

50, 1937

In the Privy Council

No. **89** of 1936.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

IN THE MATTER OF the Act 55 Vict. (Ont.) Chap. 96 and the Schedules
thereto,

and

IN THE MATTER of an Arbitration thereunder

BETWEEN

INTERNATIONAL RAILWAY COMPANY,

Appellant,

AND

THE NIAGARA PARKS COMMISSION,

Respondent.

RECORD OF PROCEEDINGS

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for the Respondent.

In the Privy Council

No. **89** of 1936.

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BETWEEN
INTERNATIONAL RAILWAY COMPANY,

Appellant,

AND
THE NIAGARA PARKS COMMISSION,

Respondent.

RECORD OF PROCEEDINGS

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No. 1

Order of the Chief Justice of Ontario Appointing Arbitrators

In the Matter of an Arbitration

THE HONOURABLE } Friday, the 2nd day
THE CHIEF JUSTICE OF ONTARIO } of November, 1934.

BETWEEN :

INTERNATIONAL RAILWAY COMPANY,

AND

THE NIAGARA PARKS COMMISSION,

*In the Matter
of an
Arbitration*

No. 1
Order
appointing
Arbitrators.
Nov. 2nd.,
1934.

10 WHEREAS, by failure to mutually agree, a difference exists between
International Railway Company, alleged successor in interest to The
Niagara Falls Park and River Railway Company, alleged successor in
interest to Edmund Boyd Osler, et al., and The Niagara Parks Commis-
sion, alleged successor to the Commissioners for the Queen Victoria
Niagara Falls Park, as to the compensation (if any) to be paid to Inter-
national Railway Company under the terms of an agreement dated
December 4, 1891, between said Commissioners for the Queen Victoria
Niagara Falls Park and said Edmund Boyd Osler, et al., which agreement
20 96 of the Statutes of 55 Victoria, 1892, and

WHEREAS, pursuant to the terms of said agreement International
Railway Company has named and appointed Mr. R. S. Robertson, K.C.,
of Toronto, Canada, as arbitrator, and The Niagara Parks Commission
has named and appointed Mr. Gershom W. Mason, K.C., of Toronto,
Canada, as arbitrator;

Now, THEREFORE, pursuant to the terms of said agreement and the
powers vested in me by law, I hereby name and appoint the Honourable
Robert Smith, formerly a Justice of the Supreme Court of Canada, as
third arbitrator.

30

W. MULOCK,
Chief Justice of Ontario.

No. 2

Award, With Schedules "A," "B," "C"

WHEREAS the Commissioners for The Queen Victoria Niagara Falls
Park entered into an agreement in writing, dated the 4th day of Decem-
ber, 1891, with Edmund Boyd Osler, Herbert Carlyle Hammond, William

No. 2.
Award,
29th May,
1935.

In the Matter
of an
Arbitration

No. 2.

Award,
29th May,
1935.

—continued

Hendrie and Richard Bladworth Angus relating to the construction and operation of an electric railway from the Village of Queenston in the County of Lincoln to the Village of Chippawa in the County of Welland;

AND WHEREAS by an Act of the Legislature of the Province of Ontario, assented to on the 14th day of April, 1892, 55 Victoria, Chapter 96, the said agreement was approved, ratified and confirmed and declared to be valid and binding on the parties thereto;

AND WHEREAS International Railway Company has succeeded to the right, title and interest of the said Edmund Boyd Osler, Herbert Carlyle Hammond, William Hendrie and Richard Bladworth Angus;

10

AND WHEREAS by an Act of the Legislature of the said Province, 17 George V, Chapter 24, the name of "The Commissioners for the Queen Victoria Niagara Falls Park" was changed to "The Niagara Parks Commission";

AND WHEREAS the said Agreement dated the 4th day of December, 1891, contained *inter alia* the following paragraphs:

"16. The company may commence the construction of the said railway whenever the location has been decided upon by the commissioners, and the plans and specifications approved in accordance with Paragraph 3 of this agreement, and the right to operate the same shall begin on the first day of September next, or so soon (before or after that date) as the said railway or any section thereof has been constructed and is ready for operation, and shall extend to a period of forty years from the said first day of September, one thousand eight hundred and ninety-two, and shall be renewable on the request by the company for a further period of twenty years as hereinafter provided."

20

"26. If at the end of the said period of forty years, the company are unwilling to renew, or at the end of the further period of twenty years, if the company continue to hold for such further period, the company shall be duly compensated by the commissioners for their railways, equipment, machinery and other works including the low level railway, if the same shall have been constructed and then held by the company under this agreement, as also the high level railway from Chippawa to Queenston, and including also their works in Chippawa and Queenston, but not in respect of any franchises for holding or operating the same, such compensation to be fixed by mutual agreement, or in case of difference, by arbitration, as in Paragraph 17 of this agreement, but the failure before the expiration of any such term, to fix such compensation in the manner aforesaid, or to pay before such expiration, the amount of compensation so fixed, shall not entitle the company to retain possession meanwhile of the said railways, equipment, machinery and works, by this

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40

10 agreement to be constructed or operated, but the same shall nevertheless and notwithstanding that the commissioners may have taken possession thereof remain subject to such liens and charges save as to possession as aforesaid, as may exist in favor of bondholders or debenture holders of the company and the company shall retain a lien or charge thereon, save as to possession as aforesaid for the compensation of their railway, equipment, machinery and works to be agreed upon as aforesaid, or so to be awarded to them provided, however, that all such liens and charges shall not exceed the amount that may be agreed upon or may be awarded for such compensation as aforesaid."

20 "29. Subject always to the terms and provisions of this agreement, and to the rights of the commissioners as the owners in fee simple of the right of way in the park proper and on the chain reserve, the said railways and their equipment and the other works constructed or required under this agreement, shall upon such construction or acquisition, as the case may be, be vested in and shall be the property of the company who shall, subject as aforesaid, be entitled to operate, manage and control the same during the period or periods respectively above mentioned, it being however hereby declared, understood and agreed, that at the end of the said first or second periods, as the case may be, the whole of the company's said high level railway from Queenston to Chippawa, and the said low level railway, if then held by the company under this agreement, together with their equipment and the machinery and works aforesaid, including the elevators or lifts acquired or built and including also the works in Queenston and Chippawa shall become the property of the commissioners, subject to the payment of compensation to be agreed upon or awarded as the case may be, and as is hereinbefore provided for."

30

AND WHEREAS the railway referred to in the said agreement, dated the 4th day of December, 1891, as the high level railway, was constructed but the railway therein referred to as the low level railway was not constructed.

AND WHEREAS at the end of the period of forty years referred to in Paragraphs 16 and 26 of the said agreement, dated the 4th day of December, 1891, the International Railway Company was unwilling to renew.

40 AND WHEREAS the compensation to be paid by the Niagara Parks Commission to International Railway Company under the terms of the said agreement, dated the 4th day of December, 1891, was not fixed by mutual agreement.

AND WHEREAS Robert Spelman Robertson and Gershom William Mason were appointed arbitrators by the International Railway and the Niagara Parks Commission respectively.

*In the Matter
of an
Arbitration*

No. 2.
Award,
29th May,
1935.

—continued

*In the Matter
of an
Arbitration*

No. 2.
Award,
29th May,
1935.

—*continues*—

AND WHEREAS pursuant to the provisions of Paragraph 17 of the said agreement dated the 4th day of December, 1891, the Chief Justice of the Supreme Court of Ontario appointed The Honourable Robert Smith as third arbitrator.

AND WHEREAS the said arbitrators duly took upon themselves the burden of the arbitration as provided in the said agreement, dated the 4th day of December, 1891, and the said Statute of the Legislature of the Province of Ontario, 55 Victoria, Chapter 96, and have heard the evidence adduced by and the argument on behalf of the parties as to the amount of compensation payable to International Railway Company by the 10
Niagara Parks Commission.

NOW THEREFORE, we, the said The Honourable Robert Smith and Gershom William Mason, being two of the above-named arbitrators (the other of the said arbitrators not joining in this award although present at the making thereof), do hereby make and publish our award in manner following, that is to say:—

We fix, award, adjudge and determine the amount of the compensation to be paid to International Railway Company to be the sum of One hundred and seventy-nine thousand one hundred and four dollars (\$179,104).

We have not included any sum for interest on the amount of the com- 20
pensation, being of opinion that this is a matter beyond our jurisdiction.

We have thought it advisable to set out in the reasons for our award the amount of compensation which might be arrived at by applying the method of valuation urged upon us on behalf of International Railway Company and the amounts which, in our opinion, would be proper amounts to be allowed in the event that it should be found that certain items for which we have made no allowance should have been included or that certain items for which we have made allowance should be allowed on some other basis, or that certain items which we have included should not have 30
been so included.

We award, adjudge and determine that the Niagara Parks Commission do pay to International Railway Company its taxable costs of this arbitration excluding therefrom such costs as have been the subject of agreement between the parties.

IN WITNESS WHEREOF we, the said The Honourable Robert Smith and Gershom William Mason (being a majority of the said arbitrators) have hereunto set our hands this 29th day of May, 1935.

(Signed) R. SMITH.

(Signed) GERSHOM W. MASON.

SIGNED AND PUBLISHED the 29th day of May, 1935, by the said The 40
Honourable Robert Smith and Gershom William Mason (the above-mentioned Robert Spelman Robertson being present at the time although not joining in the award) in the presence of:

(Signed) J. J. DALEY.

"A"

Value of Property as of August 31, 1932

	Land	\$ 23,930.00
	Grading	25,000.00
	Ties	1,300.00
	Rails, etc.	12,395.00
	Paving	3,271.00
	Roadway tools	184.00
	Crossings and signs	400.00
10	Bridges	578.00
	Highway bridge	11,440.00
	Ellis Street retaining wall	1,944.00
	Colt's culvert	2,344.00
	Whitty's culvert	1,096.00
	Bowman's culvert	3,661.00
	Smeaton's culvert	480.00
	Queenston retaining wall	1,513.00
	Small culverts and pipes	7,019.00
	Signal system	170.00
20	Telephone system	5.00
	Poles and fixtures	404.00
	Distribution system	12,000.00
	Rolling stock	1,402.00
	Bridge Street building	1,500.00
	Clifton incline	18,288.00
	Clifton machinery	6,000.00
	Whirlpool incline	11,740.00
	Whirlpool shelter	240.00
	Power house	25,000.00
30	Shop equipment	300.00
	Furniture and fire equipment	200.00
	Materials and supplies	300.00
	Power plant machinery	5,000.00
		\$179,104.00

In the Matter
of an
ArbitrationNo. 2.
Schedule "A"
to Award,
29th May,
1935.

—continued

"B"

Statement of Reconstruction Cost as of September 1, 1932, and of
Depreciated Value on Basis of Reconstruction Less Depreciation.No. 2.
Schedule "B"
to Award,
29th May,
1935.

		Reconstruction Cost.	Depreciated Value.
40	Land	\$ 30,450.00	\$ 30,450.00
	Organization, engineering, legal expenses ...	30,000.00	
	Correspondence and legal expenses	17,500.00	

In the Matter
of an
Arbitration
—
No. 2.
Schedule "B"
to Award,
29th May,
1935.

—continued

Payment Parks Commission	17,500.00		
Taxes during construction	750.00		
Interest during construction	62,405.00		
Engineering during construction	50,000.00	144,437.00	
Grading	155,896.00	155,896.00	
Track	346,788.00	156,251.00	
Paving	3,675.00	3,271.00	
Roadway tools	306.00	184.00	
Crossings and signs	3,723.00	1,867.00	
Bridges numbers 1 to 7	50,124.00	33,085.00	10
Culverts and retaining walls	28,184.00	18,057.00	
Signal system	723.00	600.00	
Telephone system	2,400.00	1,440.00	
Poles and fixtures	39,323.00	12,010.00	
Distribution system	63,066.00	27,760.00	
Rolling stock	148,392.00	84,616.00	
Clifton incline building	24,537.00	18,288.00	
Bridge Street building	4,500.00	3,321.00	
Whirlpool incline building	20,000.00	11,740.00	
Whirlpool shelter	401.00	240.00	20
Power House, including wheel pit, tunnel, etc.	152,310.00	137,079.00	
Clifton incline machinery	10,000.00	6,000.00	
Shop equipment	1,257.00	500.00	
Furniture and fire equipment	1,001.00	200.00	
Power plant equipment	148,793.00	120,000.00	
Materials and supplies	680.00	300.00	
	<u>\$1,414,684.00</u>	<u>\$ 967,592.00</u>	

MEMORANDA

30

Land—We have not included parcels 121(a) and 121(b) of a total value of \$1,100.

Grading—We have omitted the Lewiston bridge line \$2,885.

Track—We have not included Lewiston bridge line reconstruction cost \$ 13,295.00
and C.N.E. turnout reconstruction cost 900.00

a total of \$ 14,195.00

Depreciated value - \$6,400.00 (of both).

Bridges—We have included bridges numbers 1 to 7 inclusive on basis of substituting concrete for masonry in abutments, reconstruction cost \$50,124.00 and depreciated value \$33,085.00. If concrete were not substituted the figures would be \$67,112. and \$50,971.

40

We have not included railway bridge 8. If it were included the reproduction cost of substructure would be \$3,394, and of the superstructure \$16,460.—in all \$19,850. while the depreciated values would be \$3,055. and \$11,522. respectively or \$14,577. in all.

We have not included highway bridge 8(a), the reproduction cost of substructure would be \$8,234. and for superstructure \$6,933. in all \$15,167. while the depreciated values would be \$6,587. and \$4,853. respectively in all \$11,440.

10 Poles and fixtures—We have deducted the Lewiston bridge line which makes a difference of \$580. in reproduction cost and \$180. in depreciated value.

Distribution system—We have deducted the Lewiston bridge line, making a difference in reconstruction costs of \$934. and in depreciated value of \$415.

Power House—We have taken concrete as substituted for a portion of the masonry, chiefly the masonry below grade. If the substitution were not permissible the amount to be added for reconstruction cost would be \$26,715. and the amount to be added to the depreciated value \$24,044.

20 Intake—We have not included the intake. If it were included the reproduction cost would be \$43,325. and the depreciated value \$22,862.

We have included in grading the Macklem Street loop valued by the Park at \$172. and by the Railway at \$428. The grading on the land of the Niagara Power Company at Chippawa valued by the Park at \$240. and by the Railway at \$570.

The fill in the ravines known as Colt's and Whitty's and Bowman's valued by the Park at \$68,412. on which we have placed a value of \$85,937.

The land subject to the Hydro easement at Queenston on which the Park has placed a value of \$25. and the Railway at \$126.

30 The lands sold to the Hydro Electric Power Commission at Queenston over which the railway runs valued by the Park at \$391. and by the Railway at \$866.

We have included in the track figures the Macklem loop valued by the Park at \$3,767. and by the Railway at \$4,864. the depreciated value being fixed by the Park at \$1,205. and by the Railway at \$3,259. The track on the Canadian Niagara Power Company's land at Chippawa valued by the Park at \$3,435. and by the Railway at \$4,440., the depreciated value being fixed by the Park at \$1,099. and by the Railway at \$2,975. The table rock loop valued by the Park at \$1,668. and by the
40 Railway at \$3,335., the depreciated value being fixed by the Park at \$534.

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and by the Railway at \$2,234. The track on the land subject to the Hydro easement at Queenston valued by the Park at \$5,100. and by the Railway at \$6,180., the depreciated values being put by the Park at \$1,632. and by the Railway at \$4,141. and the track on the land conveyed to the Hydro Electric Power Commission at Queenston valued by the Park at \$5,312. and by the Railway at \$6,535., the depreciated value being placed by the Park at \$1,700. and by the Railway at \$4,378.

We have included in the power and line equipment the Macklem Street loop valued by the Park at \$427. and by the Railway at \$563., the depreciated value being put by the Park at \$124.00 and by the Railway at \$360. The equipment on the lands of the Canadian Niagara Power Commission at Chippawa valued by the Park at \$403. and by the Railway at \$499. the depreciated value being \$117. and \$319. respectively. The equipment on the land subject to the Hydro easement at Queenston valued by the Park at \$323. and by the Railway at \$433., the depreciated value being \$94. and \$277. respectively and the equipment on the Hydro land at Queenston valued by the Park at \$322. and by the Railway at \$433., the depreciated value being \$93.00 and \$277. respectively.

NOTE. With regard to all of the above, except the substitution of concrete for masonry, the figures exclude depreciation from obsolescence.

"C"

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Railway Land Following the Order in Exhibit 7.

Land.	Value if acquired for railway purposes as of August 31, 1932.	Value as of August 31, 1932.	
Parcel D-106	\$ 5,940.00	\$ 4,000.00	
B-106	2,475.00	2,000.00	
A (1)-106	5,000.00	5,000.00	
E & F-106	2,640.00	1,100.00	
C & D-107	1,325.00	600.00	
A (1)-107	520.00	220.00	30
A & B-109	5,000.00	4,840.00	
111	1,200.00	1,200.00	
112	588.00	588.00	
113	737.00	737.00	
115	200.00	120.00	
116	450.00	350.00	
118—Not property of railway.			
120 (a)	900.00	450.00	
120 (c)	500.00	500.00	40
122 (a), (b)	1,275.00	1,275.00	
124	450.00	450.00	

125	1,250.00	500.00
	\$30,450.00	\$23,930.00
121 (a) Disallowed as not being within terms of agreement	450.00	450.00
121 (b)	650.00	650.00
Disallowed as not being within terms of agreement.		

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No. 3

Reasons for Award of Majority Arbitrators

No. 3.
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10 THIS arbitration arises under the terms of an agreement made the 4th day of December, 1891, between the commissioners for the Queen Victoria Niagara Falls Park acting therein on their own behalf as well as on behalf and with the approval of the Government of the Province of Ontario described as "Commissioners" and Edmund Boyd Osler and others, described as the "Company."

20 The agreement recited that the Company desired to construct and operate an electric railway along the west bank of the Niagara River from Queenston to Chippawa, described as the High Level Railway and that the Company desired to acquire the rights of way to construct the railway through and in Queen Victoria Niagara Falls Park, which was the property of the Commissioners, and through and over other lands of the Commissioners and other lands held or contracted for by the Commissioners. It was recited that the Company intended to apply to the Ontario Legislature for a charter enabling them to construct and operate the railway, the new company to assume the liabilities and engagements of the contracting company and the personal liabilities of Mr. Osler and his associates also to cease when the liabilities and engagements of the Company had been assumed by the new company, with certain exceptions which are not now material.

30 The Commissioners licensed the Company to construct an electric railway with single or double track as might later be agreed upon in and through the park and on or over other lands of the Commissioners to a point in or near Queenston and the Commissioners agreed to supply the right of way therefor. The Company agreed to construct and operate the railway and extend the same to Chippawa Creek but provided that the Company should not be compelled to operate the railway between December 1 and March 1 in each year except between the Grand Trunk Railway in Niagara Falls and the upper Islands within the park. The plans and specifications governing the construction were to be approved
 40 of by the Commissioners and by the Commissioner of Public Works for the Province and the location of the railway in the park proper and on

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that part of the property of the Commissioners known as the Chain Reserve extending from the north boundary of the park to the north boundary of Niagara Falls was to be as the Commissioners might decide. The Company agreed to pay to the Commissioners \$10,000.00 for the right of way over the Chain Reserve and the benefit of contracts already entered into between the Commissioners and various land owners.

Paragraph 11 of the agreement provided that the Company should have the right to construct and operate incline railways and elevators at such points north of Niagara Falls Ferry as might be approved of by the Commissioners and that it should have the right to acquire and operate such incline railways and lifts together with machinery and works connected therewith. 10

Paragraph 13 provided that the Commissioners should not grant to or confer on any other company or person any right to construct or operate the railway within the park limits or to construct or operate lifts or incline railways in the areas therein designated.

Paragraph 14 provided that the Commissioners would assent to an arrangement being made between the Company and the Municipality of Niagara Falls for the supply to the Company of power for working the railway and the machinery necessary to operate and light it and that if satisfactory arrangements could not be made the Commissioners would grant to the Company such necessary rights as would enable it to procure from the waters above the Falls the power required for these purposes. This was later amended to read that the Commissioners would grant such rights as would enable the Company to procure from the waters above the Falls the power required for the purposes of any railway company which purchased the franchises of the Company. 20

Paragraph 16 provided that the right to operate the railway should extend to a period of 40 years from September 1, 1892, and should be renewable for a further period of 20 years. The Company did not exercise the right to renew. 30

Paragraph 19 provided that the Company should pay to the Commissioners an annual sum of \$10,000.00 by way of rental for each year during the 40-year period.

Paragraphs 26 and 29 are particularly important as affecting the present arbitration and are as follows:

“26. If at the end of the said period of forty years, the company are unwilling to renew, or at the end of the further period of twenty years, if the company continue to hold for such further period, the company shall be duly compensated by the commissioners for their railways, equipment, machinery and other works including the low level railway, if the same shall have been constructed and then held by the company under this agreement, as also the high level railway 40

10 from Chippawa to Queenston, and including also their works in Chippawa and Queenston, but not in respect of any franchises for holding or operating the same, such compensation to be fixed by mutual agreement, or in case of difference, by arbitration as in Paragraph 17 of this agreement, but the failure before the expiration of any such term, to fix such compensation in manner aforesaid, or to pay before such expiration, the amount of compensation so fixed, shall not entitle the company to retain possession meanwhile of the said railways, equipment, machinery and works, by this agreement to be constructed or operated, but the same shall nevertheless and notwithstanding that the commissioners may have taken possession thereof remain subject to such liens and charges save as to possession as aforesaid, as may exist in favor of bondholders or debenture holders of the company, and the company shall retain a lien or charge thereon, save as to possession as aforesaid for the compensation of their railway, equipment, machinery and works to be agreed upon as aforesaid, or so to be awarded to them provided, however, that all such liens and charges shall not exceed the amount that may be agreed upon or may be awarded for such compensation as aforesaid.”

20

30 “29. Subject always to the terms and provisions of this agreement, and to the rights of the commissioners as the owners in fee simple of the right of way in the park proper and on the chain reserve, the said railways and their equipment and the other works constructed or required under this agreement, shall upon such construction or acquisition, as the case may be, be vested in and shall be the property of the company who shall, subject as aforesaid, be entitled to operate, manage and control the same during the period or periods respectively above mentioned, it being however hereby declared, understood and agreed, that at the end of the said first or second periods, as the case may be, the whole of the company’s said high level railway from Queenston to Chippawa, and the said low level railway, if then held by the company under this agreement, together with their equipment and the machinery and works aforesaid, including the elevators or lifts acquired or built and including also the works in Queenston and Chippawa shall become the property of the commissioners, subject to the payment of compensation to be agreed upon or awarded as the case may be, and as is hereinbefore provided for.”

40 This agreement was confirmed and declared to be valid and binding on the parties by Chapter 96, 55 Vic. (Ontario). This Statute constituted the persons forming the company a body corporate by the name “The Niagara Falls Park and River Railway Company” and gave the Company power to construct and operate the railway in accordance with the terms provided by the agreement.

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Subsection 9 of Section 4 gave the Company the power to acquire the right to convey electricity required for the working and lighting of the railway over, through or under lands other than the right of way, as well as the right of way, and to lay conduits under or erect poles and wires on or over such lands as might be determined by the Company and further provided that electricity so conveyed should not be used for any other purpose than the purposes set out in the section. This was subsequently amended to provide that electricity so conveyed should not be used for any other purpose than the purposes of any railway company which should purchase the franchises of the Company. 10

Paragraph 8 of the agreement provided that the capital stock of the Company should be \$1,000,000.00 to be divided into shares of \$100.00 each.

Paragraphs 18 and 21 are particularly important and are as follows:

“18. The directors of the said company shall have power to issue bonds of the company for the purpose of raising money for prosecuting the said undertaking, the whole amount of the issue of such bonds not to exceed in all the sum of \$45,000. for each mile of the said railway and the actual cash value of the wharves, piers, docks, steamers, vessels and other water craft, incline railways, elevators and hotels of the company and the equipment thereof respectively, but such bonds shall be limited as a charge so as not to interfere with the terms of Section 26 of the agreement, and the amount of compensation under Section 26 for the railway, its equipment, machinery and works between Queenston and Chippawa shall not include the value of hotels, vessels, steamboats, nor the value of any other equipment or work than such as may be incidental to the use of electric power, nor any excess of the value of the class of work prescribed by the plans and specifications which shall have been approved by the Commissioner of Public Works, nor stocks in navigating companies, or in companies building or operating elevators or incline railways, nor the cost or value of elevators or inclined railway, except the elevators or inclined railways expressly authorized to be built or acquired under the agreement, nor of any other works not expressly and specifically provided for by the said agreement set forth in the schedule hereto.” 30

“21. Before proceeding with the construction of the said railways, plans and maps showing the location thereof, with profile, cross sections and specifications, and determining and including the width of right of way where not already expressly provided and specified in the agreement shall be submitted to and approved by the Commissioner of Public Works; and the said company shall also submit in detail, to the Commissioner of Public Works plans and drawings of the carriages or coaches proposed to be used for passenger traffic, for his approval, and the same shall be approved 40

of by him before the said carriages or coaches shall be used upon the said railways, and before proceeding with any changes or expansions in the plans and specifications affecting the system of the renewal of the construction of the said railways and the building of the said carriages or coaches such changes, expansions or renewals shall be subject from time to time to the inspection, direction and approval of the Commissioner of Public Works, on such terms as he may require of the company, and copies of all such railways, plans, with cross-sections and specifications shall be deposited in the Department of Public Works for Ontario."

10

Both the agreement and the Statute made reference to a low level railway to be erected as near to the edge of the waters of the river as circumstances would permit but this railway was not constructed and the provisions relating to it are of no importance in this arbitration.

20

The railway was constructed and operated for some years by the Niagara Falls Park and River Railway Company. By Chapter 54 of 63-64 Vic. (Canada) the Buffalo Railway Company, a company incorporated under the laws of the State of New York, was invested with the powers necessary to carry on certain undertakings therein set out and to purchase the entire assets, undertaking, name, franchise and goodwill of the Niagara Falls Park and River Railway Company and by Chapter 86 of 1 Edward VII (Ontario) the Niagara Falls Park and River Railway Company was authorized to sell its assets, undertaking, etc. to the Buffalo Railway Company and the latter Company was authorized to purchase the same. The sale and purchase were carried out accordingly.

30

By Chapter 12, 2 Edward VII (Ontario) and Chapter 43, 2 Edward VII (Canada) the name "International Railway Company" was substituted for the name "Buffalo Railway Company" wherever the same appeared in Chapter 86, 1 Edward VII (Ontario).

The International Railway Company thus became the successor of the Niagara Falls Park and River Railway Company within the meaning of the agreement of December 4, 1891, which provided that the expression "The Company" should include not only the Company to be incorporated but its successors and assigns.

40

Paragraph 26 of the agreement of December 4, 1891, provided that if at the end of the period of 40 years the Company were unwilling to renew, it should be duly compensated by the Commissioners for its railways, equipment, machinery and other works, including the high level railway from Chippawa to Queenston and including also its works from Chippawa to Queenston but not in respect of any franchises for holding or operating the same, such compensation to be determined as therein set out.

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Paragraph 29 provided that at the end of the period the whole of the Company's high level railway from Queenston to Chippawa, together with its equipment and the machinery and works aforesaid including also the works in Queenston and Chippawa, should become the property of the Commissioners, subject to the payment of compensation. The Company was unwilling to renew and so notified the Commissioners by a letter from its president to the Commission, dated July 27, 1931. Subsequently, and at the expiry of the 40-year period which had commenced on September 1, 1892, the Company's railway and other property as described in Paragraphs 26 and 29 of the agreement of December 4, 1891, became the property of the Commissioners, subject to the payment of compensation. The Railway continued to operate for the first eleven days of September of 1932 but this was under an arrangement made by the Railway Company and the Commissioners without prejudice to their rights. 10

On the 1st day of September, 1932, the property of the Railway Company which became vested in the Commission consisted not only of the railway structure including ballast, rails, ties, track equipment, poles, cross-arms, feeders, trolley wires and the other appurtenances of an electric railway, but also of a number of buildings, a number of parcels of real estate, chattel property of various kinds ordinarily used in connection with an electric railway, power house equipment used in the furnishing of electric power for the operation of the railway, an incline railway situate near the whirlpool and an incline railway known as the Clifton Incline Railway; the latter incline railway included, and the whirlpool railway excluded, the machinery necessary for its operation. 20

Questions have arisen before us as to whether or not certain items included in the Railway Company's claim come within the provisions of the agreement and these questions will have to be discussed later, but the important question at the threshold of our inquiry is to determine the method by which the "just compensation" provided for by the agreement is to be determined, and as to this the parties are at great variance. 30

The Company contends that the only proper method of arriving at the compensation is to ascertain the cost of reconstruction of the railway, as of the date of its being vested in the Commission, then to ascertain the amount of deterioration from the new condition as the railway actually existed in its physical state and to fix the amount of the difference as the just compensation. The Commission contends that the railway has operated at a very heavy loss for a long period; that the passenger traffic on which the railway depended has greatly decreased, that the railway is no longer the best means of transportation for visitors wishing to see the beauties of the Park, that the days of the railway are over and that the only means of arriving at its worth is 40

to sell its component parts at the best price possible, it being impossible to sell the railway as a whole for the purpose of operation.

In support of the method of reproduction less depreciation, counsel for the railway has referred us to the following cases:

The Kirkleatham Local Board and the Stockton and Middlebrough Water Board, 1893, 1 Q.B.D., 375 and 1893 A.C., 444,

Edinburgh Street Tramway Company vs Edinburgh Corporation, 1894, A.C., 456;

re-London and London, 1894, A.C., 489;

10 London vs London, 1898, A.C., 375;

Lucas vs Chesterfield, 1909 1 K.B., 16;

Hamilton vs Hamilton, 1910 A.C., 300;

Melbourne vs Tramways Board, 1919 A.C., 667;

Oldham vs Ashton, 1921 1 K.B., 269 and 1921 3 K.B., 511;

Peterborough vs Peterborough, 52 O.L.R., 9;

City of Toronto vs Toronto Railway, 1925, A.C., 177;

Berlin vs Berlin and W. Railway, 42, S.C.R., 581

and furnished the arbitrators with copies of the award made by the arbitrators in the Toronto Street Railway Arbitration from which the
20 appeal was subsequently taken which is reported in 1925 A.C., 177, and the award in National Telephone Company, Limited vs His Majesty's Post Master General, reported in 29 T.L.R., 190.

Mr. Slaght for the Commission discussed these cases and certain cases tried in the United States and referred to in volume 1 of the 2nd Edition of Whitten on Valuation of Public Service Corporations (1928) at pages 384, 489 to 492 inclusive, 508, 526 to 528 inclusive, and has also furnished the Board with a copy of the award made by the arbitrators appointed to fix the value of the shares of the Grand Trunk Railway Company. None of the English cases or of the Canadian cases cited
30 is the same kind of case as the case before the Board.

In the Kirkleatham case the Water Board were empowered by statute to take over the pipes and plant of the local board for the purpose of improving the water supply in outlying districts, and exercised that right. The amount to be paid was to be determined by arbitration. The Water Board contended that the basis of calculation should be the value of mains, pipes, etc., as planned *in situ* capable of earning profit which they arrived at by taking the cost of laying them down and making good the ground and deducting an amount for depreciation. The Joint Board contended that the amount to be fixed was the value,

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not so measured, but measured by the revenue which that board was able to earn by means of them. The arbitrators adopted the latter basis and capitalized the net revenues for a period of seven years making certain deductions. This basis was held to be wrong in all the subsequent appeals. Lord Justice Lindley at page 384 of the judgment in the Court of Appeal held that the arbitrator was wrong because he included in his estimate of price compensation for the loss of the right to supply water, which to his mind was contrary to the Act. He pointed out that the matter was not to be dealt with as an ordinary matter between vendor and purchaser because it was a case where there was only one person who could buy. Lord Justice Bowen pointed out at page 385 that the key to the section was that it did not provide compensation to the sellers but merely empowered them to obtain a price for something to be sold. The Legislature had said that the sellers were to receive a price as distinct from compensation. Lord Herschell adopted the same view in the House of Lords and said that what the Joint Board really claimed was not the price of the mains, etc., but such price coupled with certain statutory rights. The effect of the judgment, therefore, was that these rights were not included in what was sold and were not to be compensated for. The method of fixing a price by capitalizing the revenues was not proper because the relevant section of the Statute in question provided that the Board should when so required by the sanitary authorities sell to such sanitary authorities the mains, etc. The Board acquiring the mains was compelling the other Board to sell. The mains, etc. *in situ* were capable of earning a profit and the taking Board was acquiring them for continued operation. 10

The ground stated for rejecting value based on capitalization of revenue was that revenue or earnings ceased to be available to the sellers as their further right to earn was cut off and value based on rights that the sellers were not entitled to transfer to the purchasers was not an element of value to the sellers and they were not entitled to compensation for that right. 30

The Edinburgh case was decided under a section of the English Tramways Act which provides that where the promoters of a tramway in any district are not the local authority, the local authority may within six months after the expiration of 21 years from the time when the promoters were empowered to construct the tramway, require the promoters to sell to them their undertaking upon the terms of paying "the then value (exclusive of any allowance for past or future profits of the undertaking, or any compensation for compulsory sale, or other consideration whatsoever) of the tramway and all lands, buildings, works, etc., of the promoters suitable to and used by them for the purpose of their undertaking." 40

The real point at issue was again the question as to whether or not the price should include the value of the powers given the promoters.

Lord Herschell said that the word "tramway" as used in the section was used to describe the structure laid down on highways and nothing more. He pointed out that the local authority, that is the purchasers, became entitled to the tramway by reason of the Statute and that this right was not conferred by the Company which constructed the tramway, that is the sellers. Lord Watson, to the same effect, excludes the value of the franchise because the Act does not include it. The sellers had no further right to the earnings and these therefore could not be an element in fixing value to the sellers.

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- 10 It is to be observed that the governing section in the Tramways Act fixed the amount to be paid at the then value of the tramway, etc., exclusive of every other consideration.

The London vs London case, 1894 A.C., 489, is very similar to the Edinburgh case and adds nothing to it.

London vs London, 1898 A.C., 375, deals with a motion in the House of Lords to reverse the judgment in the Edinburgh case, which was refused, firstly, because the House of Lords held that they had no power to reverse their own judgment and secondly, because they believed the judgment to be right.

- 20 The Lucas vs Chesterfield case deals with compensation for the compulsory taking of land. It is well settled that in such cases the owner is to be compensated for the loss to him by reason of the taking. The case before the Board is not such a taking and if the value to the owner were to be the basis of fixing compensation, many factors would have to be taken into account other than the principle of ascertaining value by applying the reproduction less depreciation basis.

- 30 In the Hamilton case the point at issue was once more the question of whether or not the Gas Company had the statutory right to supply gas and to transfer that right to the Town of Hamilton as purchasers. The Privy Council held that it had and that the Town was the assignee of these rights and must pay their value in the price to be fixed. This resulted entirely from the proper construction to be placed on the words of the Statute. Lord Shaw in delivering the judgment and in stating its effect on the fixing of value, proceeds as follows, at page 311:

- 40 "One limit to the profit-earning power of the undertaking does appear in the Act, namely, that its profits could never be declared at more than 15 per cent; any balance that might, so to speak, be earned over that figure was by anticipation drawn off for the benefit of the community in relief of the price of gas. Below that figure and down to nil or a loss—all these considerations going to its value—were elements for the arbitrator in ascertaining the price to be paid under s. 46, sub-s.1."

In the National Telephone case the Post Master General had the

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right to take over the plant, land, etc., of National Telephone Company, Limited and entered into an agreement with the Telephone Company in which it was provided that the value as of a fixed date of all the plant, land, etc., purchased should be the then value (exclusive of any allowance for past or future profits of the undertaking or any compensation for compulsory sale or other consideration whatever) of such plant, land, etc., having regard to its suitability for the purposes of the Post Master General's telephonic service. It will be observed that the language adopted in the Telephone Company agreement was the same language as appears in the Tramways Act and that every consideration was excluded except the value of the plant, etc., having regard to its suitability for the purposes of the Post Master General's telephonic service. The use of these words indicated an intention on the part of the parties to that agreement to adopt the method of valuation followed in the Edinburgh case with the addition that suitability for the purposes of the taker would have to be considered. Apparently the National Telephone Company was highly successful and the Post Master General was anxious to acquire the property for the purpose of expanding and supplementing the telephone service already given by the Post Master General.

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The Melbourne case differs from all the others. In that case the Tramways Company was a lessee of the tramways and owner of the rolling stock and plant. The Act besides vesting the tramways in the Tramway Board and providing that compensation should be determined by arbitration, the arbitrators to determine the value of the subject matter in accordance with the specific provisions of the Act and so far as necessary the provisions of the Lands Compensation Act, also provided that no allowance was to be made for compulsory purchase and that the arbitrator should have authority to determine the matters submitted to him to the end that the award might effect a final and equitable settlement. The arbitrator fixed the compensation in respect of many of the assets, including rolling stock, but considered them as things *in situ* capable of earning profit and this in many cases, in his view, necessitated fixing values by reference to structural cost with a proper deduction for depreciation.

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Lord Dunedin points out at page 674 of the judgment, in the Judicial Committee, that the Legislature had intervened in the interests of the public and that the Act must be construed in the light of the provisions of the statute, that there should be no interruption of traffic and that the authority of the arbitrator should extend to the determining by him of the matters referred to him to the end that his award might effect a final and equitable settlement. He thought that the method adopted by the arbitrator was within his power and that within reason he was master of the situation. He goes on to say: "Their Lordships recognize that this is a special case arising on the provisions of a statute specially

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expressed and they are not in the slightest degree criticising or qualifying the series of decisions of which in re-Lucas and Chesterfield Gas and Water Board (1909) 1 K.B. 16; Cedars Rapids vs Lacoste, 1914 A.C. 569, and Ruddy vs Toronto Eastern Ry. Co. 1917, W.N. 34, (decided by this Board) may be taken as examples." It is to be observed that the arbitrator considered the plant as capable of earning a profit and that he pointed out that this was a consideration in fixing the valuation as he did.

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10 Oldham vs Ashton was a case of compulsory taking by a local authority under Section 43 of the English Tramways Act of 1870 and the Edinburgh case was followed in determining the then value of the tramways. It does not add anything to the determination of the case now under consideration.

20 Peterborough vs Peterborough—The City of Peterborough expropriated the property of an electric light and power company under the provisions of a special Act of the Ontario Legislature. One of the sections of the Act provided that in determining the compensation to be paid nothing should be taken into account or allowed for prospective profits or loss of profits and the taking was a compulsory taking. The compensation was to be assessed on the basis that certain considerations such as profits or loss of profits should not be taken into account and it was pointed out in the Court of Appeal that there existed the clearest provision for continuation of the enterprise as it was never contemplated that a period of darkness should settle upon the city. The corporation was bound to supply power and light to the Company's customers under existing contracts. It was held that the corporation was to take the property off the Company's hands as a workable property of value to the corporation as such. Mr. Justice Masten said that the intention of the Legislature was that the undertaking was to be valued 30 as at the moment it was taken over at which moment it was a going concern and was to be valued as such and not as scrap, but that any estimate founded on revenue or profit was excluded, and he held that the arbitrators were bound to value the plant, not as a profit earning concern but as a concern ready for operation *in situ*.

40 In the Toronto Railway case the rights of the parties arose under a contract between the Railway Company and the City of Toronto by which it was provided that at the termination of the contract the City might take over the property at a value to be determined by arbitration. The agreement further provided that in determining such value the rights and privileges granted by the agreement and the revenues, profits and dividends being or likely to be derived from the enterprise were not to be considered but the arbitrators were to consider only the actual value of the actual tangible property, etc., connected with and necessary for the operation of the railway, such value to be only the value of the property to the City at the time of the arbitration having

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regard to the requirements of a railway of the best kind in system then in operation and applicable to the City. It is apparent, therefore, that the agreement was very different from the agreement between the parties to the present arbitration. The judgment in the House of Lords is the last important case dealing with some of the questions which have been argued and it may be important to observe the language as to reproduction cost less depreciation occurring in the reasons for judgment of Viscount Cave. At page 191 he says that no doubt the arbitrators took reproduction cost less depreciation as affording a serviceable guide in valuing the track, rolling stock and building in which they were fully 10 justified by the authorities cited but that the arbitrators were careful to make it clear that they had not adopted reproduction cost less depreciation as the only and safe test of value. They had allowed not only for wear and tear but for obsolescence and had regard also to comparative utility and other relevant considerations.

In the Berlin case, the Ontario Street Railway Act provided that no municipal council should grant to a street railway company any privilege for a longer period than 20 years and that at the expiration of a franchise so granted it might on giving notice assume the ownership 20 of the railway and of real and personal property in connection with the working thereof on payment of the value of the same. It was held in the Supreme Court of Canada that the proper mode of estimating the value was by estimating what the property taken over was worth as a railway in use and capable of being operated. Apparently the railway was a successful enterprise and the Railway Company contended that the proper method of estimating the value was to capitalize its revenue. This contention, however, was held to be erroneous because the franchise of the company was at an end and "without a privilege to operate the railway system the franchise would not be revenue producing." 30

The Grand Trunk arbitration was for the purpose of determining the value, if any, of certain stock of the Grand Trunk Railway Company of Canada. The majority of the arbitrators refused to consider the reproduction cost as they considered that the correct principle upon which the valuation had to be made was the earnings of the Company. It does not follow, however, that the same considerations which would be of value in determining the value of the stock of a corporation would be useful in deciding the question before the present Board.

The American cases cited by counsel for the Railway, while not binding upon the Board, touch more closely the question we are con- 40 sidering than do the English and Ontario cases above mentioned. These cases are set out quite fully in Whitten on Valuation of Public Service Corporations, 2nd Edition, 1928. Pages 384 and 385, Volume 1, in re City of Eureka, 19 Cal. R.C.R. 952. There, a commission was appointed for the purpose of fixing just compensation for local street railway

lines which the city proposed to acquire. The California railroad commission in fixing the compensation said that if the property had been able to earn its operating expenses plus a fair return, or if there were reasonable prospects of such condition being brought about in the future the fair value would not be less than its reproduction cost less depreciation plus a reasonable development cost, but that the evidence established that for at least ten years the company had carried on and operated at a loss and that there was no reasonable prospect of the company making even reasonable expenses plus taxes and depreciation in the future. In that case, however, the Commission found that a fair value was considerably more than the mere scrap value because the Commission could see no reason why under competent ownership and operation the railway system should not earn all its expenses and prove a valuable asset. The railway would be relieved from the payment of taxes, street paving costs and certain overhead expenses. The Commission thought that there was no possibility at the time of the hearing of a substitute for the railway that would furnish equally satisfactory service at equal cost and that it would be more economical for the City to acquire the existing property at a reasonable price and later rehabilitate the system, while a plant which it would build itself would cost at least \$300,000.00. It was found on the evidence that if the City did not buy the property the more economical step for the Company was to discontinue operation and salvage the scrap. Apparently the City had the right to take the property from the electric railway company by virtue of some statutory provision.

In re City of Oroville, P.U.R. 1922, 451, the City asked the California Railroad Commission to fix the just compensation to be paid for the electric system and gas properties of a company operating in the City and in the adjacent territory. The Commission held that the amount of the just compensation was affected by the fact that the property was engaged in a losing business and earning not even all its expenses for operation and that a finding of just compensation required the consideration of all factors affecting value relations whether they tended towards a higher or a lower price. They stated that in a case of this kind measures of value such as reproduction cost or historical cost or reasonable investment failed completely. The Commission held, however, that they should also consider that it must be assumed that if the City desired to acquire the plant it did so because it considered the property of value to the City as it wished to supply its inhabitants with the utility whether the operation was carried on at a profit or at a loss. To do this the City would have to build a new plant or acquire the existing plant by paying just compensation and, therefore, the property was of value because the cost to the City of a new plant would certainly be greater than the value of the present plant plus the cost of placing it in first class operating condition. They pointed out that the City would be able to eliminate certain expenses,

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such as taxes, and that the value to the City was an element of value to be considered but that the value of the property to the City bore no relation to the estimate of cost of reproduction less depreciation and that such measure of value did not apply either in the case of the value to the Company or of the value to the City.

The quotation from the judgment of the Privy Council in the Hamilton case set out above seems to be precisely in point and the principle there laid down is in accord with what was said in the American cases cited in Whitten. Lord Shaw, in this quotation, expressly holds that, whether there are earnings or no earnings or a loss is an element to be taken into consideration in fixing value and Mr. Justice Rowlatt in *Oldham vs Ashton* is of opinion that it is the only element to be considered, except where it is excluded by statute or agreement. At page 276 he says, "When one comes to examine carefully the powers which the section describes, one is met with great difficulty in understanding it because when one is discussing the value of a commercial undertaking the element of value is its profits, and there is none other. To seek to find a value without looking into profits is like seeking to build a house without materials. If one disregards the profits the value seems to be the scrap value." 10

The difficulty he found resulted from the provisions of the statute which excluded from consideration the element of profits. This exclusion of profits resulted in the establishment of the rule laid down in the *Kirkleatham* and *Edinburgh* and other cases. Had it not been for the provision in the statute excluding profits from consideration Mr. Justice Rowlatt, apparently, would have considered profits as the real and only element to be considered in fixing the value and was no doubt guided to that view by what was laid down in the *Hamilton* case as above quoted. In the *Edinburgh*, *London*, *Oldham*, *Telephone*, *Peterborough* and *Toronto* cases, rents or profits are expressly excluded from consideration as elements to be considered in fixing the value by the terms of the statutes and agreements relating to the works in question. In the *Kirkleatham* and *Berlin* cases there were similar exclusions as a result of the construction placed on the statutes and agreements. We are of opinion, therefore, that these cases have no application to the questions involved in this arbitration, because by the terms of the agreement here, consideration of profits is not excluded as an element in fixing the value. It is also argued on behalf of the Parks Commission that these cases dealt with the taking over of works that the takers were desirous of acquiring for use and operation by them and which had a value to them for that purpose, while the railway here in question is one which the Parks Commission does not wish to operate and which at the time it was handed over was useless to them and of no value as a railway. 30 40

The Company, however, had a right to turn it over at the end of

the 40 years and the Commission was obliged to take it over and to pay the compensation by the terms of the contract which they voluntarily entered into and their wishes at the end of the period are not an element to be considered. During the last 11 years of operation down to the time of handing over the railway to the Commission the earnings each year with one exception fell short of paying operating expenses. In the one year, 1925, the earnings exceeded the operating expenses by only \$2,535.93. During the last 13 years of operation the annual loss, after allowing for depreciation and after paying 5 per cent. interest on the \$600,000.00 bond issue, ranges from \$25,980.42 in 1921 to \$112,303.72 in 1931 which was the last full year of operation and for the last 8 months the loss was \$78,350.34. These facts appear from Exhibit No. 68. The evidence establishes beyond question that there was no prospect of any change in this condition for the future. The railway, therefore, at the time that it was handed over to the Parks Commission was of no value for operation as a railway to the Railway Company or the Parks Commission or to anyone else.

We have, therefore, concluded that the compensation to be paid by the Parks Commission to the Railway Company for its railway, equipment, machinery and other works is not to be arrived at on the basis of reproduction cost less depreciation but by applying various considerations to various component parts of the property of the Railway Company in an endeavor to arrive at the full value to be attached to each. With respect to such items as track, distribution system, machinery and rolling stock, the value is the amount that could be realized from the disposal thereof. With respect to the incline railways which the Commission continued to operate after August 31, 1932, we have taken into consideration the reproduction cost less depreciation, their earning power and other circumstances affecting their value. With respect to items such as paving, retaining walls and culverts, we have regarded them as adding value to the property of the Commission and have allowed for them on the basis of reconstruction cost less depreciation. As to certain other items, including the power house building and a portion of the grading, we have regarded them as adding value to the property of the Commission and have allowed what we think is their full value on this basis. With respect to the lands, we have allowed what we consider to have been the full value thereof as of the 31st day of August, 1932, but not on a reconstruction basis.

Applying all these various considerations to the property in respect of which compensation is to be allowed, we have arrived at the amount set out in our award.

We do not accept the argument that the Railway Company and the Commission were engaged in a joint venture or that the railway should be compensated for the service which it rendered to the Park during the years of its operation. It must be assumed that the parties entered into

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a business agreement and that if it had been intended that compensation should be awarded on such a basis language to that effect would have been found in the agreement. Neither of the parties knew what the future would bring forth. The Railway Company had the right to retire from the operation of the railway at the expiration of the 40-year period should it see fit to do so. The Commission was clearly not desirous of acquiring the railway and had no intention of operating it after September 1, 1932. In reaching our conclusion we have not been unmindful of the fact that the operations of the railway after 1929 were conducted in a period when its earnings would be seriously and increasingly affected by the general depression prevalent throughout North America but a perusal of the evidence, including the statement prepared by Mr. Schmunk, the Railway Company's Auditor, shows clearly that there was a marked decline in the earnings of the Company in the prosperous years preceding the depression. We are satisfied by the uncontradicted evidence of several witnesses of knowledge and experience that owing to the advent of the automobile, its growing use and, as a result, an ever extending system of good highways, and the later development of motor buses, the mode of transportation offered by the railway was effectively superseded to the extent that it could not serve a sufficient number of people to make it possible to operate the railway without great loss. 10

It was argued that the Railway Company served as a great feeder to the Park's revenue but there is no evidence on which it might be found that any benefit the revenue of the Park might obtain from the continued operation of the railway would make up the huge loss that such operation would entail. Indeed it is apparent from the exhibits that the public visiting the Park were coming largely by other means of transportation. For instance, the figures filed showing the receipts of the whirlpool incline railway and the Clifton incline railway show that while the number of passengers carried by the railway had greatly diminished up to the end of 1929, that year was the peak year of the revenues obtained from the incline railways. 30

In the California cases above mentioned the Commission was able to find an intermediate value because the City taking over the utility could obtain certain economies in operating costs and found it necessary to have the railway in order to provide the service for the public which would otherwise be lacking. Had they not been able to acquire the utilities there in question they would have had to construct anew. We do not see how we can apply these considerations to the present case because the only expenses the Commission could avoid in operating the railway would be comparatively trivial in amount and on the evidence we could not find that the operation of the railway was essential to be carried on by the Commission and the agreement imposed no obligation to carry it on. 40

In addition to the cases cited above we would refer to Milnes vs.

Tery, 14 Ves. 400 at 407 and to Irwin vs. Campbell 51, S.C.R., 358 at Page 372 where Anglin, J. refers to the principles applicable to a valuation between a tenant and his landlord who is taking over the tenant's building at the expiry of a lease.

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The contention between the parties turns upon the question of the proper basis on which the compensation should be fixed. The Railway Company directed practically all its evidence to the compensation proper to be fixed on the basis of reconstruction less depreciation. The Parks Commission, while also submitting evidence as to compensation on that
10 basis, contended from the outset that compensation on the basis of the cost of reconstruction less depreciation was wholly inapplicable to the present case because the railway when turned over had no value as such to either the Railway Company or the Parks Commission, its sole value, according to this contention, being the value that could be realized from the disposal of its component parts.

Having concluded that the proper basis of fixing the compensation is not by ascertaining the reconstruction cost of the railway in 1932 as a whole less depreciation, we think it is a question of law as to whether or not this conclusion is right and we have thought it advisable, in order
20 to prevent unnecessary expense to the parties, to fix the amount of the reconstruction cost and the depreciated value, should it later be determined that that basis should have been adopted. We find that the reconstruction cost of the railway as of August 31, 1932, on the basis urged on behalf of the Railway Company is the sum of \$1,414,684 and that the depreciated value thereof as of the said date was \$967,592.00.

It was, however, contended on behalf of the Railway Company that to the above amounts there should be added certain items which we disallowed and which are as follows:—

	Reconstruction Cost	Depreciated Value
30 Land		
Parcels 121 (a)		
121 (b)	\$ 1,100.00	\$ 1,100.00
Items relating to the Lewiston bridge line. . . .	17,694.00	9,375.00
Items relating to the C.N.E. turnout in the City of Niagara Falls	900.00	405.00
Bridges Nos. 1 to 7, additional amount if concrete not substituted for masonry	16,988.00	17,886.00
Railway bridge No. 8, Substructure	3,394.00	3,055.00
40 Superstructure	16,460.00	11,522.00
Highway bridge No. 8 (a), Substructure	8,234.00	6,587.00

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Superstructure	6,933.00	4,853.00
Power House if concrete not substituted for cer- tain portions of masonry	26,715.00	24,044.00
Intake	43,325.00	22,862.00

We disallowed the cost of the items relating to the Lewiston bridge line and the C.N.E. turnout because we considered them not to be part of the railway to be taken over by the Parks Commission.

