,765.

Exhibits
 No. 51
 Statement showing
 Assessment of
 Property (undated)
 (Filed by
 Contestant)
 —continued

April 6th, 1932.

ASSESSMENTS FROM 1914 TO 1924 INC.

1914

Assessment No. 66187.

Owner—Estate of John Boulton.

Lessees—Standard Fuel Company, Limited.

Assessment—

Land: 66 (cor.) x 1015 at \$475}	}.....	\$97,500
147 x 1015 at \$450}		
Buildings.....		17,000

\$114,500

20

Business Assessment—\$34,350.

1915

Assessment No. 68323.

Assessment:—

Land: 66 x 1015 at \$600}	}.....	\$120,450
147 x 1015 at \$550}		
Buildings.....		17,000

\$137,450

30 Business Assessment—\$41,235.

1916

Same as 1915.

	598	
Exhibits	1917	
No. 51	Same as 1915.	
Statement showing		
Assessment of		
Property (undated)	1918	
(Filed by		
Contestant)	Assessment No. 74247.	
—concluded	Assessment—	
	Land: 66 (cor.) x 1015 at \$600	\$120,450
	147 x 1015 at \$550	
	Buildings.....	17,200
	Business Assessment \$41,295.	<u>\$137,650</u>
	1919	10
	Same as 1918.	
	1920	
	Same as 1918.	
	1921	
	Assessment No. 61713.	
	Assessment—	
	Land: 66 x 1015 at \$700	\$141,750
	147 x 1015 at \$650	
	Buildings.....	17,200
	Business Assessment—\$47,685.	<u>\$158,950</u> 20
	1922	
	Assessment No. 61808.	
	Assessment—	
	Land: 66 (cor.) x 1015 at \$800	\$163,050
	147 x 1015 at \$750	
	Buildings.....	17,200
	Business Assessment—\$54,075.	<u>\$180,250</u>
	1923	30
	Same as 1922.	
	1924, 1925 and 1926	
	Same as 1922.	

LIST OF PROPERTIES SOLD BY HARBOUR
COMMISSION.

MEMORANDUM.

Exhibits

No. 52
List of Properties
Sold by Harbour
Commission
(undated)
(Filed by
Contestant)

re Toronto Viaduct.

re Boulton Estate & Standard Fuel Company Arbitration.

List of Properties sold or leased by Harbour Commission from 1927 to 1929 at lower prices than prices placed on them by Mr. McBrien in 1927.

1928. LEASES:

- 10 1. Dominion Timbers Limited, Eastern Industrial Area, 3.385 acres—
about 256 feet by 581 feet.
Sale Price, \$75,944. W. C. McBrien—about \$91,200.
2. Canadian Paperboard Company, Eastern Industrial Area, 11.285
acres.
Sale Price—\$185,664.80. W. C. McBrien—\$238,330.00.
3. Canada Metal Company, Inner Harbour, 3.247 acres.
Sale Price—\$45,000 per acre. W. C. McBrien—\$50,000 per acre

1928. SALES:

- 20 4. A. R. Clarke, Limited—Eastern Industrial Area, 1.145 acres.
Sale Price—\$10,000 per acre. W. C. McBrien—\$15,000 per acre
5. Imperial Oil Company, Eastern Industrial Area. 4.922 acres.
Sale Price—\$17,500 per acre. W. C. McBrien—\$20,000 per acre.

1929. LEASES:

6. Canada Cement Company, Eastern Industrial Area, 3.413 acres.
Sale Price—\$34,360 per acre. W. C. McBrien—\$40,000 per acre
7. McColl Frontenac Oil Company, Eastern Industrial Area, 8.42 acres.
Sale Price—\$180,000. W. C. McBrien—\$255,700.
8. Imperial Oil Company, Eastern Industrial Area, 19.23 acres.
Sale Price—\$396,412. W. C. McBrien—\$446,360.00.

30 1927. LEASES:

9. Dominion Envelope & Cartons, Eastern Industrial Area, 8.815 acres.
Sale Price—\$20,000. W. C. McBrien—\$25,000.
10. Link-Belt Company, Eastern Industrial Area, 1.58 acres.
Sale Price—\$12,500 per acre. W. C. McBrien—\$15,000 per acre.

REPORT OF YARD FOREMAN JOHNSON.

REPORT OF BASCULE BRIDGE OVER CHANNEL

Wednesday, April 20, 1932

Up	Down
941	946 a.m.
1040	1045
1215	1221
240	247 p.m.
345	351
403	408
545	500

Friday, April 22.

Up	Down
809	8.15 a.m.
1021	1026
1112	1116
1139	1143
156	201 p.m. 10
328	335
351	356
408	415

Thursday, April 21.

Up	Down
712	718 a.m.
733	737
744	751
757	800
906	911
950	955
1209	1214
146	151 p.m.
207	210
319	327
328	331
453	501

Saturday, April 23.

Up	Down
928	931
1011	1015
1109	1114
1124	1128
1141	1146 20
1232	1235
1246	1250
146	153 p.m.
344	352
411	415

Timed by Yard Foreman.

W. T. JOHNSON.

Bridge over new Ship Channel.

30

PHOTOGRAPH OF PLANT OF STANDARD FUEL COMPANY, CHURCH ST. DOCK

No. 17
Photograph of
Plant of
Standard Fuel
Co., Church
St. Dock,
Spring, 1923.
(Filed by
Claimant,
Standard Fuel
Co.)

----- 17 - Photograph of plant
of Standard Fuel Company.



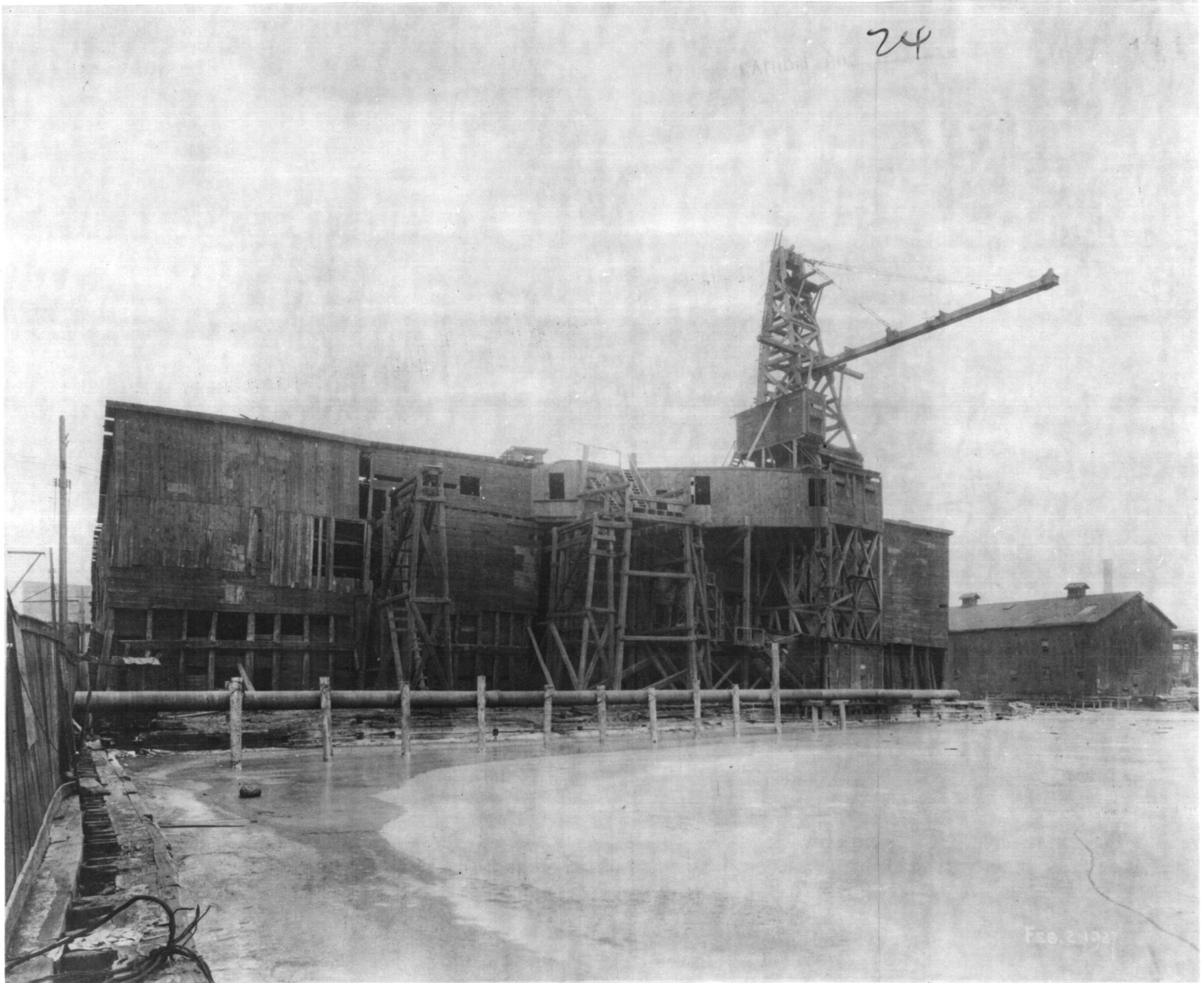
CHURCH STREET DOCK

Ex. 17

FIVE PHOTOGRAPHS SHOWING STANDARD FUEL COMPANY BUILDINGS

(1) MAIN COAL SHED

No. 24
Five Photographs
showing Standard
Fuel Co. Buildings,
Feb. 2, 1927.
(Filed by
Contestant).