We disallowed the cost of the enlarged and lengthened intake and of the two bridges over it because that work was done under an agreement between the Canadian Niagara Power Company and the Railway Company without the approval of the Commissioner of Public Works as required by the agreement, which work entailed the expenditure in reference to these items set out above. 10

Counsel for the Parks Commission urged that we should find that the railway as a whole was obsolete.

Much of the machinery and equipment was old and, therefore, not up to the standard of modern design but was capable, with proper maintenance of performing the functions for which it was designed.

In arriving at our opinion as to reconstruction and depreciated values we have made proper allowance for the age and obsolete type of the machinery and equipment. The railway as a whole when turned over to the Parks Commission was capable with proper maintenance of performing its functions as an operating railway and up to that time was in fact performing these functions. It was obsolete as a whole in the sense that by reason of the changed conditions already referred to it became incapable of earning the cost of operating it and competing satisfactorily with other modes of transportation. 20

In arriving at the depreciated value of \$967,592.00 we have not had regard to any claim for obsolescence of the railway as a whole.

Application was made at the opening of the proceedings for leave to call a greater number of witnesses giving opinion evidence than the number prescribed by statute, and this was allowed. 30

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GERSHOM W. MASON.

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As I am unable to concur in the Award of the majority of the Arbitrators, it is proper that I should make some statement of my reasons for dissent.

The governing Agreement was made on 4th December, 1891, between The Park Commissioners and certain individuals, the predecessors in title and interest of the International Railway Company, who are referred to in the Agreement as the Company. This Agreement provided that the Company should construct, equip and operate a first-class electric railway with sufficient sidings and equipment to meet the development of traffic; the railway to be constructed in part upon lands provided by the Park Commissioners and in part on lands to be acquired by the Railway Company. The Agreement provided, in Paragraph 29, that at the end of the period of forty years from the First day of September, 1892, (subject to certain rights of renewal which were not exercised) the whole of the Company's railway with equipment, machinery and works should become the property of the Park Commissioners, and, in Paragraph 26, that the Company should be duly compensated by the Park Commissioners for their "railway, equipment, machinery and other works," but not in respect of any franchises for holding or operating the same. The duty of the Arbitrators is to determine the amount of the compensation.

The majority of the Arbitrators have determined that the basis upon which compensation should be fixed is the basis commonly known as "scrap value." This means that the railway with its equipment, machinery and other works is to be considered not as a railway at all, but as a collection of unrelated parcels of land and chattels which are to be sold off so far as possible to any available buyers. It is of the very essence of this method of fixing compensation that all consideration of the property as a railway shall be excluded. Any other conceivable use of the several properties may be regarded, but one must not regard them as a railway.

I have not seen the Reasons for the Award, which I understand are in preparation by the other Arbitrators, but I am aware of the details making up the amount of their Award and a reference to some of the items will illustrate the particular method adopted by them in arriving at their Award. There are lands which the Railway Company acquired for its right of way, consisting mainly of long narrow strips lying between the Park Commissioners' boulevard drive and the river. This land is not valued as the right of way for a railway, but is valued merely at the prices that might be obtained for it if it were divided into parcels and sold as vacant land to any available purchasers. The rails and their fastenings are valued not as an essential part of a railway, but as waste material to be removed from their location and sold as scrap metal. Not only is no allowance made for the cost of labor in laying the rails, but a deduction is made from the price of the scrap metal for the cost of labor in tearing them up and transporting them to market. The ties, worth over \$30,000 for their present use, are valued at \$1,300 for firewood. No allowance whatever is made for the ballast

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on which the ties and rails are laid, not because it is not serviceable as ballast where it is, but because it cannot be sold as something else. A telephone system some miles in length used in the operation of the railway is valued at \$5.00, that being the amount which might be obtained by the sale of some small piece of its equipment. The cables carrying the electric current and the trolley wires and other overhead work are put in at the amount they would realize if sold as waste material. The poles which carried the wires are in the main given no value whatsoever, but some of the wooden poles are considered as likely to sell for something. The power plant equipment, the present depreciated value of which for the purpose for which it has been in use, is put by the expert witness called by the Park Commissioners at \$119,000, is put in at \$5,000 on the assumption that the power plant will all be removed, and that a buyer may be found for some small part of it. 10

The foregoing are illustrations of the application of the basis of compensation which has been adopted in the Award. In my opinion, it is in direct conflict with the provisions of the Agreement. The railway may be a good railway or it may be a poor railway, it may be worth much or little, but it is a railway and it is only as a railway that we are to consider it. Any other basis of valuation is outside the scope of this arbitration. The Railway Company could not “scrap” the railway and sell off the salvaged materials. Under the terms of the agreement the Railway Company was bound to maintain and operate the railway until the moment when it vested in the Park Commissioners. We are referred to numerous reported decisions in Great Britain and in Canada dealing with the valuation of public utilities under a variety of circumstances. In none of these cases was the so-called “scrap value” basis approved although it was not infrequently put forward. It has been referred to as being, in a measure, confiscation. 20

The undertaking provided for in the Agreement of December, 1891, was in the nature of a joint venture from which each party expected certain benefits, and in which each of them assumed definite obligations. So far as the Park Commissioners were concerned the railway was part of a larger scheme of development. The Commissioners needed more revenue and hoped to get it by establishing at various points along the railway, restaurants and other places where visitors would be likely to spend money. The Railway would bring the people who would become the Commissioners’ customers. The Commissioners invested a great deal of money in these various enterprises and, as expected, the revenue from them became substantial. The continued operation of the railway was vital to these other ventures of the Commissioners and they accordingly stipulated that the Company should operate the railway during the term agreed upon and that the railway should vest in the Commissioners at the end of the term—original or renewed. As this bound the Company to maintain and operate the railway for 40 years, whether it was profit- 40

able or not, it was important that the Company should be assured that at the end of that period it would be paid for the railway on turning it over to the Commissioners. The title of the Company to the railway was always subject to the terms of the agreement (see Paragraph 29) so that it was never the absolute owner and the Commissioners had from the first a real title in the nature of a revisionary interest in the railway. These co-relative rights, therefore, on the part of the Commissioners to the continued maintenance and operation of the railway and then to its ownership, and on the part of the Company to receive compensation for
 10 the railway as a railway constructed and maintained by it under the agreement, have their origin in the agreement of 1901 and are to be understood and to be enforced as the parties then intended. The later fortunes of the venture do not impair nor alter the rights and obligations of either party.

This is not a case where it is alleged that the Railway Company has by reason of failure to perform the agreement on its part become dis-entitled to the benefit of it. The Railway Company agreed to construct the railway and to operate it for 40 years, and to turn over to the Park Commissioners on First September, 1932, a railway *in situ* and in
 20 operating condition. This agreement it fully performed. Even if it had not, the Arbitrators could do nothing about it. That would be a matter for the Courts to deal with.

Neither is this a case where the Park Commissioners say that owing to what has happened or to changed conditions since the agreement, without fault in either party, the agreement cannot be performed and should be deemed to be at an end—in other words that the doctrine of “frustration” applies. That also would have to be dealt with by the Courts if it were raised, and is foreign to this arbitration. Further, the Park Commissioners have in fact taken over the railway, and the
 30 agreement is fully performed except the payment of compensation.

The main ground upon which Counsel for the Park Commissioners placed his claim for the adoption of “scrap value” as the basis of compensation was what he termed the “general obsolescence” of the railway. It is very necessary to understand exactly what he meant by “general obsolescence” of the railway. It has nothing whatever to do with the age or condition of the railway and its equipment, or with their fitness for service. The claim is that electric railways in general have gone out of use as carriers and that the motor bus and private motor cars have replaced them. Then it is said that if this is not true of electric
 40 railways in general, it is true of interurban electric railways, and in any event that it is true of this particular electric railway.

Even if the evidence established what is asserted, it does not seem to me that the Park Commissioners can make any use of it. This is one of the chances they themselves took when they bargained for the

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railway in 1891. They have got the railway they bargained for. Their revisionary interest in it has matured into full ownership. Further, I think the conduct of the Park Commissioners ought to prevent them from saying that the railway is obsolete. Obsolescence does not come on suddenly. The Company at great cost maintained and operated the railway until the very end of the 40 year period. For the whole of that period the Park Commissioners collected their \$10,000 per year and enjoyed the benefits of the traffic brought by the railway. They never suggested that the railway was of no use and that the Company had better cease operating it and save its money. On the contrary the railway was regarded in every way as the railway contemplated by the agreement. In fact the Park Commissioners proposed to the Company a discussion of terms for the renewal of the franchise for another 20 years. When this did not interest the Company, the Commissioners publicly advertised for tenders for the future operation of the railway. It would be a strange thing if, having accepted to the very end the benefit of the Company's heavy expenditure in the maintenance and operation of the railway in addition to the yearly rent, and having treated the railway always as a useful railway, the Commissioners could be heard to say that it should not be considered as a railway when fixing the amount they should pay for it.

As to the fact of obsolescence:— In my opinion the evidence falls far short of establishing any of the things that were termed general obsolescence. There is no evidence that electric railways generally have gone out of use. It is, of course, common knowledge that electric railways, and steam railways as well, have had a bad time in recent years. A great many of them are not making any money. No doubt the motor bus and motor cars generally are important factors in the situation. But neither Mr. Wilson, the Commissioners' chief witness on this matter, nor any other witness would say that the motor bus and motor car have solved the transportation problem. They have merely created it. There are still many electric railways in operation and the public seem to demand them and their cheap fares and suitability for handling large numbers in a short time.

Then as to the class of electric railways termed "interurban": It is said that they especially have suffered from the competition of the motor bus. One would have thought that the term "interurban" would not be applied by anyone to this railway. But it was gravely put forward that this is an interurban railway because Queenston, a small hamlet, is at one end of it and Chippawa, a small town, is at the other end. Perhaps it is sufficient to refer to Paragraph 2 of the Agreement of 4th December, 1891. It indicates what the parties themselves thought of the importance to the railway of these two "urban" communities.

This railway was built to serve a special locality. Its passengers are mainly tourists who come to see Niagara Falls and the upper and

lower rapids. They come chiefly in the summer and in great numbers on holidays and at week-ends. What is the evidence that this particular railway has become obsolete? Of course, no one claims that it has been profitable to the Railway Company. It has paid, I think, only one dividend in 40 years. But it is not claimed that failure to make money for its shareholders is sufficient to establish obsolescence. The railway may still be a useful railway, serving a public need, and, with their other enterprises, even profitable to the Park Commissioners. The Commissioners; as their reports show, from the beginning counted upon the railway to substantially increase their revenues quite apart from the annual rental of \$10,000 paid directly by the Company. The revenues of the Commission from their places of entertainment have been large and depend directly upon the number of casual customers brought to them. The Commissioners made no effort to show to what extent their revenues are to be attributed to the railway, or whether it would be profitable to their operations as a whole if they operated the railway, even if they had to take care of some loss in its operation. On the contrary, Counsel for the Commissioners made strenuous objection to the introduction of evidence to show what their revenues had been and to what extent they had fallen off since the railway ceased operating. The Commissioners have, therefore, left us without any evidence upon which it can be said that even when looked at strictly as a financial venture, the operation of the railway will not be profitable to the Commission.

The evidence clearly establishes that there is still a demand by the public for the service of the railway. In 1929, the last season before the depression, which has caused a great falling off in travel, the gross revenue of the Railway Company was greater than in any of the first 25 years of its existence, save 1901, when there was a great Exhibition at the neighboring City of Buffalo—see Exhibit 68. Unfortunately, the cost of operation also increased. The fact remains that until the depression set in the public made great use of the railway and it continued to perform the important purpose of bringing people in large numbers to the Park.

There is no evidence that any other method of transportation has displaced this railway. The Park Commissioners have that matter peculiarly within their own control. They can prohibit the use by motor buses of the roads through the Park and in fact they did so while the railway was operated. The evidence is exceedingly meagre as to bus service since there is a bus line, but what service it gives and to what extent it is used we do not know. There is no evidence to show that there is any bus service available to take care of a summer holiday crowd. The situation upon such an occasion would seem to be one for which the railway is especially useful. In any event the evidence falls far short of proving that the railway has lost its usefulness as a carrier of passengers.

An alternative valuation was made as appears by the Award, upon

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No. 4,
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the basis commonly known as “re-construction cost less depreciation.” The method followed was substantially that adopted in the Award in the Toronto Railway case and approved by the Privy Council in 1925, A. C. 177. Full allowance was made not only for depreciation but for every other element proper for consideration. A long line of cases has approved this as a correct method of valuing a public utility where the value of the franchise is excluded from consideration.

The amount mentioned in the Award should be increased, however, from \$967,592, to \$1,069,652 by adding the following items:—

(a) For the spur to the Lewiston Bridge and the spur to connect 10
with the Canadian National Railway \$11,051.00. Paragraph 2 of the
agreement required the Company to construct sufficient sidings and
equipments to meet the development of traffic. The evidence is that a
large volume of traffic came from the Lewiston Bridge connection.

(b) For the intake at the Power House \$22,862.00. A plant for
the development of hydro-electric power would certainly require an
intake. The objection is made that the present intake which was sub-
stituted thirty years ago for the original intake was not approved by
the Commissioner of Public Works. I think the finding of fact should 20
be that it was so approved. The approval was not required to be in
writing, and there was no evidence that it was not approved. Annual
reports were made by the Park Commissioners for the information of
the Legislature and contained references to the building of the new
intake. No objection was ever made to it and it is inconceivable that
the Commissioner of Public Works did not know of its existence. The
fact that no plan or letter with the Commissioner’s approval is pro-
duced is not of any great significance. No great care seems to have
been taken of the plans in use for the numerous purposes of the Park
and Railway, and from the way in which they turned up from time to
time during the course of the arbitration and the variety of places from 30
which they came, one would hardly know when he had exhausted all
sources of inquiry. Private individuals, such as Mr. Bunnell and Mr.
Frid, seem to have been able to get possession of plans in the custody of
the Government and of the Park Commission and while no one would
suggest that they would not take proper care of them it still indicates a
loose method in the care of plans that should be found in the Government
office.

(c) For two bridges at the intake—\$26,017, divided as follows:

For the Railway bridge	\$11,440.	
For the Highway bridge	\$14,577.	40

(d) For the amount deducted from the present value of the Power
House building on the assumption that concrete is substituted
for stone in foundations \$24,244.

(e) For the amount deducted from the present value of certain bridges on the assumption that concrete is substituted for stone in the substructures\$17,886.

I do not think there is any warrant for these deductions. The work is done in stone in accordance with plans duly approved. The evidence does not establish that in the places where this stone is used concrete would have been acceptable. In the case of the power-house the question of durability is important especially when there is direct exposure to water and ice. In the case of the bridges the stone may well have been used on account of its better appearance. It is noticeable that the Park Commissioners have used and are still using stone in structures where concrete could be used but where a good appearance is desired.

For these reasons and with every respect to the opinion of the majority of the Board of Arbitrators I think the amount awarded should be \$1,069,652.

(Sgd.) R. S. ROBERTSON.

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No. 4.
Reasons of Dissenting Arbitrator,
29th May, 1935.

—*continual*

No. 5

Notice of Appeal

TAKE NOTICE that a motion will be made on behalf of International Railway Company, the appellants herein, to the Court of Appeal for Ontario, on Monday, the 16th day of September, 1935, at the hour of eleven o'clock in the forenoon, or so soon thereafter as an application can be heard, by way of appeal from the Award of the majority arbitrators herein, (made in pursuance of the terms of the provisions of the agreement between the above-mentioned parties, dated the 4th day of December, 1891, and confirmed by the Act of the Legislature of Ontario, being Chapter 96 of 55 Victoria, 1892), dated the 29th day of May, 1935, and filed and served on the 19th day of June, 1935, upon the following amongst other grounds:

In the Court of Appeal for Ontario.
—

No. 5.
Notice of Appeal, by International Ry. Co. from Award of Arbitrators.
28th June, 1935.

1. That the majority arbitrators erred in law and in fact in the method or methods adopted in arriving at the compensation to be paid by the Niagara Parks Commission to the International Railway Company under the terms of the agreement, dated the 4th day of December, 1891, and ratified by Act of Parliament, being Chapter 96 of 55 Victoria (Ontario) 1892, according to the Reasons for Award delivered by the majority arbitrators.

2. That the majority arbitrators in determining the method by which they should fix the compensation due from the Niagara Parks Commission to the International Railway Company, proceeded upon an erroneous basis and declined to follow a long line of cases both in England and in the

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Courts of this country, in which the method of determining the principle of compensation was fully discussed and settled, and improperly followed cases cited in the Courts of the United States of America, which, the appellants submit, are in no way applicable.

3. That the reasons given by the majority arbitrators for arriving at their Award are indefinite and inconclusive, nor do they state the amount which they have allowed in respect of the different items referred to in their reasons, and the appellants have no opportunity of knowing how the total amount is arrived at.

4. That the majority arbitrators failed to give effect to the over-riding provisions of the agreement of the 4th day of December, 1891, as confirmed by the Statute under which the appellant Company undertook to construct a railway and maintain it and operate it for forty years, upon receiving due compensation for so doing. 10

5. That the majority arbitrators in coming to their conclusions were apparently influenced by utterly irrelevant matters, such as the number of passengers carried, the expenses of operating and the fact that the appellant Company were operating at a loss, there being no understanding or undertaking given on the part of the appellant Company that the venture would be a successful one from an operating standpoint, although they were required under their contract to operate the same for forty years, which they did, and to pay to the Commissioners a clear annual sum of ten thousand dollars by way of rental for each and every year until the termination of said period or term of forty years, which they paid. 20

6. The methods adopted by the majority arbitrators in reaching their Award are inconsistent with the terms of the agreement or the Act confirming the same, or the facts appearing in the evidence on the hearing before the Board, nor are they in accordance with the well recognized principles of law in determining the compensation to be paid in matters of this kind. 30

7. The majority arbitrators in determining the amount due the appellant Company have failed to give effect to facts proved in the evidence on behalf of the appellants in support of their claim and the amount awarded is improper and insufficient to properly compensate the appellants in accordance with the terms of the agreement and the evidence adduced before the Board.

AND FURTHER TAKE NOTICE that at the hearing of this appeal the appellants will ask that the majority arbitrators be requested to state the amounts awarded under the different methods and principles adopted by them in awarding compensation for the different items for which compensation was to be paid. 40

AND FURTHER TAKE NOTICE that upon and in support of this application will be read the agreement of the 4th day of December, 1891, the Act

of Parliament, being Chapter 96, 55 Victoria, 1892, the Award of the majority arbitrators, the Reasons for Award of the majority arbitrators, the Reasons for Dissent from Award of R. S. Robertson, K.C., the minority arbitrator, the evidence taken at the hearing before the Board of Arbitrators and the exhibits filed, and such further and other material as counsel may advise.

DATED at Toronto this 28th day of June, 1935.

D. L. McCARTHY,

Counsel for the Appellants,
International Railway Company.

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To:

THE NIAGARA PARKS COMMISSION;

AND TO:

A. G. SLAGHT, ESQ., K.C.,
their counsel.

No. 6

Reasons for Judgment of the Court of Appeal for Ontario on Motion to Set Aside the Award

MULOCK, C.J.O., MASTEN, MIDDLETON, FISHER AND HENDERSON, J.J.A.

20

Argued on the 28th, 29th, 30th and 31st days of October, and on the 1st, 4th and 5th days of November, 1935.

JUDGMENT OF MASTEN, J.A.:

This is an appeal to this Court from an award of arbitrators dated 29th May, 1935, fixing the amount of the compensation payable by the respondents to the appellants in respect to its railways, equipment, machinery and other works.

30

The award was made and this appeal is brought in pursuance of the provisions of an agreement between the respondents and the predecessors in title of the appellants dated the 4th day of December, 1891, which was confirmed by an Act of the Legislature of Ontario, being Chapter 96 of 55 Vict. (1892).

The award fixes the compensation to be paid at the sum of \$179,104. The sum so awarded is ascertained on the footing that the railway has no value as an operating railway and that the only compensation payable by the respondents is the value of its various component parts taken separately and not as a railway; in other words, what is commonly called scrap.

In their reasons for the award the majority arbitrators state that

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they disallowed for the various reasons assigned by them the following items claimed by the appellants:

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Land	Reconstruction Cost	Depreciated Value	
1. Parcels 121(a)			
121(b)	\$ 1,100.00	\$ 1,100.00	(1)
2. Items relating to the Lewiston Bridge line	17,694.00	9,375.00	(2)
3. Items relating to C.N.E. turnout in the City of Niagara Falls	900.00	405.00	(3) 10
4. Bridges Nos. 1 to 7, additional amount if concrete not substituted for masonry	16,988.00	17,886.00	(4)
5. Railway bridge No. 8, Substructure	3,394.00	3,055.00	(5)
6. Superstructure	16,460.00	11,522.00	(6)
7. Highway Bridge No. 8 (a) sub- structure	8,234.00	6,587.00	(7)
8. Superstructure	6,933.00	4,853.00	(8)
9. Power House if concrete not sub- stituted for certain portions of masonry	26,715.00	24,044.00	(9) 20
10. Intake	43,325.00	22,862.00	(10)

The majority arbitrators also include in their reasons the following paragraph:

“Having concluded that the proper basis of fixing the compensation is not by ascertaining the reconstruction cost of the railway in 1932 as a whole less depreciation, we think it is a question of law as to whether or not this conclusion is right and we have thought it advisable, in order to prevent unnecessary expense to the parties, to fix the amount of the reconstruction cost and the depreciated value, should it later be determined that that basis should have been adopted. We find that the reconstruction cost of the railway as of August 31, 1932, on the basis urged on behalf of the Railway Company is the sum of \$1,414,684. and that the depreciated value thereof as of the said date was \$967,592.00.” 30

The contention of the appellant is first (and principally) that compensation ought to be computed and measured by ascertaining the cost of reconstruction at the date of taking over and deducting therefrom a proper sum for depreciation and obsolescence; second, that the several items above mentioned which were for various reasons disallowed by the majority arbitrators ought to have been allowed by them. 40

The respondents did not serve any notice of cross-appeal within the time allowed for appealing, but during the hearing of this appeal

they applied to the Court to extend the time for appealing and for leave to cross-appeal in respect of the five items mentioned below which were allowed by the majority arbitrators.

In support of their application they allege that until particulars of the items making up the sum of \$179,104 was furnished by the arbitrators at the request of the Court they were unaware of how that sum was reached, and also that they were under a misconception as to their right to cross-appeal without serving formal notice.

10 With some hesitation I am of opinion that the leave asked should be granted as all relevant evidence is before the Court and the appellant company cannot be prejudiced.

The cross-appeal is against the following items allowed by the award and is supported on the grounds stated below:

“1—The sum of \$25,000.00 for grading.

2—The sum of \$3,271.00 for paving.

3—The sum of \$18,057 for culverts.

4—The sum of \$25,000 for Power House.

5—The taxable costs of the arbitration which the Respondent was directed to pay to the Railway Company.”

20 “(1) That the learned majority Arbitrators erred in law and in fact in the basis and principle adopted in arriving at the compensation allowed with respect to the above numbered one to five items according to the Reasons for Award and the itemized statements delivered and filed by such majority Arbitrators.

“(2) That there was no evidence to warrant the amounts and findings included in the first four items above indicated.

30 “(3) That it was not open for the said majority Arbitrators under the Agreement and Statute to allow the Railway any sums whatever because the assets for which such allowances were made were regarded as adding value to the property of the Commission.

“(4) With regard to the allowance of costs comprised in item No. 5 above, the submission to arbitration by the parties herein did not include any power or authority on the part of the Arbitrators to award costs, and such award was outside and beyond the jurisdiction of the Arbitrators.”

40 The subject matter in respect of which compensation is sought is an Electric Railway twenty-two miles long extending along the west bank of the Niagara River from the Village of Chippawa at the south to the Village of Queenston at the north, including the equipment, machinery and other works of the Railway. It is located on lands

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owned by the respondent Commissioners who granted to the predecessors in title of the appellant Company an exclusive franchise which terminated at midnight on August 31st, 1932, as provided by the agreement of the 4th December, 1891.

That agreement stipulates that on the determination of the franchise "The Company shall be duly compensated for their railways equipment, machinery and other works."

The relevant provisions of the statute and of the agreement are very fully set forth in the reasons for their award prepared by the majority arbitrators but for the purpose of the present judgment it appears sufficient to quote clause one of the statute and clauses twenty-six and twenty-nine of the agreement. 10

Clause one of the Statute:—

"The agreement between the Commissioner for the Queen Victoria Niagara Falls Park and the said Edmund Boyd Osler, Herbert Carlyle Hammond, William Hendrie and Richard Bladworth Angus, dated the fourth day of December, 1891, and as set forth in schedule 'B' hereto, and in this Act hereinafter designated as 'the agreement,' is hereby approved, ratified, confirmed and declared to be valid and binding on the parties thereto; and each of the parties thereto is hereby authorized and empowered to do whatever is necessary to give effect to the substance and intention of the provisions of the agreement, and is hereby declared to have and have had power to do all acts necessary to give effect to the same." 20

Clause twenty-six of the Agreement:—

"If at the end of the said period of forty years, the company are unwilling to renew, or at the end of the further period of twenty years, if the company continue to hold for such further period, the company shall be duly compensated by the commissioners for their railways, equipment, machinery and other works including the low level railway, if the same shall have been constructed and then held by the company under this agreement, as also the high level railway from Chippawa to Queenston, and including also their works in Chippawa and Queenston, but not in respect of any franchise for holding or operating the same, such compensation to be fixed by mutual agreement, or in case of difference, by arbitration as in Paragraph 17 of this agreement, but the failure before the expiration of any such term, to fix such compensation in manner aforesaid, or to pay before such expiration, the amount of compensation so fixed, shall not entitle the company to retain possession meanwhile of the said railway, equipment, machinery and works, by this agreement to be constructed or op- 40

erated, but the same shall nevertheless and notwithstanding that the commissioners may have taken possession thereof remain subject to such liens and charges save as to possession as aforesaid, as may exist in favour of bondholders or debenture holders of the company, and the company shall retain a lien or charge thereon, save as to possession as aforesaid for the compensation of their railway, equipment, machinery and works to be agreed upon as aforesaid, or so to be awarded to them provided, however, that all such liens and charges shall not exceed the amount that may be agreed upon or may be awarded for such compensation as aforesaid.

10

“29. Subject always to the terms and provisions of this agreement, and to the rights of the commissioners as the owners in fee simple of the right of way in the park proper and on the chain reserve, the said railways and their equipment and the other works constructed or required under this agreement, shall upon such construction or acquisition, as the case may be, be vested in and shall be the property of the company who shall, subject as aforesaid, be entitled to operate, manage and control the same during the period or periods respectively above mentioned, it being however hereby declared, understood and agreed, that at the end of the said first or second periods, as the case may be, the whole of the company's said high level railway if then held by the company under this agreement, together with their equipment and the machinery and works aforesaid, including the elevators or lifts acquired or built and including also the works in Queenston and Chippawa shall become the property of the commissioners, subject to the payment of compensation to be agreed upon or awarded as the case may be, and as is hereinbefore provided for.”

20

It is not in controversy that the claimant (appellant) fulfilled the terms of its agreement by operating the railway in question down to the 1st of September, 1932, and by paying the rental of \$10,000.00 per annum stipulated by the agreement; also that the claimant handed over to the respondent Commissioners on September 1st, 1932, a complete electric railway with its appurtenances capable of operating *in situ*. There was no compulsory taking. The term of the franchise was forty years definite with the right to the appellant to require an extension which extension by written notice it expressly declined to take.

30

The possession conferred on the appellant by the original agreement of 1891 came to an end on September 1st, 1932, and on that date the railway with its equipment, machinery and other works passed to the respondent Commissioners as an organic railway capable of operation *in situ*.

40

During the forty years life of the franchise the appellant paid a

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dividend in one year only, namely, in the year 1901, and to the following finding of the arbitrators no exception was or could be taken:—

“During the last 11 years of operation down to the time of handing over the railway to the Commission the earnings each year with one exception fell short of paying operating expenses. In the one year, 1925, the earnings exceeded the operating expenses by only \$2,535.93. During the last 13 years of operation the annual loss, after allowing for depreciation and after paying 5 per cent interest on the \$600,000.00 bond issue, ranges from \$25,980.42 in 1921 to \$112,303.72 in 1931 which was the last full year of operation and for the last 8 months the loss was \$78,350.34. These facts appear from Exhibit No. 68.” 10

Supplementing the financial statements which support the foregoing finding, expert testimony was given by the witnesses Waller, Campbell, Wilson, Acres, Bunnell and Beattie, the effect of which is that there was no prospect of a change in this condition for the future.

In consequence of the very able, candid and exhaustive arguments which were addressed to us during seven days, I think that I have an adequate appreciation not only of the misfortunes which have befallen the appellant Company but also of the fact that the respondent Commission for forty years received in full measure all the benefits and advantages contemplated by the agreement of 1891. These considerations cannot, however, affect the conclusions of this Court which must depend on the construction of the agreement in question and its application to the circumstances established by the evidence. 20

I proceed to consider, in the first place, the principle or measure in accordance with which the compensation is to be ascertained under the agreement in question as applied to the circumstances existing on September 1st, 1932. I refer to the oft quoted words of Lord Shaw in the case of *Hamilton Gas Company, Limited v. Hamilton Corporation*, 30 1910, Appeal Cases, 300, where he says:

“Their Lordships, however, are of opinion that each of these cases and also the present case depended and depends, not upon any rule or principle of law of general application, but solely and entirely upon what is the just construction of the language, whether of statute or agreement, regulating the measure and nature of the claim. Illustration might easily be given of this fact, as, for instance, the decision in the case of *Stockton and Middlesbrough Water Board v. Kirkleatham Local Board*, (1893) A.C. 444. In that case a water board constituted by a special Act was bound, when so required, to sell to the sanitary authority the mains, pipes, and fittings belonging to the board within that district. It was held, upon a construction of certain statutory provisions, and upon the terms above quoted, that the sum to be awarded was merely as a 40

price for the mains, pipes, and fittings themselves, and not as a compensation for the loss of statutory rights of supply as a revenue-earning undertaking. The case was treated purely as one of construction, and the same method of treatment appears in *Toronto St. Ry. Co. v. Corporation of the City of Toronto*, (1893) A.C. 511, and the other cases cited in the Court of Appeal. In none of these did the decision invoke any general principle whatever, except that the language employed by the parties must be carefully looked to in order to attach to it its accurate meaning."

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10 I also refer to the language of Chief Justice W. R. Meredith approved by Viscount Cave in *Toronto City Corporation v. Toronto Railway Corporation*, 1925, Appeal Cases, at page 197, as follows: "There is no law which limits arbitrators to one method of determining value. Any and every method that may be helpful may be applied. Actual cost, reproduction cost and market value direct or indirect or actual value may each and all give assistance or only one may be useful according to the nature and circumstances of the particular enquiry." For the reasons stated at length by the arbitrators and which it is unnecessary to repeat, I think that none of the cases discussed before us
20 are on all fours with this case so as to bind us when considering this appeal.

The outstanding features to be considered in fixing the compensation in the present case seem to me to be as follows:—

First—That the taking is not compulsory for the franchise of the appellant ended in compliance with the original agreement aided by the act of the appellant itself in declining any extension.

Second—Consideration by the arbitrators of profits and losses is not expressly excluded by the agreement or by the statute. Mr. McCarthy argues that such consideration is in fact excluded by law. But
30 for reasons to be hereafter stated I am unable to agree with his contention.

Third—The railway by reason of changed conditions in transportation had become absolescent, incapable of earning the cost of operating it and of competing satisfactorily with other modes of transportation.

Fourth—Except in Paragraph one, quoted above, the statute (55 Vic. cap. 96) relates exclusively to the incorporation of the railway, its powers and limitations and has no bearing on the question of compensation.

40 These features and circumstances seem to me to distinguish the present case from all the cases brought to our attention except the American cases which, of course, are not binding on us.

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As already stated it is not in controversy that what passed to the respondent Commissioners from the appellant, claimant, was the “railway with its equipment, machinery and other works” *in situ*, capable of operation as a going concern. The question is whether the actual financial value as an operating railway *in situ* is to be taken as the basis of compensation or whether under the terms of the agreement such actual value should be ignored and compensation awarded on the basis of cost to the appellant, that is, cost of reproduction less depreciation and obsolescence.

I think that the railway took its chances not only in regard to profits and losses occurring through operation during the forty years of the existence of its franchise but that it also took its chances as to the quantum of compensation based on the financial value of that which passed to the Commission at the expiry of their franchise. For reasons stated hereafter, I think that compensation must be based on the actual financial value to the respondents of that which passed and not on any artificial value such as the appellants seek to establish. 10

Mr. McCarthy’s argument to the contrary is summarized by him in the following words:—

“The majority Arbitrators erred in finding that the electric railway, its equipment, machinery and works had no value to the Respondent as an electric railway (a) because they reached this finding by considering ‘losses’ which they were precluded from considering, and (b) because even if they were permitted to consider ‘losses’ the evidence would not support the finding, and (c) because the Respondent was estopped from denying the value of the railway &c. as a railway.” 20

On ground (a), viz., that the arbitrators were precluded from considering losses, I understand from the oral argument that the proposition is supported on the following reasoning: 30

The method of fixing compensation by capitalizing profits is not applicable in the case of a public utility where the franchise comes to an end by the original agreement or by a right to the taker conferred by a statute which was in force when the franchise was granted, (citing the Kirkleatham case (1893) A.C. 444, and the Edinburgh Street Tramway case (1894) A.C. 456). The essential point determined in these cases is that the franchise having come to an end, no future profits can accrue to the claimant; and the method of fixing compensation by capitalization of estimated future profits is inapplicable. It follows that evidence of past profits is irrelevant and therefore inadmissible *for the purpose of determining compensation by capitalizing profits.* 40

But it does not follow that evidence of profits or of losses is inadmissible when it is sought to fix the compensation by ascertaining

directly the actual value of the subject matter. In this connection I refer to certain observations of Lord Herschell in the Edinburgh case (1894) A.C. at page 465:—

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10 “My Lords, I have so far dealt with the language of the section, without taking into consideration the words within the parenthesis, upon which so much of the argument turned; what was to be paid by the purchasers was the then value of the tramway, ‘exclusive of any allowance for past or future profits of the undertaking’, or any compensation for compulsory sale, or other consideration whatsoever.”

20 “...It is said that the words ‘exclusive of any allowance for past or future profits of the undertaking’ were introduced for the purpose of preventing the arbitrator making any addition to the value otherwise arrived at in respect of such profit. I find it difficult to understand how it could ever be supposed that an arbitrator would *make any addition* to the value of the tramway in respect of the past profits of the undertaking, or how it could ever have been thought necessary to prohibit his doing so. It is, however, quite intelligible that *it might be thought necessary to guard against his allowing for, or, in other words, taking into account past profits in arriving at the value of the tramway.*”

In the case of the *Toronto Railway* and the *City of Toronto*, the majority arbitrators in their reasons for their award make the following observations:—

30 “We understand the word ‘depreciation’ occurring in the decisions cited to include obsolescence and deterioration from whatever cause, and not as confined to physical wear and tear and to what might be called ‘obsolescence’ as distinguished from ‘obsolescence’ at the time of valuation. The fact and degree of obsolescence must be determined from the evidence upon the point having regard to good practice in railway administration.”

40 I do not find in the judgment of the Court of Appeal or in the judgment of the Judicial Committee any criticism of this observation, and it appears to me to be a correct statement. It is true that in the *Toronto Railway* case it was expressly provided that “the value of the franchise and earnings present and future of the railway” are not to be taken into consideration but where as in this case there is no express prohibition of such evidence it appears to me that the arbitrators were right in admitting evidence of losses from year to year and expert evidence to show that through obsolescence the railway possessed no value as a going concern.

This view receives support from the observation of Lord Shaw in the *Hamilton Gas Case* (1910) A.C. at page 311, where he says: “One limit to the profit-earning power of the undertaking does appear

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in the Act, namely, that its profits could never be declared at more than 15 per cent.; any balance that might, so to speak, be earned over that figure was by anticipation drawn off for the benefit of the community in relief of the price of gas. *Below that figure and down to nil or a loss*—all these considerations going to its value—*were elements* for the arbitrator in ascertaining the price to be paid....”

I, therefore, reach the conclusion that evidence of losses was in the present case admissible.

—continued

The second ground taken by the appellants is that even if the arbitrators were permitted to consider losses the evidence does not support their finding. 10

This is a question of fact, and while no doubt this Court has jurisdiction on the present appeal to consider their finding and to reverse or modify it, yet after full consideration of the appellant's argument, I find no grounds to warrant interference with the finding that “the railway at the time it was handed over to the Parks Commission was of no value for operation as a railway to the Railway Company or the Parks Commission or to any one else.”

The third ground stated by Mr. McCarthy is: “Because the respondent was estopped from denying the value of the railway &c. as a railway.” I find difficulty in understanding how the principle of estoppel can be applied to the circumstances of this case, for the obligation to pay the rental of \$10,000.00 per annum during the life of the franchise rests on direct contract, and by Clause 19 of the Agreement it is expressly provided that the rent shall be paid although the Company may not by virtue of this agreement be able to exercise the rights and powers to construct and operate the said railway. 20

For these reasons I am of opinion that evidence of losses and evidence that the railway could not hereafter be operated without loss was admissible; that the majority finding of the arbitrators that as a railway operating *in situ* it is valueless is right and consequently that it is impossible to ascribe to it a value based on Reconstruction less depreciation. 30

If I am right in the views just expressed, fixing of compensation by the method of reconstruction cost less depreciation is not applicable and some other method of ascertaining the compensation must be applied, and as the railway is valueless as an operating railway, the only value to be attributed to it as a basis for compensation is the value which can be ascribed to its component parts. But value to whom? I venture to think that the well-established rule laid down by the Privy Council in *Corrie et al v. McDermot* 1914 A.C. 1056, does not here apply, and that compensation is, in the special circumstances existing, to be measured by the value to the taker and not by the value to the owner. It 40

seems to me that the compensation in question falls to be determined by the terms of the agreement between the parties. That agreement, like any other contract, is to be construed in accordance with the language used as applicable to the surrounding circumstances. The words of the agreement are "the company shall be duly compensated by the commissioners for their railways, equipment, machinery and other works."

10 The surrounding circumstances are (1) that the railway as such is a fixture *in situ*; (2) under the agreement it cannot be sold to the public because it passes to the Commission contemporaneously with the cessation of the franchise, (3) whether profitable or unprofitable it is valueless to the railway company. It cannot use it and it cannot sell it either as a complete railway or as "scrap."

20 Did then the parties intend by their agreement that on the termination of the franchise all the physical assets of the railway should pass to the commissioners for nothing without payment of any compensation because such compensation was to be measured by the value to the taker which was *nil*? To construe the agreement in that way would in my opinion be doing violence to the intention of the parties, for real compensation was plainly intended. See the observation of Cassels, C. J. Exch. in *The King v. Halifax* (1918) 18 Exch.R. at page 72. The basis of compensation applicable under this agreement is analogous to that which is applied as between landlord and tenant where buildings are erected by a tenant and at the conclusion of the tenancy are taken over by the landlord, i.e., at their value to the landlord.

30 Here, the lands on which the railway was constructed remained at all times the property of the Parks Commissioners. All that the railway had was an easement to build and operate its railway for which it paid a rental of \$10,000.00 per annum. The railway and its equipment passed to the Parks Commissioners at the expiry of the franchise with a right to the railway of compensation, like the right of the tenant to compensation for his improvements. For these reasons I think that this case falls outside the well-established rule that compensation is to be measured by the value to the owner and not the value to the taker, and that under the terms of this agreement compensation is here to be awarded on the footing adopted by the arbitrators, that is, the value to the respondent commissioners of the component parts when broken up.

40 It remains to consider the ten items disallowed by the arbitrators and appealed against by the company as also the five items of the Commissioners' cross-appeal.

In dealing with those items disallowed by the arbitrators against which disallowance appeal is taken by the Railway Company I follow the numbering ascribed to these items during the argument of the appeal.

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Item One.

Parcels 121 (a) being lands on Kent Street in Queenston
121 (b) as shewn on Plans 121 and 122.

The claim for disallowance is based on the following grounds:

- (1) The title of the Company to these lands was not established;
- (2) They were acquired for the purpose of a spur leading to the Lewiston Bridge as distinguished from a siding and form no part of the main line of railway between Chippawa and Queenston for which alone compensation can be awarded;
- (3) Their acquisition is not shewn to have been approved by the 10
Minister of Public Works as required by Sec. 21 of the Statute.

These lots were acquired as part of a scheme for cooperation between the appellant Railway Company and an American Company operating on the Eastern side of the Niagara River so that passengers might make a round trip down one side of the river and up the other. The scheme received the support and approval of the Park Commissioners and proved advantageous to the appellant Company but it has been found impossible to establish by evidence the express approval of the Commissioner of Public Works for Ontario.

I am of opinion that the right of the Railway Company to acquire 20
these lands is conferred by Section 2 of the agreement which required the appellant Company to construct sufficient sidings and equipment to meet the development of traffic.

I am also of opinion that it was not necessary for the appellant company to prove express approval by the Commissioner for Public Works for Ontario. These lands were notoriously in use by the Company for a great number of years. I think from 1903 and the maxim *omnia praesumuntur rite esse acta* applies.

But apart from the foregoing reasons, a study of the Statute, Cap. 96 of 55 Vic. convinces me that the requirement by Sect. 21, of the ap- 30
proval of the Commissioner of Public Works is solely for the protection of the public and the absence of express approval by the Commissioner of Public Works cannot operate to exclude from the assets which passed to the respondents and for which compensation is to be awarded, these lands which had been legitimately acquired under clause (2) of the agreement.

Counsel for the respondent in his last memorandum says:

“If this Court should give effect to the argument for the Railway that this item was improperly disallowed and should seek to allow it on a salvage or scrap basis, the sum of \$1100.00 would be 40
the proper amount to be added to the award.”

I would allow the appeal on this item and add \$1100. to the sum awarded.

Item 2.

“Items relating to the Lewiston Bridge line.”

“Depreciated Value \$9,375.00.”

The views just expressed in regard to item 1 apply also to this item. But no evidence has been pointed out to us to shew what its value would be on a “scrap” basis. It is suggested that in existing circumstances it has no value as a bridge and that wrecking it would
10 cost more than the resulting scrap would be worth.

To avoid the expense of a reference back I would suggest an allowance of \$500. for salvage in respect to this item. If this allowance is not agreed there should be a reference back to the arbitrators at the risk as to costs against the party who declines the above allowance, to fix the salvage value of this bridge.

Item 3.

“C.N.E.” turnout in the City of Niagara Falls.”

This is a siding or spur laid down some years ago in Niagara Falls for the purpose of enabling the appellant Company to run up Bridge
20 Street, in the centre of the Highway, to the former waiting room of the Niagara and St. Catharines Railroad so as to make close and convenient connection with that Railway. This waiting room was long ago moved to another part of Niagara Falls and this bit of track thereupon fell into disuse and is valueless to the Park Commissioners who moreover are not shown to have any right to tear up the street and remove the rails. In any aspect I can find no ground shown for the allowance of compensation in respect of this item. The appeal should therefore be dismissed as to this item.

On the argument of the appeal items 4 and 9 were dealt with together.
30 In the reasons for award they read as follows:

“*Bridges No. 1 and 7.* Additional amount if concrete not substituted for masonry.”

“9. *Power House.* If concrete not substituted for certain portions of masonry.”

It is easy to comprehend the argument of the appellant Company on these two items, if compensation were to be fixed on the basis of reproduction cost less depreciation; but I have difficulty in comprehending how on the basis which this Court finds applicable such claims to compensation are intelligible or can be entertained. The appeal on these
40 two items should be dismissed.

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Items 5, 6, and 10 read as follows:

“Railway Bridge No. 8—substructure (5)
superstructure (6)
intake (10).

While for reasons already stated I cannot agree with the majority arbitrators in holding that the want of evidence to establish the concurrence of the Commissioner of Works warrants the disallowance of these items as not being within the terms of the agreement and while these assets might have value to the Commissioners as component parts of a railway under actual operation yet, as a separate disassociated part the intake has no value whatever to the Parks Commissioner and the bridge has value only as “scrap.” The appeal as to item 10 should therefore be dismissed. As to items 5 and 6 I would suggest a scrap allowance of \$500, by consent in order to avoid the expense of a reference back. If this is not agreed there should be a reference back to the arbitrators at the risk of the refusing party as to costs, to fix the “scrap” value of this bridge. 10

Items 7 and 8 read as follows:

“Highway Bridge No. 8a. substructure (7)
superstructure (8) 20

In the reasons of the majority of the Board these items are disallowed but by inadvertence the sum of \$11,440. being their depreciated value is included in the total award of \$179,104. This is admitted by counsel for the appellant railway and the award should, pursuant to his consent, be reduced by the sum of \$11,440. This item forms no part of the physical assets handed over to the Commissioners. Whatever might be argued if reconstruction less depreciation was the basis of compensation no allowance can be made on the footing of “scrap” value. The appeal on this item should therefore be dismissed.

I proceed to deal with the cross-appeal of the Parks Commissioners. 30
The first four items of that appeal, the particulars of which have already been stated, may be dealt with together. These items and the reasons for their allowance are referred to in the following passage of the arbitrators’ reasons:

“We have, therefore, concluded that the compensation to be paid by the Parks Commission to the Railway Company for its railway, equipment, machinery and other works is not to be arrived at on the basis of reproduction cost less depreciation but by applying various considerations to various component parts of the property of the Railway Company in an endeavour to arrive at the full value to be attached to each. With respect to such items as track, distribution system, machinery and rolling stock, the value is the amount 40

10 that could be realized from the disposal thereof. With respect to the incline railways which the Commission continued to operate after August 31, 1932, we have taken into consideration the reproduction cost less depreciation, their earning power and other circumstances affecting their value. With respect to items such as paving, retaining walls and culverts, we have regarded them as adding value to the property of the Commission and have allowed for them on the basis of reconstruction cost less depreciation. As to certain other items, including the power house building and a portion of the grading, we have regarded them as adding value to the property of the Commission and have allowed what we think is their full value on this basis. With respect to the lands, we have allowed what we consider to have been the full value thereof as of the 31st day of August, 1932, but not on a reconstruction basis."

I agree with these observations and with the opinion elsewhere expressed by the arbitrators that under the special provisions of this agreement compensation is to be fixed, as in the case of Landlord and Tenant, by the value to the taker and not to the owner.

20 The allowances made by the arbitrators in respect to the four items now under consideration seem to have sprung into prominence only at a late stage of the argument in this Court. Little attention was paid to these items by either party during the hearing before the arbitrators. It is true that certain of the expert witnesses called by the Commissioners expressed the opinion that these items possessed no value. Apparently the majority arbitrators discredited these opinions of the experts as they were entitled to do. They had necessarily during the forty-eight days of taking evidence supplemented as it was by an extended inspection of the whole property acquired a very real and complete apprehension of the undertaking and of its component parts including these four items. It is impossible for this Court, even though
30 assisted by the able arguments of counsel, to acquire the complete grasp of the situation which was possessed by the arbitrators who saw the property and with maps and plans before them received explanations which are not available to this Court. Under these circumstances I find it impossible to say that the arbitrators were wrong and accordingly, I would dismiss the cross-appeal in respect to these four items.

40 The contention of the Parks Commission as to costs remains for consideration. As stated in the notice of appeal, it is this "The submission to arbitration by the parties did not include any power or authority on the part of the arbitrators to award costs, and such award was outside and beyond the jurisdiction of the arbitrators."

At the date of the agreement between the parties, the arbitrators had no power over costs unless it was conferred by the submission, or the submission covered all matters in difference between the parties, and the question of costs of the arbitration was deemed to be one of the

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matters in dispute and so came within the terms of the submission. This state of affairs was remedied by the Act of the Ontario Legislature in 1897, recasting the provisions of The Arbitration Act. This Act, 60 Vict., cap. 16, provided, Section 4, that a submission unless a contrary intention is expressed therein, thereby deemed to include the provisions set forth in Schedule A to this Act, so far as they are applicable to the reference under the submission, and in Schedule A is found the provision, as paragraph (i), "The costs of the reference and award shall be in the discretion of the arbitrators or umpire who may direct by and to whom and in what manner these costs or any part thereof shall be paid and may award costs to be paid as between solicitor and client." 10

Section 48 of this Act provided: "This Act shall not affect any arbitration pending on the 1st day of September, 1897, but shall apply to any arbitration commenced thereafter under any agreement or order made on or before the said date."

The effect of this statute is to add the implied provision to the agreement of the parties ratified by the Act of Parliament under which this arbitration is now held. *Re Williams v. Stepney* (1891) 2 Q.B. 257, C.A. 20

This statutory provision was carried unchanged into the revision of 1897 and the implied provision has ever since continued, notwithstanding the various revisions of the statute, but Section 48, being regarded as of a temporary nature, has disappeared and been repealed, and it is not now found in the statute. The effect of its repeal (by 9 Edw. VII, cap. 35) is not to remove the implied provision from the contract of which it had been made a part. The implied provision had been effectively added to the actual contract between the parties by the Act of 1897. This provision was spent and so repealed. But the effect of the repeal was not to destroy everything that had been done 30 under the repealed Act.

The Interpretation Act, Sec. 16, modifies the earlier cases.

Upon another ground the arbitrators may be said to have power to order the costs of the arbitration. Sec. 3 of Cap. 97 of the present revised statutes provides that "this Act shall apply to every arbitration under any Act passed before or after the commencement of this Act as if the arbitration were pursuant to a submission, except in so far as this Act is inconsistent with the Act remedying an arbitration or with any rules of procedure recognized and authorized by that Act," so that if this arbitration is regarded as an arbitration authorized by the Statute which approved and validated the agreement of the parties, the present Arbitration Act and its Schedule apply to this arbitration. 40

As appears by the notice of appeal, the appeal is only as to the powers of the arbitrators to award costs. It is hard to understand

why the arbitrators should have given to the railway the costs of the entire arbitration. Obviously a great part of the costs were occasioned in connection with matters in which the railway has completely failed, and had an appeal been taken upon this ground we might have felt constrained to relieve the Parks Commission from an award which was productive of this consequence and possibly giving to them the costs of the matters in which they succeeded. But it does not by any means follow that a general award of costs entitled the party in whose favour the award is made to all the costs of proceedings. The claims put forward before the tribunal disposing of the matter may be looked at and where it is obvious that the costs have been substantially increased by the making of certain contentions and putting forward of certain claims in which that party is unsuccessful, a general award of costs will not entitle him to the costs of these claims and of these contentions. He will only be entitled to tax his general costs of the arbitration, the costs incurred with relation to matters upon which he has succeeded, not those incurred solely in respect of matters upon which he has failed. This is the effect of a general award of costs. There should be a declaration to this effect.

20 The award should be varied to accord with the foregoing declarations after the parties have indicated their respective positions with regard to the bridges above mentioned.

The appellant Company should pay to the respondent Commissioners the costs of the principal appeal to this Court and the Commissioners should pay to the Company the costs of the cross-appeal and of the motion for leave to cross-appeal.

MULOCK, C.J.O.:	FISHER, J.A.	} I agree.
MIDDLETON, J.A.	HENDERSON, J.A.	

No. 7

Order of Court of Appeal.

30 Seal
14.4.36
"G.T."

THE RIGHT HONOURABLE THE CHIEF
JUSTICE OF ONTARIO
THE HONOURABLE MR. JUSTICE MASTEN
THE HONOURABLE MR. JUSTICE MIDDLETON
THE HONOURABLE MR. JUSTICE FISHER
THE HONOURABLE MR. JUSTICE HENDERSON

} Tuesday, the 31st
day of December,
A.D. 1935.

40 1. UPON MOTION made unto this Court on the 28th, 29th, 30th and 31st days of October, and on the 1st, 4th and 5th days of November, A.D. 1935, by counsel for the Appellant by way of appeal from the Award of the majority arbitrators dated the 29th day of May, 1935, herein, and

In the Court of Appeal for Ontario.

No. 6.
Reasons for Judgment of Court of Appeal on Appeal from Award,
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Order of Court of Appeal.
31st Dec., 1935.

*In the Court
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for Ontario.*

—
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upon motion made unto this Court on the 1st, 4th and 5th days of November, A.D. 1935, by counsel on behalf of the Respondent for leave to cross-appeal and also by way of cross-appeal from those portions of the Award of the majority arbitrators dealing with allowances for grading, paving, culverts, power house and the taxable costs of the arbitration dated the 29th day of May, 1935, herein, and in the presence of counsel for all parties, and upon hearing read the pleadings, the evidence adduced at the arbitration and the Award aforesaid, and judgment having been reserved unto this day

2. THIS COURT DOTH ORDER that the said Award be varied, and as 10
varied be as follows:—

(1) WE FIX, AWARD, ADJUDGE AND DETERMINE the amount of the compensation to be paid to the Appellant, International Railway Company, by the Respondent, The Niagara Parks Commission, to be the sum of \$168,764.00 as full compensation except for items relating to the Lewiston Bridge line and items comprising the substructure and superstructure of the Railway Bridge, which items are specially hereinafter dealt with.

(2) WE FIX, AWARD, ADJUDGE AND DETERMINE that the Re- 20
spondent, The Niagara Parks Commission, do pay to the Appellant, International Railway Company, its costs of the arbitration incurred with relation to matters upon which it succeeded, excluding therefrom such costs as have been subject of agreement between the parties, forthwith after taxation thereof.

3. THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the applica-
tion on behalf of the Respondent for leave to cross-appeal from those portions of the Award of the majority arbitrators dealing with allow-
ances for grading, paving, culverts, power house and the taxable costs of the arbitration, be and the same is hereby granted, and that the appeal
of the Respondent from those portions of the said Award of the majority 30
arbitrators dealing with allowances for grading, paving, culverts and power house be and the same is hereby dismissed.

4. THIS COURT DOTH FURTHER ORDER AND ADJUDGE that this Court
having determined that the Respondent, The Niagara Parks Commission, should pay to the Appellant, International Railway Company, compensa-
tion for items relating to the Lewiston Bridge line and for items com-
prising the substructure and superstructure of the Railway Bridge, and
having fixed the sum of \$500.00 as compensation for each of such items
subject to the parties hereto agreeing to such sum or sums, and the parties
having failed to agree to such sum or sums, it shall be referred back to 40
the Board of Arbitrators to determine the additional amount of compen-
sation to be paid on a salvage or scrap basis by the Respondent, The
Niagara Parks Commission, to the Appellant, International Railway
Company, for said items, and that such reference shall be had at the risk

of costs against the Appellant, International Railway Company, being the party who declined to accept such sum or sums.

*In the Court
of Appeal
for Ontario.*

5. AND THIS COURT DOTH FURTHER ORDER that the Respondent, The Niagara Parks Commission, do pay to the Appellant, International Railway Company, its costs of the cross-appeal and motion for leave to cross-appeal forthwith after taxation thereof.

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Court of
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31st Dec.,
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6. AND THIS COURT DOTH FURTHER ORDER that the Appellant, International Railway Company, do pay to the Respondent, The Niagars Parks Commission, its costs of this appeal forthwith after taxation thereof.

—continued

10

“D’ARCY HINDS,”
Registrar, S.C.O.

Entered O.B. 156 page 174-5.
April 14th, 1936.
“R. M.”

No. 8

**Reasons for Judgment of Fisher, J.A., Admitting Appeal to
His Majesty in Council.**

No. 8.
Reasons for
Judgment of
Fisher J.A., on
motion for
leave to appeal
to His Majesty
in Council,
7th February,
1936.

20 This is a motion by the railway company for an order admitting the appeal of The International Railway Company to the Privy Council from the judgment of the Court of Appeal for Ontario, and to approve the security for the costs of the appeal. No objection is raised to the security. The motion arises out of an appeal from an award of a board of arbitrators to the Court of Appeal. The company and the commission, years ago, entered into an agreement which had to do with the operation of the railway company in this province. The terms of the agreement are set out in the Statute under which it was confirmed, 1892, 55 Vict., ch. 96 (Ont.).

Mr. Slight on behalf of the Commission opposes the motion upon two grounds:

30 (1) That under para. 17 of the agreement the parties agreed upon the Court of Appeal for Ontario to determine any questions of law or fact arising on an appeal from the award of the board of arbitrators and there is no appeal to the Privy Council. The Court of Appeal was agreed upon as a finality.

40 (2) That the railway company, being an extra provincial foreign corporation, having discontinued carrying on business in Ontario in September, 1932 (now having no licence), can not enter suit by way of action or participate in any proceedings before an Ontario Court, in the absence of an extra provincial corporation licence: The Extra Provincial Corporations Act, R.S.O. 1927, ch. 219, sec. 15.

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No. 8.
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Mr. Slaght's contention is, in regard to the second ground, that this motion is a *proceeding* in the Supreme Court of Ontario and he refers to class 9 in sec. 3 of The Extra Provincial Corporations Act (which defines the railway company as a corporation not coming within classes 1 to 8) and that class 9 is applicable, and the railway company having no licence, it is a bar to the motion.

Mr. McCarthy's contention is that, the railway company having ceased operations under the agreement, no licence is required to commence an action to recover in the Courts of Ontario anything that might be due under the agreement, or to enforce its rights arising under the arbitration clause. 10

I am of the opinion that the aim and object of The Extra Provincial Corporations Act is to compel all foreign corporations before commencing business operations in this province to take out a licence, and on failure to do so under sec. 15 a penalty of \$50.00 per day is imposed; that this railway company was licensed to operate, but since the termination of the agreement all operations and business have ceased; that I am unable to find anything in the Act, requiring the railway company to take out a licence to enforce its rights under the agreement; that a proceeding to enforce rights under a contract entered into under a licence is an entirely different matter to operating a business after a licence has expired. It would follow, if Mr. Slaght's argument is to be upheld, that the railway company had no right to proceed with the arbitration without a licence. It seems to me that if the railway company had applied to the Department for a licence after the termination of the agreement the Department would have asked, "What business do you contemplate operating?"; and the only possible answer would be: "We do not intend to operate the railway company or engage in any business but we want a licence to arbitrate or commence an action to enforce our rights under an agreement which we had with the Parks Commission". 30
In these circumstances, I think the Department would have said that bringing an action or proceeding with an arbitration under the terms of an expired agreement does not mean "operating a business" and that "no licence is required". I also think that the general Act in view of the terms of the special Act has no application. I can see no merit in this contention.

The first objection raised by Mr. Slaght has given me considerable difficulty. Briefly, Mr. Slaght's argument is that the agreement gave both parties the right to arbitrate, and, if either was dissatisfied, they agreed to go to the Court of Appeal; that the railway company having gone to the Court of Appeal, that is a finality, and The Privy Council Appeals Act, R.S.O. 1927, ch. 86, has no application. The relevant part of para. 17, following the provision made for the appointment by the Chief Justice or a senior presiding Judge of the Provincial Court of ultimate appellate jurisdiction for Ontario, reads: 40

“And the award of such arbitrators shall be subject to the same provision of law as if the said arbitrators had been appointed by the said parties upon a voluntary reference under the Revised Statutes of Ontario respecting Arbitrations and References. Either party to such arbitration may appeal from the award upon any question of law or fact to the said provincial court of ultimate appellate jurisdiction for Ontario and the said court shall have the same jurisdiction therein as a Judge has on an appeal from a report or certificate under section 4 of the aforesaid Revised Statute respecting Arbitrations and References”.

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10 It is to be noted that under the old Arbitration Act an appeal from an award was taken direct to a single Judge.

—continued

For the company, Mr. McCarthy contends that para. 17 does not state that the award of the arbitrators was to be final; that either party was given a right to appeal to the Court of Appeal instead of going to a single Judge; that the Court of Appeal has the same jurisdiction as that of the single Judge; and also that the Court of Appeal, having given judgment, two rights exist:

(a) Either party may appeal to the Supreme Court of Canada, or

(b) Appeal to the Privy Council under The Privy Council Appeals Act, R.S.O. 1927, ch. 86. Sec. 1 of that Act reads:

“1. Where the matter in controversy in any case exceeds the sum or value of \$4,000, as well as in any case where the matter in question relates to the taking of any annual or other rent, customary or other duty, or fee, or any like demand of a general and public nature affecting future rights, of what value or amount soever the same may be, an appeal shall lie to His Majesty in His Privy Council; and, except as aforesaid, no appeal shall lie to His Majesty in His Privy Council”.

He refers to *Re Boulton et al.*, and *The Toronto Terminals Railway Co. Ltd.*, [1933] O.R. 816.

30 I confess that on the argument I was much impressed with Mr. Slaght's contention, but, after careful consideration, my conclusion is that the railway company is entitled to the order. Briefly, my reasons are as follows.

Admitting that the agreement does provide for an appeal to the Court of Appeal and also admitting that both parties applied to and had the agreement confirmed by legislation, the important fact remains that the agreement is silent on the right of either party to a further or last appeal.

40 The judgment of the Court of Appeal awarded the railway company a sum far in excess of \$4,000.00, and dealt with important questions of

*In the Court
of Appeal
for Ontario.*

No. 8.
Reasons for
Judgment of
Fisher J.A., on
motion for
leave to appeal
to His Majesty
in Council,
7th February,
1936.

—*continued*

law and fact, and it seems to me that, until such time as it is found that both parties to an arbitration or to litigation have expressly agreed that there shall be no further appeal either to the Supreme Court of Canada or to the Privy Council, section (1) of The Privy Council Appeals Act (*supra*) is available to either litigant desiring an appeal.

One of the natural and statutory consequences of an appeal to the Court of Appeal is that the judgment of that Court is appealable to the Supreme Court of Canada or to the Privy Council, and I think it must be found that, when the parties agreed to what is set out in para. 17, they assumed all the natural and statutory consequences thereof. I can find 10 nothing in para. 17 or on the face of the agreement which even suggests a limitation on the unqualified right of appeals stipulated. The right of appeal to the Privy Council from any judgment of the Court of Appeal of the appropriate nature or amount being given by statute, it is unnecessary for the parties to provide for such a further appeal by their agreement, but had they intended to exclude such an appeal they would have done so in express terms. The Court cannot possibly supply or infer such a term involving waiver of the statutory benefit by implication, where there is nothing in the agreement that would even suggest the propriety of such an implication. 20

The order asked for will issue. The costs of the motion will be to the successful party on the final determination of the appeal.

No. 9

Order of Fisher, J.A. Admitting Appeal by International Railway Company to His Majesty in Council

IN THE SUPREME COURT OF ONTARIO

THE HONOURABLE

MR. JUSTICE FISHER
IN CHAMBERS

} FRIDAY, the 7th day of February,
A.D., 1936.

UPON THE APPLICATION made the 30th day of January, 1936, by 30
Counsel on behalf of International Railway Company, in the presence
of Counsel for The Niagara Parks Commission, for an order admitting
the appeal herein of International Railway Company from the Judg-
ment of the Court of Appeal for Ontario, dated the 31st day of De-
cember, 1935, to His Majesty in His Privy Council, and approving
the security for the costs of the said appeal, and upon hearing read
the affidavits (2) of D'Alton Lally McCarthy, filed, and the affidavit of
Donald Day Carrick, filed, and the exhibits referred to in the said
affidavits, and upon hearing Counsel as aforesaid, and it appearing that

No. 9.
Order of
Fisher, J. A.
admitting
appeal on
behalf of
Int. Ry. Co.
7th February,
1936.

International Railway Company 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;

In the Court of Appeal for Ontario.

No. 9.
Order of Fisher, J. A. admitting appeal on behalf of Int. Ry. Co. 29th Jan'y., 1936.

1. IT IS ORDERED that the sum of \$2,000.00 paid into The Canadian Bank of Commerce by International Railway Company to the credit of the Accountant of this Honourable Court, as appears by the receipt of the said Bank dated the 23rd day of January, 1936, be and the same is hereby approved as good and sufficient security that the International Railway Company 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 and damages as may be awarded in the event of the said Judgment being affirmed.

—continued

2. AND IT IS FURTHER ORDERED that the appeal by International Railway Company herein to His Majesty in His Privy Council from the said Judgment of the Court of Appeal for Ontario be and the same is hereby admitted.

3. AND IT IS FURTHER ORDERED that the costs of this application shall be costs in the said appeal.

“D’ARCY HINDS”
Registrar,
S. C. O.

20

Entered O.B. 153, page 568,
February 8th, 1936.
R.M.

No. 10

Affidavit of D. L. McCarthy

No. 10.
Affidavit of D. L. McCarthy, 29th Jan'y., 1936.

I, D’ALTON LALLY McCARTHY, of the City of Toronto, in the County of York, Solicitor, MAKE OATH AND SAY as follows:

1. I am the Solicitor for the International Railway Company, the appellant herein.

2. I have been instructed by the said International Railway Company to appeal from the Judgment of the Court of Appeal for Ontario pronounced herein on the 31st day of December, 1935, to His Majesty in His Privy Council.

3. The matter in controversy in this matter and appeal exceeds the sum or value of Four Thousand (\$4,000.) Dollars.

4. That now shown to me and marked Exhibit “A” to this my affidavit, is the certificate of the Accountant of the Supreme Court of Ontario of the payment into Court by International Railway Com-

30

pany of the sum of Two Thousand (\$2,000.00) Dollars as security on the appeal to His Majesty in His Privy Council.

*In the Court
of Appeal
for Ontario.*

No. 10.
Affidavit of
D. L.
McCarthy,
29th Jan'y.,
1936.

SWORN before me at the City of }
Toronto, in the County of York, }
this 29th day of January, 1936. }
"G. W. ADAMS"
A Commissioner &c.)

"D. L. McCARTHY"

--continued

No. 11

Affidavit of Donald D. Carrick

No. 11.
Affidavit of
Donald D.
Carrick,
27th Jan'y.,
1936.

I, DONALD DAY CARRICK, of the City of Toronto, in the County of 10
York, Solicitor, MAKE OATH AND SAY THAT:

1. I am a Solicitor in the office of Mr. A. G. Slaght, K.C., solicitor for the Niagara Parks Commission, and have knowledge of the facts herein deposed to.

2. An arbitration in this matter was proceeded with and an award made by the Board of Arbitrators who were appointed by the above named parties in accordance with the terms of the written agreement between the parties hereto.

3. From such award, an appeal was taken by International Railway Company to the provincial court of ultimate appellate jurisdiction 20
for Ontario, being the Court of Appeal for Ontario, such appeal having been expressly provided for by the agreement of the parties.

4. A copy of the agreement above referred to dated the 4th day of December, 1891, is now shown to me and marked Exhibit "A" to this my affidavit, and a statute ratifying such agreement was enacted by the Province of Ontario and is known as Chap. 96, 55 Victoria.

5. No further or other right of appeal was agreed upon or provided for by the parties either in the written agreement made between them or in the statute confirming the same, or otherwise howsoever.

6. The above named appellant, International Railway Company, 30
is an extra-provincial corporation, being a foreign corporation incorporated under the laws of the State of New York, one of the United States of America, and search has been made by me in the office of the Provincial Secretary of the Province of Ontario, and I find that such International Railway Company was licensed to carry on business in the Province of Ontario by extra-provincial corporation license dated August 19th, 1904, which provides that such license shall be forfeited by non-user during two consecutive years at any one time. Now shown to me and marked Exhibit "B" to this my affidavit is a certified copy of such license.

7. In such search I also found two letters dated January 18th, 1934, and January 23rd, 1934, the latter stating that operation of the railway was discontinued on September 11th, 1932 by the International Railway Company. Now shown to me and marked Exhibit "C" to this my affidavit are certified copies of the said letters.

SWORN before me at the City of }
 Toronto, in the County of York }
 this 27th day of January, A.D., }
 1936. }

"DONALD DAY CARRICK"

*In the Court
 of Appeal
 for Ontario.*

—
 No. 11.
 Affidavit of
 Donald D.
 Carrick,
 27th Jan'y.,
 1936.

—continued

10

"A. B. MORTIMER"
 A Commissioner, &c.

PART II.—EXTRACTS FROM EVIDENCE

*In the Matter
of an
Arbitration*

No. 1.
Extract from
remarks of
Counsel in
presenting
case to Board
of Arbitrators,
Jan. 9th, 1935.

No. 1. Extract from remarks of Counsel on behalf of INTERNATIONAL RAILWAY COMPANY, giving historical review of situation, in opening his case before BOARD OF ARBITRATORS.

MR. McCARTHY: The first statute of the Province of Ontario in which the Niagara Falls or the adjacent lands in Niagara Falls are mentioned is chapter 13 of 43 Victoria, being an act passed in 1880 by the Provincial Legislature. Nothing very much turns on that because that Act was repealed very shortly afterwards. It was an endeavour on the part of the Government to get the State of New York and the Province of Ontario together with the idea of unifying the Park or the lands adjacent to the Falls on both sides. 10

Then I refer you, sirs, to 48 Victoria, chapter 21, an Act passed in 1885 for the preservation of the natural scenery about Niagara Falls. That Act repeals the Act of 1880. Sections 3, 4 and 5 are perhaps interesting. Under section 3 the Lieutenant-Governor-in-Council was given power to appoint three persons to constitute a Board of Commissioners for Niagara Falls Park, and they held office during pleasure. They were given certain powers in reference to the appropriation of lands, and they were to report their plans and opinions to the Lieutenant-Governor-in-Council from time to time for his approval and assent. 20

The next Act is the Act of 1887, being 50 Victoria, chapter 13. Section 2 of that Act, which is called "An Act respecting the Niagara Falls Park" appoints the Commissioners as follows:

"2.—(1) From and after the commencement of this Act, Colonel "Casimer Stanislaus Gzowski, of the City of Toronto, Aide-de-Camp "to the Queen; John Woodburn Langmuir, and James Grant Mac- "donald, both of the City of Toronto, Esquires, the persons forming "the Board of Commissioners for Niagara Falls Park, and two other "persons to be appointed by the Lieutenant-Governor-in-Council if "he thinks fit, shall be a corporation by the name of 'The Commis- "sioners for the Queen Victoria Niagara Falls Park,' and shall con- "tinue to hold their respective offices, as members of the said cor- "poration, during the pleasure of the Lieutenant-Governor-in- "Council, and the Lieutenant-Governor in Council may, upon the "death of any such persons respectively, or on their resignation, or "removal from office, and from time to time thereafter, appoint "other persons to fill their places during pleasure as aforesaid." 30

Then Clause 14 of the Act is important in view of some evidence which I propose to submit:—

“14. The commissioners shall make an annual report for the information of the Legislature, setting forth the receipts and expenditure of the year and such other matters as may appear to them to be of public interest in relation to the park or as the Lieutenant-Governor-in-Council may direct.”

Now, following the incorporation of the Park Commissioners certain reports were made by them, and I am going to call the Board's attention to them. The first two reports do not contain anything of interest so far as this arbitration is concerned, but the third report, at page 58, makes this statement—

MR. SLAGHT: Official reports from the Commission to the Legislature?

MR. McCARTHY: To the Lieutenant-Governor-in-Council.

MR. SLAGHT: Is there a volume containing these reports?

MR. McCARTHY: Yes, this volume contains the official documents from 1880 to 1895, of the Queen Victoria Niagara Falls Park. I read from page 58:—

“The Commissioners, after much consideration of the question, are forced to admit, that, even under improved conditions, the sources from which the revenues are now drawn will prove inadequate to meet the annual cost of maintaining the Park, exclusive of the payment of the interest and sinking fund on the debentures. In view of this the Commissioners have given a great deal of thought during the past year to various measures, having for their object the augmentation of the revenue, and at the same time increased comfort and convenience of visitors to the Park.

“The first and most important of these is the promotion of an undertaking for the construction on the bank of the river, of an electric railway between the park and Queenston. Perhaps at no place on the continent of America are the conditions so favourable for building, attracting travel, and, from a financial view, successfully operating an electric railway than between the points named; the locality is the most celebrated in the world, offering no engineering difficulties in construction, possessing inexhaustible means for the creation of electric power, with the finest views of the Falls, Whirlpool Rapids, Whirlpool and the gorges of the river in full view from observation cars from the beginning to the end of the line . . .”

MR. SLAGHT: I do not want to interrupt my friend, but so that it cannot be said that I am guilty of permitting my friend to be misled, the report from which he is now reading is a matter which, in my view, is not receivable in evidence, and when offered in evidence would be objected to by me; but I do not think I should from time to time interrupt

*In the Matter
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Arbitration*

No. 1.
Extract from
remarks of
Counsel in
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case to Board
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—continued

*In the Matter
of an
Arbitration*

No. 1.
Extract from
remarks of
Counsel in
presenting
case to Board
of Arbitrators,
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—continued

my friend's statement as counsel of what he regards as a historical record. I rise now to say that as to some of the Statutes and this report and other matters, I desire to be of record that I am not to be regarded as acquiescing to their relevancy.

MR. McCARTHY: I gave you, sirs, a reference to the Act of 1887, which required the Commissioners to make annual reports, and I am reading now from the third annual report dated December, 1888. I gave my friend notice to produce them, because they are in the custody of the Government. I am reading from an official document. If my friend has the originals I would be glad to put them in, and if my friend has not the originals I am reading a copy from the files of the department of the Provincial Secretary:— 10

“ . . . all tending to increase the already great crowds of people
“ from all parts of the world and constantly increasing local travel
“ between Toronto, Niagara Falls and Buffalo. With all these ad-
“ vantages, the privilege to construct a railway along the banks of
“ the river should, in the opinion of the Commissioners, be a most
“ valuable asset for the purpose of increasing the annual revenue of
“ the Park. Believing this to be the case a survey of the route is
“ now being made, and when completed the Commissioners propose 20
“ asking the consent of the Government to advertise for proposals
“ for the acquirement of the franchise for a term of years to be
“ agreed upon.”

MR. McCARTHY: Mr. Chairman, no doubt you still have in mind the provisions of section 14 of the Act incorporating the Commission, namely, chapter 13 of 50 Victoria, passed in 1887, to which I referred yesterday. That was the Act appointing Sir Casimer Stanislaus Gzowski, Mr. Langmuir and Mr. Macdonald the Commissioners, and incorporating them as the Queen Victoria Niagara Falls Park. Section 14 of that Act provides that the Commissioners shall make an annual report for the information of the Legislature, setting forth the receipts and expenditures of the year and such other matters as may appear to them to be of public interest in relation to the park or as the Lieutenant-Governor-in-Council may direct. Now, the matters which I seek to refer to, and which were referred to in the reports prior to the making of the agreement, were matters which appeared to them to be of public interest, and in the interests of the park. They had found that the revenues of the park were insufficient to maintain the expenditures. They had found that there was no means of the public reaching the park. This was a scheme which was intimately tied up with the park itself, in an effort to enable the Commissioners to draw the public to the park and to get the public to patronize the various attractions and amusements which they had set up. One of my claims in this case for compensation is that whether the railway did or did not pay us makes no difference; we built the railway and operated it for forty years, and the Act says we are to be compensated. These reports in addition to showing the views of the Commis- 30 40

sioners in regard to matters of interest, also set forth the receipts and expenditures; and I propose at some stage to introduce evidence showing the benefits that accrued to the park and to the different industries connected with the park as the result of this railway being built. For instance, they have a number of lunch rooms, sight-seeing facilities, guides, and so on, all of which prospered as the result of this railway being introduced. My submission is that these preliminary statements by the Commissioners, which are amply verified by the results and by the Commissioners subsequent findings tell the whole story in regard to

10 why these capitalists were induced to make this investment, and also why the investment was made, and the benefit that accrued to the park as the result of it. It does not matter very much to me whether or not the railway was a financial success; it would not benefit me if it had been a great success; if the railway had paid ten per cent. I could not take advantage of it in claiming compensation. And my friend, I submit cannot take advantage of it, because what we are to be compensated for is our railway. We built our railway and ran it for forty years. We may have lost money on it, but it became an integral part of the affairs of this Commission and this park. Therefore I submit I am entitled

20 to refer to the whole story from beginning to end as it appears in these reports, and that this Board should have these reports before them. The reports constitute a continuous history, and therefore I submit they are not in the class of documents to which my friend refers, namely, negotiations between parties prior to the making of the agreement. These reports are statements made by members of a public body to the Lieutenant-Governor-in-Council, and as such they became a public document, as the result of which this railway was promoted. I therefore ask that the reports prior as well as subsequent to the making of the agreement be admitted as evidence.

30 MR. SLAGHT: In answering my objection my friend dealt with matters that are new and were not put forward earlier, and I confine my remarks to those new matters. The task here, as I see it, is to ascertain an amount which will duly compensate the railway for turning over to us on the first September, 1932, certain assets. I entirely disagree with my friend's submission when he suggests that because our lunchrooms may have prospered as the result of the operation of this railway during the forty years his clients operated it that is a factor to be taken into account in fixing the due compensation to his clients in September, 1932, for what they are turning over to us, I submit that if there was any

40 added prosperity enjoyed by our lunchrooms during the forty-year period because of the operation of the railway that is something we were entitled to the benefit of under our contract as it flowed along. A proposition of that kind, it seems to me, is beside the question when you come to determine exactly the value that the railway company are losing in parting with the assets they did part with to us in September, 1932.

The question whether the railway was a financial success from my

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—
No. 1.
Extract from
remarks of
Counsel in
presenting
case to Board
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—continued

*In the Matter
of an
Arbitration*

No. 1.
Extract from
remarks of
Counsel in
presenting
case to Board
of Arbitrators,
Jan. 9th, 1935.

—continued

friend's clients' standpoint is, in my submission, a very important aspect of this inquiry. This is not an expropriation or a compulsory taking by us of any property of my friend's clients, and it is therefore entirely outside of the considerations which move Boards and Courts in fixing value under those circumstances.

I would like to remind the Board at this stage of the character of this turning-over. It is a turning-over of assets of which the railway company desire to rid themselves. They have a perfect right to keep them; they contracted for that right by saying to us, "We will carry on for another twenty years"—with further right of renewal for another twenty years—they may keep the assets; but they are ridding themselves of unwanted assets to us. We are reluctantly receiving unwanted assets; they are being forced upon us at a date and a period when we do not want to take them. Evidence will be offered, as has been stated by counsel already, that we have not continued to operate this railroad, our reason being, as will appear, that it has been operated by my friend's clients at a loss for ten years. With the best advice possible we found it could be operated by us at present and in the future only at a loss, which we do not think the Park Commissioners are justified in doing. Bearing that in mind, I must now point out to the Board that whether or not the type of revenue-producing asset which we are being forced to take against our will, and of which my friends are ridding themselves because they choose to do so, is a white elephant or is an asset which can be used as a railway qua railway without incurring a loss, is one of the vital matters with which this Board will have to deal. So, repeating the grounds I put forward before, I submit that the earlier historical references and statements which my friend seeks to file are not receivable in evidence by the Board because they are not relevant evidence to the inquiry.

THE CHAIRMAN: Do you wish to add anything?

MR. McCARTHY: No, sir.

THE CHAIRMAN: The question of the admissibility or non-admissibility of these documents is reserved. We accept the documents subject to objection, and reserve the question of their admissibility or of their value to be determined later. In the meantime we will allow them to be read.

MR. McCARTHY: I have now completed the correspondence (Exhibit 3).

MR. ROBERTSON: Will the reports be marked Exhibit No. 5?

MR. SLAGHT: May I point out that only a fractional portion of the extracts of which a copy was furnished to me by my friend Mr. McCarthy have been read or called to the attention of the Board.

MR. ROBERTSON: I beg your pardon?

MR. SLAGHT: As I understand it, what is now being received as Exhibit No. 5, of which I have been furnished with a copy, are such

portions of extracts as have been prepared and read or specifically indicated to the Board by my friend Mr. McCarthy yesterday.

MR. McCARTHY: No; I want to put in all the reports. I cannot go through them all and read the different portions, but there are portions to which both of us would desire to refer.

MR. SLAGHT: If they are relevant it seems to me that now is the proper time to refer to them, because I cannot hope to deal in argument with fifty pages of data that you have not read to the Board, and with which the Board is not familiar.

10 MR. ROBERTSON: Yesterday each of us was furnished with a document headed "Historical" which contains the statute, the agreement, and certain extracts from the reports. Those extracts were all read to us?

MR. McCARTHY: Yes.

MR. ROBERTSON: We have had all of Exhibit 5 read to us?

MR. SLAGHT: No, I am afraid we have not.

MR. ROBERTSON: What part has not been read?

MR. SLAGHT: There must be many parts.

MR. McCARTHY: No; I read it all.

MR. SLAGHT: From the first to the last page?

20 MR. McCARTHY: Yes.

MR. ROBERTSON: Mr. McCarthy did not read verbatim the agreement or the Act.

MR. McCARTHY: The Act and the agreement are in the document.

MR. SLAGHT: If the only things contained in the proposed Exhibit 5 are the extracts read yesterday to the Board plus the agreement and the statute, then my trouble disappears.

THE CHAIRMAN: Then this document will be marked Exhibit 5?

MR. McCARTHY: Yes.

THE CHAIRMAN: Exhibit 5 contains what you read yesterday.

30 MR. McCARTHY: Yes.

THE CHAIRMAN: You skipped some clauses as being unimportant?

MR. McCARTHY: I read all the extracts verbatim, but there were some portions of the agreement which I did not read.

EXHIBIT 5: Reports of the Commissioners for the Niagara Falls Park.

MR. ROBERTSON: Are we to pay any attention now to any other portion of any reports?

MR. McCARTHY: Not at this stage; I will seek to introduce those later.

* * * * *

40 No. 2. Extract from Evidence of H. L. LOWE, Engineer. Called on behalf of INTERNATIONAL RAILWAY COMPANY.

H. LELAND LOWE, Sworn. Examined by MR. McCARTHY:

Q. What is your full name? A. H. Leland Lowe.

Q. Where do you live? A. On North Street, Rye, New York.

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Arbitration*

—
No. 1.
Extract from
remarks of
Counsel in
presenting
case to Board
of Arbitrators,
Jan. 9th, 1935.

—continued

Claimant's
Evidence.
No. 2.
H. Leland
Lowe,
Examination,
January 10,
1935.

*In the Matter
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—
Claimant's
Evidence.

No. 2.

H. Leland
Lowe,
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1935.

—continued

Q. What is your business? A. I am an employee of Stone & Webster, Engineering Corporation. My business is that of Engineer, and I bear the title of Consulting Engineer for that company.

Q. Would you be kind enough to tell us what the scope of the activities of Stone & Webster are? A. Stone & Webster Engineering Corporation, which, with its affiliated companies, is located at 20 Broad Street, New York, with offices elsewhere in the United States, is one of several companies engaged in the activities of Stone & Webster, Incorporated, which is the parent company of the group. The engineering corporation looks after such matters as engineering, which includes design, consultation, appraisals of property, and work of that kind; and construction and other companies forming the Stone & Webster group, supervise the management of public utility properties, the company doing that being known as Stone & Webster Service Corporation. This latter company devotes its entire time to the management of properties which are not owned in any way by Stone & Webster Incorporated or any of its subsidiaries. The management of those properties which are owned by Stone & Webster, Incorporated, comes under Engineers Public Service Company, Incorporated. In addition to those companies there is another company which handles the financial and security matters of the company, which is known as Stone & Webster and Blodgett. That company is engaged in the buying of securities from companies desiring to raise money and distributing those securities to the public. Stone & Webster Engineering Corporation has over a long period of years derived approximately twenty per cent. of its income from the companies under the Stone & Webster management, and eighty per cent. of its income from other companies that are not connected with it in any way. This income is to a very large extent from construction activities, the building of works of all kinds, including industrial properties, as well as public utility property; and in recent years with the depressed position in the public utility industry, the chief revenue of this sort has come from the industries. Incidental—and I think it is regarded as incidental—to the designing and construction activities, there has grown up a service for the clients of the company of a consulting nature, and that service is available to any who want it, whether they have employed Stone & Webster for construction purposes or not, and the circumstances under which I am here relate to this latter service. I am here on assignment by my company to testify with respect to certain particular things which I have been asked to testify upon. I think that describes in a general way the activities of the company.

Q. What have been their activities in the railway field, for instance?
A. In the railway business Stone & Webster were particularly active in the early days of railway electrification, and a considerable portion of their business in the late nineties and the early nineteen hundreds was in the electric railway business. They built railways at that time, acquired them through ownership and managed them and continue now to manage

railway properties in various parts of the United States, although there has been little construction activity, as you probably know, in that field in recent years. In addition to that work Stone & Webster have been consulted with respect to transportation and rapid transit problems by companies doing business in some of the largest cities of the United States.

10 Q. To what extent were you associated with the activities of Stone & Webster personally? A. My activities with Stone & Webster in the railway business began when I joined the company in 1916. As a matter of fact my first assignment with them related to some designing and construction work for the El Paso Electric Railway Company. Subsequently, and I believe in that same year, I did some work for the Dallas Railways. The company at that time operated a railway through a number of villages in the neighborhood of Plymouth, Massachusetts, and I recall having to go there in connection with some operating questions.

* * * * *

MR. McCARTHY: Would it be sufficient to say your firm were consulted on matters of vital importance in connection with transportation problems? A. That is true; I think they were really important problems.

20 Q. You say you joined the firm of Stone & Webster in 1916. Are you a graduate engineer? A. I am.

Q. Of what university? A. Cornell University.

Q. Where did you graduate? A. The class of 1903, with the degree of Mechanical Engineer.

30 Q. After the time you left Cornell University until the time you joined the firm of Stone & Webster, what were your activities as an engineer? A. I was at first assistant editor of an Engineering magazine in New York City, one of the few large ones at the time. Subsequently I was with the Delaverne Machine Company, New York City, manufacturing the first large gas engines for power purposes in this country and also producers of oil engines; I was Chief Engineer of that department when I left to go with the Carnegie Institute of Technology. I assisted in the equipping of shops and laboratories, and remained there for six years to teach. I had the title of Assistant Professor of Physics, and I gave the lectures in Heat and Thermo Dynamics, and directed the laboratory work in connection with that. Subsequently I was employed by the General Motors Company in Detroit to assist in the equipping of laboratories for research and remained with them to do research work in automotive problems, chiefly carburetion, and electric starting which was then new. I also interviewed inventors and passed on their proposals. Later
40 I went with the National Light and Power Company which was a public utility holding company with head offices in St. Louis; I was Vice-President and Chief Engineer in charge of engineering and construction. We did work not only for the companies we managed but also for other companies. At that time I not only looked after the engineering in the

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Claimant's
Evidence.

No. 2.

H. Leland
Lowe,
Examination,
January 10,
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—*continued*

office, but I directed the field work as well. In 1916 I left the National Light and Power Company to go with Stone & Webster Engineering Corporation.

Q. Then, Mr. Lowe, in addition to the railway experience which you have mentioned, what other important assignments did you have from Stone & Webster since you have been with them? Do not detail them all, but give us those you think are of sufficient importance to mention in order to show your qualifications? A. In 1917 I was put in charge of the design of what later became 122 steel ships of about 8000 tons dead weight capacity, and about 400 feet length. I had the engineering staff under my direction, numbering about 550 people. When this work was carried to its completion I left and went to New York and was employed for a brief interval by the Interborough Consolidated in connection with an historical appraisal of the surface lines which they then owned. Subsequently I made an investigation of the future possibilities of the Mississippi River Power Company, which was an enterprise of about \$25,000,000 magnitude and having as property a dam spanning the Mississippi River at Keokuk, Iowa, and a power house of about 100,000 kilowatts capacity. This was a thorough and complete economic investigation of the future business of that company. It subsequently was sold by Stone & Webster to the Union Electric Light and Power Company of St. Louis. Then I made a similar, although an even more exhaustive, inquiry into the economical future and the construction course to be pursued by the Puget Sound Power and Light Company, which serves a large territory in the North-West. Then I was sent to Japan by the company to take charge of the engineering in connection with a large hydraulic enterprise for the Shogawa Hydro-Electric Company. The dam was over 200 feet from rock to crest, and designed for fifteen feet of water over the crest, both of which were records as of that time. I returned to the United States and was subsequently sent to Japan to appraise the property of the large electric companies there. The value of the property appraised, which I appraised single handed, travelling on foot over a great deal of the territory, amounted to approximately \$300,000,000. This work was done for bankers and loans were made and the securities distributed in Japan, England and the United States. I have just returned from Porto Rico, where I went in February of last year and made an appraisal of the property of the Ponce Electric Company, and gave testimony before the United States District Court of Porto Rico—

Q. I take it it is from those experiences that you have drawn in preparing your testimony to be given to this Board? A. I think that even those experiences that are not railway experiences have contributed somewhat.

* * * * *

Q. First, would you tell us, Mr. Lowe, what did you first do by way of preparation to enable you to give the opinions that you are now about to express? A. There are certain fundamental principles and concepts

that apply to all of these estimates. They are rather simple, and I would rather state them initially so that we may keep them well in mind while I am talking about the individual items. First of all, the estimates are based on the property of the railway company as it existed on August 31, 1932. Second, it is based on prices which prevailed at that time. Prices include a number of things beyond mere dollars; terms of payment, length of time of delivery of equipment, efficiency or productivity of labor, construction methods, engineering practices, procedures common to organizers of property and business, and I suppose legal work would also

10 be included in that. Otherwise than in the respects I have mentioned we must consider only the conditions which existed at the time the property was built. Estimates of cost of construction, for example, would have to relate to the conditions as they existed when the construction was being done. If a special provision had to be made at a highway crossing to take care of the traffic during the construction in 1892 and 1893 that clause should be included in making the reproduction appraisal, but if such a highway did not exist at that time, but did exist in 1932 one would not include such cost. The same thing applies, for example, to pavements where rails are laid; if the rails in 1893 were laid in pavement and the

20 pavement had to be cut, then in order to lay them the cost of cutting the pavement as well as replacing it would have to be included in the cost of reproduction; but if that pavement did not exist at the time but did exist in 1932 it would not be reasonable to include it. With respect to some of the other matters such as financing, for example, I think that while we have to consider the cost of distributing securities and the excellent facilities that exist as in 1932 for the distribution of securities, we have to consider what the public attitude towards those securities was in 1892 instead of in 1932. That is, if in 1932, as may have been the case, there was a strong public opinion running against public utility properties and

30 public utility investments, which would tend to increase the cost of distributing securities of that kind in 1932, that additional cost should not be put on to the reproduction cost of this property when in 1892 such a feeling did not exist, and, as a matter of fact, I have made allowances for that in my estimate of cost of financing.

* * * * *

MR. ROBERTSON: Q. And you say that in your opinion you did get such information as would enable you to make fair estimates of the matters you did estimate? A. Yes, that is true; and the procedure in this particular instance is no different than in many other instances in which I have engaged where I have been called upon to make estimates of this

40 kind. Sometimes these estimates have been for appraisal purposes such as this and sometimes for the purpose of determining the cost of engineering of some project which has not yet been built.

* * * * *

WITNESS: I might add one further item and that is that I read some of the reports of the Commissioners; but I think even without reading

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them, and after looking at the property, I felt I was reasonably well qualified with my other general experience to make these estimates. It is true that I read the Railway Act and read the Companies Act for the purpose of finding out whether their procedure in organizing companies and establishing a railway business here was any different from the general procedure of business men and engineers doing similar work elsewhere, and while I find that certain formalities were somewhat different, and public officials bore different titles, in general about the same human labor had to be done as I was familiar with, and the costs of it were about the same as the cost of the work that I was acquainted with.

10

Q. Did you read the agreement and the Act of incorporation? A. Yes; and I have talked to officials of the company and others with whom I have had contact about the ideas that people have here with regard to compensation for their services. I take it, for example, that it might be very likely in constructing this property new—not reconstructing it but building a property such as this—that the organizers and incorporators might turn to Stone & Webster Engineering Corporation and ask them to do it; we have done work in Canada on a number of occasions, and apparently the terms and conditions under which we do that work are not materially different from those of Canadian companies; and so I do not anticipate that my ideas with respect to compensation not only of engineers but of the incorporators of the company and lawyers involved in it are materially different than the figures I have been accustomed to use. In any case, whether they are or are not, or if they are not, I think it would be readily discernible by you gentlemen when you see these figures or hear me give them to you, to know whether they are or are not reasonable, with the possible exception of the cost of engineering; and, as I say, I believe that Stone & Webster Engineering Corporation would be a fair competitor with anybody else in doing work of that kind in this territory. I do not believe I have anything more to add about that other than general experience.

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* * * * *

MR. ROBERTSON: Q. Perhaps Mr. Lowe would make a distinction between depreciation and obsolescence? Have you considered it? Obsolescence has to do with lifetime, of course. A. I do not know where that obsolescence might apply in this particular instance, and that is why I stop to think. Obsolescence is one of those things that does not accrue by degrees; it occurs, and it occurs at the time the property has been removed from service, because it is no longer suitable for its purposes because of obsolescence. And in the case of this particular railway I do not just now recall any particular items which relate to the original engineering of the work which did in fact become subject to the occurrence of obsolescence.

40

* * * * *

MR. ROBERTSON: If you had a bridge which, by reason of greatly

increased weight of the rolling stock had to be replaced, that would be a pure case of obsolescence? A. Inadequacy, I believe we would call that, to use a technical differentiation.

* * * * *

Q. Now, will you answer my question as to whether or not on your scheme of reproduction cost which you are putting forward as an expert you have based it upon prices of 1932 which some other gentlemen have produced for you in Exhibit 7, and have based it on the assumption that those other gentlemen had regard to conditions of forty years prior when the railway was built in reaching their quantities? A. No.

10 Q. You have not? A. No.

Q. Is that or is it not the correct basis for reaching the reproduction value of the road as of the time we took it over? A. That is the basis that I took in preparing my own testimony given previously, and is the basis that I adopted in testing the accuracy of the figures given in Exhibit 20.

Q. What do you say as to whether that is or is not, as far as you are concerned as an engineer, the proper basis for the Board to work upon in reaching the reconstruction value that you are participating in swearing to? A. It is a conception of value that I approve of; I think
20 it is sound.

* * * * *

Q. I invite you to say that there is no other sound basis than the one you have outlined that you know of, that would be properly applicable to put before this Board in this matter?

MR. ROBERTSON: That is on reconstruction cost?

MR. SLAGHT: Yes.

Q. I am not putting to you a basis of scrap valuation for instance?

A. I hardly know how to answer a question like that.

Q. Where is the difficulty? A. I think the difficulty is that one
30 sees logic in it and attempts to follow it consistently; it is difficult for me in a subject as involved as Valuation to just condemn out of hand without knowing what other conceptions may be offered, and say they are all wrong; I do not believe I want to be in the position of condemning everybody else's ideas as wrong. I am willing to say I approve of my own.

* * * * *

MR. SLAGHT: Q. Let me put it in a further way, because I want to know before you leave the witness box where you stand on affirming or derogating from Mr. McCarthy's statement as to the proper basis for this Board to use in reaching this valuation when we took the railway over. I want to direct your attention to this statement by counsel at page
40 189, lines 12 to 17, of the record:

"MR. MCCARTHY: Mr. Chairman, this evidence is really directed
"to reconstruction; the project has not yet been built; we are build-

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“ing the project now in 1932 on the terms and conditions as they
“existed in 1892, and that is the method of reconstruction value that
“I propose to adopt.”

Referring to that statement, which was given while you were testifying
before, do you endorse that as the proper method of reconstruction value
in this case? A. It is the method—

MR. McCARTHY: “Reconstruction value” or “reconstruction cost”?

WITNESS: It is, with the proper interpretation of the terms wherein
that interpretation does not relate to prices or the effect of prices, includ- 10
ing terms of delivery and terms of payment, and things of that kind,
which are as of 1932. In making an appraisal of this property myself I
would be guided by the principles which I stated at that time, which were
to the effect that I would observe the conditions as they existed at the
time of construction and apply to them the prices as they existed in 1932;
that would be the method I would follow. If some one else has followed
some other method I think it would be proper for him to explain why he
has used some other method.

* * * * *

MR. MASON: Supposing a farmer had come along in 1920 and asked
for the construction of a culvert that had not theretofore existed, how
would you treat that in your reproduction cost? A. I would attempt 20
to follow the principle I have laid down, and consider the conditions at
the actual time of construction of that culvert.

Q. That is, you would not include the construction cost of that cul-
vert? A. I would include the construction cost of the culvert if it
existed in 1932 at prices as of 1932, and would give consideration to the
conditions under which it was actually built in 1920.

Q. I was trying to get at what was meant in connection with an
expense of that kind as of conditions in 1892? A. Almost all of this
property was constructed in 1892 or 1893, and we have for convenience
referred to the original construction as of that date; I have no doubt that 30
there are some parts of the property that we see today that were actually
built at some later time, but I believe they are in relatively small amounts,
so it is just a convenience of expression to refer to 1892.

* * * * *

Q. Then it is an item in your appraisal of the total? A. Just like
any other item; and valuation of property is considered to be a valuation
of the property which actually existed at a certain date, which in this case
is August 31, 1932, and it includes all of the property of the company
which did exist on that date irrespective of the time that it was originally
built.

* * * * *

MR. MASON: Q. May I put this specific question: Supposing a rail- 40
way is constructed in 1892, and half a mile of it is abandoned in 1920, how
would you treat that half mile in your reconstruction cost on the basis

you have been giving as the proper method? A. I would throw it in a category called "non-useful property."

MR. ROBERTSON: Q. In other words, if you were dealing with reconstruction cost there is only one thing to do, and that is to reconstruct; but if you were dealing with the broader question of how much should be paid for it then perhaps you would not apply reconstruction to the non-useful property? A. That is a Valuation which a tribunal attempts to reach from evidence such as engineers can give.

Q. That if it passes to the new taker he may be entitled to have it not on a reconstruction basis at all, but on some lower basis?

MR. SLAGHT: Is that what the witness says?

MR. ROBERTSON: Q. Might not that be so, if it were not useful any longer to the railway? A. Oh, if it were not useful as a railway the engineer would appraise it as "Other property" irrespective of the railway.

* * * * *

THE CHAIRMAN: Q. I do not know how you can say that. Supposing there are two conclusions, one including that abandoned part and the other excluding it, the conclusion necessarily would be different on the one supposition from what it would be on the other? A. The thing I have attempted to do is to scrutinize certain costs marked "Other Structural Costs," and determine whether they are reasonable for the amount of property that appears to be here; and the conclusion I come to with respect to that is that they are. There are certain articles of property which are abandoned that are relatively small in amount as compared with the total property, and I have reached my conclusion as to reasonableness irrespective of that consideration. I would not suggest to you for one moment that I would appraise on reproduction cost new property not used and useful in railway business; that is, if some of this abandoned property has rails and ties on it, one would not be justified in appraising that as useful property. The land, however, on which those rails and ties rest, if they are still there, must have some kind of a value which a real estate man could give.

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No. 3. Extract from Evidence of JOHN F. SCHMUNK, Accountant. Called on behalf of INTERNATIONAL RAILWAY COMPANY.

JOHN F. SCHMUNK, Sworn. Examined by MR. McCARTHY:

Q. Mr. Schmunk, what do you do? A. I am a public accountant.

Q. Where do you live? A. Philadelphia, Pa.

Q. And how long have you been engaged in your profession as an accountant? A. Since January, 1918.

Q. And before that time what were you engaged in? A. I have been engaged in accounting work ever since I left school; in general corporation accounting until 1913, when I was engaged by the Public Service Commission of the Commonwealth of Pennsylvania as Senior

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Accountant of the Commission, and occupied that position until 1918 when I entered public practice.

Q. During the time you were the Senior Accountant for the Public Service Commission, what accounting work did you do in that connection? A. My work consisted almost entirely of the investigation and examination of public utilities, in valuation proceedings and rate analyses, having had charge of the work in connection with the Pittsburgh Railways Company, the Wilkes-Barre and Hazelton Railway Company, Lehigh Traction Company, the Erie Traction Company, the Westmoreland Water Company, Philadelphia Suburban Water Com- 10
pany, and many smaller utilities.

Q. I believe you were also Consulting Accountant for the Valuation Committee of the Philadelphia Rapid Transit Company? A. That was after I entered public practice. I was consulting accountant for the Valuation Committee of the Philadelphia Rapid Transit Company, and the accountant member of the Valuation Committee of the International Railway Company. From about 1921 or 1922 I was consulting accountant for the Philadelphia Rapid Transit Company, and from that date up to and including the present time have been Consulting Accountant of the International Railway Company. 20

MR. SLAGHT: Q. I did not get the year from which you have been consulting accountant to this railway? A. Since about 1921 or 1922.

MR. McCARTHY: Q. Your practice is not confined to railway companies, but you do general accounting work? A. General accounting practice, including mercantile establishments, manufacturing establishments and banks.

Q. You were asked to compile a balance sheet of the Niagara Falls Park and River Railway Company from the year ending December 31, 1893, until June 30, 1902, being the date when this company was taken over by the International Railway Company? A. I was. 30

Q. Have you got that balance sheet before you? A. I have.

Q. Have you got copies that we can put in? A. Yes.

EXHIBIT No. 67: Balance sheet of Niagara Falls Park and River Railway Co., from year ending December 31, 1893, to June 30, 1902, with sheets attached entitled "International Railway Co. Park and River Division, Cost of road and equipment" 1903 to 1929.

Q. And have you made an investigation for the purpose of determining the cost of the road and equipment covering that period? A. I have.

Q. And what books or records did you have access to at that time? 40
A. The only books that I had access to were the minute books of the company covering the period from the time of its incorporation and running through till 1910. There were account books available but only ledgers for the period from March, 1899, until June 30, 1902. Subsequent to 1902 the accounts are part of the accounts of the International Railway Company. There are no separate books for the Park and River

Railway Company.

Q. Then have you set up the result of your examination in this Exhibit 67 in tabular form? A. I have.

Q. And this is a copy of the statement which you now produce. Will you kindly explain it to the Board, Mr. Schmunk? (Exhibit 67).

A. On the first sheet of Exhibit 67 the result of my investigations are set up in balance sheet form. The first six items on the page are the fixed capital accounts, or, as may be termed, the cost of its plant and equipment. The second line is a total showing the total at the end of each year, and amounting to \$1,260,067.17 at June 30, 1902, at which time the property and assets were purchased by the International Railway Company.

Q. Underneath that you have other assets which you have added, bringing the total to \$1,283,000 odd? A. That is the total assets. And the lower half of the sheet shows the liabilities, and the total liabilities amount to the same figure.

Q. I notice that among the assets you have the cost of road and electrical equipment including franchise. Is there anything set up in the books representing the cost of the franchise? A. There are no details back of that item in the minute book, and it was an account caption used by the accountant who certified to the first statement, but was not used in succeeding years.

Q. You have just adopted it as you found it? A. I have just adopted it as I found it in the minute books.

MR. SLAGHT: Q. Was used by the accountant in one year only, and not adopted in future years? A. Yes, the word "franchise" appeared only in the first year.

Q. This year of 1893? A. 1893.

MR. MCCARTHY: Q. Is there any other explanation you would like to make in regard to this top sheet of Exhibit 67? A. I think not, Mr. McCarthy. It shows year by year the total assets and liabilities of the company.

Q. As appear in the books? A. As they appear from the statements in the books.

Q. Then you have attached to this four sheets? A. Yes.

Q. Which contain certain additions, and which I take to be the equipment added to the railway, with certain other items which indicate sales by the railway or realizations since the International Railway Company took it over? A. That is correct.

Q. And that takes us down to what date? A. To the last date that there were any expenditures, which happened to be June, 1929.

Q. The information or the records from which this information would be obtained would be the books of the International Railway Company, would it? A. Yes, the reference to the source of original entry is given right on each entry.

Q. What does "A.F.E." mean? A. "A.F.E." is an abbreviation

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as used for an appropriation that the company designates "authority for expenditure."

MR. SLAGHT: Q. That is the column that is the source of original entry? A. Yes.

MR. McCARTHY: Q. Are there any remarks that you would like to make in regard to the sheets following the first balance sheet? A. Yes, there are. If you will refer to page 2, there is an item designated "A.F.E. 1272, semi-vestibuling 18-600 type open cars," and a list of numbers. I of course tabulated these first as they appeared in the books and records, and did not wish to make any corrections or adjustments on the original entry; but of the 18 car numbers listed on A.F.E. 1272, seven of them, namely, 678, 679, 685, 686, 687, 682 and 684 are the only cars remaining in the Province, and the only ones listed in the inventory—that is, the only passenger cars listed in the inventory. 10

Q. What do you call the inventory?

MR. MASON: Exhibit 7.

MR. SLAGHT: Q. That would be seven cars? A. Yes. So I have made an adjustment taking 11/18ths of that amount from the total shown on Exhibit 7. On A.F.E. 1410, listing 25 cars, seven of those cars of the same numbers just given are still on the Canadian Division; so I have taken 18/25ths of the \$375 and made a deduction. 20

MR. SLAGHT: Q. I did not catch how many cars are still on the Canadian side? A. Seven.

MR. MASON: Seven of that type. A. They are all the same type. There is I think three service cars that are not in any of these. That credit will amount to \$270.

MR. McCARTHY: Q. The credit on those two? A. 1272 is \$594.19; 1410 is \$270. I will give a total of these at the end. On A.F.E. 1455 there is the changing of 18 600-type, 14 bench open cars from 2-57 motors to 4-57 motors with the other necessary changes, and seven of those 18 cars are still on the Canadian Division, so that 11/18ths of the \$10,116, amounting to \$6,182 is a credit to the original amount shown. And on sheet 4 A.F.E. 2196, equipping open trailer cars No. 661-663-667-683 for motor operation, none of those cars remained on the Canadian Division, and the entire amount is deducted. The total of those four items is \$21,020.53. 30

Q. Which one is that you say you take off altogether? A. A.F.E. 2196.

Q. And what is the total? A. Reduces my total to \$1,402,151.58.

Q. After giving credit for the amount realized, that figure represents the total assets of the company purchased between 1893 and 1929? A. Yes. 40

Q. That is after deducting the credits, of course? A. Yes, that is after making adjustments for items that no longer exist.