No. 24
Five Photographs
showing Standard
Fuel Co. Buildings,
Feb. 2, 1927.
(Filed by
Contestant).
—continued



607

(3) WEST SIDE OF ROOF OF MAIN COAL SHED

Exhibits

No. 24

Five Photographs
showing Standard
Fuel Co. Buildings,
Feb. 2, 1927.
(Filed by
Contestant).

—continued





STANDARD FUEL CO. INTERIOR OF COAL SHED LOOKING N.E. 19 JULY 27





No. 41—W. E. FITZGERALD,
July 18th, 1931.
5 to 6.5 thousand tons.

Length, 420'
Beam, 52'
Moulded Depth, 28'

No. 41
Photographs of
Modern Coal
Carrying Vessels,
July 18, 1931,
to April 17th,
1932.
(Filed by
Contestant).



MIDLAND PRINCE
at Century Coal Dock.

Aug. 12th, 1931.

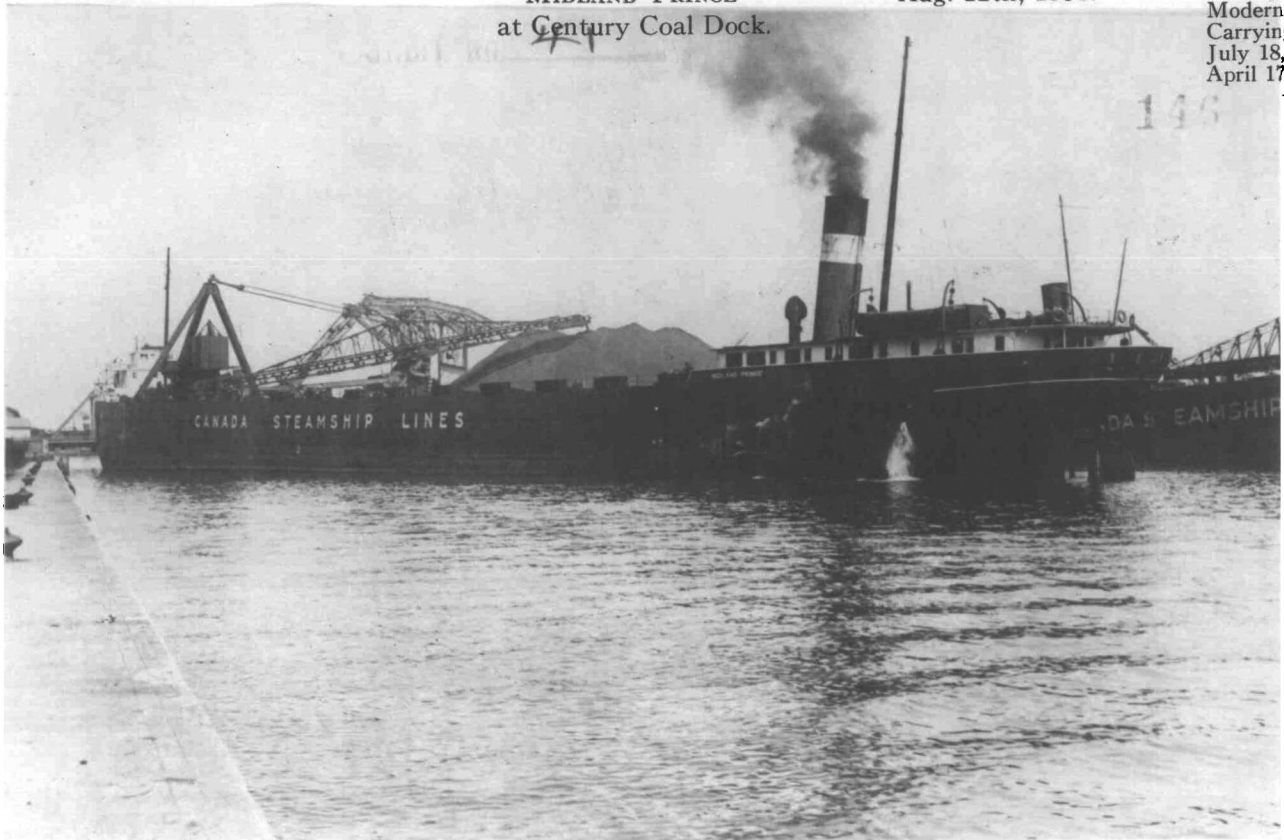


MIDLAND PRINCE
at Century Coal Dock.