Q. That is, after deducting the credits we find on sheet 3? A. Yes, sir, 3 and 4.

MR. ROBERTSON: There are some on two. These items in red, they are deducted, are they?

MR. McCARTHY: Yes.

WITNESS: The deductions I have made appear in items on sheets 2 and 4.

MR. McCARTHY: Q. 2, 3 and 4? A. No, the items shown in red which are deductions, are deducted from the original total given.

Q. I am sorry, I do not follow you. Deducted from the original total?

10 MR. ROBERTSON: That is \$1,260,000.

WITNESS: If you look on sheet 2, A.F.E. 1272, there is a deduction made on account of that of \$594.

MR. McCARTHY: Q. Yes, I am speaking of the figures in red. A. They are deducted in arriving at the original total of \$1,423,000.

Q. That is what I say.

MR. MASON: Is that right, Mr. McCarthy, to 1929?

MR. McCARTHY: To 1929, yes, sir.

MR. SLAGHT: That is the date that figure is of.

20 MR. McCARTHY: Q. You have also prepared a profit and loss account? A. I have.

EXHIBIT No. 68: Profit and Loss Account of Niagara Falls Park and River Division, December 31, 1893, to September 11, 1932.

Q. Would you just explain this Exhibit 68? A. Exhibit 68 is a tabulation of the income and expenses of the Park and River Railway Company and the Park and River Division of the International Railway Company. The first sheet is a rather condensed tabulation showing the entire period on one sheet. The following sheets show in more detail the income and expenses for the years as indicated at the top of each column. For the period from December 31, 1893 to December 31, 1898, 30 the figures were taken from the minute books of the company.

Q. That is the old company? A. Yes. For the years 1899, 1900 and 1901 they were taken from the ledgers of the Niagara Falls Park and River Railway Company. From 1901 to September, 1932 they were taken from copies of the reports made by the company to Canadian authorities. For the period from 1902 to 1908 they were from the reports to the Minister of Railways and Canals. And for the period from 1909 to 1932, to the Board of Railway Commissioners for Canada, and the Dominion Bureau of Statistics at Ottawa.

40 Q. Is the information which we find on this front page the information which is given to these different official bodies? A. It is.

Q. As required by their forms which are furnished I think? A. Yes.

Q. Are you certifying to the correctness of this, or are you compiling it from these different sources? A. I have taken it from these different sources, but for a portion of the period I have a responsibility as to the correctness in the report.

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Q. What period? A. From 1920; subsequent to 1920.
Q. Since 1920. You have got an operating income and a non-operating income. What is meant by the non-operating income? A. Non-operating income includes the receipts in this instance from concessions in the Park as set aside from the passenger revenue—anything outside of passenger revenue and revenue directly from the operation of street railway is classed as non-operating income.

Q. Does that mean the inclines? A. It would mean the inclines, Clifton Incline, the Whirlpool. They had a building here, I think it was called the Indian Stand. 10

Q. Concessions? A. Yes, concessions, for use of property owned.

MR. SLAGHT: Q. Do you mean freight was in the non-operating? A. No, not freight. Any freight that was in there would not be in the non-operating.

Q. I thought you said anything outside of passenger? A. I think I did.

MR. MASON: Q. This does not include the revenue from inclines? A. It does in the non-operating. It was not separated prior to the year 1908. Subsequent to 1908 non-operating is shown separately.

Q. And includes revenue from incline? A. Yes. 20

MR. McCARTHY: Q. That is what I was going to ask, why it began at a certain date. Up to 1908 it was all included in what you call operating income? A. Yes.

Q. And then in that year you separated what you call the operating from the non-operating, and operating is confined exclusively to the operation of the cars, whether freight or passenger? A. That is correct.

Q. We get the gross income, which we can understand, and then "Rental paid Commissions". That is the commission to the Park, is it?

A. That "Commissions" should be singular, should be "Commission," 30 meaning the Park Commission.

Q. Then you have a rental paid to the Village of Chippawa which did not commence till about 1923, and then you have the interest on your funded debt. Then beginning about 1909 or 1910 I see a depreciation has been set up. A. That begins in 1908, Mr. McCarthy.

Q. And how is that depreciation set up? A. There was no set policy of the International Railway Company subsequent to 1920.

Q. Subsequent to that or prior? A. Prior to 1920. They had no general practice or fixed practice that I could ever find, but as a result of a proceeding before the Public Service Commission of the State of New York, they found an annual depreciation rate to be used by the company; a portion of the company's total depreciation, amounting to \$1,016,000 a year, is allocated to the Park and River Division. 40

Q. By whom? A. By the accounting department in making up the reports. There is no division of it except in the reports.

Q. Who fixes the total amount of depreciation of the International

Railway Company? A. That was fixed and determined by the Public Service Commission of the State of New York.

Q. The amount that appears under the head of depreciation since 1920 is the amount which has been allocated to this division by— A. International Railway Company.

MR. MASON: Q. On what basis is that? A. That is I think three per cent on depreciable property.

THE CHAIRMAN: Q. This depreciation, there was so much each year apparently, and then the total is \$633,629, and so on. Is that what
10 you mean there? A. Yes, sir.

Q. That is the total depreciation in those years from 1908. A. I would like to correct my percentage on that. I recall definitely now that is four per cent on the depreciable property and not three per cent.

Q. I was trying to get at the \$1,016,000 a year. You say that is allocated to this division? A. A portion of that is allocated to this division.

MR. McCARTHY: Q. \$1,016,000 is the total? A. Of which \$42,000 is applicable to the Park and River Division.

MR. SLAGHT: Q. Do I understand that the total depreciation is
20 \$1,016,000? A. Yes. That is for the total International Railway System, but there is only \$42,000 allocated to the Park and River Division.

MR. MASON: Q. The allocation is done by the Railway Company itself? A. Yes.

MR. ROBERTSON: Q. Why is it the same for a long period of years to the very cent? A. Because there has been none, or very little change in the depreciable assets.

Q. That is, if we look at the last item we do not see very much added in those years, or we do not get the years? A. There is a year, but unfortunately it is bound in pretty close and hard to see.

THE CHAIRMAN: Q. These red figures represent the loss, do they?
30 A. Yes, sir.

MR. SLAGHT: Q. The last column, that \$571,000; is that a total of the red figures, or is it a total of the red figures less the purple figures?
A. That is a total of the red figures less the purple figures.

MR. ROBERTSON: Q. How did they make so much money in 1901?
A. That was a very interesting question, Mr. Robertson. That was the Pan-American year, and I think the first year of the operation of the Gorge Route.

MR. SLAGHT: Q. And your big red figure in 1916, that was an
40 accident? A. Yes.

Q. A lot of claims? A. If you refer to a sheet that has a column heading of 1916, it is very plainly set forth there that the injuries and damages in that year was \$152,000 plus.

MR. McCARTHY: Q. Turn to the second page, and we get the profit and loss account in greater detail between the years 1893 and 1901?
A. Yes.

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Arbitration*

—
Claimant's
Evidence.
No. 3.

John F.
Schmunk,
Examination,
January 31,
1935.

—continued

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Claimant's
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—continued

Q. Giving the general office, legal and management, taxes and insurance, advertising and printing, transportation expenses, wages, conductors and motormen, and so on, and we get the cost of power and maintenance, commissions paid agents; then you get your total operating expenses which correspond with the summary given us on the first page, and the rental paid the Commission, interest on advances, and so on, and that is carried on through. A. Through each succeeding page.

Q. Now, is there anything you want to remark in regard to those, Mr. Schmunk? They seem to be fairly plain? A. I tried to make them as near self-explanatory on the face of them as I could. There is one item that may cause a query. In comparing or making a calculation on surplus account in 1898, the calculator will find there is a ten-cent error there that I cannot locate. It was in the original statement. 10

MR. SLAGHT: We will never look for it.

MR. MASON: Q. The interest on the funded debt I suppose is 5% on the bonds of \$600,000? A. The bonds were 5%. In the early days I think there were some varying rates when they were borrowing money. The interest is all in one column.

Q. I see it is uniform for a great many years. A. Yes, from 1903 on when all the bonds were actually issued it has been constant. Up to I think 1899 or 1900 the bonds were not actually issued but were used as collateral against loans, and for that reason the rate fluctuated somewhat in those preceding years. 20

MR. SLAGHT: Q. It becomes constant in 1903? A. I think you might call it constant from 1899 on. You will notice there is \$30,203. I know there was a small note out at that time. It was \$30,700 in 1900; \$31,600 in 1901, and the \$15,900, the next period, is for a half year. That is where the accounting period was changed from December to June.

MR. MASON: Q. Why is there such a terrific difference in the taxes there? I notice that in one year, 1927, it is \$26,000 odd; in the year before \$13,000, and the following year \$14,000. Is there any explanation of that? 30

MR. McCARTHY: What year was that?

MR. MASON: About 1927 or 1928. Just follow the taxes—\$13,000, \$26,000, \$14,000, \$18,000, \$12,000. There seems to be great variation.

WITNESS: I cannot answer that at this moment. I will try to get the answer for you over night.

MR. MASON: It is not very important anyway.

MR. McCARTHY: Q. You have tried to give the history of the road in dollars and cents as far as you could? A. As far as I could and to the best of my ability to find out. 40

* * * * *

CROSS-EXAMINED by MR. SLAGHT.

EXHIBIT 74: Return by Niagara Falls Park & River Ry. to Minister of Railways and Canals, for year ended June 30, 1905, showing conditions of capital and revenue account, etc.

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MR. SLAGHT: Q. How do you account, if you can account, for the rather prosperous revenue from freight back in those earlier years and the disappearance of revenue from freight almost entirely in the later years of this railway's operation? A. I cannot—I do not know.

Q. That seems to be, though, the course of events that have happened here, does it not? A. The figures so indicate.

Q. The figures so indicate? A. I do not know the local history.

Q. Well, they say figures lie sometimes, but we won't go into that. Now, still on your Exhibit 68, looking at the first page, I will discuss
 10 this depreciation problem with you. We talked about it last evening a little bit, and you recorded yourself that you would not say one way or the other as to the fairness or otherwise of the 4 per cent or the base figure of \$1,050,000 odd which produced it. Looking at your depreciation column on Exhibit 68, sheet A, I see it begins with the year 1908?
 A. That is correct.

Q. Actual depreciation began in the first year of the existence of the venture, I take it? A. To the extent that there is depreciation, it starts the first day of the property.

Q. Would you say it would or would not be improper to add to
 20 this column from the first year, 1893, filling in the blanks each year down to the end of 1907, a depreciation of \$42,051.92 for each of those sixteen years? A. I would consider it very improper.

THE CHAIRMAN: Q. You would consider it what? A. Very improper.

MR. SLAGHT: Q. Too high an amount? A. Yes; and it is very evident from the statement itself that the amount set up as depreciation is too high. If you will look at the last column on the page you will find that after paying its obligations from its incomes and setting up \$633,000 the company fell short of earning that \$633,000 by \$571,000.

30 Q. Do you correlate earnings with depreciation, then, to that intimate extent? A. Absolutely. There is a certain order in which payments must be made, and to accrue depreciation to take care of your stockholders before you take care of your creditors is the height of folly. Even setting it up here is purely a mathematical calculation, because it has never been earned; it has no relation to the physical condition of the property.

Q. There has been a physical depreciation, of course, over a forty-year period, certain depreciable assets, has there not? A. There is bound to be some. As to the extent of that I would have to be advised by
 40 an engineer.

* * * * *

Q. That is the way you get at that. And then the taxes in the next column, and then you bring out the red figures in the last column that I have just added up with you. Now, this \$30,000 a year on the bond issue, why do you take that off in getting at the question of whether you are

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-continued

operating at a loss or a profit? A. Because it is a necessary expenditure.

Q. It comes in there, or does it come in, because it is a value on that amount of money which is invested in there? A. Sure.

Q. The rate being 5 per cent.? A. 5 per cent.

Q. With your figure of \$1,400,000 money invested in there, the balance went in by the promoters or the people who controlled the company in some other form than as the fruits of a bond issue? A. That is correct.

Q. So those behind the venture had invested in the venture not only the \$600,000 which was paid for the bonds and went in, but \$800,000 more in cash which went in by another route? A. That is correct. 10

Q. And I suppose the fair value of the \$800,000 in money that went in, either as common stock or in some other way, the same value would attach to that money \$800,000 as would attach to the \$600,000 that went in as a bond-issue fruit? A. May I have that question read?

Q. Is it fair to say that the other money that went in, the \$800,000 odd, would bear the same value as money as the \$600,000 that went in as the fruits of bonds sold? A. Yes, I think that is correct.

Q. So if we add a 5 per cent. on the \$800,000 that the people behind the venture put in, that would give us \$40,000 a year more for the value of the money tied up in the enterprise? A. That is correct. 20

Q. And I suppose in looking at an enterprise as a whole to see whether it is making a return or not on the money tied up in it, or whether it is an enterprise that is operable as a revenue-producing asset so as to give a surplus over deficits, it is fair to include another \$40,000 there for the use of that money which lay in there? A. That would be very fair.

Q. Now, I am going to do that; so that to the deficit of \$971,805.87 for the last twelve years and nine months of that accounting period I can add, can I not, $12\frac{3}{4}$ times \$40,000, which would be \$510,000 more, as a fair value on the cash that the promoters had tied up in the venture in addition to the bond money? A. That is to provide a theoretical return to the investors in the property. 30

Q. Quite so. A. That is correct.

Q. And to give a bird's-eye picture of the venture as a commercial venture in determining whether or not it was one operable at a profit—if that word "operable" is a good English word; I am not so sure about it—one capable of operation at a profit—that is a fair item at which to look, just as the cost of the money included in the bond issue must be looked at, is it not? A. Yes. 40

Q. So if we carry that back through the page, or if I add a new column on your profit or loss column, I would be justified, perhaps, for the last twelve and three-quarter years, in adding \$40,000 a year, as we have indicated; I wondered why you had not put that in? A. I put in only the costs and the accruals.

* * * * *

THE CHAIRMAN: I know all that. I am trying to make out how it got in there, who put it in there. There was \$600,000, apparently.

MR. SLAGHT: We know how that got in.

THE CHAIRMAN: Where did the rest of it come from?

MR. SLAGHT: Q. How did the rest of the cash get in there? A. Well, there is \$600,000 in capital stock, \$600,000 from the bonds, then there was \$133,000 odd came into the company from the International Traction Company.

Q. Let us get these. Start the other way. With the bonds, we know, there was \$600,000; now, \$600,000 was paid in for capital stock—

THE CHAIRMAN: I see that. It was the bond issue for which I was looking. I saw this \$600,000, but that is capital stock; now you have got the bond issue.

MR. SLAGHT: Yes. If you look, sir, on page A of Exhibit 67, it helps us with quite a lot of this problem as to how the money got in.

Q. What column do we take? A. The last column there.

Q. The last column is capital stock paid in, \$600,000; the next is sundry creditors. We are looking at the liability column; that is an amount that the Railway Company owed for assets they had not yet paid for? A. That is correct.

Q. But the International Railway Company, I assume, being not bankrupt, that is an item of that kind, anyway—a credit in there, not cash. Then we get the next cash item, \$600,000, the bonds; we know about that. You were going to tell me of some money the International Traction put in; how much was that? A. It was either International Traction or the Buffalo Traction paid originally \$133,000 plus in excess of the par value of the stock.

Q. They put in cash? A. Yes.

Q. And bought the stock at a premium, so to speak, above par? A. Well, they paid a price above par, but it is rather evident that the cash went into the coffers of the company and not the stockholders.

Q. Well, that is a good place for it to go; I mean, if they bought treasury stock that is where it would have to go? A. I am talking of the premium. Now, if you look at Exhibit 67 under the year 1898, there was a deficit of \$111,507.77.

Q. That is apparent; it is in the red, then, at that time. A. And at the end of 1899 there was a surplus of \$3,637.65—

Q. So the venture was—

MR. McCARTHY: Let him finish.

WITNESS: Just wait a moment. But during 1899 there was an operating loss of \$8,088.50, and I have reconciled that, and it takes the \$133,000, really going in there as a donated surplus to wipe off the accumulated deficits.

Q. Well, I don't care whether it was donated or whether stock was taken out for it; some good angels who were interested in the venture put in in dollars 133,000 more dollars about that year? A. Yes.

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—continued

Q. To keep this thing afloat, because it was operating at a deficit the year before? A. Yes.

Q. And they had to have more money? A. Operated at a deficit from the first year.

Q. Yes, from the first year. That gives us a total of \$1,333,000 of cash that we see how it got in. Now, how did the rest get in? A. The rest of it has been additions to the property paid for by the International Railway Company since 1902.

Q. Out of their other pocket or treasury, but paid for for the benefit of this Park and River Division? A. Yes. 10

MR. McCARTHY: Q. Since when? A. Since 1902.

MR. SLAGHT: Q. So I come back, do I, properly so, to my starting figure of \$1,402,000 cash put into this venture from time to time? A. Yes.

Q. And that leaves me still my \$800,000 item, which in this set-up up to the present moment when you and I are discussing it, has not been put forward as another item, being 5 per cent on the extra capital in, and meaning \$40,000 of a further carrying charge, unless the men were to let their money lie for forty years without any return on it; so we are agreed on that, are we not? A. Yes. Unfortunately, they did leave it lay for forty years without any return, except one year. 20

Q. Well, let us have that year?

MR. McCARTHY: Q. What do you say? A. Unfortunately, they did leave it lay for forty years without any return on it, except one year.

MR. SLAGHT: Q. Well, Mr. Osler got out at a pretty good time, didn't he? That banner year, when the World's Fair or something was on, was 1902, and the revenue was \$157,000, wasn't it? A. Yes.

Q. And then he sold out, and the International Railway bought in just after that big cash intake; and sold out the following year, didn't he? A. I don't know anything about Mr. Osler.

THE CHAIRMAN: The big year was 1901, apparently. 30

MR. SLAGHT: 1901, that is right.

WITNESS: Yes; the Pan-American year.

MR. SLAGHT: The Pan-American year was 1901; that is the big year that the then promoters had. Then the Board may remember that in 1902 we find the agreement of sale where they sold out for \$733,000 while the going was good, and assumed the bond issue of \$600,000, so there was sagacity on one end of that deal, apparently.

MR. MASON: But I understand the witness to say of that \$733,000 purchase price, in addition to the assumption of the bonds, apparently \$133,000 did not get into the hands of the original shareholders, but got 40 into the assets of the company in some way?

WITNESS: That is very evident.

MR. MASON: Q. Well, how was that worked? A. The book shows a deficit of \$111,507.77 at December 31, 1899.

Q. Where does that appear? A. At the bottom of the column headed 1898, on Exhibit 67.

Q. Yes? A. The year headed December, 1898.

Q. Yes? A. And the red figure at the bottom opposite the line "surplus" is \$111,507.77. Now, the books of what is referred to as the American interests were opened at March 29, 1899, and when those books were opened the surplus account showed \$12,136.08, or a change of \$123,000 in the surplus account in the three months' period, and the expenses and revenues for that three months' period were taken on to the new book, so there was nothing accomplished through an operating profit. But taking the figures from the balance sheet at December, 1898, and adding to it those balance-sheet figures, the \$133,358.46, and deducting the liabilities that changed at that period—if you will notice the second item in the liability section, due for advances, there is \$257,837.45 in 1898, and it drops to \$15,000 at December, 1899. At March, 1899, it was nothing. So it took the combination of the \$133,000, amounts from accounts receivable, and the cash balance, and the increase in the amount shown for bonds in that year, and the paying in of the balance of the capital stock, to liquidate that \$257,857 of indebtedness and \$11,575 of accrued interest, to clear up the balance sheet as the American interests took it over. There is only one place that could have come from, was from either the purchaser advancing the money to clear it up or the sellers of the stock giving part of the purchase price to clean it up; and it is an odd, ragged amount, that is not a percentage of increase over the par value of the stock, is not an even percentage increase.

Q. This is a deduction from these figures. Apparently there is nothing in Exhibit 2 to account for it, as far as you know? A. No—any more than the International Railway Company took the property over at \$733,000, and at that time the International Traction Company was the owner of the stock, either the International Traction Company or the Buffalo Traction Company, it is not clear, bought this stock at the beginning of 1899, and there is reference in the minute books of the American interests taking the property over.

MR. McCARTHY: Q. The Buffalo Company only paid par for the bonds, didn't they? A. No; there was this extra \$133,358 paid.

MR. McCARTHY: Oh, yes, that is right.

MR. ROBERTSON: They did not pay that to the holders of the stock.

MR. McCARTHY: No.

WITNESS: From the figures it is evident to me they did not. It may have passed through the hands of the holders of the stock and come back in to the company, but the amounts very evidently got back in to the company to clean up the tail end of the early operation.

MR. McCARTHY: Q. Was it stock or bonds? A. Stock.

MR. SLAGHT: Q. Then, Mr. Schmunk, will you look at this situation with me; Exhibit 68, as exhibited to the Board—before I go into that: You told me that unfortunately the gentlemen who had their money in this only made a profit one year out of the forty; is that correct? A. That is the only record of dividend, one year out of forty.

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Arbitration*

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Cross-
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Examined,
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—continued

Q. And did you give us what year that is? A. 1901.

Q. Did they pay a dividend? A. Yes, sir.

Q. Of how much? A. \$120,000.

Q. You have in Exhibit 68 shown a net loss of \$571,400.76, after allowing interest on the bonds each year as a carrying charge? A. Yes.

Q. But with making no carrying charge for the other \$800,000 or such amount of other cash money as was in there? A. No, there was no accrual for any return on the other money.

Q. Now, I want to see if this is a fair way to put it: At the outset, looking at your exhibit 67, you do not start with as much money invested in here as you wind up with in 1932—that is without regard to depreciation, but just cash put in—you start that year with \$1,260,000 odd, don't you? 10

MR. McCARTHY: Which year?

MR. SLAGHT: 1892 or 1893.

Q. 1893, the figure that you start off with is how much? A. You mean the investment in the property?

Q. Yes? A. \$1,033,394.57.

Q. Then when does it get up to \$1,260,000? That would be by 1902, would it? A. June, 1902. 20

Q. Up to \$1,260,000. Take it from June, 1902, at \$1,260,000, on to June, 1932; that would be a thirty-year period if it had not increased any more at all, if the money in had not increased, would it not? A. Yes.

Q. Now I am going to take from the \$1,260,000 the \$600,000 of the bond issue, because each year in your set-up on Exhibit 68 you have been paying that and charging the railway with it as a cost of operation, so to speak; that leaves a figure of \$660,000 capital that has been lying in there for the last thirty years, since 1902, doesn't it? A. Yes, with periodical increases between that and 1932.

Q. Well, I am going to give myself as a commuter the worst of it in this sense, and ask you if this is within the proper bounds; if I take that \$660,000 extra capital in there at 5 per cent, that gives me \$33,000 a year, doesn't it? A. Yes. 30

Q. And for thirty years only, that would be \$990,000 loss in the sense that for thirty years the people behind the enterprise had that much money lying there for which they got no return at all? A. Yes; it was their contribution to keeping the road running.

Q. Their contribution to keeping the road running; and at 5 per cent that contribution for thirty years is \$990,000, or just short of another million? A. Yes, sir. 40

Q. Then if we take the ten-year period from 1893 down to 1902, and take it on your basis of we will say for round figures a million dollars only, there would be \$400,000 at 5 per cent, which would be \$20,000 a year loss there, and for ten years that would be \$200,000 more? A. Yes.

Q. So that I have a grand total of \$1,190,000 on that loose way of going, and there was that much more money at least, and something on

top of that, lost by the people who supported this venture as a whole, if you count it loss not to get any return on your money? A. That is correct.

Q. And that large figure of— A. Beg pardon; that is correct, except that during that period they did get \$120,000.

Q. Oh, yes, I must deduct that. So I have got \$1,190,000, and for one period they got \$120,000, so I take that off, and that leaves me \$1,070,000 of a dead loss, as far as no revenue on their money is concerned, which, if that be a loss to be looked at in appraising the whole venture
 10 by and large as a revenue producer or otherwise, would have to be added to the \$571,000 here? A. Appraising it as a revenue producer, that is correct.

Q. How do you account for what I regard as the obsolescence of this railroad in 1932? I mean, a collection of assets, we will say, carefully assembled, prudently and economically operated, and we find them absolutely incapable of producing a revenue at all, and the people who keep on running it pouring money in every year by way of losses; how do you account for that?

MR. McCARTHY: How do you mean, pouring money in every year?

20 MR. SLAGHT: Losing money every year, at the clip of a hundred thousand a year.

Q. How do you account for that as an accountant? A. I cannot answer that question.

Q. I am going to try to help you. Is it not the fact that interurban electric railways have met with changed conditions which seriously affect their revenue, and which are beyond their control of course? A. Yes.

Q. Some of those conditions; and perhaps the primary one being the advent and the increase in numbers of automobiles, which are a means of transportation? A. The privately-owned automobile is bound to be
 30 one of the factors. The economic conditions in the last four years have been another contributing feature.

Q. I agree with you; I will come to that in a moment. A. How much weight must be given to each I cannot say.

Q. So that we have at least two factors, the automobile as a competitor—and in that I should like to include motor busses; they are very serious competitors in transportation nowadays with the interurban electric roads, are they not? A. You would have to give me specific cases. If I had knowledge of specific cases I could answer your question; I cannot answer it generally.

40 Q. Well, I will give you the ninety busses that the International Railway have installed on some of their interurban runs, or part of those ninety? A. I do not know what your information is, Mr. Slaght, but I know of no ninety busses on interurban service.

Q. I said part. Most of the ninety busses are in Buffalo, but on the interurban services Mr. Young told us that the International Railway

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are running busses now; as an accountant you would know that, wouldn't you? A. Yes. Do you want the answer?

Q. Yes? A. The International Railway is running one bus, one trip a day, between Niagara Falls, New York, and Buffalo, New York. That is the only interurban operation.

Q. The coming in of busses in competition with interurban railways, I suggest as a whole—leave this railway out for the moment—is another factor in addition to the privately-owned automobile you mentioned, which I suggest has had to do with bringing obsolescence around the shoulders of interurban electric railways as a general thing; what do you say? A. Unfortunately your information must be wider than mine. The only— 10

Q. Do you know anything about the— A. Please let me finish.

Q. Certainly. A. The only instances I have knowledge of is where the bus operation is supplemental to the street-car operation, and not competitive with it.

Q. Your knowledge does not go outside of that? A. I have had some fairly wide knowledge on it, but in every instance that I am connected with, and have been connected with, and made surveys, it has been a supplemental service, not a competitive service. 20

Q. That, I think, is a very fair answer, and I am not going to ask you to pass upon competitive service, but I will ask you this: Do you know the history or not of interurban railway operation in the Province of Ontario in the last fifteen years? A. I do not.

Q. Then I won't go into it.

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THE CHAIRMAN: Q. Do you know anything about whether trucks interfered with that or not? A. If your Honour please, I cannot answer that right now, but I want an opportunity to go into it a little. I know in a general way that there have been periodically high freight receipts on this system, speaking of the Park and River, but my recollection is that it has been during a building activity in connection with the power development here, and the freight— 30

MR. SLAGHT: I think the witness is right.

WITNESS: Where the freight came in over the steam roads and was switched on to the Park and River and delivered to the different power companies along the line. It has not been a constant source of revenue, but an irregular source of revenue during these periods. Now, if Mr. Slaght—

MR. SLAGHT: I agree with the witness in that, and I think when we lit on that year by a fluke and he gave me their \$37,000 of freight, in all probability if we take the trouble to analyze these years we will find that was a very high year, almost a peak year, on freight. 40

MR. MCCARTHY: That was the year the Canadian Niagara and the Electrical Development Company were building their plants over here, using the railway.

MR. SLAGHT: Q. You would get a short haul off the steam roads of freight that would not be normal? A. That would not be normal. If you would graph the curve on it it would probably look like a jig-saw.

Q. Aside from that—the Chairman asked you this; you may or may not be able to deal with it—aside from that year that we picked out having been abnormal, I am suggesting that in the older periods before trucks came on the scene, the steady or normal freight receipts from this road were considerably in excess of what they have been the last ten years; what do you say as to that? A. I have no picture in my mind of the trend of those freight surveys.

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MR. SLAGHT: Q. So, adopting what counsel for the railway suggests—and I adopt it—it would be fair to suggest that the nice freight revenue at least that we found there one year of \$37,000 out of \$157,000 has practically forever disappeared in this area, because of the water-privilege conditions indicated by counsel, and that was an abnormal revenue that could not be expected to repeat itself? A. I think that is a fair statement.

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No. 4. Counsel on behalf of INTERNATIONAL RAILWAY COMPANY reads extracts from Reports of NIAGARA PARKS COMMISSION to the Governor-in-Council.

No. 4.
Extracts from
Reports
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MR. McCARTHY: Have you got the report of 1932?

MR. SLAGHT: There is the report for 1932 (producing). We have given Mr. Runals a lot of our reports heretofore. I do not know whether he has got that one or not.

MR. McCARTHY: No, we have not got it here unfortunately.

I am putting in the Forty-seventh Annual Report of the Niagara Parks Commission, of 1932. It is printed by order of the Legislative Assembly of Ontario, and I wanted to call particular attention to a statement appearing on page 6 in reference to the falling revenues: Perhaps it really begins on page 5, and perhaps if I may just read a word or two from it,—

MR. SLAGHT: A report of this kind I submit is not evidence for my friend or against my clients. It is not evidence that it was communicated to my friend, or there is no evidence as to just how it was compiled or reached. One can well understand that matters of a report of this kind are perhaps not an accurate statement of all the facts connected with the subjects that the report may refer to. I do not know of any rule that makes it evidence against my clients. It may have been compiled by some particular gentleman who in that year was an officer or a member of the Board, or by the Board, but I submit it is not evidence in this inquiry.

I furnished it to my friend as a matter of courtesy to make it easy for him to have access to it. I put it to him that I am not going to consent

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to its being put in as an exhibit, and if he wants to prove it he will have to take steps to prove it as evidence.

MR. McCARTHY: It is addressed to the Lieutenant Governor of Ontario, and it is printed pursuant to Section 17 of the Niagara Parks Act, which requires the Commission to publish a report of this kind every year, and I am submitting it as evidence as against the Commission, as a result of their operations.

MR. ROBERTSON: That is the Act in the Revised Statutes?

MR. McCARTHY: That is the Act in the Revised Statutes. I have it here. I read it to the Board early in the proceedings. It is Section 17 of Chapter 31 of the Revised Statutes of Ontario for 1927. It provides,— 10

“The Commission shall make an annual report for the information of the Legislature, setting forth the receipts and expenditures of the year, and such other matters as may appear to them to be of public interest in relation to the Parks, or as the Lieutenant-Governor may direct.”

THE CHAIRMAN: We will deal with it as we did before. We will take it subject to the objection.

MR. McCARTHY: I am reading from page 5,—

“When in 1885 it was decided by the Government of Ontario 20
“to examine into the establishment of a park at Niagara Falls, for
“the purpose of restoring scenic effects, and to preserve the same
“from further deterioration, a Commission, consisting of C. S.
“Gzowski, Chairman, with J. W. Langmuir and J. G. Macdonald, was
“appointed to select land, and to report on the plan to be adopted
“for this improvement as well as the administration of the prop-
“erty. If the Commissioners concluded to so recommend, the
“Lieutenant-Governor-in-Council, after giving notice that proposals
“would be received from companies willing to undertake the creation
“and maintenance of the park under the Act, might transfer to any 30
“Trustee, or a Company to be incorporated under The Letters Pat-
“ent Act, or otherwise, the right of acquiring the necessary lands,
“subject to the ratification of the transfer by resolution of the Leg-
“islative Assembly. Reporting in September, 1885, the Commission-
“ers advised that the possession of the property to be taken should
“be retained by the Province of Ontario, and that its management
“as a free park should be under provincial control, and not adminis-
“tered by private enterprise. For the financial requirements the
“hope was expressed that a scheme would be evolved to provide the
“necessary funds without entailing any permanent burden on the 40
“province. In a short time it was expected to become self-sustaining.
“To see points of special interest and beauty, requiring the services
“of guides and mechanical appliances, it was recommended that a
“moderate charge be made to reimburse the outlay, and for some
“years tolls were collected from foot passengers, and for carriages
“crossing to Cedar Island to view the Upper Rapids, in addition to

“charges for visitors going under the Horseshoe Falls. The pedestrian charge remained until June, 1892, and the carriage charge until April, 1903, but the revenues from these sources were quite disappointing, and at no time amounted to anything but a small proportion of the money necessary for the operation of the park. The receipts from the lift enabling visitors to go under the falling waters of the river, on the other hand, were of more importance and added to the revenues considerably. The total amounts received from privileges, tolls and fees since the inception of the park have been as follows.”

10

And these are the figures that I am asking the Arbitrators to take a note of. The figures begin in 1887 and continue till 1932. I am not going to read them all. If I take them every ten years I think it will be sufficient.

In 1887 the total amount received from privileges, tolls and fees amounted to \$1,716.

In 1893—I think that was the first year the railway was operated—they jumped to \$18,511.

In 1903 they jumped to \$20,986.

20

In 1913, to \$30,296.

In 1923 they jumped to \$53,197.

In 1928 they reached \$180,504.

In 1929, \$182,935.

In 1930 they dropped from \$182,935 to \$120,503.

And in 1931 they dropped to \$73,590.

And in 1932 they dropped to \$21,888.

That is nearly \$100,000 drop between 1930 and 1932. I would hate to suggest the Park was obsolete.

MR. SLAGHT: You have not shown any net deficit yet?

30

MR. McCARTHY: No, I am coming to that.

Then on page 7 there is a statement in regard to this Railway Company which I would like to read to the Board.

MR. SLAGHT: May I ask—you are putting in, so to speak, or directing attention to the report from page 5 where you started to read, down to and through the schedule on page 6?

MR. McCARTHY: I will not read it. It goes on to comment on the figures. If my friend wants me to I will read the rest.

40

MR. SLAGHT: I do not want you to read any. I want to know what I shall mark to comment on if necessary in my argument, as having been brought to the attention of this Board.

MR. McCARTHY: The article under the head of “Falling revenues.”

MR. SLAGHT: Page 6?

MR. McCARTHY: And part of 7.

Then the article on the International Railway on page 7,—

“The International Railway Company, successor to and purchaser of the Niagara Falls Park and River Railway, under agree-

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“ment, dated July 1st, 1902, notified the Commission in July, 1931,
“that a renewal of the operating agreement of December 4th, 1891,
“would not be sought at the expiration of the original 40-year term,
“and that in consequence the said operating agreement would
“terminate on August 31st, 1932. Because of the inconvenience to
“the travelling public to be without service over Labour Day, Mon-
“day, September 5th it was by mutual agreement arranged that the
“Company would continue the electric railway until midnight of
“Sunday, September 11th. The following day a last trip was taken
“over the line, from Chippawa to Queenston, and then the property 10
“was formally handed over to the Park Commission.

“Built during 1892-1893, the railway was opened for the car-
“riage of passengers on May 24th, 1893, as a single track line, fol-
“lowing the edge of the gorge and the Niagara River throughout
“its length. The rails were laid for the most part on lands belong-
“ing to the Commission. At once successful, arrangements were
“completed for double tracking and the construction completed in
“in 1894. In 1895 the Niagara Gorge Railroad from Niagara Falls,
“New York, to Lewiston was constructed, and by 1899 bridges suf- 20
“ficient for railway traffic were completed at Niagara Falls and
“Queenston. Thus a route was provided for a belt line service, over-
“looking the gorge and lower rapids, from the Canadian side, and
“running through the gorge, at river level, on the American side.
“This trip was inaugurated with the purchase of the Niagara Falls
“Park and River Railway by American interests and remained an
“attractive feature for tourists for thirty years. A steamboat con-
“nection at Queenston provided a water route to Toronto and for a
“time there was a similar means of communication between Chippawa
“and Buffalo, but the latter proved disappointing and was abandoned.
“Carrying from a million to nearly two millions of passengers, for 30
“a number of years, the traffic fell off rapidly from 1928 and finally
“the abandonment of the line was inevitable.”

Then it goes on. I do not know that the rest has to do with us. I will just stop there.

MR. SLAGHT: You are not referring to anything beyond the word “inevitable” there?

MR. McCARTHY: “Inevitable” on page 7.

MR. SLAGHT: I am not trying to restrict you. I want to know what I will have to deal with and read, that is all.

MR. McCARTHY: Then I pass to the financial statement as to Oper- 40
ating Account on page 14. It gives the gross receipts from the various concessions; that is, the Table Rock House and lunch room, the gross receipts from the elevator, from souvenir sales, and also from the lunch room; also the gross receipts from the dining room at the Refectory and the lunch room there; and from the lunch room at the Glen Inn, and the souvenir sales there.

I should have really looked at page 13 first. That is the revenue and expenditure for the year ending 30th November, 1932. The net operating revenue as per schedule 2:

From the Table Rock House was \$16,488.34;
 the loss from the Refectory was \$12,708.02;
 from Niagara Glen Inn, the loss was \$2,131.40;
 from the Queenston Restaurant the loss was \$3,741.57;
 and the revenue from Brock's Monument was \$2,665.00.

10 For my friend's information, so he may know, I propose to refer to the balance sheet and the revenue and expenditure in connection with the Park for that year, and also to compare it with previous years which I will refer to later.

That report I will ask to have marked as an exhibit.

MR. SLAGHT: Now you are on page 12?

MR. McCARTHY: The balance sheet begins on page 12, and really goes over to page 17.

20 MR. SLAGHT: I want to make a further objection that this evidence is not only inadmissible on the ground I have already put, but is irrelevant evidence, not part of the issue here, not the operation of any other railroad, and confusing and inadmissible.

MR. McCARTHY: The Board realizes my friend has tendered evidence and developed evidence of the falling off in revenue and the carriage of passengers not only on our railway, but also on railways in Buffalo, and on the Gorge, and that has been accepted. I want to show that there was a corresponding falling off of revenue in every industry in the Park, and that it was not confined to the Railway, my friend's suggestion being that the railways were the only people who suffered as a result of the depression. I want to show there was a far greater loss suffered by the Park.

30 MR. SLAGHT: No, I have not said the Railway was the only industry that suffered, nor did I introduce depression particularly in my evidence in showing that for forty years the Railway operated at a loss. I did not rely on depression at all. There may be candy stores that operated, millinery shops and other industries, over the forty-year period, and as to those my submission is evidence would not be receivable by the Board, nor are the activities of the Park Commission relevant or admissible. That is the additional point of objection. We could spread out and go into feather factories and the automobile industry, and many others, but they would not be relevant and it would not be admissible.

40 MR. McCARTHY: I quite agree with my friend's contention that if he gets into the feather factory it might not be admissible, but I do suggest that this railway from its very inception was so intimately concerned with the operations of the Park, as indicated by the portions of the reports which I read to you in my opening—indicating that the very object of this railway was to carry passengers to the Park. My friend is, I take it, from his line of cross-examination going to suggest that it

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was the motor traffic or something else that caused the falling off in the railway revenue. I am going to suggest there was a similar falling off in all of the Park enterprises; it was not confined to us—if the falling off in the revenue is of any significance. For that purpose I was going to ask the Board to allow me to put in without reading and just note to my friend the points that I wanted to refer to, the reports from 1927 down to the one which I have just put in. If I may briefly give my friend the pages I refer to—

MR. SLAGHT: I want to take the same two objections to the reception of this evidence. 10

THE CHAIRMAN: We will treat it as we did the other objections.

MR. SLAGHT: So when the Board perhaps later come to consider the relevancy, admissibility or weight of this matter, I add this to the observations my friend and I have made about it: Unless and until you minutely investigate the set-up of these other and different activities operated by the Park over the period in question, you cannot reach a conclusion of the kind that I am asking the Board to reach as regards the railway; and to go into all those collateral considerations as to the capital invested, the management, the matters that might affect the business— all that would have to be gone into to permit of a comparison, and for 20 that added reason I submit it is very unsafe, and would make for mistrial if this Board gave in its consideration of our problem any consideration whatever to the operation of these other activities by the Park, as a guide in reaching the conclusion on the operation of the railway.

MR. McCARTHY: I am only going to refer to gross receipts. So the operation or the mismanagement or the good management really has no part in it.

MR. SLAGHT: That is one of the real reasons for my objection.

MR. McCARTHY: I am only referring to the gross receipts. I am not taking the net. 30

EXHIBIT No. 80: Forty-Seventh Annual Report of the Niagara Parks Commission for the year 1932.

MR. McCARTHY: In the Report of 1927, which will be Exhibit 81— I will put this in better form for the Board later on so it will not be necessary to take down a lot of figures—the gross receipts for the Table Rock House were \$84,000 odd, and the gross receipts from the elevator were \$124,000 odd, the total being \$209,000 odd.

In 1928 the total gross receipts from the same source were \$200,000 odd.

In 1929 the gross receipts from the same source were \$203,000 odd. 40

The gross receipts in 1930 from the same source dropped to \$164,000 odd.

In 1931, the total receipts from the Table Rock House dropped to \$114,000 odd. And then according to the exhibit which I put in formerly, No. 80, in 1932, they dropped to \$58,000 odd.

I am not going through all these different things now, but what I am going to ask leave to do, and I will give my friend a copy of it, is to

make extracts from those six years showing the gross takings from the different concessions and industries of the Park; that is, the Table Rock House, the Refectory, Niagara Glenn Inn, Queenston Restaurant, and Brock's Monument, showing the falling off in gross revenue from all those sources. I will prepare it in the form of a draft or something of that kind so it will be easily followed.

EXHIBIT No. 81: Forty-Second Annual Report of the Niagara Parks Commission for the year 1927.

10 EXHIBIT No. 82: Forty-Third Annual Report of the Niagara Parks Commission for the year 1928.

EXHIBIT No. 83: Forty-Fourth Annual Report of the Niagara Parks Commission for the year 1929.

EXHIBIT No. 84: Forty-Fifth Annual Report of the Niagara Parks Commission for the year 1930.

EXHIBIT No. 85: Forty-Sixth Annual Report of the Niagara Parks Commission for the year 1931.

MR. ROBERTSON: We are not getting 1933?

MR. McCARTHY: I have asked for 1933, but have not seen it yet.

20 MR. SLAGHT: It has not been ratified by the Legislature I am told, whatever that has to do with it. I think the 1933 year is submitted in 1934. It has never been printed or submitted to the Legislature. It is only in draft form and I do not think has been signed or completed.

MR. McCARTHY: There is a signed copy in Toronto I know.

MR. SLAGHT; The position I am told is that it has been signed and an original has been sent to Toronto but has not been submitted to the Legislature.

MR. McCARTHY: They are really addressed to the Lieutenant-Governor and printed by direction of the Legislature.

MR. SLAGHT: They have not been printed yet, Mr. McCarthy.

30 MR. McCARTHY: I will take the unprinted copy. That will do me.

MR. SLAGHT: This is the only one I have.

MR. McCARTHY: I will not put it in, Mr. Slaght. I will take my extracts if I may.

MR. SLAGHT: I make it available to you subject to my objections as to its admissibility, and I would like it back.

MR. McCARTHY: I will be very glad to give it back. I will give extracts from this because my friend wants it back, and if I may perhaps incorporate what I have to extract from it in the notes.

40 MR. SLAGHT: My further submission as to this is that it is subsequent to the date of the rights of the parties being determined, which is August 31, 1932, and not admissible on that additional ground. On that ground it does seem to me, with great respect, that it cannot be admissible against me.

THE CHAIRMAN: What date is this?

MR. McCARTHY: It is dated the 11th of June, 1934. It purports to

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be the report of the Commission for the year 1933, the fiscal year ending in 1933.

THE CHAIRMAN: How would that be evidence as to our present investigation?

MR. McCARTHY: On the same principle my friend tendered evidence as to the amount of carriage on the railways during the year 1933, and on our railway in that period. I am only bringing it up to the date of our own road.

MR. SLAGHT: I do not recall tendering any evidence of the operation of their railway after September, 1932, although you may be right. I do not think you can direct us to any such. 10

MR. McCARTHY: Exhibit 79 which I have here.

THE CHAIRMAN: I think we had better let it go in anyway subject to objection.

MR. McCARTHY: The only part I proposed to put in really was schedule 2 of the operating account for the year ending the 30th of November, 1933, because that brings me up to the carriage of passengers on the International Railway and the Gorge Route which my friend put in as Exhibit 79. I will have to read this to you because my friend wants this book back. 20

“The gross receipts from Table Rock House and lunch room were as follows: Gross receipts from elevator, \$34,744.50; gross receipts from souvenir sales, \$15,422.77; and gross receipts from lunch room were \$5,770.84; making a total gross revenue from that source of \$55,938.11.”

Then from the Refectory, the gross receipts from the dining room were \$9,137.95.

From the lunch room, \$8,506.79.

Niagara Glen Inn: Gross receipts from rental were \$300, and the rest has nothing to do with it. 30

Queenston Restaurant: The gross receipts from rentals and sundry sales, \$819.50.

And Brock’s Monument: The gross receipts from tolls and pamphlet sales was \$2,743.55.

And the Clifton Incline, which that year was operated by the Park, not by us: Gross receipts from Incline Railway, \$1,532.50.

And the gross receipts from souvenir and refreshment sales was \$11,402.03.

MR. SLAGHT: In the Refectory you gave three items, did you carry out the total of the three? 40

MR. McCARTHY: I gave only two, the dining room and the lunch room. The total from the Refectory was \$17,644.74, and the total from the Incline Railway was \$12,934.53.

THE CHAIRMAN: All this has been accepted subject to the objection that none of it is admissible or relevant beyond what has relation to the Railway. We are simply accepting it subject to that reservation in the meantime.

MR. McCARTHY: Then in connection with the statement put in by our last witness, Mr. Schmunk, Exhibit 67, sheet No. 1—when I say sheet No. 1, my friend and I called the outside sheet A; it is the second page, but it is called sheet 1—in reference to the last four items; that is, A.F.E. 309, 311, 312 and 313, those were extensions made to the head-race, etc., about the power house, and in regard to which I have to furnish my friend, if I can find them, with some documents which I think will all be in order by Monday for him—I want to refer to one or two extracts from the minutes of the Commissioners for Niagara Falls Park.

10 The first minutes I refer to are the minutes of the 1st of August, 1903, at page 132 of the minute book. It is under the heading, "International Railway Company—New Bridge." I do not want to put the book in as a whole.

"The International Railway Company submitted a sketch plan of the carriage and pedestrian bridge proposed to be built over their intake, and it was ordered that the plan be approved subject to the detail drawings being satisfactory."

20 Then the next one is the minutes of September 26, 1903, which are in the minute book at page 134. This is under the heading, "Electric Railway Intake."

"The Chairman further reported that on the 16th inst. the International Railway Company had submitted a plan for permanently improving their head-race and that of the town water works so as to overcome the annual difficulty from floating ice.

30 "The plan provides for a joint open raceway extending from the wide intake already constructed by the Canadian Niagara Power Company to the power house of the Railway and the gate-house of the town flume, with concrete walls similar to the intake from the river and a new steel bridge to carry the Railway over the enlarged raceway. The plan also provides for a new wheel with an extension of the wheelpit within the power house.

"The changes outlined being a decided improvement on the existing works, and having the approval of Commissioners Wilkes and Campbell, the Superintendent had been instructed to allow the works to proceed, and the Chairman's action was confirmed by the Board."

The next minute I would like to refer to is the minute of the 15th October, 1903, at page 137. It is under the heading, "International Railway Double Tracking."

40 "The International Railway Company submitted plans for double tracking their Railway at two of the points where there is now only room for a single track, viz: at the end of the Upper Steel Arch Bridge.

"Ordered that the plans for double track opposite the present Dufferin Cafe be approved, provided the Railway Company construct suitable concrete platforms for the convenience of the public

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“using the trolley lines, the design and construction to be to the approval of the Park Superintendent. The consideration of the plans for double tracking near the Upper Arch Bridge to be reserved until the road at that point has been widened.”

I should have read at the same meeting, on the 15th of October, 1903, on the same page 137, “International Railway Bridge Over Intake.” I should have read this before I did the one just now. It reads as follows:

“The International Railway Company submitted three plans for a carriage bridge over the joint intake of the Railway Company and the town. 10

“Upon consideration it was ordered that plan ‘C’ which provides for a steel bridge truss entirely encased with concrete, and with an armored concrete floor be approved, subject to the report on details by the Park Superintendent.”

MR. MASON: Is that what you call the highway bridge?

MR. McCARTHY: The highway bridge, yes.

That is all I want to refer to just at the moment. There are others, but I think perhaps I can save time by looking them over.

MR. SLAGHT: There are two items there that are relevant to what my friend has read, that he has not read, and that I want to have in. 20

MR. McCARTHY: I have only just got the minute book. I did not have a chance to look through it all.

THE CHAIRMAN: Will you have these extracts copied?

MR. McCARTHY: We will have the extracts copied.

MR. SLAGHT: I am going to read a couple of additional extracts relevant to these matters that ought to be before the Board with the ones my friend has put in. I suppose the one document will copy them all. These various minutes have numbers opposite each, and I want to read now from page 137 the minute which is No. 120. It reads as follows: The sub-marginal note is, “International Ry. Conduit.” 30

“The International Railway Company submitted plans for the construction of a conduit from their power house in the park to the Upper Steel Arch Bridge to protect their wires from ice and frozen spray, and to convey electricity through the park and over the bridge for working their railway system on the American side, in whole or in part.

“Upon consideration it was decided to refer the application and plan to Mr. Irving for his opinion as to what rights the International Railway Company possesses under the original charter and the amended act of 1 Edward VII, Chap. 86.” 40

That item you will see refers to the projected ambition to export power to the American side.

MR. McCARTHY: My friend is interpreting that. It was nothing of the kind. It was equalization.

MR. SLAGHT: I made a statement the other day to that effect and you said it had never been considered.

MR. McCARTHY: I still say so.

MR. SLAGHT: To complete the reference to this minute book, on April 19, 1902, page 29, item 31; the marginal note is, "C.N.P. Co.'s plans."

"The Canadian Niagara Power Company submitted an application for approval to its plans,

"(1) Filling out into the River.

"(2) Bridge over intake.

"(3) Railway & Town Do."

The ditto is under the word "intake", so I take it that means "Railway and Town Intake."

10 "Ordered that the filling on the shore by the Canadian Niagara Power Company may be extended about 50 feet beyond the line already approved.

"(2) That provision may be made in the shore filling for an intake opening to the Town and Railway power houses not exceeding 125 feet, on the express condition, however, that the parties requiring such enlarged intake shall construct the bridge over the same at their own cost and to the approval of the Commissioners.

20 "(3) That the plans submitted for the bridge construction to carry the electric railway and the highway across the mouth of the forebay, showing a steel and arch concrete structure faced with rock-faced masonry are approved."

* * * * *

No. 5. Extract from Evidence of F. S. BEATTIE, Car-builder. Called on behalf of INTERNATIONAL RAILWAY COMPANY.

Q. What is your business? A. I am Superintendent of the Car Department of the Ottawa Car Manufacturing Company.

Q. You were asked for the reconstruction cost of certain cars belonging to the International Railway Company? A. Correct.

Q. Did you make any inspection of the cars? A. Yes.

30 Q. When did you first inspect the cars? A. Two weeks ago last Saturday.

Q. Where were the cars standing at the time? A. In a yard just outside Niagara Falls.

Q. In the open? A. Yes.

Q. What was the nature of your inspection? A. A general inspection to size them up, to figure on reproduction.

Q. As of what date were you figuring the reproduction cost? A. 1932.

Q. Have you prepared a statement showing how you arrived at the reproduction cost of those cars? A. Yes, I have.

40 Q. How long have you been with the Car Department of the Ottawa Car Manufacturing Company? A. 25 years.

Q. How many cars do the company turn out per year in normal times? A. In the last twelve years we have turned out about 160 cars.

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Q. How long have you been the Superintendent of the Car Department? A. Since 1919.

Q. You say you have prepared these statements. May I see them? A. Yes.

MR. McCARTHY: I will file this statement headed: "Valuation Estimate by Ottawa Car Mfg. Co., Ltd., Ottawa, Ont. For International Railway Co., Buffalo, N.Y.," as Exhibit No. 94.

EXHIBIT NO. 94: Valuation estimate by Ottawa Car Manufacturing Company, Limited, Ottawa, Ont., for Claimant (9 sheets); produced by Mr. F. S. Beattie. 10

* * * * *

CROSS-EXAMINED by MR. SLAGHT.

Q. You told my friend that in the last twelve years your company had turned out about 160 cars? A. About that, Mr. Slaght.