Aug. 12th, 1931.

No. 41
Photographs of
Modern Coal
Carrying Vessels,
July 18, 1931, to
April 17, 1932.

—continued



MIDLAND PRINCE
at Century Coal Dock.

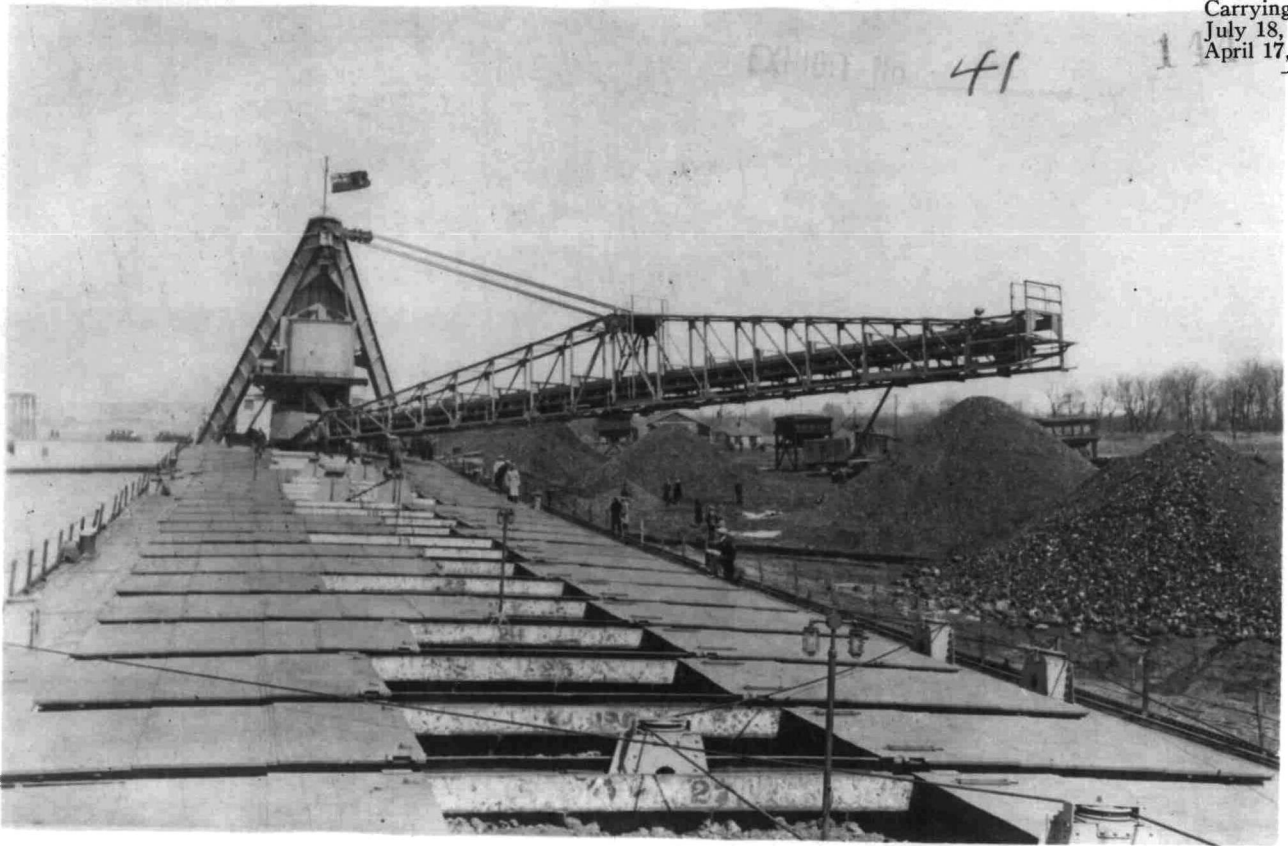
Aug. 12th, 1931.



Gross Tonnage, 6339
Net Tonnage, 4243
Length, 466'

Beam, 55'
Moulded Depth, 31'
Boom, 150'

5,000 to 6,770 tons.



DOW CHEMICAL

April 17th, 1932.