Q. In the last five years what have they turned out? A. 22 cars.

Q. 22 cars in the last five years? A. Yes.

MR. SLAGHT: He says they have sold 160 cars in the last twelve years and 22 in the last five years.

Q. Would they all be sold to the Ottawa Street Railway? A. Yes, city cars.

Q. Do you do a national business? Do you quote and sell in other provinces as well as Ontario? A. Yes; right from Vancouver to Halifax. 20

Q. So in twelve years you have turned out and sold 160 cars, but in the last five of those years you turned out only 22 cars, which would leave us 138 cars in the seven years preceding that time and 22 cars in the last five years, and our year of 1932 comes in the centre of the last five years? A. Yes.

Q. The entire output of your plant for five years was an order that the City of Ottawa gave you, which you filled, for 22 cars which were used on the streets of Ottawa? A. Yes, on the city streets. 30

Q. And aside from those you have not sold a street car? A. Not at all.

Q. Not at all in the five years' time? A. Correct.

Q. I suppose your company have not retrenched particularly? They were ready for business? A. Yes.

Q. And may I take it that the purchasing power for electric railway cars has very materially fallen off, when we come down to the year 1932? A. I might explain the reason they bought those was on account of them changing over.

THE CHAIRMAN: Speak louder, please. 40

MR. SLAGHT: Q. The reason the City of Ottawa bought those 22 cars was because they were changing over? A. Yes, from a two-man operation to a one-man operation.

Q. So that accounts for the Ottawa order? A. Yes.

Q. But looking at the purchasing power or market that your firm

would hope to have for cars, may I take it that the electric car business by 1932 had tremendously fallen off as against earlier years? A. I would say "Yes," around 1932 it fell off very suddenly.

Q. And for five years you have never had an order for a single street car other than the 22 cars the City of Ottawa bought because they were changing their operation from the two-man car to the one-man car? A. Yes, that is the position.

Q. And I gather that your firm did not go out of business but were ready and looking for business during the five year period? A. Yes, right.

Q. In other words, the manufacture of electric cars has become awfully tough? A. Yes.

Q. Have your people gone in for manufacturing motor busses? A. Yes.

Q. When did you start in the manufacture of motor busses? A. First in 1922, and then that dropped off; and we started again three years ago.

Q. You have an English agency for motor busses perhaps? A. Yes.

Q. What firm of motor busses do you represent? A. The Associated Equipment Company.

Q. An English company? A. Yes; we also build bodies for chasses.

Q. For other makes of motor bus? A. Yes.

Q. Would it be fair to say that as far as your experience in the business is concerned the motor bus is gradually supplanting the electric railway car? A. No; I would not say that; it all depends on the condition in the railway; the motor bus will never replace mass transportation; it may be all right for a feeder. That is my personal opinion about it.

Q. I had not asked you for that, but you are volunteering the opinion that motor busses will never replace mass transportation? A. Yes.

Q. How many miles of track for interurban travel, that is barring city railways, have been built in the Province of Ontario in the last five years? A. I would not like to answer that question.

Q. Do you know of a single mile of track for interurban electric railway travel that has been constructed in the Province of Ontario in the last five years—new or extended trackage? A. No.

Q. But you do know of a great many busses purchased and bus lines established and set up in our province in the last five years? A. Yes.

Q. Is the bus business good with you? A. It looks very good.

Q. That is around the corner, but has the bus business been fair? A. Fair.

Q. Whereas the electric car business has been as dead as a door nail with the exception of the one order you have mentioned? A. Yes.

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*In the Matter
of an
Arbitration*

—
Claimant's
Evidence.
No. 5.
F. S. Beattie,
Cross-
Examined,
February 4,
1935.

—continued

*In the Matter
of an
Arbitration*

—
Claimant's
Evidence.
No. 6.

H. E.
Riexinger,
Examined,
February 5,
1935.

No. 6. Extract from Evidence of H. E. RIEXINGER, Engineer. Called on behalf of INTERNATIONAL RAILWAY COMPANY.

EXAMINED by MR. McCARTHY.

Q. Speaking generally how was the line located with reference to the river, to the edge of the bank? A. The line was constructed very close to the edge of the bank. The purpose of the line of course was best served by having it as close to the bank as possible.

Q. You as the engineer in that capacity would have a knowledge of the line? A. Yes.

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Respondent's
Evidence.
No. 7.

Norman
Douglas
Wilson,
Examined,
February 6th,
1935.

No. 7. Extract from Evidence of N. D. WILSON, Engineer. Called 10 on behalf of NIAGARA PARKS COMMISSION.

EXAMINED by MR. SLAGHT.

NORMAN DOUGLAS WILSON, Recalled: Examined by MR. SLAGHT:

Q. Mr. Wilson, you are a member of the firm of Wilson and Bunnell, Consulting Engineers? A. Yes, sir.

Q. I understand you specialize in transit and traffic problems, city planning and municipal economics? A. That is right.

Q. Your present firm was founded in 1923? A. In 1923 I entered 20 partnership with Mr. Bunnell.

Q. You are a graduate of Toronto University in Civil Engineering? A. Yes, sir, B.A.Sc. in 1904 and C.E. in 1923.

Q. Then you are a member of the Engineering Institute of Canada? A. Yes.

Q. Of the Town Planning Institute of Canada? A. Yes.

Q. The Institute of Traffic Engineers, New York? A. Yes.

Q. And you are registered as a Professional Engineer in the Province of Ontario? A. Yes, that is correct.

Q. Then I believe you obtained your commission from the Dominion Government as a Dominion Land Surveyor in 1908? A. That is correct. 30

Q. And of Ontario Land Surveyor in 1909? A. Yes.

Q. Prior to your graduation were you in the office of the Dominion Bridge Company at Lachine? A. I was for a summer.

Q. After your graduation, with the Toronto and Niagara Power Company? A. Yes. I was with Mr. W. T. Jennings for a season with the Toronto and Niagara Power Company.

Q. He was Chief Engineer of that company? A. He was then Civil Engineer of the Toronto and Niagara Power Company, which was the transmission line from the Electrical Development Company to Toronto. 40

Q. That is the same Mr. Jennings whose name we find on some of the earlier plans in this matter? A. That is right.

Q. Your work was in connection with what? A. On refinements of location, and in preparing plans for the purchase of right of way.

Q. On the transmission line from Niagara Falls to Toronto? A. On the transmission line from Niagara Falls to Toronto.

Q. In 1905 you were with the Canadian Pacific Railway on construction of their Toronto and James Bay line? A. For a short while.

Q. Then you went with the Grand Trunk Pacific as instrument man in Manitoba? A. That is right. I was a year with that company as instrument man on construction, and draftsman on location. I left them after a year, and went with the C.P.R., and was a resident engineer on the C.P.R. construction east of Saskatoon. I had twenty-seven miles of
10 residency there. Then in the winter of 1907 I went into the Dominion Land Surveys in Saskatoon and Alberta. And in the fall of 1909 I came east. I had an opportunity to get back again to the east, and came and formed a partnership as municipal engineers in Niagara Falls, Ontario, and was here for about a year and a half, and then transferred to Toronto and opened up as a land surveyor in Toronto in 1910. In 1911 I was back in the Falls, making a survey of the crest of Niagara Falls for International Waterways Commission, the Canadian branch.

In 1912 I left private practice and went with the Toronto Harbour
20 Commissioners in charge of surveys, and was with them until 1923; in fact, till the time I went into partnership with Mr. Bunnell. I had charge of all surveys, land surveys, hydrographic engineering surveys, in charge of the drafting rooms, in charge of all dredging and reclamation; had charge of all development for the use of the land, and had charge of the property, and all agreements for property, and all applications to the Railway Board.

Q. That is enough detail along that particular path. Then in 1915? A. In 1915 the Harbour Commission went in with the City of Toronto on the Civic Transportation Committee, on a report for civic transportation for Toronto, and I was assigned to that work, and had
30 charge of traffic counts and traffic analysis.

In 1920 when the Transportation Commission was coming into being my services were asked for, and I went to the Transportation Commission on a part-time arrangement with the Harbour Commission, and was engaged on the preliminary investigation as to the form of transportation desirable in Toronto.

Q. You were with the T. T. C.? A. With the T. T. C.

Q. As engineer of traffic study? A. I stayed with them when they started to operate, September 1, 1921—I continued with them as
40 engineer of traffic study, organizing that department which had charge of all traffic counts, and all traffic studies, and was virtually an internal audit department of the class of service rendered the public.

Q. In 1928 you were appointed Director of the Advisory City Planning Commission of Toronto? A. Yes. I stayed with the T. T. C. until I was appointed Director of the Town Planning scheme of 1928.

Q. In 1924 I understand you were retained by the Mexico Tramways Company, and went to Mexico City, and made a report on their

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transportation system in Mexico City; is that right? A. That is correct. I was in Mexico City about four months at the time.

Q. Was there any special problem involved in that? A. It was a question of combating the jitneys. There were about 2,000 jitneys combatting the electric railway in Mexico City.

Q. That was the problem involved in that task? A. That and the question of concessions.

Q. You spent four months in Mexico that year, went back for the same company in 1926, 1929 and 1930? A. That is right.

Q. And made a report to the joint commission authorized by the President of the Republic of Mexico on the reorganization of the transit services of Mexico City? A. That is right. The service I was connected with ended in a general report to the President of the Republic. 10

Q. In 1925 you were retained by the Brazilian Traction Company I understand to advise on transit and traffic problems in Brazil? A. That is right. I am still their traffic advisor. I am still under retainer, have been for the last ten years.

Q. How many times have you been to Brazil in that interval? A. I have been to Brazil eight times in the interval, anywhere from three to six months at a time. The problem in Brazil is in the two cities of Rio de Janeiro and Sao Paulo. There are two concessions operating in Rio de Janeiro and one in Sao Paulo. The problem there is the modernization of the system to combat the increasing automobile traffic and modern ideas of transportation. 20

Q. Rio de Janeiro is a city of a million and a half population, and Sao Paulo something over a million? A. Yes. I also reported on the transportation possibilities of Bello Horizonte and of Santos. Bello Horizonte is the capital of Minas Geraes.

Q. And then did you investigate the interurban line at Guaratingata? A. Yes. 30

Q. That is an interurban line? A. It is a small interurban line that runs out from Guaratingata to a shrine.

MR. SLAGHT: I may say in parenthesis, I would not trouble the Board with this but for some special evidence on interurban traffic conditions I am going to ask Mr. Wilson to give later. Therefore I want his experience in this problem to be known.

Q. Your work with the Brazilian Traction included an inspection of the major Latin-American cities. What for? A. I was asked to view all the major Latin-American cities on the continent, to see the public relationships, the type of service they were giving, and the general traffic conditions in the various cities. 40

Q. Did you visit Buenos Aires, Valparaiso, Chile; Santiago, Chile; Lima, Peru; Havana, Cuba; and did you go to Portugal, and go to Paris, France, and London, as well as many of the larger cities in the United States? A. That is right. I was in Paris and London to look into the transportation service.

Q. I see you reported for the City of Kingston? A. Yes, I made a report for the City of Kingston in Ontario some years ago. Most of that work has been done by Mr. Bunnell in my absence. I also reported on the Sandwich-Windsor and Amherstburg Railway. In the last three months I reported for the Hydro-Electric Power Commission on the City of Hamilton transportation.

Q. The Hydro own it now under their Dominion Power transmission service, the assets they bought there. What about this Latin-American transit experience as in any way applicable to Canadian conditions?

10 A. The traffic difficulties are the same everywhere at the present time. It is the entire change in the trend of transportation from the electric railway to the motor, free-wheeling traffic—free-wheeling vehicle on the streets. There is one thing that foreign experience has given me. Whereas the motor vehicle arose in North America around 1905 to 1910, and the change-over has been slow and gradual in the last twenty years, the motor car reached both Mexico and South America as a finished product, and the whole cycle of competition, and the destruction of the monopoly of the electric railway was lived through in a very short cycle of even five years.

20 Q. In the Latin-American countries? A. Yes. I have seen a city in Mexico which had only at the most five motor vehicles in it. The conditions of transportation were exactly as they were thirty years ago. So I have seen the cycle.

Q. Do you know something especially about the Niagara Falls Park and River Railway? A. Since my earliest childhood I have seen this Railway. The whole family always were across the lake pretty nearly every Saturday afternoon.

Q. You have ridden on it in your youth? A. I believe I rode on it the 24th of May it started; if not, the 1st of July.

* * * * *

30 MR. SLAGHT: Q. Reading from page 29 of the Parks Commission minute book, item 37 as numbered in the margin; you had better read that? A. "The Canadian Niagara Power Company submitted an appli-

"cation for approval to its plans

"(1) Filling out into the River.

"(2) Bridge over intake.

"(3) Railway & town Do."

Q. The ditto is under the word "intake." A. "Ordered that the "filling on the shore by the Canadian Niagara Power Co. may be "extended about 50 feet beyond the line already approved.

40 "(2) That provision may be made in the shore filling for an "intake opening to the Town and Railway power houses not ex- "ceeding 125 feet, on the express condition, however, that the parties "requiring such enlarged intake shall construct the Bridge over the "same at their own cost and to the approval of the Comsrs."

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MR. ROBERTSON: Q. Before leaving the City of Niagara Falls—in 1892 can you give any information as to what sort of place it was, how big it was? A village, I think; it is called a village in some of the—
A. There was a Town of Niagara Falls clustered around the Grand Trunk Station at Suspension Bridge, which had its business heart on Bridge Street. There was also a Village of Niagara Falls up at Lundy's Lane, up on the hill behind the Refectory. Now, those two, in the process of time those two towns and villages grew together, and they amalgamated in the City of Niagara Falls, I think sometime after 1900.

Q. Well, it was the population about which I was thinking. Have you any idea what the population was in 1892? Very small, wasn't it? 10

A. Oh, very small. I don't think it would be more than six or seven thousand all told.

MR. McCARTHY: Q. Are you speaking of Niagara Falls? A. Niagara Falls and the Village of Niagara Falls. I will get that figure for you, sir.

MR. ROBERTSON: Well, it may be of some moment, as to whether anybody ever thought this would be a railway that was for local purposes. That may have some bearing on it.

WITNESS: It was. The villages were small, and there was at no time very much local traffic, though there was a traffic, due to the small size of that town, there was a consistent shoppers' traffic and such like across the river, because there were no facilities either for shopping or for recreation on the Canadian side for the local residents. The town was too small for that. Now the town has grown sufficiently that those facilities are available on their own side, therefore what little traffic there was of that nature has simply dwindled away. 20

MR. McCARTHY: Q. Could you get across the river before 1902? A. Not before 1902, sir, no.

THE CHAIRMAN: Q. I beg your pardon? A. Not with the railway before 1902. 30

Q. What other mode of crossing was there before 1902? A. You could walk across on the Suspension Bridge or take a carriage across.

Q. I beg your pardon? A. You could take a carriage across or walk across.

Q. The Suspension Bridge? A. The Suspension Bridge at Falls View, sir; but there were no street cars across the bridge till the International took over the Niagara Falls Park & River Railway and instituted the belt-line service, or instituted the local service to Niagara Falls, New York.

MR. SLAGHT: Q. From the Falls View Bridge in Niagara Falls, having regard to traffic territory on the west side up to Chippawa, what have you to say? A. It traverses the Park. 40

Q. Is there any population in the Park? No residential population? A. No residential population in the Park whatever. There may be a few power house employees, there may be Park employees. The Park is limited by the escarpment and again by the Michigan Central

Railway at the top of the escarpment, with no means of access. When you get above the Dufferin Islands, why, you traverse what is now one single residential estate, and there is absolutely no traffic until you get to the Village of Chippawa. The Village of Chippawa is a village of about twelve hundred people; it is a suburb of Niagara Falls, and there is possibly some local traffic between Niagara Falls and Chippawa.

Q. Then what do you say with regard to tourist traffic as affecting this railway? It, we are told, connected—I am speaking now of 1932, August—with boats from Toronto at Queenston, did it not? A. In 10 1932?

Q. Yes? A. Oh, yes.

Q. At the time it was abandoned. We have heard that there was at one time a traffic, either expected or real, I am not sure which, from the City of Buffalo to come by boat to the Village of Chippawa and then enjoy the privileges of this railway. Do you know personally whether that ever materialized in any appreciable way, whether there was ever a—
A. Yes, sir, I do. For some reason, I believe the reason being that the passengers were afraid to come down the Niagara River as far as Chippawa, the Railway Company extended their line on some tentative
20 arrangement with the Park Commissioners as far as Slater's point, which is about another mile and a half or two miles further up the river, and a boat service was instituted between that point and Buffalo to make a through trip from Toronto to Buffalo. That service was going during the Pan American Exhibition to my knowledge. I think, if my memory serves me, the Columbian was the boat that made the trip in question. How long it lasted after the Pan American year I do not know, but the traffic apparently was not adequate to support the service, and that boat service was abandoned and the rails from Slater's Point to Chippawa torn up and the terminus left at Chippawa; so that the through traffic
30 from Toronto to Buffalo or from Buffalo to Toronto via boat to Chippawa apparently was not satisfactory.

Q. Well, it has been abandoned for several years? A. Oh, it has been abandoned—

Q. Prior to 1932? A. About twenty-five years.

Q. The only other thing which occurs to me is the Peace Bridge, which has come into existence; it has been referred to by a real-estate man. Let us know what factor that might or might not be. When did it become completed for traffic? A few years ago, some six or seven years ago, I understand. What, if any, traffic to this road, which has had its
40 terminus at Chippawa since the Peace Bridge has been built, might this road expect to enjoy from the Peace Bridge? A. Oh, the Peace Bridge, of course, would tend undoubtedly to take traffic from this road, in that the Peace Bridge in an indication of the growth of the motor-car traffic and the development of highways, and if anybody once got started on a motor vehicle, either his own or some through bus, I do not see that he would make any transfer connection to this railway.

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—continued

Q. Then in your opinion would the Peace Bridge as a factor be likely to bring traffic from Buffalo, people who would have to come by car to Chippawa and then leave their cars and embark upon this railway? A. I do not think the Peace Bridge in itself will have tremendous influence upon the downward trend in traffic on this road, not in itself, but it is an indication of the factors that did detract from the traffic on this road.

Q. The Peace Bridge Canadian terminus is at Fort Erie, and from there what is the main artery provided for Buffalo traffic coming across the Peace Bridge to Canada that might be headed for Hamilton or Toronto? Is there a highway link which connects with the Canadian end of the Peace Bridge? A. Oh, yes, there are several. 10

Q. What about the chief highway link? A. The chief highway link would be to sidetrack Niagara Falls entirely and go through Port Colborne, down to Welland, and on to Hamilton and Toronto.

Q. Is that using the Fonthill-Smithville road? A. That would be using the Fonthill-Smithville road. That is much the quicker, much the shorter.

THE CHAIRMAN: I suppose a through route of that kind would eliminate the Falls? A. It would, sir. 20

MR. SLAGHT: Unless a man was interested to detour by a longer route.

THE CHAIRMAN: In order to see the Falls.

MR. SLAGHT: To see the Falls; and then I don't know that he would get out and ride on the electric railway—I don't know whether he would or not.

Q. But the through route you indicate for American traffic coming from Buffalo into Canada, across the Peace Bridge, would have a shorter mileage and a more direct route by not coming past this railway? A. It would, sir. 30

Q. Going as you have indicated, Welland, Fonthill, Smithville? A. The only purpose of coming this way would be to see the Falls or to traverse the Boulevard.

* * * * *

MR. SLAGHT: Then I put in this schedule of Canadian Division passengers and passenger revenue from 1928 to 1931 inclusive as Exhibit 122.

EXHIBIT 122: Schedule, Canadian Division, passengers and passenger revenue, 1928-29-30-31.

MR. SLAGHT: Q. I won't spend much time on this, but just interpret it for us in a word, will you? A. There is shown under each of the said years the traffic derived from the Belt Line, from the boat traffic, from other interline traffic and from local traffic. It shows the revenue passengers and the percentage of revenue passengers derived from those four sources. It shows also the passenger revenue and the percentage derived from those four sources for each year, and it shows the average fare obtained from each of those four sources, and it also shows an aver- 40

age obtained from those statistics for the four years 1928 to 1931 inclusive.

Q. Looking at revenue passengers, take the first year, 1928; the total of revenue passengers that year was 930,000 odd? A. Yes.

Q. And the Belt Line initiated 182,000? A. Or 19.6 per cent. of the total, sir.

Q. 19.6 per cent. of the number of passengers? A. Yes.

Q. This schedule will explain a question that Mr. Robertson raised some days ago; he called our attention to the fact that in some years in
10 Mr. Schmunk's schedule you apparently carried fewer passengers but had more passenger revenue, and this chart will in part explain that, I think, will it not? A. It will, sir, yes.

Q. Take 1928; out of 930,000 passengers the Belt Line as a source of revenue passengers produced in passengers 19.6 per cent. of the total of the 100? A. That is right, sir.

Q. But the passenger revenue from the Belt Line initiated traffic was \$97,000 odd? A. That is right, sir; 60.3 per cent. of all the passenger revenue.

Q. So that was 60.3 per cent. of the total passenger revenue that
20 year, which in dollars was \$161,000? A. That is right, sir.

Q. And then the average fare you have indicated in the last column, from Belt Line passengers was 53.3 per cent., and from local passengers was 6.5 cents? A. That is right, sir.

Q. So that in that same year, while the railway carried 673,000 local passengers, the local passengers furnished only 6.5 per cent. of the total average fares and the Belt Line furnished more than half? A. The local passengers represented 72.4 per cent. of the traffic and 6.5 per cent. of the revenue. The marvellous thing of this statistic is to show the absolute
30 uniformity over those four years.

MR. MASON: Q. Pardon me; you didn't mean 6.5 of the revenue; it is 27.1? A. 27.1 per cent—I stand corrected, sir; 27.1 per cent. of the revenue. The percentage drawn from out of those four sources is very uniform throughout the years. The average for four years shows that there is 73.1 per cent. of the passengers carried are local passengers, representing 29.7 per cent. of the revenue, or, deducting the Belt Line, there is 80.4 per cent. of all the traffic is what might be called Canadian traffic.

MR. SLAGHT: Q. In numerical numbers of passengers, you mean? A. No, sir—80.4 per cent. of the numerical number of passengers, and
40 they represent only 41.1 per cent. of the revenue obtained.

Q. Looking at the percentage covering the four years, if you take away the Belt Line you take away 58.5 per cent. of the revenue? A. You do, sir.

Q. Then we heard that the Belt Line connection was torn up in Niagara Falls, New York, in the year 1932?

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MR. McCARTHY: My friend has made that statement; that is not true.

MR. SLAGHT: Discontinued, then.

MR. McCARTHY: That, of course, is not true either.

MR. ROBERTSON: That might not follow, of course. That is, people might still ride on the railway for the very same purpose that they take the Belt Line trip, but they might not have the convenient access and the right to ride on both sides on the one fare, and things of that kind.

MR. SLAGHT: We heard, sir, that Belt Line tickets are sold by steam railways as part of their initiation of traffic. I was wanting to look at it from the point of view of initiation of traffic and the effect on the road. 10

MR. ROBERTSON: But, Mr. Slaght, of course you have got to understand, all this is very useful, but you have got to read it with some judgment. Mr. Wilson is not attempting at all to tell us that 27.1 per cent. of the people who got on the line are local people; they may come from anywhere.

MR. SLAGHT: Oh, that is true.

MR. ROBERTSON: They board the cars here.

MR. SLAGHT: That is all that means. 20

MR. ROBERTSON: That is all the Belt Line traffic means, that people came that way.

WITNESS: It is local traffic, sir.

MR. SLAGHT: Q. Well, what do you mean by local traffic? A. I mean local pick-up fares, either travelling on local tickets sold in the town or just incidental pick-ups that ride a short distance, but not taking the Belt Line trip, which is a sightseeing trip, or not being through passengers from Toronto via boat to Niagara Falls, or by other connecting railways such as the Canadian National or the New York Central or such like, who might have a ticket sold over this railway to some point in the Park or to Queenston. 30

Q. Leaving aside what are the real facts regarding the cutting off of the previous service from the City of Niagara Falls to the American edge of the Falls View Bridge, which a witness told us was a distance of 1,260 feet from the point in the City of Niagara Falls where those tracks had been taken up to the American end of the Falls View Bridge, but assuming for the moment that that service was necessarily cut off from the Park & River Division, what do you say as to whether or not that would have a material effect on the revenue of the Park & River Division? A. You would lose 58.5 per cent. of your revenue immediately. 40

Q. Mr. Riexinger gave us the facts on the distance from the Niagara Falls cut-off to the edge of the bridge. Now, regarding this railway as a means of transit for the purpose for which it was built, what do you say as to the railway as a whole when it was turned over in August, 1932, as to whether or not it was obsolete?

MR. McCARTHY: I object to that question.

* * * * *

MR. SLAGHT: Q. What do you say was the condition of this railway when it was turned over to us in 1932, having regard to it being used as a transportation system? A. As a railway, as an electric railway, in that particular site and position and in that particular year and for some years previously and continuing after, the railway has outlived its usefulness and is obsolete.

* * * * *

THE CHAIRMAN: The witness defines what he thinks constitutes a thing being obsolete; that is his idea of it, at all events.

10 MR. SLAGHT: Q. What do you mean by that, Mr. Wilson? Elaborate that. A. I believe a thing is obsolete when the service it renders is no longer desired, when it is passed by in favour of something else which can take its place.

THE CHAIRMAN: Q. Desired by whom? A. By the user or prospective user. In other words, when a railway cannot get sufficient traffic to support itself, then if some other facility can take its place and provide an equivalent service at a lesser cost, or which is more favoured by the riding public, then the railway is of no further use or demand, and is obsolete.

20 MR. ROBERTSON: Q. Do you mean, Mr. Wilson, by that, that if the cost of running a railway increased, although there were just as many people rode on it, if the cost of running increased it would become obsolete? A. If there was no service to take its place, sir, it would not be obsolete, and if there was any possibility of getting a revenue to support that railway, it would not be obsolete.

Q. Then the mere fact that it does not pay does not make it obsolete? A. Not essentially, sir, not entirely.

THE CHAIRMAN: If you call it obsolete for that reason, I suppose it was obsolete from the start; it never paid.

30 MR. SLAGHT: They had some bright years, made a profit sometimes.

THE CHAIRMAN: When it started it was obsolete, because it did not pay at the beginning.

MR. McCARTHY: Every railway in Canada and the United States must be obsolete, according to this man.

WITNESS: That does not follow, sir.

MR. ROBERTSON: Q. Are you able to state any percentage that the use made of it must fall off before it becomes obsolete? A. No, sir. I recommend the complete abandonment and the scrapping of this railway, because it is obsolete in my judgment.

40 Q. You are not getting my question; that is not what I mean. You have a railway that is carrying a million passengers, and it doesn't pay; assume it doesn't pay, but there are a million people want to ride on it; you perhaps would say, well, that railroad was not obsolete, there were a million people wanted to use it? A. If there was some other facility could take its place at a less cost, then that railway would be obsolete.

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Q. I am putting to you the case where for a certain part of the population there is something takes its place, but there is still perhaps a majority of the people, or a very large number of people, who have nothing else, and if they haven't that railway they simply can't go; I wondered if you were able to say by proportion or per cent. or anything else how much the requirements for public use must fall off before it becomes obsolete; how does one reach the opinion? A. If there is another service which can provide that facility at a lesser cost, then there is no occasion to continue the other service in question, losing money.

Q. But if there is no other thing that provides it for— A. If 10
there may be then a social demand, that requires a subsidy, if you cannot jack up the fares sufficiently to carry that.

Q. Well, on this railway there were in the last year that it operated—that is, in 1931—nearly half a million people riding on it; I mean half a million revenue passengers? A. That is true, sir, but that is not—

Q. That is not enough people? A. Not enough within five times to even supporting the operating expenses.

Q. Then you are getting back, not to a matter of the demand for it, but to the amount of money they make. I wonder, Mr. Wilson, if when you use the word "obsolete" you have not got to be a little careful; surely 20
a thing does not become obsolete simply because it does not pay? A. No, sir, it does not, it may not. A thing may be obsolete in one part of the world and a first-class thing in another part of the world. What I am saying is that in this location, in this decade, and as far as we can see into the future, this railway has served its purpose as a railway, and is done.

Q. Although there were half a million revenue passengers? A. Although there were half a million people willing to ride on it, there were not sufficient willing to ride on it to make it even—

Q. And perhaps had no other means of getting to and fro unless they walked? A. I did not say they did not have other means, or that 30
other means could not be provided for them.

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THE CHAIRMAN: He means that it is a road that will no longer pay its way by earnings.

MR. SLAGHT: Yes, sir.

WITNESS: It has no hope of earning its way, and it has no hope, in my opinion, of attracting traffic. The traffic that formerly went to that road is now diverted forever to the motor vehicle.

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MR. ROBERTSON: Q. It was carrying more passengers in 1931 than in 1898 or 1899? A. Yes; but in the meantime the operating expenses of that road had gone up. This is a commercial railway; it was incorporated 40
for that purpose.

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MR. SLAGHT: I wish you would explain in further detail, Mr. Wilson, what you mean by another form of transportation taking the place of this? A. The fundamental form of transportation now used by the great majority of the tourists who come to Niagara Falls and vicinity, for which I believe this railway was designed to serve, now come in their own automobiles.

Q. Besides those who have their own automobiles or come in the motor cars of others, what other factor affects this railway as a railway?

MR. ROBERTSON: You are speaking of 1932?

10 MR. SLAGHT: Yes.

WITNESS: The small amount of travellers left who want to use a common carrier transportation can be more cheaply and efficiently served with a bus service.

MR. SLAGHT: Q. Has there been a bus service? A. Yes, since the railway was abandoned.

MR. McCARTHY: Q. When was the railway abandoned? A. September 11, 1932.

MR. McCARTHY: Where does that appear in the minutes?

MR. SLAGHT: It is a physical fact.

20 MR. McCARTHY: Not yet.

WITNESS: The operation was abandoned.

MR. MASON: If we say "ceased to be operative" we will get away from all trouble.

MR. SLAGHT: What about the changing conditions, if any, since the early days of the railroad in so far as roads are concerned? Is that or not a factor? A. With the growth and increase in the number of automobiles, hand in hand, there has been a tremendous increase in the number of good roads, until almost every side road now is a well developed highway for motor traffic.

30 Q. Was that condition existent to the same extent in the early years after the railway first started? A. No; there were no roads at all; until about the War there was not a road in this country fit to travel on in the winter months or the early spring, particularly in the County of Welland, which was notorious for clay.

Q. What, if any, bearing has the gradual diminution of traffic on this railway on the answers you have been giving? A. It is due entirely to the increasing use of the motor vehicle; they have run just parallel. I have a graph here which shows how the railway falls off as the use of automobiles goes up.

40 Q. What does that graph indicate? A. This is plotted from the passengers carried by the Park and River Division of the International Railway Company. It also shows the growth of passenger automobile licenses in the Province of Ontario, and in the States of New York, Pennsylvania, Ohio, and Michigan, within 300 miles of this railroad.

MR. McCARTHY: I object; that is not a proper comparison.

MR. SLAGHT: Q. What do you say as to whether the decrease in

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traffic has a relationship to the increase in the use of the motor car and motor busses, and the making of better roads? A. I beg your pardon?

Q. What do you say as to whether or not the decrease of traffic on the International Railway has not borne a relationship to the increase in the use of motor cars and motor busses? A. The decline of traffic on the railway has borne a direct relationship to the increased use of the motor vehicle.

Q. Have you taken steps to ascertain the ratio of increase of use of the motor vehicle? A. The increased use of motor vehicles is in direct proportion to the number of licenses granted year by year. 10

Q. Have you secured the figures as to the granting of Licenses? A. Yes.

MR. ROBERTSON: You are not making that as a statement of fact, surely, Mr. Wilson? A. The ratio?

Q. That the use of motor vehicles is in direct proportion to the number of licenses granted? A. (No answer).

THE CHAIRMAN: Your relationship, if it exists, must be in reference to the traffic on this particular railway as compared with traffic in the same district. I do not think you can get beyond that.

* * * * *

Q. We have already had from Mr. Schmunk Exhibit No. 101, where 20 the number of passengers carried has been analyzed. What do you say, if anything, as to the data disclosed on Exhibit 101 as having a bearing upon the obsolescence or otherwise of the railway turned over to us in 1932?

MR. MCCARTHY: I object to the use of the word "obsolescence."

WITNESS: The last column, showing the passengers carried, shows a peak in the year 1923, which was about the beginning of the increased use of motor cars, and about the commencement of the good roads programme. From that point, even during the increasing prosperity of the country, the traffic fell consistently and continuously until 1929 or 1930, 30 when it began to take an extra slump due to the depression. So that the fact is that while the prosperity of the country was climbing to a peak and the good roads were extending, motor cars were increasing in number, as the result of which the railways were steadily falling into disuse.

Q. Exhibit No. 79 indicates the passengers carried for the years 1920 to 1930 inclusive, both Fare Passengers and Transfer Passengers, by the International Railway Company. What do you say as to whether or not the information disclosed in this Exhibit has any bearing on the view you have expressed as to the obsolescence of this road you are valuing? A. These statistics show the same thing, which is the normal 40 point of electric railways—that they reach their peak around 1923 and 1924; and even in the face of the increasing prosperity of the country they steadily declined, which is entirely in alignment with the increased use of motor vehicles.

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MR. ROBERTSON: Before Mr. Wilson gets too far away from that, Exhibit No. 101 is interesting from many points of view. He made a statement about the year 1923, and said it reached its peak. That is one way of putting it, but perhaps not the whole story. If you look at Passenger Train Miles in 1925, it is distinctly higher than the passenger train miles in 1923, and the revenue is distinctly higher, which would indicate that while perhaps there were more revenue passengers in 1923 they were spending more money and travelling longer distances by car.

10 WITNESS: No, sir; it indicates that they were using more train mileage to gather fare passengers.

MR. ROBERTSON: Q. And getting a great deal more money? A. They had to jack up their fares to do it.

Q. I do not know that? A. They would have to, with the increased train mileage.

Q. Why could not passengers ride longer distances instead of shorter distances? A. The passengers carried are fairly consistent; the sources of traffic are and have been fairly consistent and uniform; every phase of revenue and every source of revenue has declined.

20 Q. Between 1923 and 1925 the passenger revenue went up over \$30,000? A. That is right; but your car miles went up, which means greater expenditure.

Q. I am not talking about expenditure, but about revenue. You are saying that the peak of use by the people was in 1923? A. Yes.

Q. And I say that there were more people paid fares and they did not pay more money? A. No, sir; more people paid fares in 1923.

Q. That is what I say. They did not pay more money? A. The number of passengers carried shows the amount of service rendered.

Q. Surely the distance they are carried has a lot to do with it? A. It has.

30 Q. Well, your passenger revenue is higher in 1925 and your car miles are greater. I think you are wrongly generalizing. You get hold of one item and build your peak on that? A. It is the peak of passengers carried.

Q. And that does not mean very much? A. (No answer).

MR. ROBERTSON: I think you must look more broadly at Exhibit 101 in order to ascertain the real meaning of it.

MR. SLAGHT: Let me develop that, sir.

40 Q. As Mr. Robertson points out, the year 1925 shows a larger revenue, and you have said that the peak of passengers carried, that is the number of people comprising the public who were served, was reached in 1923? A. Yes.

Q. But, as Mr. Robertson points out, in 1925 the railway got in more revenue? A. Yes.

Q. In 1925, on the revenue side, does that or not appear to be the peak? A. That is the peak for revenue.

Q. And with perhaps a year or so varying one way or the other,

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is there a general gradual downhill run from 1925, so far as revenue is concerned?

MR. McCARTHY: That is suggestive, I submit.

MR. ROBERTSON: The revenue in 1927 was much higher than in 1923.

MR. SLAGHT: We are speaking of a downhill run from 1925 now, sir.

MR. ROBERTSON: I know; but the revenue in 1927 is much higher than in 1923.

WITNESS: In general there is a decline from the peak of revenue in 1925 to 1929.

MR. ROBERTSON: It does not appear to me that Exhibit 101 very definitely and closely reflects the interference of the motor car, and that there is something else operating here besides the motor traffic. 10

MR. SLAGHT: What is it, sir? If we can discuss that now, I would be glad.

MR. ROBERTSON: Q. Hard times? A. No, sir; that was the very peak of conditions, when money was very, very fluid and there was lots of it.

MR. McCARTHY: Are you an expert on that too?

A. That is my experience, sir.

MR. SLAGHT: If there is another element there I would be glad to discuss it now. 20

MR. ROBERTSON: I do not think this Exhibit is to be explained, as the witness says, by the increased motor traffic.

MR. McCARTHY: I have objected to the witness expressing any opinion.

MR. SLAGHT: The Railway Company may have some gentlemen who will suggest a different reason for it, and then we will have all the reasons.

Q. Looking still at Exhibit No. 79, the Niagara Gorge Railroad Company's figures are set forth on the second page? A. Yes.

Q. What do they reflect so far as this problem is concerned? Where is the Niagara Gorge Railroad operated? A. Niagara Falls, New York, to Lewiston. 30

Q. That is along the American side of the river? A. Yes, and is the other leg of the Belt Line service.

Q. What does that series of figures under "Niagara Gorge Railroad Company" on Exhibit 79 indicate as affecting the problem with which you are dealing? A. It shows that the peak was reached in 1927, and from that point on the traffic fell.

MR. McCARTHY: Did the motor traffic affect that traffic also? A. It has affected a number of people who have come to Niagara Falls; it has affected the manner in which they have spent their time when they came here. 40

MR. SLAGHT: Yes. A. When people had to come by railway train to Niagara Falls they were dumped here and had the day to spend here. They travelled around the Belt Line and visited the various sights, and made a day of it.

MR. McCARTHY: Are you giving evidence on this? A. Yes; that is my experience. When they come by motor car they are free to come and go as they like, and they do not visit points covered by the Belt Line; they feel free to come again very shortly and are much more casual. The motor car civilization, sir, is a very peculiar psychology. If you can explain it to me you can explain a lot; I have been trying for twenty years to find out the psychology of it.

Q. And that is the best you can do? A. Yes, sir; it is the basis of all this railway problem; the whole trend of civilization has changed.

10 MR. SLAGHT: What do you say as to the nature of the traffic on the Park and River Division that we are valuing here, as to whether or not it was seasonal? A. It was very seasonal, altogether seasonal.

Q. What do you say as to whether or not there were startling daily variations or isolated daily variations in traffic? A. The traffic varied tremendously from day to day, such as the first of July or the fourth of July or Labour Day, when it jumped out of all proportion to what it was the day before and the day following.

20 Q. Is that or not typical of a road that handles tourist traffic? A. It is typical of a road that handles tourist traffic, and particularly typical of a summer interurban service anywhere. Here is a statement drawn from the passenger revenue, showing the month by month percentages obtained on the road.

Q. What does this indicate? A. That is the percentage of passenger revenue obtained month by month for the four years from 1928 to 1931 inclusive.

Q. And the last column shows an average for those four years? A. Yes.

30 Q. Without going into detail I see the statement shows that April is 1.8 per cent. of the whole; May rises to 4.4 per cent.; June, 12.3 per cent.; July 24.5 per cent.; August 30.0 per cent.; and September drops down to 14.8 per cent., October to 3.6 per cent. and November to 1.5 per cent? A. Yes.

EXHIBIT NO. 123: Respondent's Schedule showing per cent. of passenger revenue earned monthly on Park and River Division of Claimant's Railway; produced by Mr. N. D. Wilson.

MR. McCARTHY: Q. What is the source of that information? A. That, sir, is derived from statistics furnished by the International Railway Company.

40 MR. ROBERTSON: Q. Have you compared it with Exhibit No. 105, which is Mr. Schmunk's graph? A. I would presume that it was about the same thing.

Q. I wondered whether you had actually compared it? A. Basically it is the same.

MR. SLAGHT: Q. Have you checked it with the graph? A. No, sir.

Q. Mr. Schmunk's graph Exhibit No. 105, purports to show by the month or by the year certain figures. You have not made an analytical

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comparison of the two? A. No; this shows passengers carried by months, and Exhibit No. 123 shows passenger revenue by months.

MR. ROBERTSON: Q. Your Exhibit is as to revenue? A. Yes.

Q. And Mr. Schmunk's is the number of passengers? A. Yes.

Q. Taking one particular year I notice there are variations? A. Yes.

MR. SLAGHT: In the main is there a variation which is substantial and which we ought to discuss? If one or other is inaccurate, it might be well to determine it now.

WITNESS: You will notice that in general the revenue will be much less in the winter months because in the winter months, except for one or two trips by the Belt Line carrying a few passengers the traffic is entirely local traffic. 10

* * * * *

Q. We will say March, 1932. And, Mr. Wilson, in your enquiries is it fair for me to say that you received every possible assistance from the officers of the International Railway Company in furnishing all the information asked? A. They supplied us with everything we asked for.

Q. Then may I go further and ask you, did you as a result of your preliminary enquiries, if I may call them such, make any enquiry as to whether it would be possible in the event of the Commission taking over the railway to retain the connection with the Gorge Route on the American side? A. I may say that our understanding was that such would be possible. 20

* * * * *

Q. And is it not necessary, in your opinion, for the Park to have a feeder of some kind to maintain its different institutions such as the Refectory, and so on? A. I think it is desirable that there should be some common transport.

Q. Apparently the Commissioners thought so, but what is your view? A. As of 1892?

Q. As of any time, as to the desirability of having a feeder through the Park? A. I think it is desirable at any time to provide a feeder through the Park, provided you furnish a modern feeder. 30

Q. Have you made any count in Niagara Falls, Ontario, as to the amount of traffic here? A. No, sir; I have not.

Q. Have you made any count of the number of automobiles coming and going in a season here, or crossing the bridges? A. Yes; we have made that count. I have made inquiries over the bridges. I have made no count of our own; simply inspection sufficient to satisfy.

Q. Have you or not made traffic counts? A. I have not made a traffic count. 40

Q. Have you found out what the taxi services in Niagara Falls, Ontario? A. I have some statistics of traffic and taxi service.

Q. When did you obtain that? A. The Parks Commission keep a record of the amount that is brought to their several concessions by taxis.

Q. Again you are going to the Parks Commission for your information? A. Yes.

Q. You have made one yourself? A. No, sir.

Q. Do you know what the taxi service charges are? A. I do not think there is any charge for sight-seeing service (sic); I know there is a charge for taxi service to specific points in the towns and to points in the Park amounting to 25 cents.

Q. Do you know whether the taxis pay? A. I do not know; I do not assume they do.

10 Q. Do you know what efforts were made to establish a feeder for the Park after the railway discontinued operating? A. Yes; sir; there was a service provided; what service the traffic could stand was provided.

Q. Do you know that as a fact? A. I know as a fact that a bus service was provided through the Park.

Q. Do you know what the service is? A. I do not know the absolute service rendered.

Q. You do not know where they ran to or where they ran from, or with what frequency they ran? A. The frequency, of course, is a matter of seasonal traffic.

20 Q. Do you know? A. No, I do not know at the present moment the absolute frequency of the busses.

Q. Do you know what the charges are from Queenston to Niagara Falls, and from Niagara Falls to Chippawa? A. No, I could not say I do absolutely.

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CROSS-EXAMINATION BY MR. McCARTHY:

MR. McCARTHY: May we have the question read?

MR. MASON: The general effect of it was, "To what extent would the concessions depend on a feeder system?"

30 WITNESS: There would be, I think, effect upon the concessions as the result of a feeder system. The amount I could not rightly estimate. One thing is certain, that there would be no difference to the concessions by replacement of the Railway by other equivalent facility, which in turn could be operated materially cheaper.

MR. McCARTHY: You could not help getting that in.

MR. SLAGHT: You asked him what effect would the feeder system have, and the comment is unwarranted. The witness is quite justified in giving his opinion.

MR. McCARTHY: He said so.

40 MR. SLAGHT: Your comment was a little sharp I thought. I am sure it was not so meant.

MR. McCARTHY: Q. Then in that connection did you consider the feeder system—when I speak of the feeder system, I am speaking of the means of transportation which you support; that is, automobiles and the bus system, whatever it was—we do not know what it was—from the

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Norman Douglas Wilson, Cross-Examination, February 8th, 1935.

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Queenston Terminal during the year 1933? A. I know this fact, sir, that from the records there was no diminution of picnic business in Queenston Heights Park in 1933; in other words the traffic up from the Queenston Dock was handled just as effectively by what accommodation was given.

Q. I thought you told me you did not know what it was.

MR. SLAGHT: He is telling you now.

MR. McCARTHY: I hear. Please do not quote your own witness. He is capable of looking after himself.

Q. I thought you told me you did not know what the system was? 10

A. Which system?

Q. The bus system. A. I know there are busses operating, yes. I know where they are going and what they are doing. I do not know their absolute schedule and headway.

Q. Or what they charge? A. Or I do not know what they charge absolutely, but I know the fares are not materially different. . . .

Q. Do you know? Have you studied the situation? I would like to know if you have made a count of the busses or people in the busses. You have not done that? A. No, sir.

Q. You have not made a count of automobiles? A. No, sir. 20

Q. Do you think it is possible to form an opinion without making a traffic count of some kind? A. I certainly do.

Q. Have you ever attempted to do so without having a traffic count in any of your operations before? A. I generally make traffic counts if there is any question in my mind as to the need of them.

Q. Do you know how many people were handled by the busses in 1933? A. I don't know that figure absolutely, no, sir.

Q. Do you know how many people were brought here by motor cars? A. I do not.

Q. Or how many people the taxis handled? A. No. 30

MR. ROBERTSON: Do you know how many the busses could handle within an hour on a rush occasion?

MR. McCARTHY: Q. Do you know how many people the busses could handle, say within an hour, on rush occasions? A. It depends entirely on the number of busses thrown in, sir.

Q. Do you know how many busses are available for this service? A. I know, not from having seen them, but from—call it hearsay.

Q. I do not think you ought to tell us hearsay? A. I know the fact is—

Q. Is this hearsay? A. No, that is having seen the statistics of 40 the picnic business at Queenston Heights Park.

Q. Furnished by whom? A. The Parks Commission.

Q. What year? A. 1933.

Q. Are they in their returns? A. I have them.

Q. Are they in their returns? A. For 1933?

Q. Are they in their report? A. The report is not—I don't know whether they are or not, sir.

Q. If they are, I would like to see them.

MR. ROBERTSON: This is the Queenston Heights Park he is talking of. They do not need any bus for that, do they?

MR. MASON: Yes, they have to get up from the dock.

MR. McCARTHY: Q. How far is Queenston Heights from the dock, the picnic grounds? A. About a mile.

Q. As far as that? A. I think so.

MR. SLAGHT: It is an up-hill-pull.

MR. McCARTHY: Q. You have seen figures somewhere of picnic parties. How did they reach the Queenston picnic grounds? By boat, or train, or how? A. I don't know, sir.

Q. You don't know whether they came over by boat, or went down by busses, or walked? A. I don't know, sir.

Q. Or whether they came from the other side? A. I don't know.

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MR. SLAGHT: Q. Mr. Wilson, will you tell us? A. Obsolescence is the condition or state of becoming obsolete. It is the increasing inability of anything to provide acceptable service.

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No. 8. Extract from Evidence of A. SEDGWICK, Engineer. Called on behalf of NIAGARA PARKS COMMISSION.

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EXAMINED by MR. SLAGHT.

Q. Then, Mr. Sedgwick, on the question about which you were asked yesterday, but we did not finish the subject, you were asked as to modern bridge building—I think you said you went back twenty-five years on it—as to what you would say as to whether concrete is used or usable instead of the stone abutments in the sub-structures? A. Yes.

Q. What can you tell us as to bridge building, on that subject? A. Well, to the best of my knowledge concrete is used entirely.

Q. How many years back are you safe to speak of there? A. Well, I am sure of twenty-five years of my own knowledge, and I believe still farther back; about since 1905.

Q. Is there a difference in cost or expense in using concrete instead of the solid stone abutments? A. Oh, yes, very much.

Q. And is there a difference in durability as between the two? What would be the differences? A. Well, when they first started out, of course, it was a new material, and the results were not all that they should be, but the technique has been improved so in the last ten years, I would say that you can obtain results—

THE CHAIRMAN: Q. You are stopping your speech with your fingers now. A. I beg your pardon, sir. I would say that in the last ten years the technique of concrete construction has been so improved that the results are equal to the best stonework.

MR. SLAGHT: Q. In bridge construction where the dependable life

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No. 8.
A. Sedgwick, Examined, February 12th, 1935.

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A. Sedgwick,
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of bridges of which you have spoken has been seventy-five years in some instances and a hundred years in other instances, having regard to that life you have given to superstructure, what would you say as to whether concrete substructure for those periods is or is not by 1932 as dependable a substructure as the rock would be, the stonework? A. Concrete, you are speaking of?

Q. Yes? A. I would estimate concrete substructures would have a life of seventy-five to a hundred years.

Q. As to being a satisfactory substructure or not, as compared to the rock masonry, what do you say? A. Entirely satisfactory. 10

MR. SLAGHT: That is all I have, Mr. McCarthy.

THE CHAIRMAN: Q. Just as a matter of curiosity—don't take this down—I notice that the locks, not on the Welland Canal, because I do now know about it, but on the previous canal, were all built of the large block stones; has concrete been substituted for that? A. To the best of my knowledge, entirely, sir.

Q. The new Welland, is that concrete? A. Yes, sir.

THE CHAIRMAN: It shows quite a change nowadays.

MR. SLAGHT: I wonder, sir, if it might be proper to embody that information in our official data here? 20

THE CHAIRMAN: What I have said?

MR. SLAGHT: Yes.

THE CHAIRMAN: If you wish. I thought perhaps I was only straying. I was interested to know whether that is a general practice.

MR. SLAGHT: If I may be permitted to have that made a matter of record, it might be helpful, or it might not; it has a bearing.

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No. 9.
H. P. Frid,
Examined,
February 15th,
1935.

No. 9. Extract from Evidence of H. P. FRID, Contractor. Called on behalf of NIAGARA PARKS COMMISSION.

EXAMINED by MR. SLAGHT.

MR. MASON: Q. That on the basis of his statement, the concrete 30 should be substituted for masonry in a structure that would be built in 1932, you put forward these figures. What is your view as to the fact as to whether masonry would be substituted for by concrete in building in 1932? A. In our experience with all bridges and foundations of buildings and structures in the last—since we have been in business, the only reason—rather, I might say, we have never ran against masonry below ground at all; it has been always a concrete superstructure.

MR. McCARTHY: Q. Superstructure? A. I mean substructure. I do not know of any job that we have built in twenty years that we have put in a stone foundation. We have built stone above the ground, but that 40 is built for architectural effect mainly.

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No. 10. Extract from Evidence of J. L. McDougall, Professor.
Called on behalf of INTERNATIONAL RAILWAY COMPANY.

EXAMINED by MR. McCARTHY.

Q. Mr. McDougall, you are the Assistant Professor of Economics at Queen's University, Kingston? A. Yes.

Q. And have been since when? A. 1934.

Q. Kindly state what your qualifications are, Mr. McDougall?

A. If I may start from the time of my graduation from the University of Toronto in 1921, I was given the Alexander Mackenzie Research Fellowship in Economics and took the M.A. degree in 1923, my thesis being
10 the History of the Welland Canal.

In 1924 I was an occasional student in the London School of Economics, London, England.

In 1924 and 1925 I graduated in Arts and Science at Harvard University.

The following year I was Instructor in Economics at the University of Austin, Texas.

In the year after that I was a Lecturer in Economics at the University of Toronto.

20 From 1927 to the end of 1931 I was Chief Statistician of the Canadian General Securities, Limited.

From the beginning of 1932 I have been connected with Queen's University, first as Instructor and latterly as Assistant Professor.

I have also done certain special work, notably the preparation of the brief of the Canadian Primary Cotton Industry in 1932 for the Ottawa Imperial Conference.

I have also done work for the Eaton and Simpson organizations in Toronto, making a survey of the furniture industry in the spring of 1934.

30 In the summer of last year I did a report on wages and prices for the two railway companies, the Canadian National Railways and the Canadian Pacific Railway, acting jointly.

Last month I completed a special study for the Price Spreads Commission.

Q. I take it that for the last several years you have made a study of price trends? A. Yes, that is the business of an economist.

Q. What is a price trend? A. A price trend is an attempt to express in one single figure the course of a number of prices of related commodities.

Q. What is a price index? A. The index is the series of figures which are given for successive periods of time.

40 Q. Did you trend the prices of labour and materials used in the construction of the Niagara Falls Park and River Railway from the years of original construction to August, 1932? A. Yes, sir; with particular reference to the terminal years.

Q. Tell us what you did? A. I might first say that none of the official series which are available in the Government publications would

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be of significant value for this inquiry; they are all of them indices of wholesale prices only, and they are made for general use and not for any particular purpose. Secondly, being indices of wholesale prices they do not in any way bring in the factor of labour which came into this property. Certain prices of labour are available from the Department of Labour, but they are only from 1901 when the Department was first founded; and therefore I was forced to go outside the range of the official series to which resort is usually had, although I was able to supplement my work from those official series.

I took each of the property groups in turn and attempted to build up what was happening in that particular group. For example, in the matter of grading I took Exhibit 99 of the witness Ullmann and from it found out what was done. I then found unit prices which I applied against the particular operation. For example, for common labour I relied upon the evidence of the witness Harriman, and for foremen and stone masons I relied on his evidence and that of the witness Usher, and built up comparative figures showing the cost which would be taken in relation to those activities. The prices of common labour at that date were \$1.50 per day; that figure incidentally, I may add, checks back against another local price that I was able to get out of the records of the Welland Canal. In Sessional Papers No. 1 of 1894, 1895, and 1896 there is given a very detailed record of wages paid, and that price of \$1.50 checks against that. And so I worked down in each case. Where teams were involved I used the figure of \$3.50 per ten hour day, which is again from the testimony of the witness Usher and which again checks out against the Welland Canal figures. 10 20

In track work I was able to determine prices on ballast, on rails, on ties, and on rail fastenings, from the records of the company, and in certain cases I was able to check those against outside sources. For example, in relation to rails, there were some 2438 tons. On 1300 tons I had a record of the price delivered in Niagara Falls from the records of the company. There was also an unstated amount which was purchased at \$22.50 per ton delivered. I took a weighted average of these three prices, assuming that that purchase of an unstated quantity for the balance of the tonnage involved was made in 1894 when the double tracking took place, and that gave me a weighted average cost per ton of \$23.62, which compares against a similar price laid down at 1932— but excluding Sales Tax of \$53.10 per ton. 30

For labour I had my common labour rates as shown, and similarly for foremen. 40

For bridge ties I was forced to go outside of those records, but I found that there had been a purchase by the Government of some 7759 feet of oak at \$30 per M. for use in the building of a new bridge on the Welland Canal either in the year ending June 30, 1893, or 1894.

MR. SLAGHT: Since this answer is disclosing further data I want to

take objection to this evidence or to supplement the objection I took in a preliminary way, that it is entirely irrelevant and not receivable.

THE CHAIRMAN: We are taking this evidence subject to objection. Your objection is noted.

WITNESS: In relation to bridges I took the Exhibits of the witness Mantell and the witness Robertson and the witness Pratley, and also certain adjusting Exhibits, and from those Exhibits finding quantities I applied thereto prices which I was able to get from the enlargement of the Cornwall Canal.

10 MR. SLAGHT: Q. From what source? A. The Sessional Paper No. 1, 1894 and 1895.

THE CHAIRMAN: Q. You are speaking of the enlargement of the Cornwall Canal back in the nineties? A. Yes, 1892, 1893 and 1894.

Q. These are prices of what? A. Prices of stone masonry, concrete work, rock excavation, earth excavation, and so on.

MR. McCARTHY: Q. And the reference was in the Sessional Papers? A. Yes, the Report of the Auditor General.

MR. SLAGHT: Have you those with you? A. Yes. I was able to apply prices so found to the quantities as shown in those Exhibits.

20 For the structural steel itself I had the evidence of the witness Mantell, which covered better than 95 per cent. of all the structural steel involved.

For the distribution system I had the testimony of the witness Baskin and the Exhibits filed by him, and I was able to get a price on copper from the report of the Board of Inquiry into the Cost of Living, at Ottawa, supplied by the King's Printer at Ottawa, 1915—a price on solid bare copper wire. That price I applied to such wire as was in the property and I took the differentials away from that price which applied to other types of cable as in 1932 and applied them to such types as at
30 the original cost dates. I felt I was justified in that course by the fact that I had a continuous record of prices of copper in ingot form and solid bare copper wire from 1890 through to 1933, and the spread between those two prices was remarkably constant; and since I knew what entered into the covering and that those prices were also substantially unchanged it was a defensible technique to use to extend my price series.

MR. SLAGHT: I beg your pardon? A. In the covered cable you have copper plus covering, and the prices for the material entering into the covering were about the same in the 1890's as they were in 1932.

40 In buildings and structures I have the Exhibits of the witnesses Robertson and Kunz and their testimony, and from those, getting quantities again I applied prices as mentioned.

For earth work I had a weighted average of 25 separate payments made upon the Cornwall Canal and applied that weighted average of 36.9, I think, to earth work.

I had nearly as many prices on rock excavation, and for stone masonry some 14 to 16 prices, a remarkable unanimity also in concrete of \$7

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per cubic yard. Applying then the mason's rates of labour of 30 cents per hour and common labour 15 cents per hour, I was able to find the costs of these things in place.

In Power Plant Equipment I had the testimony and Exhibit of the witness Baskin, and the original authority for expenditure No. 311, which is Exhibit No. 76. That showed, when compared with the same property, that I had something more than half of all the power plant equipment. Now, that authority for expenditure included more than was taken into the figure of the witness Baskin. I therefore felt that I was entitled to apply that percentage of change as between the two terminal periods to the whole of the power plant equipment. I had in those six groups better than 70 per cent. of all the physical property of the company, but I found that the relationship between the reproduction cost and the original cost was as 147.3 per cent. is to 100 per cent. 10

THE CHAIRMAN: Q. That was the ratio of reproduction cost to original cost? A. Yes.

Q. 147.3 per cent. to 100 per cent.? A. Yes. I think we might strike off the 3.

MR. SLAGHT: What did you say about 70 per cent.? A. I had 70 per cent. of all the property in those six groups, and having determined comparable totals I thought that as went such a fraction of that particular group so went the whole. 20

Q. You assumed the whole? A. Yes.

MR. McCARTHY: Q. Assuming a weighted trend of prices of 70 per cent. of labour and materials entering into the construction of the Niagara Falls Park and River Railway, from the years of original construction to 1932 be as 100 is to 147.3, and the original cost of the physical property be \$1,421,151.58. (sic) as shown on sheet No. 4 of Exhibit No. 67, state whether or not the fair and reasonable cost of reproduction of the entire property can be estimated with any reasonable degree of accuracy? A. Yes, I think so. 30

MR. SLAGHT: I object to that question because my friend included in it the assumption that the original cost of the property was as shown on Exhibit 67. Exhibit 67 does not purport to show the original cost of the property; it purports to show all money put into the property, both originally and year by year in various amounts over a forty-year period.

MR. McCARTHY: No, not over a forty-year period.

MR. SLAGHT: Down to 1932?

MR. McCARTHY: No.

MR. SLAGHT: That is my submission. That is what Mr. Schmunk's Exhibit 67 purports to show. 40

MR. McCARTHY: That is not so.

MR. MASON: 1902 to 1929.

MR. SLAGHT: Yes, he did not carry down to 1932. The question put by counsel to this witness presumes it was all original expenditure, and I object to any answer being received because the facts in Exhibit 67

do not warrant the statement contained in the question framed, and the answer would be entirely misleading.

MR. McCARTHY: It is assumed that they were as in Exhibit 67. Assuming that is the original cost, is my question. My friend can take advantage of that if he likes. It is important to my case.

MR. SLAGHT: That is not the proper basis, I submit, on which to accept or reject evidence, because my friend's own evidence is that this is not the original cost as originally expended forty years ago, but is a balance sheet which includes expenditures at different periods in different years in varying amounts, and to assume something which has been sworn by his own witness not to be true, is I submit, not a proper assumption that you can take for any fanciful purpose, and that that assumption cannot go into the record because it is erroneous.

MR. McCARTHY: I was going to ask it both ways, and I will ask: Taking that as the original cost and leading down to 1929—

MR. SLAGHT: I ask for a ruling on the question, Mr. Chairman?

MR. McCARTHY: If the original cost has been added to from time to time up to the time of handing over that is the original cost as far as 1932 is concerned.

MR. SLAGHT: That was not your question.

MR. McCARTHY: It was my question. I said if from the years of original construction to 1932 be as 100 per cent is to 147.3 per cent and the original cost be the amount I named, \$1,421,151.58, as shown on sheet No. 4 of Exhibit 67, state whether or not the fair and reasonable cost of the reproduction of the entire property can be estimated with any reasonable degree of accuracy, and he said it could.

MR. SLAGHT: My objection goes farther than that. This witness not having the information as to the various dates and periods, and the varying amounts when this money was expended over a forty-year period, I submit he is not in a position to take his 147.3 per cent, which is a definite date, and his 100 per cent, which is another definite date, and answer that question. I think the witness would tell us himself if he were asked.

MR. McCARTHY: I do not know what my friend means.

MR. MASON: I take it to mean this: Assuming for the purpose of the question that the cost was \$1,402,000. odd, the witness has said that a unit that would cost \$100 in 1892 would cost \$147.3 in 1932. The question rather puts it upon the witness to relate in this proportion of 147.3 per cent and 100 per cent the amount of \$1,402,000 odd as of 1893, while, as a matter of fact in 1893 there was only \$1,000,000 and the other \$400,000 was built up at successive periods to which your ratio might not apply.

MR. McCARTHY: Q. Perhaps you can tell me what years you considered in regard to the original cost of the Power Plant? A. That, sir, was based on that authority for expenditure No. 311, as shown in Exhibit No. 76.

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MR. SLAGHT: Do not tell him. Let him answer.

MR. McCARTHY: He has answered.

MR. SLAGHT: He has not told you the year.

WITNESS: The year was 1904.

MR. SLAGHT: Practically every item has had some additional expenditure at varying dates.

MR. McCARTHY: Q. You are speaking of a weighted average? A. Yes.

Q. In getting at your weighted average you take the years of original construction to 1932. What years did you take as your years of original construction? A. For practically all the property the period 1894; for power plant and equipment, that year to the year 1903 or 1904, and for 1932 I made use of Baskin's figures. 10

Q. Which figure do you mean? A. It was built up from his Exhibit; the corresponding amounts that I took to place against that \$69,528. were first the 2000 h.p. turbine and the 1500 k.w. generator and the 15 ton crane.

Q. That was in 1903? A. Yes; the A.F.E. covers those.

MR. SLAGHT: You say 1903; the witness says 1903 or 1904.

MR. McCARTHY: Q. I do not know that I follow you. Let us go back to the question again. You are dealing with the weighted trend of prices between the years of original construction. What years had you in mind when you fixed the years of original construction? A. For practically all of the property 1892 to 1894 except that part of the equipment as to which it is not possible to get dependable prices on particular units. I would say that those things are made to order; they are not commonly manufactured and sold. Therefore I take the authority for the expenditure on those particular units and compare it with the reproduction cost of Mr. Baskin, and it has its proportionate effect in the total percentage. 20

Q. If that was your idea of the years of original construction, the original cost was not \$1,421,000 odd, but a lesser amount. My friend was quite correct in his observation. The \$1,400,000 odd takes us up to 1931, but your years of original construction stop in 1903 or 1904. 30

MR. SLAGHT: Does it go to 1931 or to 1929?

MR. McCARTHY: To 1931, I think.

MR. SLAGHT: I think it goes to 1929.

MR. MASON: The last blue figure is 1929.

MR. McCARTHY: So it is. The red figure is 1931.

MR. ROBERTSON: It does not make such a tremendous difference. The end of 1894 shows \$1,207,000.

MR. McCARTHY: And the end of 1904 shows \$1,547,000. 40

MR. ROBERTSON: Where do you get that?

MR. McCARTHY: Adding up sheet 1. You get the cost of the road. Sheet 1 carries forward the first page of Exhibit 67: \$1,260,067.17, and then the additions up to 1904.

MR. MASON: It is only about \$200,000.

MR. ROBERTSON: Yes, your net is only about \$200,000 after the end

of 1894, and you get nearly that amount on sheet No. 1 in 1903 and 1904.

MR. McCARTHY: Yes; sheets Nos. 3, 4 and 5 are very small; a good many of them are deductions, of course I think perhaps it would be fairer if we took it to the end of sheet 1.

MR. ROBERTSON: If you add to his power plant equipment in 1904 the construction work also in connection with the power plant in the same year, that is about \$130,000, and then the work at Bowman's Ravine a little earlier, the first item of sheet 1, \$23,000, you have nearly the whole of it. It is not very complicated.

10 MR. McCARTHY: No, it is not. In asking the question I should have omitted the figure and said: Assuming the weighted trend of prices of 70 per cent. and of labour and materials entering into the construction of the Park and River Railway from the years of original construction to 1932 to be as 100 per cent. is to 147.3 per cent., can he estimate with a reasonable degree of certainty what the fair and reasonable cost of reproduction is?

WITNESS: Yes.

MR. McCARTHY: How do you do that? A. By applying that percentage of trend, the 147 per cent.

20 Q. To what? A. To the figure of original cost.

* * * * *

THE CHAIRMAN: I want to understand these figures. You get your 147.3 per cent by basing it on Mr. Ullmann and Mr. Robertson's estimates and prices, and you accepted those as a basis for your estimate? A. Yes.

Q. Here we have very contradictory evidence as to what these estimates should be, that is, Robertson's and Ullmann's, as against the other witness; these are very different; you have accepted as conclusive the estimates of Ullmann and Robertson and based your 147.3 per cent on those as if they were established? A. I have taken those figures 30 as the reproduction cost, yes; I have taken the labour and material items.

Q. You have taken the evidence of these two witnesses as being conclusive, and you have based your 147.3 per cent on their evidence, which has been contradicted? A. I took them primarily, sir, for quantities.

Q. Not only that, but you took those as final for the cost of reproduction?

MR. McCARTHY: May I say this is part of my case, and it is based on the evidence of my own witnesses. At the time these calculations were made the other gentleman had not given evidence.

40 MR. SLAGHT: Mr. Maurice Hynes has given evidence and the transcript thereof has been in my friend's hands for some days.

THE CHAIRMAN: Mr. McCarthy is taking that as an assumption—

MR. McCARTHY: May I suggest that I would not take my opponent's evidence for the purposes of my own case. The work this gentleman has done has taken three weeks.

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MR. ROBERTSON: Let me see if I understand the matter aright: First of all, I understand that you went to some independent sources to get original costs away back in 1892 and 1893, or about that period? A. Yes.

Q. For the purpose of seeing whether the original cost as given in Exhibit 67 was in line with the prevailing costs at that time for similar work? A. No, sir; Exhibit 67 does not give quantities, and so I had no means of—

Q. Then you did not do that? A. No, sir.

Q. You are not able to tell us from any investigation you made whether \$1,200,000 is or is not the fair cost of the work done at that time? 10
A. Except as you apply my percentage backward. You can divide your reproduction cost by that and see where you start—

Q. I want to see where you start?

MR. SLAGHT: It is the case of the hen and the egg again.

MR. MCCARTHY: The original cost is more than \$1,400,000.

MR. ROBERTSON: Whatever it was, I want to see what he did. I thought if we got from him some assistance as to original costs forty years ago.

Q. You do not tell us anything about that? A. I take as a base something beyond which I am not competent to go, namely, the quantities and materials in the properties such as rails, ties, ballast, and so on, and then I determine from these sources and various other places— 20

Q. Let me state this: Away back in 1893 and 1894 when the railway was being built, I thought you said to Mr. McCarthy that you had access to sources of information which told you what rails cost and what labour cost? A. Yes.

Q. So that knowing how much rail had been laid and what grading had been done, you were able to say something as to whether the original cost as given for these various things was approximately right. I do not mean that you find split up in various items in Exhibit 67 the item of \$1,000,000 odd, but that you were able in some way to check up the original cost of these things? A. I was able to determine unit prices such as \$23.62 per ton for rails laid down. 30

Q. Did you make any computation as to how much this railway cost originally, or any part of it? A. That is the kind of thing I could not do without an inventory of the property as at those dates.

MR. SLAGHT: Certainly.

WITNESS: I take your reproduction cost items as being in effect a representation of the property you had there.

MR. ROBERTSON: What did you apply to that? 40

MR. SLAGHT: That is all wrong; they did not have Bowman's Ravine then.

MR. MCCARTHY: Please do not interrupt.

MR. ROBERTSON: Q. What did you apply,—the unit costs of 30 or 40 years ago? A. Yes; that is exactly what I did.

Q. So that in that way you did get a check on the original cost? A. Yes.

Q. An independent and outside check apart from the books of this company? A. Yes.

Q. You had certain quantities and you got your unit prices from an independent source? A. Yes.

Q. And if you apply that to what we have here you get an independent check? A. Yes.

10 Q. Between that period forty years ago and 1932 did you have anything to guide you? A. I was forced to concentrate, because of limited time, on terminal years; I could not do the same thing for each individual year, although it is relatively a matter of mechanical routine to establish prices at five year intervals.

Q. I noticed you used some such expression as this in chief: There was a fairly constant trend during the period? A. I think what I said was that there was a relationship as between related prices. In the case of copper wire I said there was a constant spread between the copper in the ingot form and the price of the solid bare copper wire.

20 Q. What I want to know is this—it is a very simple matter and does not require an expert to add up the reproduction costs in Exhibit 7 and find out what percentage they bear to the original cost as given in Exhibit 67. If that gives you 147.3 per cent I do not know that that helps anybody very much, because that is purely arithmetic? A. What I did had no relation to Exhibit 67 except with respect to power plant equipment. I was taking my physical quantities—

30 Q. Take Mr. Ullmann's evidence. In your evidence in chief I did not observe that you said anything about taking prices from Mr. Ullmann's evidence. You did say you took quantities, and the same as to the evidence of other witnesses, and I was surprised to hear you say a little while ago that you took prices? A. Then I have to apologize. What happened was this: he gave me in a particular item, for example, the surfacing of the grade before the laying of the ballast, one foreman and 15 labourers, and those men worked a good number of days. That is an operation that has not changed in any way between those two periods. I have found his price for foremen and his price for labourers and multiplied by the number of days of labour and got a total for those labourers as at 1932. I took the same foremen and the same number of days and similar labourers and applied the labour rates of \$3 and \$1.50.

40 Q. Where did you get that? A. That was out of the testimony of the witness Harriman and the witness Usher.

Q. We have heard that evidence too and we will have to make up our minds as to how much weight we are going to attach to it, but did you have any independent figure? A. Yes, I had the Welland Canal figures. There you get rates on common labour of \$1.25 and \$1.50 per ten hour day.

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Q. When? A. 1892, 1893, 1894 and 1895.

Q. What have you got that will help us as to the reproduction end? A. I took that as basic data and did not go behind it; I have no knowledge as to whether those were or not proper figures as of today.

MR. MASON: Q. You took your figures as to reproduction cost from the figures supplied by Ullman and other witnesses? A. Yes.

THE CHAIRMAN: And you made up your 147.3 per cent. upon the basis of what Ullmann and Robertson said? A. Yes, and the other witnesses.

MR. MASON: Nobody is blaming you, but we want to get at your 10 basis? A. Yes.

MR. ROBERTSON: Q. In your investigation in the period between you referred to something in 1915 I think? A. No; between 1892 and 1894; and 1903 and 1904 as to power plant equipment; but I have an independent check against the testimony of Harriman and Usher here.

Q. What is that? A. The reports on the Welland Canal.

Q. Which Welland Canal, the recent one? A. The reports of the operating costs in construction; for construction I had to use the Cornwall Canal prices, but they had their lock keepers and labourers doing repairs, and certain repairs on bridges; I had rates from there. 20

Q. Did not you apply any knowledge or information you got that you were able to go over as to prices since original construction? A. I am sorry, sir; my time would not permit it.

MR. SLAGHT: He swallowed the railway witnesses' prices whole.

THE CHAIRMAN: All this amounts to mere calculation.

MR. SLAGHT: That is all. It is nice to listen to, of course.

THE CHAIRMAN: I suppose we could figure from Robertson's and Ullman's figures what the percentage over original cost was. If we accept his original cost and figure what he arrives at from his evidence we can make the percentage ourselves. 30

MR. SLAGHT: I assume that the Board will not overlook Mr. Hynes' evidence, whose prices are about one half of what theirs are.

MR. McCARTHY: That is hardly a fair statement. If I had thought the Board could make the calculation—I could not do it—I would not have called this witness.

Q. Mr. McDougall, you took your figures as of 1932 from Exhibit No. 7 as amended? A. Yes.

Q. What is a weighted average? A. A weighted average, sir, is an attempt to show the movement of various prices weighted in proportion to their importance. It is the old story of the man who was selling 40 the rabbit sausage which he said was half horse and half rabbit, but upon being pressed he said it was one horse to one rabbit, and if you weighed it it was 99 per cent. horse and 1 per cent. rabbit. My result is from weighting each of the units at a price in proportion to its importance in the property.

THE CHAIRMAN: My difficulty is that all this result may show that you had two rabbits instead of one.

MR. SLAGHT: Besides, this is not war time.

MR. McCARTHY: My difficulty is that I am conducting only my own case.

THE CHAIRMAN: You assume that your witnesses's figures are correct, and you are asking for a computation on that assumption?

MR. McCARTHY: Yes; I cannot do anything else.

THE CHAIRMAN: The difficulty is that if the assumption is wrong
10 the result is wrong.

MR. McCARTHY: That may be. I am showing how the assumption is applied.

THE CHAIRMAN: And that resolves itself into a mere calculation.

MR. McCARTHY: You say it is a mere calculation. I do not know how to do it. You may know how.

THE CHAIRMAN: I say this witness is giving his own method of calculation on assumptions.

MR. McCARTHY: It is bound to be. You did not expect me to go to the expense of having this witness work out my friend's prices?

20 THE CHAIRMAN: Oh, no.

WITNESS: May I speak?

THE CHAIRMAN: Yes.

WITNESS: There may be difficulty as between the two sides as to the prices to be applied at 1932. As I understand it there is very much less difficulty in agreement as to the physical quantities, and since my work and my results used those quantities and prices which I determined independently, and on which I think I can stand on each individual one, then so far as that portion of the property is concerned the figure which I produce is, I think, a dependable figure.

30 MR. MASON: Q. On the original prices? A. Yes.

MR. SLAGHT: Q. You did not determine any independent prices for 1932? A. (No answer).

MR. MASON: Q. Did you take all the buildings into your calculation? A. I took only the power house and the Clifton Incline.

MR. SLAGHT: Q. Why? A. A matter of time; I wanted to do others and had not the time.

MR. MASON: Q. As a matter of fact, you were able to get at certain well recognized costs as of 1893 and 1894 which you could check, such as rails and ties? A. And masonry and earth excavation.

40 Q. But you recognized the fact that in the construction of a diversity of materials used in this railway there would be a number that you could not check? A. Exactly, and those were set aside.

MR. MASON: I think this witness has added something in addition to computation. He has pointed to some confirmatory records of original cost, so far as they are available.

THE CHAIRMAN: Yes; he has given his own evidence as to that,

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and as to a good deal of the balance he bases it on the evidence of other witnesses.

MR. MASON: He must, yes.

MR. ROBERTSON: Q. Quite apart from your special investigation into this matter, have you, as the result of your other work and other experience, a knowledge of price trend as applied to labour and building materials? A. Yes.

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WITNESS: No. I took the prices for these particular materials and labour from these Exhibits. I did not attempt to go behind them and find whether the 1932 price as put in was a proper price. I confined myself entirely to setting unit prices at 1892 which I felt I was completely secure in accepting. 10

THE CHAIRMAN: Q. From the Exhibits? A. No; for the 1892 prices from the records of the company or from the Sessional Papers.

MR. SLAGHT: Q. But in 1932 only from the Exhibits? A. Yes.

Q. You have not checked them with the Blue Books at all? A. No.

MR. MASON: Q. When did the Bureau of Statistics commence? A. In 1919. It really breaks off from a sub-department of the Department of Labour. The report of the Board of Inquiry into the Cost of Living, to which I referred, was prepared in effect by Mr. Coates, who later became the head of the Dominion Bureau of Statistics. 20

THE CHAIRMAN: The witness is giving evidence as to prices in 1932 from these Exhibits.

MR. SLAGHT: Yes, that is his evidence.

Q. Is not that correct? A. Yes.

THE CHAIRMAN: In that case, if his evidence is given from those Exhibits, the Exhibits themselves are available.

WITNESS: May I speak, sir?

THE CHAIRMAN: Yes.

WITNESS: May I go a shade farther? I feel that what I have done will stand by itself subject only to any correction as to quantities. I have given the prices of producing this labour as at 1892 to 1894. 30

THE CHAIRMAN: I am talking of 1932. You have not given us any evidence about that, but you are quoting statistics? A. No; for 1932 I am taking Exhibit No. 7, sir.

MR. MASON: And Mr. Ullmann's and Mr. Robertson's evidence.

THE CHAIRMAN: Mr. Ullmann's evidence as to 1932 is his own evidence, and there is no use repeating what some other witness has given.

WITNESS: The figures I have developed as original cost—

THE CHAIRMAN: Q. I am not talking of that. You are undertaking to give evidence as to the price of labour in 1932 on your own oath. 40

MR. McCARTHY: No.

WITNESS: No, sir.

THE CHAIRMAN: Q. It it is not of your own knowledge, you are simply quoting statistics on that point?

MR. McCARTHY: No, no.

THE CHAIRMAN: Q. I understood you to say that so far as prices of labour in 1932 on this job are concerned you are quoting statistics?

MR. MASON: Quoting the evidence.

THE CHAIRMAN: If he is quoting evidence, that is of no consequence.

MR. SLAGHT: That is what he is doing, quoting Mr. Ullmann and Mr. Robertson.

MR. MASON: The witness, I think, says that as to original costs, whether in 1892 to 1894 or 1903 to 1904, he has obtained independent information. As to the 1932 costs he is relying upon the evidence of Mr. McCarthy's various witnesses. Then he says he takes those two results and obtains his ratio of 147.3 per cent. to 100 per cent.

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THE CHAIRMAN: So far as he bases his calculations upon certain assumptions, that is only a computation.

MR. McCARTHY: Yes.

THE CHAIRMAN: I would not pay much attention to that.

MR. McCARTHY: Why not?

THE CHAIRMAN: I say that while his calculations may be given, his assumption may be entirely wrong. I do not object to his giving a computation upon an assumption.

MR. McCARTHY: That is all we are discussing, surely.

MR. SLAGHT: Q. I want to get from you as an expert, on your own statement, that for 1932 prices you have relied on nothing whatever except the testimony of certain witnesses in this case, and I want the names of those witnesses upon whose testimony you have relied? A. Ullmann, Miller, Harriman, Usher, Mantell, Robertson, Pratley, Baskin, Kunz and Schmunk.

Q. In the result you have reached, 147.3 per cent., you have assumed that the prices stated by each of those gentlemen who did state prices were absolutely accurate and correct? A. I assumed that they had prices to be used as reproduction prices, yes.

Q. Answer the question: In reaching 147.3, a decimal figure, I suggest to you that you have assumed that each price given by those witnesses you have named, where they did give prices, was accurate and absolutely correct? A. Yes.

THE CHAIRMAN: Mr. McCarthy said that he has based it all on that assumption.

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No. 11. Extract from Evidence of S. C. MacKENZIE, Contractor. Called on behalf of NIAGARA PARKS COMMISSION.

EXAMINED by MR. SLAGHT.

Q. Before we leave the grading matter, would there be any salvage value in the grading on this road? I mean if the railway were going to abandon the road as far as the grading is concerned would there be any

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S. C. MacKenzie, Examined, February 20, 1935.

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market value for it, or could it be sold to anybody? A. That is the material the railway is built of?

Q. Yes? A. No, I would not think so.

Q. I do not think there is any dispute about that.

THE CHAIRMAN: No salvage value in the material?

MR. SLAGHT: I am speaking of the grading, sir.

THE CHAIRMAN: Oh, in the material of the grading?

MR. SLAGHT: Yes. I do not think anybody has been asked about that before. I do not think it will be controversial. That is the view of Mr. MacKenzie.

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No. 12. Extract from Evidence of G. E. WALLER, Engineer.
Called on behalf of NIAGARA PARKS COMMISSION.

EXAMINED by MR. SLAGHT.

Q. What is your occupation? A. Manager of the Hamilton Street Railway.

Q. That is the present Hamilton City Street Railway? A. Yes.

Q. I want to run back with you over some of your experience and qualifications with regard to electric railway matters. From 1889 to 1902 I believe you were agent and despatcher for the Hamilton, Grimsby and Beamsville Electric Railway? A. Yes.

Q. And from 1902 to 1908 in what capacity were you with that railway? A. I was General Manager and Secretary.

Q. Of the Hamilton, Grimsby and Beamsville Railway? A. Yes.

Q. And from 1908 to 1912 you were what? A. General Freight and Passenger Agent of the Hamilton, Grimsby and Beamsville Electric Railway, the Brantford and Hamilton Electric Railway, the Hamilton and Dundas Electric Railway, the Hamilton Radial Electric Railway; and of the Hamilton Street Railway. During that period I also made traffic surveys.

Q. All those railways then or afterwards came in under the Dominion Power and Transmission Company? A. Yes, from 1908 to 1912 and subsequently they were all controlled by the Dominion Power and Transmission Company.

Q. Were you an officer of the company? A. Until 1912 I was engaged as I have explained. From 1912 to 1924 or 1925 I was the General Superintendent of these various railways for the Dominion Power and Transmission Company, and from 1925 to 1930 I was Vice-President of the Dominion Power and Transmission Company in charge of railways.

Q. From 1912 to 1924 you were General Superintendent of those five electric railways, and from 1924 to 1930 you became Vice-President of the Dominion Power and Transmission Company, Limited, and remained still the Manager of these railways? A. Yes.

Q. And from 1930 to the present time you have been Manager of the Hamilton Street Railway? A. Yes.

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Q. I want to ask you to tell me something of your experience as a railway man. Where has these roads run of which you were Manager? The Hamilton, Grimsby and Beamsville Electric Railway ran from where? A. From Hmilton originally to Grimsby, and subsequently it was extended to Beamsville, and subsequently again from Beamsville to Vineland, a distance all told of about 27 miles.

Q. Is that a double track or single track railway? A. Single track.

Q. I do not know that we need to get the population of those cities. Hamilton today is about what size? A. 152,000; Grimsby is about 10 1,500, and Beamsville about 1,100.

Q. How long did that railway remain under your general superintendence? A. Until 1932.

Q. What happened to it then? A. It was taken up and sold.

Q. Taken up and sold? A. Yes, scrapped.

Q. Scrapped in 1932? A. Yes.

Q. Do you know about the details of it having been scrapped? A. Yes; I had all to do with it.

Q. You had all to do with that task of tearing it up and dismantling it? A. Yes.

20 Q. Generally speaking, what is done with scrap? Where does the scrap go? Perhaps I need not ask that now, because I am going to ask you about this railway if you had to scrap it. You had the experience of running that railway as a going concern for a number of years as General Superintendent, and then the experience of dismantling it and selling the scrap? A. Yes.

Q. And you were for years in charge of the Brantford and Hamilton Electric Railway while it was an operating and going concern? A. Yes.

30 Q. What happened to that railway? A. I commenced operation in April, 1907.

Q. That goes pretty well back? A. And it was discontinued in 1931 and scrapped in 1932.

Q. Were you in at the death of that one? A. I ran the first car over it and the last car back; I ran the first car over in 1907 and the last car back before it was scrapped in 1932.

40 Q. You were almost a godfather to that railroad. The Hamilton Radial Electric Railway runs where? A. It was scrapped in 1929. It ran from Hamilton through Burlington to the summer resort and Burlington Village, and ten miles easterly to Oakville, a distance of 22½ miles.

Q. Is that single track or double track? A. Double from Hamilton to Burlington Canal, and single track across Burlington—double track across the Beach, and single track from the Beach to Oakville.

Q. A word about the Burlington Beach line. You had charge of that for years before it was scrapped? A. I had charge of that line from 1908.

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Q. And you scrapped it? A. Yes.

Q. What type of traffic did you carry there having regard to this International Railway which is said to be a holiday or sight-seeing railway in part? What type of business did you cater to on the Burlington road, as I call it, its real name being the Hamilton Radial Electric Railway? A. We had the excursion business to the beach in the summer months, and also the local traffic from Oakville to Hamilton.

Q. Did you increase your equipment and run in the summer months for the excursion business? A. Yes; we had to carry the maximum amount of equipment for the summer months in order to take care of the rush traffic. 10

Q. How did your winter business compare with your summer business? A. We had a fair local business. The summer business on certain days was very heavy. We figured that we carried the equipment for about 90 days in the summer; or as many days as we had sunshine we had traffic, and as many days as were dull and rainy we had no traffic, or very light traffic.

Q. And your winter traffic was lighter because of the character of the business? A. Yes.

Q. Just picnic days or big show days, or any special feature days? 20
A. Yes. I take it that is the common lot of all summer resorts. We had very heavy days such as the 21st June, the 1st July, Labour Day, picnic days, carrying probably as many as ten thousand in one day to Burlington Beach.

Q. The Hamilton and Dundas Street Railway ran where? A. The line was about seven miles in length and ran between the Town of Dundas with a population of probably 5,500 to the City of Hamilton.

Q. And the Hamilton Street Railway you have told us is a local city line? A. Yes, a local city line.

Q. We will leave that out of consideration for the moment. Let me ask you generally whether or not you have familiarized yourself with other electric railways in Ontario? A. Yes. I do not think there is an electric railway in Ontario or in Canada that I am not acquainted with through the Association. I have been a member of the Canadian Transit Association for many years, and at the present time I am President of the Association, and in that way I get information. 30

Q. You have been a member of the Canadian Transit Association? A. Yes.

Q. Is that an Association of electric railways, or steam railways, or both? A. It comprises entirely electric railways. 40

Q. And do different electric railways belong as members to that association? A. Yes.

Q. Have you had to do with bus lines as well? A. Yes, various companies run bus lines. My experience with bus lines was unfortunate; I had to co-ordinate all the bus lines out of Hamilton.

Q. And I think you told me you had been honoured by being elected President of the Canadian Transit Association? A. Yes.

Q. For how long? A. Just a year; I was Vice-President for two years.

Q. Exclude any data or information that might have been told to you as President of your Association, or in any other way, and confine your answers to what you can speak of from your own knowledge and experience, and if there are any questions you cannot answer from your own knowledge, say so, so that we may confine your evidence within the rules. From the experience you tell us you have had with interurban street railways—you have been General Manager of four of them, and
 10 you say you are familiar with conditions—what can you tell me as to the general present situation or the situation in 1932 as compared to the general situation in that line of business for the 15 years preceding 1932?

MR. McCARTHY: I suggest that that is not evidence against me in this case.

MR. SLAGHT: I think we had that problem in connection with another witness, and while the Board indicated that we could not go into the operations of any specific line I was permitted, in that instance at all events, to ask the witness first if he was familiar with the inter-
 20 urban electric railway business in the province, and then to ask him what was the history of that business from his experience during a period of years. I seek to adduce evidence along those lines.

THE CHAIRMAN: We had evidence of general conditions, affecting the business of electric street railways in general in this province.

MR. SLAGHT: Yes.

Q. Have you from your experience found that there are or are not, general conditions in traffic matters which have affected the business of electric street railways in the province during the last 15 years?

MR. ROBERTSON: Electric Railways?

30 MR. SLAGHT: Yes, electric interurban railways.

Q. Have there been some conditions which have had an influence and effect upon that business? A. Yes, from experience I do know that the competition combined with good roads has had a very serious effect on interurban lines.

Q. To what kind of competition do you refer? A. I refer to the private automobile, so far as competition is concerned. As a matter of fact from 1921 I think the good highways had as much to do with it, in combination with the private automobiles, as anything could have, because from 1921 while there were periods that fluctuated up and down,
 40 the good roads were more or less prevalent in 1921 to 1928, that is the trunk lines, and in addition to the trunk lines there has been a good roads programme movement throughout the municipalities which has made good roads possible for automobiles. Prior to 1921, while the automobile was a factor, the people living off the trunk lines would have to come to the electric lines; but in later years there is hardly a road within the province or within three or four hundred miles probably, that

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is not so improved that the automobile can get out most any time of the year.

MR. SLAGHT: Q. In what way has that factor affected the business of interurban street railways generally? A. It has affected it in this way, that prior to the good roads and the automobile it was compulsory for people living in the suburbs to make use of interurban railways. In a survey on the Grimsby line made in 1922—

MR. McCARTHY: I do not think we ought to go into the individual lines.

MR. SLAGHT: I will not ask that. 10

Q. Your experience has had to do with traffic surveys? A. Yes.

Q. Speaking generally, and basing your evidence on experience, you told me of the private motor car. Is there any other factor which has affected the interurban electric railways in a general way in the province besides private motor cars? A. Motor cars, trucks and busses.

Q. Trucks, of course, would affect railways which carried freight? A. Yes.

Q. The freight traffic on this road never amounted to much. In dealing with busses, what can you tell us about the advent of the bus as to its effect in a general way on interurban electric railways? A. I would say that the bus has affected the electric roads to the extent that people became rubber-minded. 20

MR. McCARTHY: Q. What does that mean? A. They want to ride on rubber instead of steel.

THE CHAIRMAN: I must add that one to my dictionary.

MR. SLAGHT: It has not much to do with elasticity of mind. He says the people wanted to ride on rubber instead of on steel.

Q. In which way has the advent of the bus and the use of the bus affected electric railways, either helping them or hurting them? A. It has contributed to the downfall of electric railways. 30

Q. So you have given me the improvement in the roads the private motor car and the bus competition, and you have had experience with bus lines under your general superintendence? A. Yes; I operated a bus line out of Hamilton to Port Dover to the south, Brantford to the west, and Niagara Falls to the east, and to Buffalo, and to Burlington and to Dundas.

Q. Then you have been cruel enough to contribute to the downfall of electric railways in the operation of a bus line? A. Yes.

Q. Have you ridden on this road when it was a going concern? A. Yes, three or four trips. 40

Q. When you were a guest? A. Yes.

Q. You were not inspecting it previously as an electric road? A. No.

Q. Let me ask you what you say in regard to the future of interurban electric railway business in the province? You have told me of the downfall in a sense. Being affected adversely, what is your opinion as

to the future project of recovering or increasing its business as against what you find to-day? A. My candid opinion is that the interurban lines are done.

Q. What do you say as to the future of this railway as from 1932 on had some one desired to attempt to operate it? A. I cannot imagine any person wanting to operate it.

Q. What do you say as to whether you look forward to an increase in business from 1932 down to the present time and on into the future?

MR. McCARTHY: I object.

10 MR. SLAGHT: Q. You have had an opportunity of going over the figures in Mr. Schmunk's Exhibit 68, which has given us a bird's-eye view of forty years of operation of the International Railway, in figures? A. Yes.

Q. This is the profit and loss account put in by Mr. Schmunk through my friend Mr. McCarthy as an Exhibit on behalf of the Railway Company. Looking at this Exhibit it is apparent that from the year 1920 on this division called the Park and River Division of the International Railway Company was operated in the red or at a loss from 1920 to September 1932? A. Yes, that is what it indicates.

20 Q. And that over the entire forty years of operation, showing a loss some years and a profit other years, the losses have exceeded the profits by \$571,000 odd? A. Yes.

Q. And that the last twelve years and nine months from 1920 down to September 1, 1932, have shown a loss of \$970,000., although that does not appear on the Exhibit. What do you say as to whether or not those figures are in general accord with what we call the downfall of the interurban railways? A. The losses are in common on all suburban lines.

* * * * *

30 Q. And you have been here during part of this hearing and you know about the Power House and the two incline railways, and the line itself which you have inspected from Chippawa to Queenston and the various cut-outs and so on. How would you get at, for us, the fair market value of that railroad and its physical assets as they existed in August 1932 aside from the franchise? What method of valuation would you say could be safely adopted in reaching its market value or fair value as of that date? In the first place, has it or not in your opinion, a saleable possibility as a going concern, as a railroad?

MR. McCARTHY: Is not that a question the Board will have to determine? I do not think the witness can determine what is the fair value.

40 MR. SLAGHT: Q. Have you sold railroads of the interurban type? A. I have scrapped them, sir.

Q. With regard to the railroads you have scrapped was there any market for them? A. No; we advertised them, but had no offers at all as a going concern.

MR. McCARTHY: What would you expect?

MR. SLAGHT: I merely want to get at the evidence.

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Q. What, in your opinion, would be the expectation or possibility of finding a purchaser for this railway as a going concern, or a railway to be operated by the purchaser in August, 1932? Was there any market for it as a going concern, a person buying it for the purpose of operating it or being obliged to operate it? A. There is no market; and if there was, the revenue received would not warrant the expense of the railroad.

Q. As of 1932? A. Yes.

Q. A person who acquired this railway in September, 1932, as a gift or otherwise, could put it to what use? A. If you did not operate it you could get what value you could get from scrap or sell it as salvage. 10

Q. What various items as may have a salvage value could be sold, I suppose? A. Yes.

Q. We will deal with that in some detail later. In expressing your opinion on that point have you regard to your railway experience and your knowledge of the operation of railways and the down grade progress which railroads have made, which you have described in detail? A. From experience I would say I could speak along those lines.

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Evidence.
No. 13.
Donald M.
Campbell,
Examined,
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No. 13. Extract from Evidence of D. M. CAMPBELL, Engineer. Called on behalf of NIAGARA PARKS COMMISSION.

EXAMINED by MR. SLAGHT. 20

DONALD M. CAMPBELL, Sworn. EXAMINED by MR. SLAGHT.

Q. Mr. Campbell, I want to start and run over your experience in railway matters. You started as an apprentice in the Old Country? A. Yes, sir.

Q. In Scotland? A. Yes.

Q. That would be in what year? A. 1876.

Q. I understand you were an apprentice to a firm of construction engineers over there? A. Yes, sir.

Q. And what sort of work had you experience with in those days as an apprentice? A. Building. We were builders and contractors. 30 We built everything—piers for docks for steamships, to go into big churches, court houses, school houses and that sort of work.

Q. Then in 1882 you were out here, and I believe you started to work on the Canada Atlantic Railway construction from Ottawa to Rouse's Point? A. Yes.

Q. What job or jobs had you on that construction? A. I went into the equipment shops first, where they built cars, steam railway cars.

Q. Working at the bench? A. Working at the bench, worked on the trucks and so on. But I did not stay very long there. They sent me out on the road, travelling from Ottawa to Lacolle, Rouse's Point, 40 inspecting the station buildings, freight houses and platforms, and tracks and switches, and general reporting.

Q. Sort of an inspector? A. Anything I could do myself, I did it, but usually I reported.

Q. In 1883 you went to Winnipeg? A. To work for the Canadian Pacific Railway.

Q. What sort of work out there? A. I started in the same way as I started for the Canada Atlantic, but Sir Donald A. Smith, he was the President then of the Canadian Pacific Ry., and he asked for a man.

MR. McCARTHY: Do not tell us what Sir Donald Smith said.

MR. SLAGHT: That is Lord Strathcona.

Q. They picked you for some work. What did they pick you for? What did you do after you were elevated that way? A. Everything.
10 I was a confidential agent for him. I used to buy and report on town-sites, and possibility of railway approach to town-sites. This was private for the directors.

Q. In 1893 did you begin to take notice of electric railways? A. Yes.

Q. For the last 24 years— A. 1892 I really commenced electric railways.

Q. And then I believe for ten years you were the General Foreman and Superintendent for the Ottawa Car Company? A. Yes.

Q. Did they build cars? A. Yes.

20 Q. Is that the company that Mr. Beattie belongs to, the gentleman who was up here? A. Yes. I was there before him.

Q. For two years you were Chief Engineer for the Nyals Car Company? A. In Nyals, Ohio.

Q. What years were those? A. 1901 and 1902.

Q. And then for three years you were Chief Engineer for the Brill Company? A. Yes.

Q. The Cleveland plant? A. Yes.

Q. They are the company, we have heard, that built some of these venerable cars you have seen out here? A. Yes.

30 Q. You were ten years Manager of the Preston Car Company, until there was a fire over there? A. Yes.

Q. Since 1917 I understand you have acted as consultant and valuator and appraiser for Canadian railroad companies and others interested? A. Largely, yes.

Q. Have you acted as consultant for the Ontario Railway and Municipal Board at times? A. I have several times.

Q. And as valuator for the City of Toronto? A. Yes.

Q. Brantford? A. Yes, sir.

Q. Kitchener? A. Yes, sir.

40 Q. And Kingston? A. Among others, too.

THE CHAIRMAN: Valuator of what?

MR. SLAGHT: What sort of valuations did you make for those cities?

A. Rolling stock and buildings.

Q. Connected with electric railways? A. Yes.

Q. Have you had to do with selling and dismantling of electric railways? A. Yes, for the last seventeen years. I always gave them a

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value on anything they wanted to dismantle just as I did for this road. Then they asked me to buy it, and it was a case of noblesse oblige. I wanted their work, and I did buy it then.

MR. McCARTHY: Q. What are you talking about? What did you buy? A. The whole railway.

Q. What railway? A. The Welland Streetrailway, for instance; and the St. Thomas Streetrailway, and the Toronto Suburban; Chatham, Wallaceburg and Lake Erie; Thames Valley and Ingersoll. I forget them all.

—continued

MR. SLAGHT: Q. Did you operate these railroads? A. No, sir. 10

Q. You bought the assets? A. I bought the whole thing, and sold the scrap to the dealers—ascertained the prices from the steel plants first, and re-rolling prices, and re-laying prices, but I didn't sell to them. I always sold to the dealers. Then I salvaged things that were saleable, and on those I made my profit—sometimes.

Q. A Scotchman does not miss very often? A. Not if he can help it.

Q. You have been closely allied apparently with the breaking up of derelict railroads. What, if anything, has had to do, if you can tell me, with the necessity for scrapping these railroads that you have been concerned with in a general way? A. I don't just understand what you are aiming at. 20

Q. You have had to tear apart and scrap a great many electric railroads, as you have said? A. Yes, I have.

Q. In your opinion are there any conditions—changing times and changing conditions—which have or have not contributed to the necessity for the owners scrapping those railroads? A. Yes.

Q. What are some of the conditions? Or what in your view brings about the necessity for scrapping these interurban railroads? A. Trucks are really the largest factor. 30

Q. Anything else? A. No, not much else. Well, during the last five years, yes. During the last five years it was economic conditions.

Q. Then trucks? A. But trucks were a large contributing factor in precipitating the decadence of suburban railways.

Q. Any other factor besides trucks prior to the last five years? Take the roads that carry passengers? A. Yes. Another thing was that the cost of operation increased to such an alarming extent that they could not pay operating expenses.

Q. Trucks would interfere with electric roads carrying freight, of course. Has there been any factor or condition that you know of, that interfered with the carrying of passengers by electric roads during the past several years? A. No, just the automobile, is the only factor—and busses to some extent. But when seven years ago 90%, to talk in percentages—I am not an engineer, at least, I don't call myself one; I let other people do that—90% of the busses were operated by private companies, and about 10% of them by transportation companies; to-day 40

90% of them are operated by transportation companies, and about 10% by private companies. They didn't wake up soon enough.

Q. Has the passenger carry on these interurban railroads been increasing or decreasing during the past ten or twelve years? A. Decreasing. The automobile, of course, is the cause of it, the private automobile.

* * * * *

MR. McCARTHY: I object to that, what he would do.

MR. SLAGHT: Then we will put it in another way:

10 Q. Would this road be saleable as a railroad in August, 1932, in your opinion for the purpose of carrying it on as a going concern and operating it as a railroad? Would it have a market value of that kind? A. It was operative at that time, in my estimation.

* * * * *

Q. This Chapman Signal System—you do not give that any value as scrap? A. No, not as scrap.

Q. Did you consider selling that to another electric railroad? A. No, it is not suitable for a city system, and there are no interurban systems now bothering with that. That particular type of installation is not suitable for block system. In a city it is no use.

20 Q. What were you saying about no interurbans? A. They will soon be like the "Dodo."

Q. What is the dodo? A. An extinct bird.

Q. You do not give any value to the Chapman system? A. It has no scrap value.

* * * * *

Q. You were in the Preston plant? A. Yes, and in Ottawa, and with the Brill Company, and with the Nyals Company, and then I was in steam railways before that. I was always a car-builder.

Q. Did you examine these cars down here? A. Yes.

30 Q. Seven open, two closed, the line car, the snow plow— A. And the flat car.

Q. That is the lay-out? A. Yes.

Q. What do you tell us about them, their type and kind? You cannot run down a Brill car, because you worked there. A. I guess I built some of those.

Q. Having regard to the modern car they are turning out today new, what do you say about this as a type of car? A. Oh, it is a good enough open car—good enough type for the purpose for which it was used. It was most suitable for the purpose.

Q. Suitable for the purpose of this line? A. Yes. Nothing wrong with it in that respect.

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40 Q. Does the power house equipment contain a crane? A. Yes.

Q. Is that included in your figure here? A. Yes.

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Q. What about that crane? Why not sell it? A. It is a good crane.

Q. Why not sell that to somebody instead of scrapping it? A. The Hon. Hugh Sutherland built a house in Manitoba, and he put a fancy stair in it. They could not get the stair into the house, so he was advised to put up the stair first and build the house around it. It would be the same with this crane. You would have to put up the crane first and build a house around it to suit the crane. It would be one chance in a thousand that you could get a building that would be adapted to put the crane in. Otherwise, it is a perfectly good crane. But what is the use? 10

* * * * *

Q. Before you leave the stone; is that good ballast? A. Fairly. It is common stone—not crushed stone, some big and some small. They got it in some gravel pit I think, by the looks of it, but it is fairly good ballast. It is not first class.

Q. Then coming along you told us of the pavement in the city? A. That is good.

Q. And getting down towards Brock's Monument— A. After you leave the Lower Arch Bridge, from "260"—from then on down to Brock's Monument, as you call it, that track was laid on the grade when it was laid. 20

Q. What does that mean as to ballast? A. When the earth embankment on which the track is laid first—before it is lined up, the surrounding soil is gathered up and dumped there; the ties are laid across and the rails put on. They are lifted some space; possibly a stone put underneath them.

Q. Is that good railway construction ballast? A. No, but in that soil it is fairly good construction because it is so well drained—so close to the river bank that the drainage was always good, and it was gravelly soil, not loamy—just gravelly, the same as an ordinary farmer would have on his farm. 30

Q. It was not a crushed stone ballast? A. No, but after it was laid it was not a bad idea either; there is a lot of shale, rocky stones, all along the river bank there, and they just gathered it. We took a sample of it there. It might have been a foot wide, or two feet wide, and they threw it in between the ties, as years went by.

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*Respondent's
Evidence.
No. 14.
H. G. Acres,
Examined,
March 11th,
1935.*

No. 14. Extract from Evidence of H. G. ACRES, Engineer. Called on behalf of NIAGARA PARKS COMMISSION.

EXAMINED by MR. SLAGHT.

HENRY G. ACRES, Sworn. EXAMINED by MR. SLAGHT. 40

Q. First let me get some of your experience and qualifications. I believe you were born in Ontario, and graduated in Applied Science from the University of Toronto in 1903, with the degree of Mechanical and Electrical Engineer, taken later in 1916? A. Yes.

Q. Your graduation in 1903 was in Arts perhaps? A. No, in Science.

Q. In 1916— A. That was a University degree that corresponds to Master of Arts.

Q. You took a further degree of Doctor of Science from the University in 1924? A. Yes.

Q. What was the character of that? Is that an honorary degree? A. Yes.

Q. They conferred an honorary degree upon you in 1924 of Doctor of Science. You are a member of the Engineering Institute of Canada? 10 A. Yes.

Q. A past vice-president I believe of that Institute. And a member of the Institution of Civil Engineers of Great Britain? A. Yes.

Q. Is that correct? Do they call it Institution of Civil Engineers? A. Yes.

Q. A member of the American Society of Civil Engineers? A. Yes.

Q. Of the American Institute of Electrical Engineers? A. Yes.

Q. Of the Association of Professional Engineers of Ontario? A. 20 Yes.

Q. Of the Association of Professional Engineers of Alberta? A. 20 Yes.

Q. A member of the Engineers' Club of Toronto? A. Yes.

Q. And of the Engineers' Club of New York City? A. Yes.

Q. Have you specialized in hydraulic and hydro electric engineering? A. Yes.

Q. And I believe previous to 1924 you were Chief Hydraulic Engineer of the Hydro Electric Power Commission of Ontario? A. Yes.

Q. Prior to 1924? A. Yes.

Q. On some occasions have you acted as technical adviser of general 30 counsel in references before the International Joint Commission with regard to International Waterways? A. Yes, several times.

Q. As technical adviser to the Canadian General Counsel, I take it? A. Yes.

Q. You have directed the design and construction of certain works. Will you give me some figures on transmission line, for instance? A. 370 miles of high tension 110,000 volt line.

Q. Storage dams designed and built, have you had experience with those? A. Yes.

Q. How many? A. I have built twenty.

Q. Plants designed and built? A. That is power plants, twenty- 40 six.

Q. Can you give us an idea of the total installation of electrical horse power which has been constructed under your supervision? A. Something in excess of a million horse power.

Q. Roughly speaking, a capital investment, or money spent under your supervision, running into approximately what? A. \$140,000,000.

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Q. In the type of work we have been describing? A. Yes.

Q. I believe you now have in hand some projects in which the estimated cost of this type of work is being considered for clients? A. Yes, about \$27,000,000 worth. They are, of course, not as imminent as they were.

Q. But they have been under consideration for clients to that extent? A. Yes.

Q. Taking some of the positions you have occupied; 1903 to 1905 you were Assistant Mechanical Engineer of the Canadian Niagara Power Company of Niagara Falls, Ontario, when they placed in operation the first 10,000 horse power turbines ever built here I believe? A. Yes, I turned over the first 10,000 horse power turbine that was ever constructed on New Year's Day of 1905.

Q. That was on the Niagara River here for the Canadian Niagara Power Company? A. Yes.

Q. In 1905 were you Assistant Engineer to the Arizona Copper Company, of Arizona, on tunnel, railway and mill construction? A. Yes.

Q. In 1906 and 1907 were you Engineer in charge of general water power survey of Ontario for the Hydro Electric Power Commission? A. Yes.

Q. And in 1908 Engineer in charge of surveys and location of 110,000 volt lines for the Niagara Transmission System of the Hydro? A. Yes.

Q. In 1909 and 1910 were you Engineer in charge of construction of a mileage of 110,000 volt steel tower transmission line for the Hydro Electric Power Commission? A. Yes, about 253 miles.

Q. Then from 1911 to 1924, I think perhaps I asked you, you were Chief Hydraulic Engineer of the Hydro, and did you have supervision over surveys, design and construction of their hydraulic and hydro-electric development? A. Yes, at that time.

Q. What did that include in 1924? I am not sure whether or not that was the Chippawa Canal construction amongst others? A. It was amongst others. That was more or less of a special piece of work, because it was undertaken during the War, and we had to build it as well as do the engineering. None of the work was contracting.

Q. What did that run into approximately in expenditure? A. The completed expenditure was about \$80,000,000.

Q. And in connection with that work was there or not necessity, and was there or not used from time to time an electric railway installation? A. Yes, quite an extensive one.

Q. To what mileage? I understand the Canal only has a mileage of what? A. Altogether about twelve and a quarter miles.

Q. What mileage of electric railway was installed and then dismembered in connection with that work? A. There was upwards of 80 miles.

Q. Of electric railway? A. Single track miles.

Q. Those units being installed as an economical accessory to the construction of the Canal, hauling material, etc.? A. Yes, there were immense quantities to be handled, and they had to be handled very quickly.

Q. In that electric railway mileage of some 80 odd miles that you had to do with then, was that from time to time taken down? A. Portions of it were, yes. There was a considerable mileage of trunk line mileage, double track, that we used continuously throughout the whole course of the work. We had some of the busiest tracks in America
10 there at one time. We used to have upwards of between 400 and 500 train movements a day.

MR. MASON: Q. Did this track as completed, or as you used it, compare with an ordinary radial track? A. Yes.

Q. Or was it of a more or less temporary nature? A. No, it was a very solid track, Mr. Mason—had to be for the traffic that was put over it. If I remember, it was on 80 pound rails, all rock-ballasted.

MR. SLAGHT: Q. You would carry perhaps tonnages of freight over that chiefly? A. Yes, immense quantities of freight, heavy earth and rock. We handled 30 yard cars of excavated earth and rock, at the
20 rate at times of up to 200,000 cubic yards a month.

Q. That is down to 1924. Then from 1924 to date I understand you have been practising as a Consulting Engineer? A. Yes.

Q. You left the Hydro as Chief Hydraulic Engineer in 1924, and since consulting or advising as a Consulting Engineer with some of the following clients: Hydro Electric Power Commission of Ontario? A. Yes.

Q. New Brunswick Electric Power Commission? A. Yes.

Q. Reid Newfoundland Company? A. Yes.

Q. Niagara Falls Suspension Bridge Company? A. Yes.

30 Q. International Paper Company? A. Yes.

Q. Province of Alberta? A. Yes.

Q. City of Calgary? A. Yes.

Q. Sir William Arrol, Limited and Vickers, Limited, London, England? A. Yes.

Q. Saskatchewan Power Commission? A. Yes.

Q. Ontario Paper Company? A. Yes.

Q. City of Toronto? A. Yes.

Q. City of Niagara Falls, Ontario? A. Yes.

Q. Dominion Construction Company? A. Yes.

40 Q. Montreal Light, Heat and Power Consolidated? A. Yes.

Q. I understand you have been engaged in appraisals and valuations of plant in connection with certain arbitrations and litigation. Is that correct? A. Yes.

Q. Valuation for taxation purposes of the plant of Dominion Power & Transmission Company? A. Yes.

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Q. A limited portion of that perhaps for the Township of Grantham? A. Yes.

Q. That would be a portion only of their works? A. Yes.

Q. Then a valuation for power contract purposes of the plant and distribution system of the Simcoe Railway and Power Company? A. That was up on the Severn River, serves Midland, Penetang and the Georgian Bay municipalities.

Q. Valuation—you were engaged on one for sale purposes of the plant and distribution system of the Lindsay Light, Heat and Power Company? A. Yes. 10

Q. Had they a railway as part of their assets? A. No, that was purely hydro-electric activity.

Q. I believe you were Arbitrator in the Calabogie Power Company arbitration, between them and the Seaman Kent Company? A. Yes.

Q. Were you Technical Associate of Counsel in the Keewatin Power Company vs. Lake of the Woods Milling Company appraisal of the status and value of water rights there? A. Yes.

Q. That was a High Court matter? A. Yes.

Q. Were you Technical Associate of Counsel in the New Brunswick Electric Power Commission vs. Inglewood Estates matter? A. Yes. 20

Q. That would be a High Court matter in New Brunswick? A. Yes.

Q. Then I believe in connection with a dispute between the Hydro-Electric Power Commission of Ontario and one B. E. Groat? A. Yes.

Q. That was a High Court matter in Ontario? A. Yes.

Q. And then in connection with alleged infringement of patents in a matter between the I. P. Morris Company and S. Morgan Smith Company? A. Yes.

Q. That was in the United States Circuit Court of Pennsylvania, was it not? A. Yes. 30

Q. And in a matter between the Gatineau Power Company and Cross, in connection with the value of undeveloped water power, and the Public Service Commission of Quebec? A. Yes.

Q. And in connection with the matter between W. I. Bishop Company and the Maclaren Power Company, in connection with compensation for construction contract—that would be before the Superior Court of Quebec? A. Yes.

Q. What most important piece of work, if you can distinguish, have you had to do with in your experience in the last few years? A. The Queenston-Chippawa development was the largest. 40

Q. For the Hydro Electric? A. Yes.

Q. And that was brought into operation in 1922? A. Yes.

Q. What relative bearing had that as far as turbines and capacity was concerned, having regard to world development of that type? A. They were the largest turbines at that time that had ever been constructed.

Insofar as I know, the Queenston plant is still the largest plant in the world from the operating output standpoint.

Q. Those are some of your qualifications. I want to know whether you have or not directed yourself to problems of design and building of engineering structures, and their cost and operating economics? A. Yes, I have not been concerned with anything else for the last thirty years.

Q. First let me get your local knowledge, if there is some, and then your special investigation having to do with the Park and River Division of the Railway that we are appraising here. You reside now
10 at Niagara-on-the-Lake, I believe? A. My real home is in Niagara Falls, of course.

Q. Your real home is in Niagara Falls City, and you have a summer home at Niagara-on-the-Lake? A. Yes.

Q. Which you go to in the summer time? A. Yes.

Q. How long have you lived over here alongside of the International Railway? A. I lived in Niagara Falls and used the International Railway daily from August of 1903 until midsummer of 1905, when I went to Arizona, during the time I was Assistant Mechanical Engineer of the Canadian Niagara Power Company.

Q. That would be from 1903 to 1905 you lived in Niagara Falls
20 and used this Railway as a patron daily? A. Yes, used it regularly for transportation purposes to and from my work. And then practically continuously from 1917 until the present time I have been a resident of Niagara Falls. I came over here at the start of the construction work on the Queenston development, and have been here ever since.

* * * * *

Q. I do not think it is necessary. Just before I pass on, may I
ask you to tell us in connection with your experience in the construction
and operation of electric railways, which you detailed to us yesterday,
and in connection with your consulting practice where you were brought
30 in to appraise and value electric railways in connection with your consulting practice as a hydraulic or hydro-electric engineer, using that term not for the Hydro-Electric Power Commission of Ontario but in your experience as an engineer dealing with hydraulic matters and electric matters, sometimes perhaps separately and sometimes in combination, what factors, if any, have you had to investigate or look into? A. In the course of my experience I have had to investigate all phases of the art from the standpoint of technical study and conception, and the economic relationship of power development to the various elements of use, and naturally the question of the marketability of the product, and
40 the conditions under which it can be sold.

Q. Have interurban railways been purchasers of power? Have they been a factor in connection with the marketability of hydro-electric developed power? A. Yes; they have been a very material factor.

Q. And I think you told us that the Park and River Division is on direct current? A. Yes.

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Q. Are all interurban electric railways in the Province of Ontario on direct current, or are some on direct and some on alternating? A. The type of power varies.

Q. That is, some interurban electric railways are operating on direct current? A. Yes.

Q. We have an instance here? A. Yes.

Q. And some operate on an alternating current? A. Some do; I could not name offhand any particular railways in Canada which are operating with alternating current, but it is an existing means of operating interurban railways. Street railways are in another class; I am not aware of any street railways that operate on anything but direct current. 10

Q. By street railways you mean urban or city railways? A. A purely city transportation system.

Q. Have there not been any conditions which affected or influenced interurban electric railways in Ontario during the past twelve years, either for good or evil? A. The condition that overshadows all others so far as the engineer's viewpoint of the transportation system is concerned was the discovery and development of the internal combustion engine; that constituted the nucleus of the subsequent development of what is now our modern system of mass transportation. 20

Q. How did that first manifest itself? A. The first manifestation of that evolutionary process was the development of the automobile. Public opinion and public imagination gave the automobile such an important place in our economy that the ancillary development to the development of the automobile were these enormously extensive and expensive systems of paved and graded roads that are covering the whole of North America. The next stage of development after the building of the roads was the development of a system of mass transportation which was really more analogous to the interurban electric transportation than even the automobile, and that was the motor bus; and, of course, to a secondary extent, so far as our own problem is concerned, the motor truck; and as I say, that whole sequence of evolutionary development grows out of the discovery and adaptation to practical use of the internal combustion engine. It is a process of evolutionary development which is quite similar to that which took place when Stephenson's discovery led to the development of the steam engine which displaced the stage coach. It is a case of history repeating itself. 30

Q. You told us yesterday, I think, of your acquaintance with this road and your own user of it, and so on. You have given us the general viewpoint of change of conditions. What effect, if any, has that had on the International Railway in your opinion, I mean the division we are appraising? A. It could have no effect other than the general one which was dictated by the public, the new fashion in transportation and public preference and public need. 40

Q. In what way has that affected this railway, if at all? A. It has

led to the extinguishment of this particular system as an up to date and fashionable system of transportation, as it has done elsewhere.

Q. Have you seen Exhibit No. 68, which was put in by the Railway Company under the witness Mr. Schmunk, the Accountant? A. Yes.

Q. Having the facts which are disclosed in that Railway Exhibit in mind and your knowledge of the general conditions in Ontario which you have described, and what you have indicated as your view of the effect on this railway we are valuing, what do you say? A. I will say that the figures shown in this Exhibit offer an exemplification of the ruling trend, in this last column particularly.

Q. You are looking at Exhibit No. 68? A. Yes, the last column of this Exhibit called "Profit and Loss" I would say tells a very graphic story, the life story of the interurban railway enterprise.

Q. How does that accord with your own experience of the general trend of interurban railways in Ontario generally? A. It is entirely in accord with it.

Q. You say it tells a story. What do you mean by that? A. I will try to explain; this column called Profit and Loss shows losses at the beginning over a long period of years, the franchise period of forty years, presumably. The initial years of operation show losses.

Q. They are shown in red? A. Yes; and the final years of operation show losses. There is a considerable period of intervening years showing what purport to be profits. In my opinion there is a very vital distinction to be drawn between those red figures in the earlier years and the red figures in the later years. I think the evidence submitted at one or other stage of the proceedings here by the Claimant was to the effect that this project when it was conceived and initiated was one of the original interurban railway enterprises in this country, and these figures showing losses in the initial years of the enterprise are quite in line with that idea; the important thing about them is that they show a downward trend as the years pass. There comes a time when there is a sort of oscillation from year to year between profit and loss until finally the operations of the enterprise merge into a continuous period of profitable operation.

Q. You have been speaking of the earlier years in the red? A. Yes; those earlier years might be called the years of infancy and adolescence, if you like to put it away. The period when profits are shown represent the period when the enterprise has arrived at the full vigour of manhood, you might say. Then you come to another period of oscillation around the years 1916 and 1917, where you have a loss one year and a profit the next until finally you get the inverse process where profits gradually merge or deteriorate into continuous loss.

Q. That appears to begin at the year 1920? A. Yes. Knowing what I know about the interurban railway enterprise and having in mind what I have said about the development of the internal combustion engine which became a real factor in transportation at or about this particular

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year 1920 and 1921, to pursue the analogy we could liken this final period of increasing loss to the affliction by the subject of an incurable functional disease, call it cancer, something that nipped off what should have been the period of its maximum vigour; that is really what this is.

Q. I see the patient had periods even during the last twelve years where it got a little better, a fluctuating period? A. Yes; but the general trend was downward.

MR. ROBERTSON: Have you had any particular experience in that sort of thing? You never ran an interurban railway? A. I do not need to run an interurban railway to know what the economic implications are. 10

Q. I do not understand from what you have told us that you were familiar with what was going on in interurban railways in 1892 and along in that period. You have attempted to relate this all to one cause. Suppose you throw into the picture a few other elements: first of all, that perhaps from 1892 to 1896 there was still a hangover of a very long depression. Then throw into the brighter side of the picture later, the Pan-American Exposition. Then you come on to a period when you throw the War in, and then a later period when you throw the present depression into it. Are there not a lot of elements that get into this picture other than the simple single cause you put down? A. Were 20 not those things you have mentioned incidentals? Let me pursue my analogy for a bit: 1901 was the year of the large profit, but the trend down to that point was a trend of more or less orderly increase in prosperity.

Q. I am a little older than you are, I judge? A. I do not think very much; I am a little older than I look.

Q. You graduated in 1903 and I was through a little before 1903. All I am suggesting to you, Mr. Acres, is that you are trying to line everything up with one theory and make it accord with one theory, and I am suggesting to you that there is a lot more to it than that? A. Hardly that; I am showing how a preponderating and outstanding event 30 can account for what these figures show.

Q. If you keep that within limits it is all right? A. It is a matter of your own judgment whether I keep within limits or not; I have been trying to interpret this column of figures as I see it in the light of what I know.

MR. SLAGHT: Q. It has been suggested by Mr. Robertson, one of our Arbitrators, that the recent depression, for instance, may be an important factor. What do you say, aside altogether from the recent depression, as to whether or not the conditions which you outlined, namely the motor car, and so on, have so affected interurban railways as to enable 40 us to say what would have happened to them regardless of the depression? A. What I have to say about that is not subject to the inhibition which Mr. Robertson mentioned in connection with the earlier figures which took place when I was possibly in short skirts, because as to these latter figures—

Q. That is the last twelve years? A. Yes—I know what the

agencies I have mentioned and their ancillary reactions have meant in connection with mass transportation, and how the public preference and public need has swung from one method of transportation to another. That I know from personal knowledge, and the depression was not the governing factor in that swing.

Q. Has that problem or not been a factor to which you have had to give personal thought and consideration in connection with what you told us part of your consulting duties were, namely, to have regard to available markets for electric power? A. Oh, yes, of course.

10 Q. Just a word as to your opinion with regard to the prognosis or future of interurban electric railways including this one, as to whether or not in your opinion there is any reasonable expectation that their conditions will improve so far as being operated successfully or otherwise are concerned? A. Well, unless there is what you might call a psychical reversal of trend in public opinion and public preference and public need, which moves the masses to revert once more, and forsake automobiles and motor busses and go back to electric railway cars, there is obviously no future in store for interurban railways; and I cannot conceive that such a psychical change would be possible in view of the supporting develop-
20 ment that has taken place relative to this new type of transportation, more particularly our huge expenditure on public roads and public facilities for travel actuated by the internal combustion engine; people cannot afford to revert to a previous type of transportation which would have the effect of vitiating their investment in public highways. That would be my opinion.

Q. You cannot conceive of the future bearing any promise in that regard? A. No.

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MR. SLAGHT: Q. Then, Mr. Acres, will you express yourself to the Board as to the rentability or saleability of the assets comprising this
30 railroad in 1932 to a purchaser who might expect to operate it as a railway? A. Well, if I were offered the railway for nothing on condition that I would have to continue to operate it, I certainly would not accept it.

Q. That is not quite answering my question, because you are an engineer and not in the railway business; but from the fair value standpoint of the railway at that time as a saleable entity to be operated, what is your opinion? A. I will put it another way, that if I were called upon to advise a client as to the advisability of taking possession of that rail-
40 way by some means or other, I would be forced to tell him that if it was given to him with the condition attached to it that he had to continue to operate it I could not advise him to take delivery of it.

Q. Would that apply either to a delivery under a purchase basis or a rental basis? A. The greater contains the less. If I could not advise him to take it for nothing I could not advise him to buy it or rent it; always with the understanding that the property is not being taken over

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to sell as scrap but to be taken over to operate the co-related physical elements of the enterprise as a transportation system.

Q. I want to get an expression from you as to the fair value of these assets as a whole, or the fair value of these assets turned over as they were to the Parks Commission in 1932. You have negatived their value for the purpose of operating as a railroad. What other fair value, if any, is there in the assets which were turned over? A. There are only two other possible elements of value: the element of value associated with the enterprise as a whole and the possibility of it being used for some other purpose, and the value of the constituent elements not in place but moved somewhere else; and the only place they could be moved somewhere else feasibly is on the basis of scrap commodity. In other words if the enterprise has arrived at such a stage that it is not convertible by any other means than by the dismantling of it, the dismantling of it results in the appraisal of the resultant quantities as scrap. 10

Q. Is there any other method of disposal of it that is feasible or was feasible in 1932, in your opinion, than the dismantling of it? A. No, I do not think there was. Of course, that leaves out of consideration the lands. I am not talking about the lands because the lands cannot be moved and cannot be sold as scrap. If they are to be sold they are to be sold as realty. They have some realty value, I presume. 20

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CROSS-EXAMINED BY MR. McCARTHY:

MR. McCARTHY: Without waiving my objection there are one or two questions I want to ask Mr. Acres, having relation to what my friend has just been asking.

Q. Is there any reason why the direct current could not be used in connection with elevators, inclined railways? A. No, none whatever.

Q. So there are two inclined railways we know of, and the Table Rock elevator, for which the direct current would be suitable? A. I presume so. 30

MR. SLAGHT: One is burned down.

MR. McCARTHY: The shed has been burned down.

MR. SLAGHT: No, the whole thing.

THE CHAIRMAN: That was after it was taken over.

MR. McCARTHY: Quite so. If my friend wants to burn his machinery I am not affected by it any more than if he wants to operate it.

Q. I am also told, Mr. Acres, that the Canadian National Railways buy alternating current and convert it to direct current for the operation of their railways? A. I think probably they do. .

Q. Is there any reason why the power could not be sold to the Canadian National Railways for the operation of their railways? A. No reason, as far as I know. 40

Q. Is there any reason why it could not be sold to Niagara Falls,

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New York, across the bridge? A. Has it been previously?

Q. Is there any reason why it should not be? A. I can answer that in the same way: It is physically possible.

Q. I am only asking physical questions. You are only an electrician after all. You are not a lawyer yet. So there are apparently plenty of places or sources to which this direct current could be applied in and about the Park and across the bridge? A. There are presumptive possibilities from the strictly physical sense, as I have said before.

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No. 15. Extract from Evidence of A. E. K. BUNNELL, Engineer.
10 Called on behalf of NIAGARA PARKS COMMISSION.

EXAMINED by MR. SLAGHT.

ARTHUR E. K. BUNNELL, Sworn. EXAMINED by MR. SLAGHT:

Q. First let us ascertain some of your qualifications and your experience. I understand you graduated from Toronto University with a degree in 1907? A. Yes, with the degree of B.A.Sc. from the University of Toronto in Civil Engineering.

Q. Just prior to that, in the summer of 1906, did you have some practical experience in setting lines and grade stakes for maintenance lift on the Grand Trunk Railway, Montreal, Portland Division? A.
20 Yes; I spent that summer with the Grand Trunk Railway.

Q. Did you work out on the line? A. Yes, working out on the line all the time.

Q. Then following your graduation in 1907 you became Assistant Engineer of the City of Brantford, I believe? A. Yes.

Q. And there your work was largely in connection with waterworks and sewer construction? A. There were no waterworks; there were sewer and sidewalk works; the waterworks was under a separate Commission with which the City Engineer had nothing to do.

Q. From the fall of 1907 until the spring of 1909 I believe you were
30 Assistant Engineer on Maintenance of Way, Middle Division, of the Grand Trunk Railway under Mr. E. L. Cousins? A. Yes, that is right.

Q. And in that connection did you have to do with the designing and laying out of track, drains, sidings and grade separation crossings? A. Yes, grade separated crossings; that meant the design of subways, overhead bridges, sometimes singly and sometimes in groups.

Q. And I understand you spent the summer of 1909 in Northern Ontario prospecting? A. Yes.

Q. Did you have anything to do with the use of dynamite there? A. Yes, I learned to handle dynamite there.

Q. In the fall of 1909 and the spring of 1910 after you returned
40 you were Assistant Engineer on the Middle Division of the Grand Trunk Railway? A. Yes. I stayed there all that winter and the early spring.

Q. And in 1910 from the spring to the end of the year I believe

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you were Resident Engineer for the firm of Chipman and Power, first at Estevan and then at Weyburn, Saskatchewan? A. Yes.

Q. What type of work were you engaged on there? A. On sewer and water main construction and the construction of a water pump house, sewage disposal plant, both equipment and buildings, the electric light stations, building only; I think that is about all.

Q. That is sufficient detail. In January, 1911, I believe you returned to Toronto as principal Assistant Engineer of the Railways and Bridges Division of the Works Department of the City of Toronto, again under Mr. E. L. Cousins? A. I did.

Q. And in that capacity did you have charge of any work there? A. I was in direct charge of the Railway Section of the Railways and Bridges, and as such I had direct charge of the design and subsequent construction of the civic car lines. I had charge of the city's interest in connection with the Grand Trunk grade separation through Parkdale, and I also had charge of the City's studies in connection with grade separation plans through West Toronto, and the C.P.R. through North Toronto. In fact, when Mr. Cousins left the department I presented the City's plans of grade separation for the C.P.R. through North Toronto to the Dominion Board of Railway Commissioners.

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Q. I believe from the fall of 1912 down to the spring of 1914 you were with the Lake Erie and Northern Railway? A. I was, yes.

Q. That railway runs from Port Dover through Simcoe and Brantford to Galt? A. Yes.

Q. That is an interurban railroad that traverses that area? A. Yes.

Q. What is the mileage from Galt to Port Dover? A. 50 odd miles.

Q. What did you have to do with the construction of that road from 1912 to 1914? A. I was one of two engineers who handled the work. Mr. Kellett was the promoter and Chief Engineer of the railway. I was one of two Assistant Engineers in charge of the location from Brantford to Galt, afterwards taking over the whole location; only part of the time were there two of us.

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Q. Yes? A. Afterwards I took over the whole location from Brantford to Galt, and then I was in charge of construction from Brantford to a point north of Paris, in all about ten miles.

Q. You had charge of the location you have mentioned, and then charge of construction? A. Yes; it was a fairly heavy piece of construction, between 300,000 and 400,000 cubic yards of grading in ten miles.

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Q. How was that road constructed? Did you have a general contract for the whole business, or did you let a general contractor buy your power house equipment, and that sort of thing? A. I cannot speak as to the power house equipment because I left the road before that was purchased or installed; but in so far as the whole construction itself was

concerned Mr. Kellett functioned not only as Chief Engineer, but as Manager of Construction. The rails and ties and ballast pits were purchased by the railway, and a general contractor was awarded by tender the contract for the grading, the track laying and the ballasting. He was also awarded by tender the concrete substructures for the bridges, but the superstructure, which was mostly in the form of steel spans, was let directly to one of the bridge companies; there may have been one or more, I am not sure.

10 Q. Let by the railway? A. Yes; and those superstructures were installed complete by the bridge company.

Q. Who purchased the rails and ties? A. The Railway Company.

Q. And the ballast? A. The Railway Company purchased the ballast pits and turned over the pits to the contractor to take out the ballast and remove it to the required points on the line.

Q. From 1914 to 1918 I believe you were with the Imperial Munitions Board of Ontario on work connected with munitions? A. Yes. In 1915 I was with the Civic Transportation Committee on the first studies that were made preparatory to the taking over of the Toronto Railway System.

20 Q. You were with the City on studies preparatory to the City taking over the T.T.C.? A. Yes; it is what was known as the Civic Transportation Committee. The Provincial Hydro was represented, the City was represented, and the Toronto Hydro-Electric System was represented on the Committee.

Q. Were you the representative of the City? A. No; we had an organization under the direct charge of Mr. Lazenby, and I was Assistant Engineer under Mr. Lazenby in charge of the preparation of all the estimates.

30 Q. From 1919 to 1923 I believe you practised as a Consulting Engineer? A. Yes.

Q. During that time I want to ascertain whether you had some railway work. Did you have a task there with the Hydro-Electric Commission? A. Yes; I was working part time with the Hydro-Electric Power Commission throughout the Sutherland investigation into Hydro Radials.

40 Q. That was the investigation the late Mr. Justice Sutherland conducted in connection with the proposal to expand the radial system in Ontario? A. Yes; the Hydro had a scheme to blanket Ontario with Hydro radials, and the Drury Government decided it was a rather large bite to chew, and they ordered an investigation.

Q. That was the Sutherland investigation? A. Yes.

Q. Mr. Robertson knows all about that investigation. Was that Sir Adam Beck's scheme? A. Yes.

Q. His scheme of putting a network of radial lines throughout the province? A. Yes.

Q. I do not know what the Sutherland Report was, but the Drury

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Government ultimately decided not to go on with that general scheme, did they not? A. They did, and the scheme has not been gone on with.

Q. In 1923 did you do some special work for Mr. Couzens and Mr. Harvey including the valuation of the lines of the Toronto Suburban Electric Railway? A. While I was with the Hydro I was also working with the T.T.C. and doing special work for Mr. Couzens.

Q. Not Mr. E. L. Cousins? A. No, Mr. H. H. Couzens. I was in charge of the estimates that were prepared by the company with respect to the new construction and rehabilitation of the Toronto Railway System prior to the Commission actually taking over. When the T.T.C. actually took over the Toronto Railway Mr. H. H. Couzens continued as General Manager, Mr. Harvey was brought from the Civic Car Lines and made Assistant Manager, and I continued to do special work of various kinds for Mr. Couzens and Mr. Harvey, in which was included as you mentioned a moment ago, the valuation of the Toronto Suburban Railway. 10

Q. What about the Metropolitan Railway? Did you have anything to do with that? A. Not in a valuation sense, but I made some traffic studies in connection with the Metropolitan Railway, which was a radial that ran on Yonge Street north to Jackson's Point.

Q. For whom did you make those traffic studies? A. Directly for Mr. Couzens. 20

Q. From 1924 down to date you have been in partnership with Mr. Norman D. Wilson? A. Yes.

Q. As Consulting Engineers? A. Yes.

Q. Have you personally had to do with street railway traffic reports and have you investigated electric railways for the purpose of making such reports in different places in Ontario? A. Yes.

Q. Give me a list of those shortly? A. I made a complete report on the Brantford Street Railway System, which included a radial line to Paris, and I reported on certain phases of the radial that was part of the system that ran from Paris to Galt. 30

Q. What happened to the Paris to Galt road? A. It was shut down when the Lake Erie and Northern was opened, as it more or less paralleled what was known as the Grand Valley road from Brantford to Galt.

Q. And London? A. I think the next work I had was assisting Mr. H. L. Cummings in St. Catharines with respect to the franchise arrangements being entered into between the Canadian National Railways and the City of St. Catharines. Mr. Cummings was acting for the Kingstone firm for the City of St. Catharines. 40

Q. In London did you have anything to do? A. Yes. I personally made a report on the street railway system, in London, Ontario, in all its phases.

Q. Who was your client? A. I reported to a special committee appointed by the City Council. Sir Adam Beck was the Chairman, and the late Mr. Pocock was—

Q. We need not have the personnel. Sir Adam Beck was Chairman, and it was a work you did and a report you made to the City of London under Sir Adam Beck's Chairmanship? A. Yes.

Q. What about the Public Utilities Commission of Manitoba? A. In the fall of 1930 I was engaged and in the spring of 1931 I completed a report to the Public Utilities Commission of Manitoba with respect to the traction utility of the Winnipeg Electric Railway Company. The Company made an application for an increase in fares, and it embraced an analysis of the whole railway operation.

10 Q. In cooperation with Mr. Wilson I think you had something to do with the electric railway at Windsor and adjacent municipalities. When and what was that? A. In 1932 at the request of the municipalities we prepared a report on the operation finances of the Windsor, Sandwich and Amherstburg Railway, which is the railway which handles the local transportation in Windsor and adjacent municipalities.

Q. Is that an interurban road? A. In the main, no; it is an urban road; but it had a connection to Amherstburg and another one to Tecumseh.

20 Q. You were asked by the Parks Commission in the spring of 1932 to make an investigation and report to the Niagara Parks Commission, I believe, prior to their taking over in September, 1932, after they had received notice from the International Railway Company? A. Yes, that was in the late fall of 1930-1931, when we were so commissioned, and we reported in May, 1932.

Q. Did you, prior to reporting, make an investigation of the physical conditions and other conditions connected with this road that we are now appraising? A. Yes, sufficient for the purposes of the report.

Q. Did Mr. Wilson cooperate in that investigation? A. He did.

Q. And you made a report when? A. Some time in May, 1932.

30 Q. And I believe in 1927 and 1928 you had some task for the City of Hamilton. What was that? A. I am not sure which year it was, but it was in 1927 or 1928. I was retained by the City of Hamilton to assist Mr. R. S. Robertson in the presentation of the City's case in opposition to an application by the Hamilton Street Railway to raise its fares in Hamilton.

* * * * *

40 MR. SLAGHT: Q. From your experience with electric railways and the various studies and consulting tasks and practical tasks which you have recited in your experience, what do you say as to whether during the past twelve years conditions generally as to interurban electric railways have altered or have not? A. Yes, they have entirely altered for the worse. I explain that in this way, that riding on interurban electric railways or any railway is made up of two types; one, necessity riding, and the other might be termed recreational, social or pleasure riding. The latter type of riding, the social or recreational riding has been declining at a precipitous rate. The decline in necessity riding has

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been very much less. So a railway that depends for its business on recreational or pleasure riding has suffered and lost a much greater proportion of its traffic than one that would depend more largely on necessity riding.

Q. What conditions have contributed to that? A. Well, the conditions that have contributed to that are the development of personal transportation through the automobile, and with the automobile came the demand then for good roads, and people have changed their pleasure habits entirely as a result of the automobile. Before the automobile came their movements for recreational purposes were restricted, and were largely restricted to forms of mass transportation, and they are no longer so restricted. 10

Q. In addition to the good roads and the automobile, which I take to mean the private motor car, are there any other factors that have contributed to the downfall of the electric railway? A. It has been the ability of the man on the street to buy a motor car. Whether he has had the money in his pocket or not he has been able to persuade someone to sell him a car—he has found a car. I know when I was—

Q. I do not know that we can go into personal instances. You have spoken of the private motor car and the good roads. Is there any other element than that which has contributed? A. Yes, the development of bus transportation has had a bearing on it. 20

Q. Do you know anything yourself? Have you made a user of this railroad, the Park & River Division we are appraising? What has been your personal experience, if any, with that? A. I know as a youngster it was an annual affair almost to come to Niagara Falls on a picnic.

MR. McCARTHY: I don't think we want his personal experience. We have all had them.

MR. SLAGHT: Q. Where did you reside at the time to which you last referred? A. I lived in Brantford. 30

Q. Did you say you had to do with the study, or something to do with the Metropolitan Railroad that ran from Toronto up to Jackson's Point? A. I had.

Q. What has become of that? A. It has been dismantled and torn up from Richmond Hill north to Jackson's Point due entirely to lack of carry.

Q. Based on your experience and the conditions you have been mentioning to us, what do you say as to whether or not in the future, from 1932, looking at the date we are visualizing, down to the present time of 1935, and from 1935 on in the future—what do you say as to whether or not the interurban electric railroad, or railroad of the type we are appraising here, has a future promise of getting better or not in the matter of the business it might expect to carry? A. I cannot conceive that it can. At the time interurban railways were built and constructed, they were the best vehicle of their time. The electric street car at that time was the best vehicle that had been conceived for handling 40

large bodies of people. Since that we have had the automobile come along, and in the form of the bus. For the volume of business that is left to a mass transportation unit or agency after the bulk of the people are taken care of by private automobile, the bus is a much cheaper vehicle with which to handle it.

Q. Looking at September, 1932, what do you say as to whether or not at that time the Railway we are valuing here would have a sale value or a rental value from the point of view of its being continued to be operated as a railway or transportation system?

10 MR. McCARTHY: That, of course, will be subject to my objection.

MR. SLAGHT: Yes, the same objection you took.

THE CHAIRMAN: Yes.

MR. SLAGHT: Q. What do you say? A. I cannot conceive, based on the figures of losses as presented to this Board by Mr. Schmunk in Exhibit 68, and based on my own examination of the Railway from the standpoint of the present, speaking of 1932, and the future—I cannot conceive of its being operable either on an ownership basis or under a rental basis.

Q. Why not operable? You do not mean physically non-operable?
20 A. No, I mean financially.

Q. What do you mean by, you cannot conceive of it being financially operable? Tell us exactly what you mean by that? A. It would not make any money or would not break even. It would be a sink hole for dollars. No organization can continue to put more money into an operation than it takes out, and this property certainly could not be sustained indefinitely on the takings. It had to give a certain minimum of service if it was going to run at all.

Q. Have you examined Exhibit 68 filed by Mr. Schmunk? A. To some extent.

30 Q. And you referred to that I think a minute ago. I do not know whether you gave the number of it, but you said the figures put in by Mr. Schmunk? A. It is Exhibit 68.

Q. In order to ascertain the fair value of the assets which we have been appraising here, and which go to make up the railway as a whole, as of 1932, what do you say would be a basis for that fair value, if any, having negated the hope of selling it or renting it? A. It would be merely the dollars that could be taken out of it as salvage.

Q. In what way? A. By breaking the railway up into its component parts and obtaining the best prices available for those components.

* * * * *

40 Q. Would there in that paving item as put forward on pages 34 and 35, assuming the valuation basis was adopted on a dismantling or salvage or scrap value—would there be any market value or method of disposal of that pavement to produce any net returns to anybody? A. No, there would not, Mr. Slaght. It is perhaps something I should not

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speak of as an engineer, but I cannot conceive how the ownership of that pavement, in any event, would be in the Park.

Q. I do not know whether it is in the Park or not. I am not asking you to pass on that point. Can you sell a piece of laid pavement to anybody as scrap, or has it a salvage value if you are dismantling or breaking up assets? A. None whatsoever.

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MR. SLAGHT: Q. You have told us the traffic count data that you had before you in making your recommendations. You were asked by my friend something regarding the cost of operation between a bus and a street car, and I do not think you completed your explanation to him. 10
Will you give me your explanation of that? A. In the cost of operation of any vehicle—to follow the answer through to completion—consideration must be given to the matter of the capital invested or the interest on the investment. In addition to such day to day out of pocket expenses such as wages, repairs of equipment, power in the case of the street car, and gasoline or oil in the case of the bus, you are faced with definite fixed charges in connection with the investment in the equipment. Now, to put an electric street car on a railway—we will take this railway in particular: this railway had an investment on the basis of production new before the rolling stock and before the car barn of over \$2,000,000. 20
Now, to put a bus on the road to give the same type of service is only a question of the capital invested in the actual vehicles. On that basis and with the traffic to be handled it is only as you get to a very high density of traffic where street cars or the units operate at very close headways, headways of a closeness that did not exist here, that the street car is then a cheaper vehicle to operate than the bus. Here we had through the slack months of the year a condition when the cars, for instance, on the Belt Line service operated either once an hour or every two hours.

Q. I suppose the capital expenditure is running against the enterprise during the winter months the same as it does while they are carrying loads in the summer months? A. Yes, it is running all the time. 30

Q. I think that clears that up, Mr. Bunnell? A. There is a further item of depreciation that has a bearing on the cost of operation, and Mr. McCarthy asked me something about it.

Q. Just complete your statement on that? A. As having a bearing on the cost of operation, Mr. McCarthy asked me yesterday in connection with Mr. Schmunk's Exhibit 68 whether I had given consideration to the fact that the depreciation charges were simply a book figure, and I said Yes; but whether they are a book figure or not, they have to be provided for because depreciation in equipment is as sure as death, and you have to provide for it unless you are going to see your capital melt away. Further than that, you have to provide for obsolescence unless you are going to see your capital melt away. Take the history 40

of Transportation: we all know, although we are not old enough to go so far back, that we had the ox cart and the stage coach, and then we came to the horse railway and then we came to the electric railway and then we came to the bus. Now, if the capital that was invested in those enterprises in their time is to be kept intact, then out of the earnings of those railways there had to be set aside sufficient money in the form of obsolescence to enable them to convert themselves from what they were, for instance, the horse car into the electric railway, else the capital is entirely dissipated.

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10 No. 16. Extract from Evidence of JOHN H. JACKSON, Superintendent of NIAGARA FALLS PARK. Called on behalf of NIAGARA PARKS COMMISSION.

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No. 16.
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MR. SLAGHT: Q. Then, Mr. Jackson, just let us have the advertisements that you have inserted, and tell us the result. I believe twelve newspapers were used? A. An advertisement was inserted in twelve newspapers and the paid accounts for those advertisements are handed to you now.

20 Q. And attached to some of them, or perhaps to all of them, is a clipping of the advertisement inserted, and the bills show the number of insertions and the receipted account for the insertions in each case? A. Yes.

MR. SLAGHT: I put in twelve vouchers and paid accounts for the insertions of the advertisement in these various papers as Exhibit No. 279.

EXHIBIT No. 279: Twelve paid vouchers for advertisement, produced by Respondent's witness J. H. Jackson.

MR. McCARTHY: How are we concerned with what it cost the Parks Commission?

30 MR. SLAGHT: I am not asking the Board to look at the amounts paid as having any bearing, but this is the most convenient method of showing that these advertisements were inserted.

MR. McCARTHY: I suggest that we are not interested whether they were paid for or not.

MR. SLAGHT: The proof of insertion and of payment are linked together, but I am asking the Board to give no heed to the amount paid for their insertion.

MR. McCARTHY: We do not know what the advertisement contained.

MR. SLAGHT: I am just going to enlighten you:—

40 "The Niagara Parks Commission
"(Ontario, Canada)

"Operation of Electric Railway.

"The Niagara Parks Commission of Ontario, Canada, announces that the agreement with the International Railway Company for the operation of the electric railway extending eleven miles along the Canadian side of the Niagara River from the

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“Village of Chippawa to the Village of Queenston terminates on August 31st next, and that the Commission is willing to enter into the negotiations for the operation of the railway thereafter on reasonable terms, either by purchase or lease.

“Communications should be addressed and delivered to the undersigned on or before August 15th, 1932.

(Sgd.) “John H. Jackson,
General Manager,
The Niagara Parks Commission.

“Niagara Falls, Ont., Canada,

“May 2nd, 1932.

May 10, 13, 17, 20, 24, 27.”

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MR. McCARTHY: What is the date of the insertion?

MR. SLAGHT: The insertions by the Montreal Financial Times Publishing Company, Limited were on May 13, 20 and 27, 1932.

Q. Were the others about the same time? A. Yes.

Q. The data all appears here. I notice some in June, 1932? A. It depended upon the date of publication of the particular paper.

Q. The Montreal Financial Times, F. H. Leslie. What is that sheet I now show you? A. The Review.

Q. And the Courier Express. These are all in May. The McLean Publishing Company of Toronto. They publish the Financial Post. In each instance the advertisement is attached. The Globe Printing Company of Toronto, the Mail & Empire Publishing Company of Toronto. This advertisement is in June, another McLean insertion. What is this one? A. The Financial Post.

Q. Is that a duplicate? Here is the McLean Publishing Company in May? A. This is an additional insertion.

Q. May 14, 21 and 28? A. This is June.

Q. There are two publications in the Post of certain items in May and again in June, and it happens to have been paid for by two different bills. Then the Globe, the Mail & Empire, the Saturday Night of Toronto, the Montreal Financial Times in June, and the Transit Journal of New York in July, and the Canadian Railway and Marine World in June, and the J. Ross Robertson Estate in June. That would be the Evening Telegram? A. Yes.

Q. As the result of these advertisements you got two enquiries, I think. A. There were two responses to the advertisement.

Q. You have the correspondence here? A. Yes.

Q. And one response was from a man named Moale, of Charleston, South Carolina, on June 7, 1932? A. Yes, sir.

Q. And another response from one Ralph B. Sargent of West Scarborough, Maine, dated July 1, 1932? A. Yes.

Q. Did you communicate with Mr. Moale? A. I went to Charleston to see Mr. Moale and he was away, and I wrote him on June 28.

Q. What was the result in both of those cases? I think Mr. Sar-

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gent was written to. You have the files here if my friend Mr. McCarthy wants to explore them? A. Neither one came to Niagara Falls.

Q. Did either one buy? A. Neither one made any offer on a rental basis or a purchase basis.

MR. McCARTHY: You are not going to charge up the trip to South Carolina against us?

MR. SLAGHT: No charge at all. We are throwing this in without any claim against you for either the cost of advertising or the trip to South Carolina.

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10 Q. Since the closing down of the railway has permission been granted to a bus line to operate along the line where the railway formerly served the public? A. Yes.

Q. What line is that? A. The Highway King Coach Lines.

Q. Have they been operating in lieu of the railway? A. They have, sir.

Q. Have you or the Parks Commission or any official of the Parks Commission so far as you know received any complaints either verbally or by letter of the abandonment of the road? A. No, sir.

Q. None at all? A. No, sir.

20 Q. Or any request from any citizen, corporation or anybody, to renew the operations of the road? A. No.

* * * * *

MR. McCARTHY: When did you leave the employ of the Park? A. September, 1934.

Q. And between August, 1933 and September, 1934 what system of bus lines did you have in operation by the Park? A. From what date?

Q. From the time the property became vested in the Park until you left? A. The Highway King Coach Lines were operating.

30 Q. What was the operation? A. In the summer season, between Niagara-on-the-Lake and Fort Erie and Buffalo and in the winter between Queenston, Fort Erie and Buffalo.

Q. In the summer season how many busses were running? A. I do not know.

Q. How many people do they carry? A. I do not know.

Q. What did you pay them? A. We did not pay them anything; they paid us.

Q. How much did they pay you? A. I do not know; that can be found out.

40 Q. On what basis did they pay you? A. On a per mile basis,— on a seat mile basis, I should say.

Q. And you do not know how many busses were running? A. No.

Q. In the summer or winter? A. It is all in the books of the Commission.

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Q. But you do not know? A. No.

Q. Did you make the arrangement? A. Yes, under the direction of the Commissioners.

Q. Does it appear in the minutes? A. The permit is in the minutes.

Q. Can you show it to me? A. I can show you the permit.

Q. Let me see in the minutes what the Commission did? A. The permit for 1933?

Q. Yes. Had you one for 1932? A. Yes.

Q. Tell us what you did in 1932? 10

MR. SLAGHT: I think you may find that back in May, 1932, Mr. Jackson.

WITNESS: It appears at page 207 of the Minute Book, in the minute of the meeting of the Commission of July 25, 1932 and is included among other permits in minute No. 48. I suggest that the most convenient form in which to get that is to take the actual permit issued.

MR. McCARTHY: What does the minute say? A. It reads:—

“Highway King Coach Lines Limited.

“The application of Highway King Coach Lines Limited for a
“license to operate busses over the roads of the Park on regular 20

“schedule and for chartered and sight seeing service for the year

“1932, was considered and it was decided to grant:

“1. *Local License (Exclusive)*

“a. Route—Fort Erie (Peace Bridge), Niagara Falls, Ontario,
Queenston and Niagara-on-the-Lake.

“b. Rate—1/10 cent per seat mile.

“c. Pick-ups North Bound.

“1. All points south of Chippawa and north of Queenston.

“2. Any point north of Chippawa for discharge north of
Queenston only. 30

“d. Pick-ups South Bound.

“1. All points north of Queenston and south of Chippawa.

“2. Any point south of Queenston for discharge south of
Chippawa only.

“e. Discharge North Bound.

“1. All points south of Chippawa and north of Queenston.

“2. Any point Chippawa to Queenston, if picked up south
of Chippawa.

“f. Discharge South Bound.

“1. All points north of Queenston and south of Chippawa. 40

“2. Any point Queenston to Chippawa, if picked up north of
Queenston.

“2. *Express License (Non-Exclusive)*

“a. Route—Fort Erie (Peace Bridge), Niagara Falls, Ontario
and Queenston.

“b. Rate—1/10 cent per seat mile.

- “c. Pick-ups (North Bound).
“1. All points south of Chippawa.
- “d. Pick-ups South Bound.
“1. Any point Queenston to Chippawa for discharge south of Chippawa.
- “e. Discharge North Bound.
“1. All points south of Chippawa.
“2. Any point Chippawa to Queenston, if picked up south of Chippawa.
- 10 “f. Discharge South Bound.
“1. All points south of Chippawa.
“3. *Chartered and Sightseeing License (Non-Exclusive)*
“a. Route—Fort Erie (Peace Bridge), Niagara Falls, Ontario, and Queenston.
“b. Rate—1/3 cent per seat mile.
“c. No local pick-ups.
“4. *Sightseeing License (Non-Exclusive)*
“a. Route—Niagara Falls, Ontario to Chippawa and Queenston.
“b. Rate—1/3 cent per seat mile.
- 20 “c. Pick-ups only at Hotels and Railway Terminals.
“5. *Crossing of Chain Reserve, Niagara Falls, Ontario*
“a. Route—Crossing of the Chain Reserve, Niagara Falls, Ontario.
“b. Rate—\$5.00 until December 31st, 1932.
“c. No pick-ups on the Main Reserve.”
- MR. McCARTHY: Q. Was a similar arrangement made in 1934?
A. Yes.
Q. I mean 1933? A. Yes.
THE CHAIRMAN: What date is that minute? A. July 25, 1932.
MR. McCARTHY: Q. And was a similar arrangement made in 1933?
30 A. Yes.
MR. SLAGHT: I think the witness is a little confused.
WITNESS: I should correct myself with reference to 1933. That is after the railway ceased operation. They were then given the same right as the railway had to pick up between Queenston and Chippawa.
Q. Allowing them to pick up where they saw fit? A. Allowing them to pick up in the area excluded in the 1932 license.
MR. ROBERTSON: Q. Could the busses stop at Table Rock and let the passengers out to have a look at the Falls? A. No.
Q. Why not? A. They were not permitted. Well, there are two
40 classes of traffic. They could on the chartered busses.
Q. What would prevent them from doing that on any run? A. On a regular run you could not stop and pick up, because it takes time, for one thing.
Q. That is not what is called “pick-up”; he is your passenger? A. You are not permitted to pick him up there on a regular run and you are not permitted to let him get in your bus on a regular run.

*In the Matter
of an
Arbitration*

Respondent's
Evidence.
No. 16.
J. H. Jackson,
Cross-
Examined,
March 13th,
1935.

—continued

*In the Matter
of an
Arbitration*

Respondent's
Evidence.
No. 16.

J. H. Jackson,
Cross-
Examined,
March 13th,
1935.

—continued

Q. He could sit in the bus and you could stop and let him look at the Falls from his seat? A. Only if the bus happened to stop there.

Q. They might have stopped there on purpose? A. They did not, as a matter of fact. The regular runs were through runs and did not stop in that way.

MR. McCARTHY: I was a little confused about that myself.

Q. On the regular runs from Fort Erie to Queenston in 1932 there were no pick-ups except at the places specified? A. That is right, as I have read to you from the minutes.

Q. So they ran right through the Park? A. Yes, on regular 10 service.

Q. You do not know what the service was? A. No.

Q. Or what the speed was? A. The speed had to comply with Provincial laws and the Commission's own by-law, which was less than 20 miles an hour.

Q. But you do not know what speed they operated at? A. They operated within the speed limit.

Q. Do you know on what schedule they were running? A. No.

Q. Were there any chartered busses in 1932? A. There were 20 some.

Q. Where did the chartered busses operate? A. They would operate from any point that they could get passengers to one point in the Park.

Q. To adopt Mr. Robertson's question, could they take passengers from the Upper Bridge or the Lower Bridge to Table Rock? A. No.

Q. And stop at Table Rock? A. No.

Q. Why? A. They were not permitted to do so in their regular service.

Q. I mean excursion busses? A. An excursion bus would not operate that way, but operated from Hamilton, St. Catharines, Welland 30 or Buffalo. This very company had chartered busses operating from Buffalo in 1932.

Q. Taking parties to Niagara Falls? A. Bringing parties to various points on the Park System.

Q. Could that bus stop at Table Rock? A. Yes.

Q. And let the passengers out and stay there until they had seen the tunnel? A. Yes, if the bus wished to stay there.

Q. And then that bus could go on and stop at the Clifton Incline? A. Yes; on the chartered work you would have just the same body of passengers all the way through. 40

Q. You had the same body all the way through? A. If it started with 20 passengers in the bus there would still be 20 passengers.

Q. They could not pick up? A. No.

Q. That would be a chartered bus? A. Yes.

Q. From some outside point in Ontario or New York State. If

anybody wanted to charter a bus in Niagara Falls, New York, they could do so? A. Yes.

Q. When you get to 1933, in what respect did the system differ? A. Only in this respect, that they took the place of the International Railway between Queenston and Chippawa; that is the regular service; the chartered service remained the same.

Q. The regular service could stop at Niagara Glen, Queenston, Brock's Monument, and all points throughout the route? A. Yes.

Q. After 1933? A. Yes.

10 Q. And the chartered busses operated the same as before? A. Yes.

*In the Matter
of an
Arbitration*

—
Respondent's
Evidence.
No. 16.

J. H. Jackson,
Cross-
Examined,
March, 13th,
1935.

—continued

*In the Matter
of an
Arbitration*

Exhibits.
Ex. No. 5.
Extract from
Report of
Pk. Comm'rs.
1891.

PART III.—EXHIBITS

Exhibit 5

Extracts from Exhibit 5, Reports of the Commissioners for the Queen Victoria Niagara Falls Park, made pursuant to Section 14 of the Act of the Province of Ontario, being 50 Vict., Chapter 13, 1887, which reads as follows: "The Commissioners shall make an annual report for the information of the Legislature setting forth the receipts and expenditures of the year and such other matters as may appear to them to be of public interest in relation to the Park or as the Lieutenant Governor in Council may direct."

10

(A) *Extracts from Report of Commissioners for Niagara Falls Park for year 1891:*

The Commissioners, as in their two former reports, have again to state that owing to the want of funds no new works of restoration or permanent improvements have been prosecuted during the past year. The ordinary working staff of the Park was fully employed in keeping the extensive and varied domain in as neat and attractive a state as possible, and in the performance of these works of maintenance regard has always been had to permanent effects as well as to the temporary and annual improvement of the grounds.

20

It cannot be expected, however, that the small expenditures for the ordinary maintenance works that are carried on with the few men comprising the permanent staff can accomplish much in permanent results. Not less than \$10,000 per annum should be expended for several years to come, in reclamation and artistic treatment of the 154 acres of lawn and meadow and the beautifully wooded islands, hillsides and sloping shores within the Park boundaries. However bountifully nature has adorned this magnificent Provincial reservation, it is evident that there must be good

roads, walks, paths and all requisite artificial aids to enable every part of the grounds to be properly appreciated and enjoyed.

It may safely be asserted that nowhere on this Continent is there such a compact area of similar extent where the natural scenery is susceptible of the production of the most charming results as can be effected by the expenditure of a few thousand dollars annually. The Commissioners therefore hope that the day is not far distant when funds will be placed at their disposal to permit of proceeding with the plans for the continued development and improvement of the property placed under
 10 under their care and supervision.

In their last report the Commissioners pointed out that the Park revenues derived from the hydraulic lift and the tolls for visiting the islands were quite inadequate to meet the ordinary Park maintenance, exclusive of the interest on the debentures, and expenditures for much needed permanent improvements. The results of the past year only confirm the previous statements in this respect, as it will be seen by reference to the financial statement attached to this report, that while the ordinary maintenance expenditures for the year amounted to \$14,588.57, the revenue was only \$7,041.76, shewing an excess of expenditures over
 20 receipts of \$7,546.81. To this should be added the interest on the Park debentures amounting to \$21,000.

In view of this large annual deficit, the Commissioners in their last report sought to impress upon the Government that, if the maintenance of the Park was not to become, very largely, a charge on the revenues of the Province, the projects referred to in previous reports, having for their object the raising of revenue, must be pushed forward and developed to the fullest extent. Respecting these projects, very full information has been given from time to time in relation to the protracted negotiations that they have been conducting for the disposal of the franchise
 30 to construct an electric railway along the banks of the river, and also for the right to use the waters of the river on the Canadian side to generate electricity to be transmitted to cities and towns within a radius of 150 miles from Niagara Falls for motive power, lighting and other purposes.

The main objects the Commissioners had in view in promoting the electric railway scheme were (1) to obtain revenue for the Park maintenance and to assist in the payment of interest on the debentures issued to acquire and improve the property, (2) to increase the number of visitors, primarily for revenue purposes, but also to bring into greater prominence the Canadian Park and its historic environment on the banks of
 40 Niagara River, by connecting it with all the great railway lines of the Continent, (3) to overcome the antagonism of the cabmen, who have persistently opposed the interests of the Canadian Park ever since it was founded.

*In the Matter
of an
Arbitration*

—
Exhibits.
Ex. No. 5.
Extract from
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Pk. Comm'rs.
1891.

—continued

*In the Matter
of an
Arbitration*
—
Exhibits.
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—continued

The more effectually to accomplish these objects, the Commissioners decided that the southern terminus of the railway should be located at the mouth of the Chippawa river so as to ensure steamboat connection with the City of Buffalo, and the northern terminus at Queenston in order to connect with Toronto and other points on Lake Ontario. In the selection of these terminal points they were of the opinion that a very considerable portion of the great tourist and picnic travel would thus be intercepted at Buffalo and brought down by boat to the southern terminus at Chippawa, and from there by the electric railway to Niagara Falls and Queenston, and thence by steamers to Toronto and other points on Lake Ontario and the River St. Lawrence. They were also of the opinion that if a large hotel was erected on one of the many splendid sites on the elevations outside of the Park boundaries the Canadian side of the Niagara river would become one of the greatest summer resorts on the Continent. 10

It has been truly said that "there is but one Niagara," and it is equally true that there can only be one such electric railway with its unique and magnificent surroundings. Leaving Chippawa in observation cars travellers over the proposed route would have in continuous sight the surging rapids above the Falls, before coming in full view of the entire face of the great cataract itself with all its unparalleled grandeur; then the magnificent river gorges with the whirlpool and whirlpool rapids, through which the waters of our inland seas are compressed between the rocky walls until the placid waters of the mighty river are viewed from the historic heights of Queenston as they wend their way to Lake Ontario. 20

Having regard to the great advantages that were likely to accrue to the Park as well as the Canadian side of the Niagara river generally by the construction and operation of an electric railway such as has been outlined in the preceding remarks, the commissioners considered it of vital importance that no time should be lost in accomplishing such a desirable object. When, therefore, the option given to the English capitalists was forfeited by their inability to form a company and raise the necessary funds, the Commissioners at once commenced negotiations, with Mr. E. B. Osler and other gentlemen associated with him, for the construction and operation of the electric railway. These gentlemen being not only wealthy capitalists, able to obtain the requisite funds to successfully complete the undertaking, but who also from their large experience and connection with railway enterprises are eminently fitted to form the requisite connections with all parts of the Continent, in order to popularize the use of the proposed railway, the negotiations with these gentlemen were brought to a successful conclusion, and with the consent of the Government an agreement was entered into on 4th December last, of which the following is a copy: 30 40

(See page 287 for text of agreement.)

Immediately upon the execution of the foregoing agreement steps

were at once taken to locate the line, and at the date of this writing, the commissioners are informed that all the works of construction are under contract and are being vigorously pushed forward.

*In the Matter
of an
Arbitration*

—
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—continued

Under the provisions of clause 19 of the agreement, the Commissioners are to receive \$10,000 per annum payable quarterly for the franchise, and such payments are to date from 1st September, 1892. The Commissioners confidently hope that on the opening of the railway the volume of travel will be largely augmented and that the revenue derived from the hydraulic lift will also be correspondingly increased.

10 Should it be found practicable and safe from an engineering standpoint, the Commissioners may, under the terms of the agreement, notify the Company to proceed within six months from the date of such notice, with the construction of what is designated the low level railway. The location of this proposed road is to be along the edge of the river under the bank and is to commence near the Clifton House and to extend to Queenston or such intermediate point as may be determined. For the franchise of this additional section of electric railway the Commissioners are to be paid \$7,500 per annum. Should the Company, however, on being notified decide not to proceed with its construction the franchise may be
20 granted to another Company.

It will thus be seen that at least \$10,000 will be annually added to the Park revenues commencing on 1st September, 1892, and in the event of the low level railway being found practicable and constructed the income will be still further increased by \$7,500 per annum. Should the English capitalists avail themselves of their option to lease the waters of Niagara for the production of electrical power, \$25,000 per annum will also be received from that source.

If, however, the option lapses the Commissioners are confident, having regard to the rapid development of electrical science and the facilities
30 for transmitting power, that it will only be a short time before the unlimited force of Niagara will be sought after.

The Commissioners therefore have good grounds for believing that the Park revenues will soon be sufficient, not only to meet all expenditures for ordinary maintenance, interest on the bonds, as well as the creation of a sinking fund for their redemption, but that funds will also be available for works of reclamation and the permanent development and improvement of the Park.

The following summary shews the receipts and expenditures for the year, details of which will be found in the financial statement attached
40 to the Superintendent's Report:

Receipts

Received from Sale of old material, rents, etc.	\$1,113.50
" Hydraulic lift tolls	\$3,894.25

<p><i>In the Matter of an Arbitration</i> — Exhibits. Ex. No. 5. Extract from Report of Pk. Comm'rs. 1891. —continued</p>	<p>” Island bridges tolls 1,958.70</p> <p>” Imperial Bank, interest on deposits \$5,852.95</p> <p>” English capitalists as a forfeitable deposit in connection with the proposal to lease the water power of the Falls, being proceeds of Bill of Exchange for £2,000 282.63</p> <p>” Solicitor's costs returned in the suit against Colt et al 9,744.44</p> <p>” Osler Syndicate deposit for electric railway franchise 306.30</p> <p>Imperial Bank of Canada, overdraft 10,000.00</p> <p>..... 13,330.41</p> <p style="text-align: right;"><u>\$40,630.23</u></p>	<p>10</p>
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Expenditures

<p>Imperial Bank, overdraft on 31st Dec., 1891 \$5,041.66</p> <p>Salaries and wages, including wages of laborers .. 11,386.69</p> <p>Paid for materials, etc. 2,478.60</p> <p>Renewal work on bridges, etc. 547.96</p> <p>Commissioners' expenses 175.32</p> <p style="text-align: right;"><u>\$19,630.23</u></p> <p>Coupon interest on bonds to 1st July, 1891 10,500.00</p> <p>Coupon interest on bonds to 31st Dec., 1891 10,500.00</p> <p style="text-align: right;"><u>\$40,630.23</u></p>	<p>20</p>
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The number of visitors to the Park during the year has been 272,485 or about eight per cent. in excess of the greatest number recorded in any previous year since the opening of the Park. Those entering in carriages aggregated over 172,000, or some 30,000 (or eight per cent.) above last year; pedestrians were less numerous by 10,000, or only a fraction above 100,000. The lesser number of pedestrians this year is mainly owing to two reasons, viz., the much better facilities afforded large excursion parties to reach the Falls on the American side, at small cost, and chiefly to the very substantial inducements held out by the excursion agencies over the river, to the organizers of large excursions to the Falls to take their parties to the many "points of interest" which are to be found within convenient distance of the state reservation. 30

The revenue received from visitors in 1891 amounted to \$5,852.95, or at the rate of 2 15-100 for each one entering the Park. Of this sum \$3,894.-25 was collected at Table Rock for parties going under the Falls and the balance of \$1,958.70 from the islands tolls. In addition to these items the sum of \$1,222.62 was received from rentals, etc., etc., making the gross revenue from the Park \$7,075.57, an increase of \$33.81 over the year 1890. 40

(B) *Extracts from Report of Commissioners for the Niagara Falls Park for the year 1892:*

To the Honourable George Airey Kirkpatrick,
Lieutenant-Governor of the Province of Ontario,

May it please your Honor:

The Commissioners of Queen Victoria Niagara Falls Park beg to submit their report for the year ended 31st December, 1892, being their Seventh Annual Report.

In their last report the Commissioners gave a summary of the negotiations had with certain capitalists for the disposal of the franchise to construct and operate an electric railway along the banks of the Niagara River between Chippawa and Queenston, and submitted the agreement entered into with the Niagara Falls Park and River Railway Company as the result of these negotiations. The location of the railway through the Park and along the chain reserve was fixed by the Commissioners, and also the site of the power house and the various sidings with all other works requiring their assent. The construction has been carried on with considerable energy and the road bed and bridges are all of the most substantial character. It is expected that the railway will be ready to operate by the 1st of June, or very shortly after that date. The Commissioners learn that a steamer to connect with the railway at Queenston for Toronto is now in course of construction, which in point of capacity, appointments and speed, is expected to be the equal of the best on the Northern lakes. The Commissioners have good reasons to believe that when the electric railway and its connections are in active operation the great object of granting the franchise, as stated in their last report, will be accomplished, viz.: to largely increase the number of visitors and to bring into greater prominence the Canadian Park and its historic environment, not only at the Falls but all along the banks of the Niagara River on the Canadian side.

Electric Railway

The construction of the electric railway through the park and extending to Queenston and Chippawa, under the terms of the franchise granted to E. B. Osler and others in December, 1891, was early begun, and the work carried on throughout the season. By the end of the year the rails had been laid from Queenston to Chippawa, and about one-half of the line ballasted and put into shape. The work of completing the ballasting, etc., on the remaining portion of the line will be carried on during the winter, so as to have the road-bed thoroughly prepared against the opening of the season of 1893. The extensive works in connection with the development of water power to generate electricity were not begun until midsummer, and have not yet been completed. It is expected these works

*In the Matter
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Arbitration*

—
Exhibits.
Ex. No. 5.
Extract from
Report of
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1892.

—continued

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of an
Arbitration*
—
Exhibits.
Ex. No. 5.
Extract from
Report of
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1892.

will all be in a forward state by the time spring opens, and be finished in ample time for the opening of the line in May next.

The foundations of the power house have been brought up to the level of the ground only.

Some of the poles for the wiring of the line are on hand, but nothing has as yet been done on the ground towards the electrical equipment of the road.

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The carrying out of the various works of construction in connection with the electric railway necessarily did much to mar the appearance of the park for the time being, as the line is located, generally, along the line of travel from end to end of the property; especially was this the case during the busy season, and the park revenues suffered considerable in consequence. To enable the hydraulic tunnel work to be gone on with, the flow of water over a considerable portion of the fall, near Table Rock, was shut off by means of a dam. This left the face of the cliff exposed for a considerable distance from the mouth of our tunnel through which visitors pass to get views of the "Sheet of Water." It also prevented the near approach in front of the fall to the great mass of falling water, which is certainly the chief feature of a trip "Under the Falls." 10

As soon as the ice goes away the natural flow of water over the fall will be restored, as by that time all work in connection with the hydraulic tunnel will have been completed and the trimming and sodding of embankments and cuttings, the construction of paths where encroached upon by the railway, and grading and levelling around the power house, will tend largely towards removing these objectionable features; and leave the premises in good condition for the increased travel of 1893. 20

All the work done in connection with the electric railway has been of the most substantial and permanent character, and with good overhead construction, and rolling stock equipment, the road will most certainly be a very attractive feature to all visitors to the park. 30

(C) *Extracts from Report of Commissioners for the Niagara Falls Park for the year 1893:*

Agreement For Double Tracking the Niagara Falls Park and River Railway, 27th March, 1894

This agreement, made the 27th day of March, one thousand eight hundred and ninety-four:

Between the Niagara Falls Park and River Railway Company, hereinafter called the Railway Company, of the First Part;

And the Commissioners for the Queen Victoria Niagara Falls Park, hereinafter called the Commissioners, of the Second Part. 40

Whereas, the Railway Company propose to double track their present single line of electric railway between Queenston and Chippawa, and have applied to the Commissioners to consent to such work in pursuance

of the Act incorporating the Niagara Falls Park and River Railway Company (55 Victoria, Chap. 96) and schedule B thereto;

And in pursuance of such application the parties hereto have agreed, subject to the approval of the Commissioner of Public Works of Ontario, that the said single line of electric railway shall be made a double track electric railway between Queenston and Chippawa, except at certain points, in accordance with the terms, agreements, provisions and covenants contained in those presents and in the memorandum hereunto annexed, which, with the plans relating thereto, are hereby declared to
 10 be and are made part and parcel of this contract;

And whereas, the present single line of railway is located or is intended to be located in accordance with the plans of the said line of single railway submitted by the Railway Company to the Commissioner of Public Works, on the eighth day of April, 1892, accompanied by duly identified specifications, dated fourth December, 1891, and deposited in the Department of Public Works, which plan or plans, specifications and matters so submitted to the Commissioner of Public Works received the approval on the said eighth day of April, 1892, of the Honorable Richard Harcourt, acting Commissioner of Public Works, in the terms of a
 20 memorandum in writing, signed by him on the said eighth day of April, 1892, which said plans and specifications so approved as aforesaid relate to the location of the said present line of single railway and in so far as applicable are to be taken in connection with the works and matters appurtenant thereto, to be done and completed, as the doubling of the said single line of railway in the manner hereby agreed to be done;

And whereas the draft of the memorandum hereto annexed was, on the 15th day of March inst., submitted jointly to the Commissioner of Public Works of Ontario in the person of the Honorable Richard Harcourt, a member of the Executive Government of Ontario and Acting
 30 Commissioner of Public Works, by the President and Representatives of the Railway Company, and by John W. Langmuir, Chairman of the said Commissioners, for the consideration and approval of the said Commissioner of Public Works;

And the said Acting Commissioner having directed that upon the said draft memorandum so submitted to him with certain changes made being embodied, and plans relating thereto, together with a proper agreement duly executed by the Railway Company and the Commissioners, under their respective corporate seals, containing proper covenants and stipulations as he should deem proper for the due and satisfactory
 40 completion of the works in the said memorandum contained, and submitted to him (with the said changes being duly embodied therein) the consent and approval of the Commissioner of Public Works to the location and construction of a double track to be completed in accordance with such agreement, together with the other works contained in the said memorandum, and plans hereinbefore mentioned, would be signified by endors-

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of an
Arbitration*

Exhibits.
Ex No. 5.
Extract from
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—continued

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of an
Arbitration*

Exhibits.
Ex No. 5.
Extract from
Report of
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1893.

—continued

ing such consent on the said agreement under the proper hand of the Commissioner of Public Works;

And whereas those presents have been prepared and executed in pursuance of the matters hereinbefore recited:

Witnesseth, that in consideration of the matters hereinbefore recited the Railway Company covenant with the Commissioners in manner following, that is to say:

1st—That the Railway Company will execute, construct and complete all and singular the works in the memorandum hereunto annexed mentioned and intended to be performed, executed and constructed and completed in the best and most workmanlike manner, in the manner required by and in conformity with the said memorandum, and the plans and drawings referring thereto, which said memorandum, plans and drawings are hereby declared to be and are made part and parcel of this contract, and to the complete satisfaction of the Commissioner of Public Works of Ontario for the time being. 10

2nd—And no alterations, omissions or deviations from the works described in the said memorandum and as shewn on the plans (if shewn) therein referred to, shall be permitted unless such alteration, omissions or deviations shall have been first approved by the Commissioners by a resolution of the Board of the Commissioners communicated to the said Railway Company in writing, signed by the Chairman of the Commissioners. 20

3rd—That in case of any of the works or any part or parts thereof to be done, executed and completed by the Railway Company under the first clause of this contract shall, either in the progress of the work being done by the Railway Company or before its final completion to the satisfaction of the Commissioner of Public Works as hereinbefore provided, be not proceeded with or done to the complete satisfaction of the Commissioners, the Railway Company will, within eight days after written notice shall have been given to them by the Commissioners of the objections, omissions or matters charged to be improperly done or omitted to be done, duly execute or complete the same in a good, sound and workmanlike manner, to the complete satisfaction of the Commissioners, if the said works, omissions or matters in said notice required to be done are in accordance with the said memorandum hereto annexed and the plans relating thereto as aforesaid or such as should be done in relation thereto. 30

Signed, sealed and delivered in the presence of

(Sgd.) Em. T. Jennings

(Sgd.) Ed. B. Osler
President

Seal
Ry. Co. 40

(Sgd.) James Wilson
as to signature of
J. W. Langmuir

(Sgd.) J. W. Langmuir
Chairman

Seal
Park Com.

Memorandum of Works to be performed by the Niagara Falls Park and River Railway Company in connection with the double tracking of the line and the proper completion of the works required under the Agreement with the Queen Victoria Niagara Falls Park Commissioners of December 4th, 1891, and of the "Act of Incorporation."

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For convenience the line will be divided into four sections, viz:-

(1) From Chippawa to the south-east limit of the Park, a distance of 1 and 3-10 miles. (See plan A.)

10 (2) The Park Proper, or from the south-east limit of the Park to the Clifton House, a distance of 2 miles. (See plan "B" and amended plans Nos. 1, 2 and 3.)

(3) From the Clifton House to the north limit of the Town of Niagara Falls, 2 and 2-10 miles. (See plan "B" and amended plans Nos. 3, 4 and 5.)

(4) From north limit of the town to Queenston, 6 miles. (See plan "A").

The works in these several sections which are required to be done will be separately defined.

—continued

Section 1

20 Location—The new track to be located as shewn by a thin red line on plan "A" herewith, the distance between the tracks to be eight (8) feet, or thirteen (13) feet to centre.

Grading—The grading, ditching, etc., etc., to conform to the gradients of the existing track. All cuttings and embankments to have the slopes cleanly cut to a pitch of one and a half horizontal to one vertical, and in all cases where material is borrowed or wasted, the ground shall be levelled off and left smooth and even, and with the slopes of all embankments or cuttings to be sown with grass seed.

30 Cattle passes and culverts are to be extended sufficiently to meet the requirements of the case.

Permanent Way—All rails, fittings, guard rails, ties, ballasting, etc., to be equal in quantity and quality to the existing work.

Electrical Equipment—The centre Pole system will be adopted in this portion of the line, and the brackets, wiring, etc., shall be patterned after that now in use.

Section 2

Through the Park proper double tracking may be laid, excepting at the following points, where there shall be a single track only:

40 ("a") From a point one hundred and forty (140) feet south of the south side of Table Rock House to a point one hundred and twenty (120) feet north thereof, or a total distance of two hundred and sixty (260) feet.

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(“b”) From a point twenty-five (25) feet south of the south side of the restaurant building to a point four hundred and ten (410) feet north thereof, or a total distance of four hundred and thirty-five (435) feet.

Should it be shown that the operation of a single track at the points above specified is dangerous to the public, the railway company shall have the right to place a double track to the rear, on west side, of the buildings referred to, viz.: The “Table Rock House” and the “restaurant building,” in which case the present single track in front thereof shall be removed.

In each case the distance given is to cover the space where there shall be one track only, the leads to be beyond this distance in all cases. 10

At the several points where single track is required the railway company may either lead the second track into one pair of rails, by means of switches, or carry the two pairs of rails continuously over the distances specified, but laid as closely together as the flanges will permit; thus in the figure the distances between “A” and “B” shall be considered as single track:

Crossing the bridges on Dufferin Islands, the distance apart of tracks to be reduced to suit the existing bridge structures.

The location of the second track in the Park proper shall be as indicated on the large scale plan marked “B” but with certain amendments thereto, as defined on the several plans marked numbers 1, 2 and 3, and more particularly described as follows: 20

Commencing at the southeast limit of Park, the second track shall be located on the landward side of existing one as far as the Dufferin Islands bridge. Across the Dufferin Islands the present track to be shifted to one side sufficiently to permit of the tracks being laid as above specified.

From the bridge at Clark Hill to a point opposite the gravel pit the second track shall be on the landward side of the present one, which will remain in its present location. 30

Between the gravel pit and the head of Cedar Island the tracks may be adjusted to suit the siding at the “Gap,” as shown on the plan.

From the middle of Cedar Island to the north end thereof the present track shall be slewed over towards the river, a distance of four feet and the second track placed on the landward side. From Cedar Island to Table Rock the tracks to be placed as shown on plan No. 1.

North of Table Rock House the present siding will be extended towards the restaurant building until the switch is within twenty-five (25) feet of the south side thereof. From this point there shall be a single track for a distance of four hundred and thirty-five (435) feet, or to a point beyond the road crossing, as shown on plan No. 11. 40

North of the roadway crossing, the existing and new tracks shall be

adjusted as shown on plan number 2; they must be located so as to allow a clearance of twelve (12) feet between the present railing along the edge of the cliff and the nearest rail at the narrowest points.

Near the north end of the Park the tracks are to be located as shewn on plan No. III.

No sidings or cross-overs are to be laid within the Park without the consent of the Commissioners being first had in writing; and all existing sidings are to be removed excepting at such points as they will form a part of the double track, as has been particularly described and shown
10 on plans.

Grading, etc.—The formation level of second track in the Park shall be the same at all points as that of existing one; the slopes of all cuttings and embankments are to be trimmed to the proportion of 1 and $\frac{1}{2}$ horizontal to 1 vertical, excepting on the Burning Spring hill, where the slope shall not be less than 1 and $\frac{1}{4}$ horizontal to 1 vertical. The face of the slopes of all cuttings and embankments, excepting that of the Burning Spring, from the ties to the natural ground level, shall be sodded with newly cut sods, cut in large strips and thoroughly pegged with long hard-wood pegs. This sodding shall be done immediately after the slope shall
20 have been put in good order and condition, and not later than the 1st July, 1894; and the grass on all such slopes must be kept by the railway company close cut at all times, to the full satisfaction of the Park Commissioners. The slope of the Burning Spring hill shall be sown with good grass seed and planted with thrifty foliage trees and evergreens.

Five feet of the space between tracks shall be levelled off even with the top of ties and covered with sods, and maintained in a thoroughly lawn-like condition at all times.

The side slope of cutting east of the Dufferin Gate must not interfere with the driveway along the top of the bank at any point; but a
30 minimum space of twenty-four (24) feet must be preserved intact at the nearest approach to the Park boundary of the top of the finished slope.

Should the prescribed angle of slope, if carried from formation level, curtail this space, sufficient land must be secured and deeded to the Commissioners as shall at all times afford the full width of twenty-four (24) feet for driveway purposes.

Roads and Paths—Where the railway crosses the Park driveway on Dufferin Islands, the embankment must be widened out sufficiently so as to permit of a carriage turning completely around, clear of the rails, without danger to the occupants thereof.

The footpaths crossing the railway on Islands must be graded and
40 gravelled to the satisfaction of the Park Commissioners. The portion of the driveway occupied by the second track, from the gardener's house to the gravel pit, to be compensated for by widening out the driveway on the landward side to the full width, clear of the ballast, of eighteen feet, and forming and macadamizing and rolling the surface thereof to a true

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and hard finish. The slopes of cutting made on the south side of driveway by this widening to be trimmed and sodded.

Driveway on Cedar Island—Where the driveway on Cedar Island is encroached upon similar compensation must be provided, and the space between the rails of the second track shall also be macadamized and rolled and made fit for driving over for such distance as may be decided on by the Park Commissioners. The roadway at north end of Cedar Island, when widened as above described, shall be carried over the original channel of river to the main land by a suitable bridge structure to be erected by the railway company to the satisfaction of the Commissioners. All driveways and pathway crossings now in existence, or which hereafter may be required by the Commissioners, must be planked the full width of the space occupied by the tracks, and of such lengths as may be approved by the Park Commissioners, and the crossings maintained in good order and condition at all times. 10

Gravel Pit—The gravel pit track to be removed at once and the sides of pit sloped off neatly to an even pitch. A supply pipe of sufficient dimensions to maintain a full head of water, and not less than eight inches in diameter, to be laid from the river at the iron railway bridge at Clark Hill to the gravel pit, and an overflow of equal dimensions to be laid from the pit to the river adjoining; the bottom of pit to be graded evenly and the boulders either removed or made to form an island in the centre. 20

Dam at Channel Inlet—The dam placed at the channel inlet to Cedar Island to be removed and the inlet cleared of the debris. A proper outlet shall also be provided by the railway at the north end of Cedar Island, so as to permit this branch of the river to flow on in its natural channel.

Permanent Way—The permanent way for the new track to be generally of a similar character to that of existing one: Ties to be eight feet in length, of sawn cedar and placed two feet apart centres; stone ballast only to be used, and the width occupied by the ties in each of the two tracks over that portion or portions of the line which may be required by the Commissioners to be covered with a top dressing of finely broken stone to a thickness of two inches above the ties and evenly spread, and the surface blinded with stone that shall pass through a half inch ring. The space between the ends of the ties of the two tracks to be levelled and sodded. 30

Cattle Guard—A steel cattle guard to be put on new track at north limit of Park.

Ferry Crossing—Where the tracks cross the road leading to the "Maid of the Mist" Ferry, the road must be graded up to an even and satisfactory slope with finely broken macadam, and the tracks planked over even with rails to provide a crossing of twenty-four feet along the railway. 40

Surplus Grading—At any points where grading has been done or

material placed in excess of the actual requirements of railway embankments, it must be removed, and the original ground resodded, and left in good condition.

Electrical Equipments—The iron poles will in nearly all cases have to be taken up and replaced in new positions. In replacing the poles the concrete packing shall not be carried above level of centre of ties, good soil being spread evenly above to permit of sods being maintained around poles on an even level with balance of work. Where the poles are at present outside of the grading of the railway when finished, the excavations
 10 made therefor are to be well filled up and sodded over evenly with surface of adjoining ground.

Iron poles are to be substituted for the wooden ones now carrying feeder wires at power station.

Paint Poles—All poles are to be painted afresh when properly in position and left truly plumb and complete in all respects. All guy or straining wires must be so placed as not to obstruct travel on roads or paths.

Section 3

Double Tracking Opposite Town Front—In front of the town
 20 double tracks may be laid over the whole distance, excepting at the Clifton Suspension Bridge, where there shall be single track only, for a distance of two hundred and fifty feet south of the centre line of the Bridge and fifteen feet north of the centre line of Bridge or a total distance of two hundred and sixty-five (265) feet.

Location of Second Track—Commencing at the Park boundary, the new track shall be placed on the river side of existing one until opposite the north end of the Clifton House, where it will become and continue single track, to the Bridge, as before mentioned, and as shown on plan No. 3. North of the Bridge the second track will be laid on the landward
 30 side of the present one as far as Seneca Street siding, where the two tracks will form part of the system, as shown on plan No. 4, the leads on either side being lengthened out to ease the curvature, and the space between the tracks being narrowed in.

Queen Street—Beyond the Seneca Street siding the double track will continue on the landward side of existing track to opposite Queen Street, where both tracks shall be deviated towards the river as indicated on plan No. 5. From this deviation the second track shall continue on the west side of the present track as far as the Cantilever Bridge, where the two tracks shall be located as shown on plan "B."

40 From Bridge Street Station northwards for about a quarter of a mile the second track shall be placed on the river side of present one and from thence to north boundary of the town the new track shall be to the westwards, as shown on plan "B."

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Width Between Tracks—From the Park limits to the north boundary of the town the distance between the tracks shall not be more than eleven and one-half feet centre to centre, excepting at points where there are sharp curves, where the space between tracks may be made six inches wider.

Grading—The formation level throughout shall be the same as that of present track. The width to be graded covering the space between tracks and the space required for the new track.

New Roadway—In addition to this track space the Railway Company shall grade the roadway to the west of the new track for a width of eighteen feet from the line of ties and to a pitch of three inches from the level in the width of eighteen feet; the surface grading to be level with the base of ties where the roadway shall adjoin the track. This grading for roadway to be made the whole distance of two and two-tenths miles covered by this section of the line; all side slopes of cuttings or embankments to be trimmed true to line and level and graded 1 and ½ to 1. 10

Ballast—Ballasting of second track throughout to be of gravel on broken stone ballast, well packed around ties and even with the top of them. Space between tracks also to be ballasted up evenly therewith.

Finish of New Track—The space between the two tracks and the width occupied by new track to outside or westerly line of the ties must be macadamized up to and maintained even with the level of top of rails and rolled suitable for driveway purposes, where the driveway may be encroached upon. 20

Macadamized Roadway—In addition to the above works the Railway Company shall macadamize the roadway bed, when graded as aforesaid, to a width of sixteen feet from line of ties, and for a length of one-half the total distance covered by this section of the line, or say one and one-tenth miles from the Clifton House northwards. The macadam to be rolled and even with the top of the rail at the east side and sloping down to the west side of the roadway three inches from a level line, in order to drain the surface water therefrom. 30

The above described work of grading for and macadamizing one-half of the length of the roadway for carriages, shall be begun and carried on with despatch and in such a manner as not to interfere with the ordinary travel over said road, and shall be completed not later than the first day of July, 1894, and shall be to the satisfaction of the Park Commissioners, and of the Honorable the Commissioner of Public Works.

Sidewalk—Where it is necessary in the performance of these works to interfere with or change the sidewalk, the same shall be re-laid in position satisfactory to the Commissioners and left in good order and condition. 40

Cross Drains—A sufficient number of cross drains must be put in to effectually carry off the surface water. Should the above described works

interfere in any way with the present side ditches on the road, full compensation must be made by providing new and satisfactory ditches, and where the space between the tracks and the present fences of adjoining properties is insufficient to permit of an open drain being laid down, a covered one of size and material satisfactory to the Park Commissioners must be put in and properly connected with the cross drains, so as to preserve the present drainage.

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10 Iron Railing of Fence to be put in Good Condition—The iron railing along the edge of the cliff shall be put in good order and condition, and where it shall have been in any way interfered with it shall receive two good coats of oil and lead paint.

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Location of Poles—Over this section of the railway, from the Clifton House to the Railway Suspension Bridge, the poles carrying the wires shall be on the outside or cliff side of the tracks, and straining posts shall be placed opposite to these and on the west side of the roadway in such positions as may be pointed out on the ground by the Park Commissioners. The trolley wires shall be suspended over the two tracks from straining wires running from the main posts to straining posts.

20 All the electrical work to be the best of its class and sufficient for the duty required of it.

Section 4

This section may be sub-divided into two parts, viz., from the north limit of the town of Niagara Falls to the Military Reserve at Queenston Heights; and secondly, through the Military Reserve grounds at Queenston and including the village of Queenston.

Sub-Section 1.—As to the first described section, or from the town of Niagara Falls to Queenston Heights, the following described works shall be done and performed by the Railway Company, viz.:

30 Location of Double Track.—The double track throughout this section shall be, generally speaking, on the west of the existing line of rails, excepting through the lands purchased from Sir David Macpherson, where the new track may be placed on the east side of the present one if found desirable to lighten the work of excavation at that point.

40 Change of Location.—With respect to the proposed change of location of the existing track and the building of the new one at Smeaton's gully, approval is withheld pending the submission of plans and specifications showing precisely the nature of the changes proposed, together with drawings of the bridges, piers, abutments, etc., as required under the Agreement of December 4th, 1891, and the Act of Incorporation. The new track to be placed at a distance of eight feet from existing one, or say thirteen feet centre to centre.

Grading.—The grading, ditching, etc., etc., throughout are to conform to the lines, levels and requirements of the present track. The space between the two tracks must be graded evenly with the sub-grade level of

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track, and all farm crossings or other work required be made complete in all respects. All cuttings and embankments are to have the slopes cleanly cut to a pitch of one and one-half horizontal to one vertical, and in all cases where material is borrowed for such embankment or wasted from such cuttings, the surface of the ground so interfered with shall be levelled off and left smooth and even, and, together with the slopes of all embankments or cuttings, be properly covered with good soil and sown with grass seed.

Cattle Passes and Culverts.—Cattle passes and culverts are to be extended sufficiently to meet the requirements of the case. 10

Permanent Way.—The rails, fittings, guard rails, ties, ballasting, etc., etc., shall be equal in quality and quantity in each case to that of the existing track.

Electrical Equipment.—The centre pole system will be adopted in this portion of the line, and the brackets, wiring, etc., shall be patterned after that presently in use.

Sub-Section 2.—Respecting the portion of the line located through the Military Reserve at Queenston Heights and in the village of Queenston, approval to lay a double track is withheld pending the reception of a proper license of occupation from the Dominion Government to the Park Commissioners. When such license of occupation is received permission to lay double track will be granted on the following conditions, viz., the location of the second line of rails to be as shown on plan "A" herewith. No trees that are not actually on the road bed, or on the side slopes of graded embankments or cuttings shall be cut or maimed without the express sanction of the Commissioners. 20

All slopes of cuttings or embankments are to be trimmed properly and sown with grass seed. The drive-way leading from the highway to Brock's Monument shall at the crossing be put in good condition for driving over; approaches to the tracks to be graded to an easy slope and well macadamized and rolled, and a wide plank crossing provided. Where pathway from the Monument leads down the slope to the village, a suitable crossing over the tracks to be provided, including stairways on the graded slopes and a plank walk over tracks. 30

All debris deposited upon the lands of the Reserve by the Railway Company in excess of the works actually required for the purposes of the railway shall be removed, and the grounds left in as good order and condition as originally found by the Railway Company.

All the above described works shall be done and performed by the Railway Company to the entire satisfaction of the Honorable the Commissioner of Public Works and of the Park Commissioners, and with the exception of the several works for the performance of which approval is in the meantime withheld, all works above described and shewn on plan or intended to be so described and shewn shall be fully performed on or before the fifteenth day of June, 1894. 40

Should any of the above described works be unfinished or be considered by the Park Commissioners to be not finished to their satisfaction on the above mentioned date, the Park Commissioners reserve the right, on giving one week's notice in writing to that effect to the Secretary and the Manager of the Railway Co., to go on and carry out the several works to their satisfaction and to collect the cost of performing the said works from the Railway Company.

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Niagara Falls, December 12, 1893.

JAMES WILSON, Superintendent.

10 It is understood that nothing contained in this agreement or memorandum shall interfere or prejudice the Railway Company's rights as set forth in the original Agreement and Act of Incorporation.

(Sgd.) J. W. LANGMUIR, Chairman,
Queen Victoria Niagara Falls Park Commissioners.

(Sgd.) E. B. OSLER, President,
Niagara Falls Park and River Railway Company.

Toronto, 28th March, 1894.

20 I, the Honorable Richard Harcourt, Acting Commissioner of Public Works for Ontario, do consent and approve of the within Agreement and the Memorandum annexed thereto, subject to the sufficient quantity of land east of the Dufferin Gate and top of the bank, agreed to be deeded to the Commissioners for the purposes of affording full width for driving purposes, as stated in the 5th page of the Memorandum, being duly conveyed and deeded to the said Commissioners within three days hereof—the sufficiency in quantity and area to be such as the Park Superintendent shall determine.

Witness my hand this 28th day of March, 1894.

(Sgd.) RICHARD HARCOURT,
Acting Commissioner of Public Works.

30 (D) *Extracts from Report of Commissioners for Niagara Falls Park for year 1895:*

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40 After two years' experience of these most unlooked for results, the Commissioners were forced to admit that, even under improved conditions, the sources from which the revenues were drawn would prove altogether inadequate to meet even the annual cost of maintaining the Park, without taking into account the amount required for the payment of annual interest and sinking fund on the debentures. It, therefore, became imperative that new sources of revenue should be devised, unless the cost of maintenance and improvement was to be, to a large extent, assumed by the Province. The Superintendent was, therefore, authorized to make a

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survey of the river bank, with a view to locating a line of electric railway which would connect, at Queenston, with the steamers of the Niagara Navigation Company for Toronto and points on Lake Ontario, and on the south, with navigation on the upper reach of the Niagara River between Chippawa, the City of Buffalo and Lake Erie points; and connecting with the Grand Trunk Railway at the Suspension Bridge. The Commissioners believed that a line of electric railway forming connections with these main avenues of travel and opening up to visitors near views of the whole course of the river, with all its unrivalled wealth of scenic effect, would be a most valuable franchise which capitalists would pay 10 something to secure.

Apart altogether from the question of revenue, it became apparent from the first opening of the Park that more convenient transport should be provided to all parts of the grounds from the Grand Trunk Railway Depot, at which nearly all the large excursions to the Falls from points in Canada disembarked. The street railway of the town did not approach nearer than a mile to the Falls at any point where entrance would be had to the Park; and its equipment, at best, was quite inadequate for handling the large excursions coming from all points of Canada and the United States. The number of cabs was too limited, and to most of the 20 excursionists, too expensive. The distance from the Grand Trunk Depot to Table Rock is two and a half miles, and to the Dufferin Islands three and a half miles, and as excursionists are generally accompanied by a large number of children and are also frequently encumbered with baskets, walking such a distance was attended with great fatigue and discomfort; and one trial was usually sufficient to deter them from attempting another expedition in the same manner.

It was also found that organized efforts were made by the owners of bazaars, and other attractions on the American side, to capture any excursions booked for the Canadian Park. Agents were invariably sent to meet 30 the special trains conveying these excursions for the purpose of selling coupon tickets for admission to a number of the so-called points of interest, including bazaars and restaurants. In addition, substantial inducements were freely offered to the promoters of the excursion to entice the whole party to the American side. The large profits made on the sales to members of these excursion parties enabled the owners of these places to subscribe liberally to the funds advanced for this purpose. Even those crossing Lake Ontario by steamer from Toronto or elsewhere, found it much more convenient to take the observation trains of the New York 40 Central Railway, at Lewiston, which afforded partial views of the lower reach of the gorge, and landed the excursionists within a few minutes' walk of the Park and river on the American side. For these and other reasons it was found to be in every way most desirable that the electric railway should be built, and immediate attention was, therefore, given to the project; and as the first step, the right of way was secured where

the lands vested in the Commissioners were not sufficient for the proposed road. After several offers had been made to dispose of the franchise, a contract was ultimately entered into with Messrs. Osler, Hammond Hendrie and Angus, on behalf of a number of prominent Canadian capitalists for the construction and operation of a line of electric railway through the Park and to Queenston and Chippawa, the Commissioners providing the right of way over nearly the whole of the distance, and furnishing all the water power necessary for the developing of the electricity to operate the line.

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- 10 Under the terms of the agreement entered into with these capitalists, the sum of \$10,000 a year is secured for the Park revenue by way of rental. Early in 1892 the construction of the line was begun, and the work was sufficiently advanced to permit of the opening of the road, as a single track railway, on the 24th of May, 1893. The construction throughout is of a very substantial character, and the electrical and rolling stock equipment fully up to the requirements of the agreement. The success which attended the operating of the line from the first, convinced the Company that safety and convenience required them to double track the road throughout. To that end negotiations were entered into with the
- 20 Commissioners, and after very careful consideration of all the circumstances governing the case, an agreement was ultimately arrived at by which, in consideration of certain specific works to be performed by the Company, the laying of a second track was authorized, and the Company was able to have the work completed in time for the heavy midsummer travel of 1894. By the opening up of this route abundant provision has been made for the convenience of the visiting public of all classes; and the sublime panorama of Niagara in all its diversified scenic aspects, along its entire length, is opened up to view with every possible convenience for the tourist and at a trifling expense.
- 30 “B.—A lease to the Town of Niagara Falls for ten years from 1st September, 1889 (renewable for a second period of ten years under certain conditions), of the right to take water from the river for town purposes, with certain defined stipulations as to buildings, flumes, tunnels, etc. The consideration is a pepper corn rental of five cents a year.

- 40 “C.—The railway franchise executed on December 4th, 1891, and approved of by Act of the Legislature of Ontario, April 14th, 1892. This franchise covers the right to construct a first-class electric railway with single or double tracks, as may be agreed upon by the Commissioners and the Company, in and through the park proper, from its southern to its northern boundary, and on over the Chain Reserve or other lands of the Commissioners to Queenston, together with the right to all necessary erections, tunnels, etc., etc., for motive power, machinery and appliances.

“The compensation to be paid for the franchise, which covers the extension of the line to Queenston, is ten thousand dollars per annum,

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and the agreement is for a period of forty years from September 1st, 1892, with certain rights of renewal for a further period of twenty years. Attached to this agreement is a provision for the construction of a line of railway along the water's edge in the gorge below the Falls, from the Park to Queenston, if agreed upon between the Commissioners and the railway company within five years from the date of agreement. The additional rental to be paid for this privilege is seven thousand five hundred dollars per annum, and the period to run concurrently with the high level line.

“A single track railway with crossings has been built through the park and to Chippawa and Queenston, upon the Chain Reserve. This was opened for traffic on the 24th of May, 1893. The Commissioners have not called upon the railway company to construct the low level line under the terms of the agreement. 10

(E) *Extracts from Report of Commissioners for Niagara Falls Park for year 1896:*

Utilization of Water Power

In the early part of the year application was made by the company having the privilege of developing electrical power for commercial purposes from the waters of Niagara River within the park, for an eighteen months' extension of time within which, under their agreement with the Commissioners dated April, 1892, the initial works were to be constructed. Many meetings were held with the representatives of the company and a large volume of correspondence was carried on during the year in order that the Commissioners might become fully informed in respect of the reasons that called for the extension of the time limit on the part of the company. The Commissioners also desired to consider all the circumstances and conditions involved in the application, and their bearing upon the future interests of the Park. 20

As the subject is not only of great public importance but vitally affects the future interests of the Park, and considerable opposition has been manifested to an extension of the time limit or to any variation of the agreement with the company—although such opposition is largely confined to the residents of the Niagara district—the Commissioners think that a historic resume of all the facts connected with the utilization of the water power of the falls is called for in order that an intelligent opinion may be had in reference to the subject. 30

At the outset the fact must again be emphasized that in founding the Park the Government of Ontario made it a *sine qua non* that its establishment should not entail any financial burden on the province, but that the property should be made to yield a revenue sufficient for its yearly maintenance and improvement, and in addition pay interest on the whole outlay necessary for the purchase of the lands and for the extensive works of reclamation and reconstruction. The necessity of providing annually a 40

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sum of not less than forty thousand dollars for this purpose had from the beginning a most important bearing upon the policy of the Commissioners. Having made efforts for some years to secure this very large revenue without success, the Commissioners were compelled to look for new sources of income, and among these their attention was naturally drawn to the immense water power of the falls as one of the most promising means at command for raising revenue, more especially as a great enterprise had been organized on the American side, having in view the utilizing of the water power of the falls for commercial purposes. In the early
 10 part of the year 1889 a proposal was received by the Commissioners on behalf of a number of American gentlemen, among whom was ex-Governor Cornell and other well known capitalists, for a grant under which some of the water power of the Horse Shoe Fall could be used for the purpose of generating electricity as a motive power, and for lighting purposes, not only for local requirements but for transmission to cities and towns in Canada and the United States.

The Commissioners carefully considered the subject in all its bearings and decided that certain conditions should govern any agreement which might be arrived at, viz.: That all the constructions required for
 20 electrical works should be placed as far as possible from the bank of the river, and in a manner which would not detract from the Park design, and that all such works should be subject to the approval of the Park Commissioners, both as to position and character; and further, that the conduct of operations within the Park should be subject to the rules and regulations framed by the Commissioners.

Appendix

Ever since the construction of the electric railway, the bridge leading to Cedar Island has been a source of anxiety, owing to the narrow space left for carriages at the eastern end. During the season a substantial
 30 double way bridge, on a different alignment, and provided with strong rustic railings, was substituted and the surroundings put into better shape. Near the south end of Cedar Island a dam was placed across the channel in order to raise the water surface to something like its former level, as the excessively low water prevalent in the river for the past three or four years had left the timbering of the south bridge much more exposed than formerly, and therefore subject to decay. Incidentally it has much improved the appearance of the channel above the site of the dam.

On the Dufferin Islands, several reaches of the pathways, where the shallow streams were crossed by wooden bridges, were filled in with
 40 gravel and permanent walks made. The numerous little bridges which were left all received a thorough overhauling, and neat rustic railings put up in each case.

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(F) *Extracts from Report of Commissioners for Niagara Falls Park for year 1899:*

Exhibits.
Ex. No. 5.
Extract from
Report of
Pk. Comm'rs.
1899.

By an accidental contact of the wires connecting the large new generators placed in the power house of the Niagara Falls Park and River Railway Company to supply electricity to local users for manufacturing purposes, this substantial structure, together with all the electrical apparatus and appointments contained therein, were destroyed by fire on the night of September 4th last. By the destruction of this power station all the industries which had been using electrical power were at once crippled, and some of them which had no other means of obtaining power were compelled to close up. 10

On the 21st of July the International Bridge at Queenston Heights, which has been erected on the site of the former carriage suspension bridge built in 1850 and destroyed by a storm a few years later, was formally opened for traffic. It is a very substantial structure, with a central track for the interchange of traffic between the Niagara Falls Park and River Railway and the Gorge Electric Railway, and two carriage ways for vehicular traffic.

Exhibits.
Ex. No. 5.
Extract from
Report of
Pk. Comm'rs.
1902.

(G) *Extracts from Report of Commissioners for Niagara Falls Park for year 1902:* 20

Owing to the great length of the Park domain extending from Chippawa to Queenston, a distance of nearly twelve miles, every portion of which is full of historic interest, and scenic grandeur, it was vitally important that all the objective points should be reached by an electric railway so that tourists might be able to visit every point at a reasonable cost. This was accomplished by inducing capitalists to construct an electric railway, the Commissioners granting the right to lay a double track through the Park and on the Chain reserve, for which they receive \$10,000 per annum. This line of railway has now become part of a belt-line system, giving visitors the magnificent views from the highland of the river bank on the Canadian side, together with the Niagara Glen and Queenston Heights Parks and the intermediate gorges descending to the river all within the Park domain and returning on the American side by the gorge Railway, thus enabling visitors to view the banks and rapids from the lower levels. Whether the granting of this charter with permission to pass through the Park can, under the circumstances stated, be characterized as an act of vandalism, the Commissioners are quite content to leave to the verdict of the millions of visitors who have passed over this railway in the past ten years. That it has been a great boon to visitors both pecuniarily and visually in enabling them to view all points of interest with ease, comfort and satisfaction is almost universally admitted. 30 40

From a financial standpoint it is satisfactory to know that up to the present time the Commissioners have received over \$110,000 from this franchise.

*In the Matter
of an
Arbitration*

Ex. No. 5.
Extract from
Report of
Pk. Comm'rs.
Exhibits.
1902.

—continued

Bridge at Intake

By midsummer the excavations at the site of the Canadian Niagara Power Company's intake had been carried down to solid rock, and the construction of the bridge to carry the Electric Railway and the main Park driveway was begun. This bridge was first designed to be of ornamental steel trusses, supported by stone abutments with a centre pier.
10 Acting, however, upon the suggestion of the writer, the company have substituted a concrete arch bridge reinforced by steel ribs and faced with cut stone masonry. The parapet walls are to be of rock-faced masonry, and the bridge, which will consist of five spans of fifty feet each in the clear and have a total width of about fifty feet, will when finished be a very handsome feature of the Park.

Intake for Electric Railway and Town Water Supply

The filling out from the shore to deep water by the Canadian Niagara Power Company necessitated a new intake for supplying the flumes of the Electric Railway and the town waterworks. In each of these cases the
20 supply of water has of late become quite inadequate owing in part to the rapid current carrying stones and gravel to the entrances of the flumes, which were very contracted in area, and in part to the lowering of the margins of the river by the receding of the contour of the Horse Shoe Fall. In preparing plans for new intakes it was deemed best by the respective parties to have one large opening from the river, instead of two small ones as before and to slow up the velocity of the water passing through to the existing flumes in order to relieve the difficulty experienced from ice. The plans approved by the Commissioners provide for
30 five openings of 21 feet each between piers, these openings to be protected by heavy steel racks secured to the Portland cement concrete masonry piers and containing walls. The main Park driveway will be carried over this intake by a steel deck bridge with a span of about eighty feet. The Electric Railway Company are to provide the bridge; all the other work, including the deepening of the area enclosed by the intake walls, is at the expense of the Canadian Niagara Power Company. The contractors for this work have made very slow progress, and it will not be completed until the spring.

Coffer Dam

Subsequent to the conclusion of the new agreement authorizing the
40 company to take water from the Niagara River, application was made for approval to plans for a coffer dam to shut off the waters of the river and lay bare the river bed at the site chosen for the intake and forebay,

*In the Matter
of an
Arbitration*

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Exhibits.
Ex. No. 5.
Extract from
Report of
Pk. Comm'rs.
1902.

—continued

extending from the Dufferin Islands up-stream to the southern boundary of the Park. This work was begun in August and completed by November, and it has also been of very great interest to the public generally owing to the variety in the conformation of the strata forming the bed of the stream and which owing to the swiftness of the current had been swept clean for ages. The coffer dam was commenced at the point where the easterly limit of the Park intersects the edge of the river, and running out into the stream about twenty feet turns at a right angle and runs in a direct line with the intake of the Canadian Niagara Power Company for a distance of over two hundred yards, when it curves outward and terminates near the line of the first cascade a total distance of about 250 yards. The construction of this coffer dam shut off all the water flowing in and around the Dufferin Islands, and thousands of visitors have been attracted by the strange spectacle. The company have not yet begun the permanent works incidental to the intake or forebay, but the engineers of the company expect to have these works so far completed that the waters of the river will be restored to their usual channels by mid-summer. 10

Exhibits.
Ex. No. 5.
Extract from
Report of
Pk. Comm'rs.
1903.

(H) *Extracts from Report of Commissioners for Niagara Falls Park for year 1903:*

International Railway and Town Intake

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The work begun by the Canadian Niagara Power Company last year in extending and widening the intake for the water supply of the electric railway and town, has, under plans approved by the Commissioners, been carried through to the railway power house and one common open waterway with permanent concrete side walls substituted for the two separate wooden flumes, the timbers of which were found to be in a more or less decayed condition. This work will give a much better water supply to the railway and the town and provide better facilities for getting rid of the ice than has heretofore obtained. The change will also admit of a permanent improvement being made to the surface of the Park contiguous to the intake, and secure the erection of a new bridge for Park purposes without cost to the Park. The railway company have also made some changes in their wheelpit within their power house, with a view to securing a much more constant supply of power. 30

It is interesting to note, in view of the discussions referred to in the last report of the Park Commissioners, that the effect of the construction of the coffer dam of the Electrical Development Company, and the upper dam of the Ontario Power Company, upon the surface levels of the river at the joint intake of the International Railway and the town, has been inappreciable, although both of the constructions mentioned have been carried well out into the stream and some strong cross-currents have been created at the cascades with a setting towards the shore of Goat Island. 40

What the final effect may be when the dams are removed and the power works are in operation is of course, still a debateable question.

After much consideration and not a little solicitude, it became evident to the Commissioners that the requisite revenue could only be raised by granting certain franchises and privileges within the Park. While the primary object in granting such concessions was to provide revenue, the Commissioners fully realized that the public sentiment of the Province would not, even in furtherance of this necessity, tolerate or permit any desecration of the Park property, and notwithstanding the adverse criticism of some of the methods resorted to for raising money the Commissioners confidently assert that no violence will be done to the most aesthetic taste in the granting of these revenue producing franchises. That, the public may judge whether we are warranted in making this statement or not, I may be permitted to comment very briefly on the three classes of franchises that have been granted.

First. Owing to the great length of the Park Domain, extending from Chippawa to Queenston, a distance of nearly twelve miles, every portion of which is full of historic interest and scenic grandeur, it was vitally important that all the objective points should be reached by an electric railway, so that tourists might be able to visit every place at a reasonable cost. This was accomplished by inducing capitalists to construct an electric railway; the Commissioners granting the right to lay a track through the Park, and on the property of the Commissioners northwards to Queenston, for which they receive \$10,000 per annum. That this railway has been a great boon to visitors, both pecuniary and visually, in enabling them to view all points of interest with ease, comfort and satisfaction, is almost universally admitted.

(I) *Extracts from Report of Commissioners for Niagara Falls Park for year 1908:*

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Queenston

This outlying park is becoming more popular as a single day picnic ground for various organizations from Toronto and other places that can reach it readily and on a number of days this summer more people have had to be looked after at Queenston than at the park proper. And it appears probable that this popularity will increase rather than decrease, within the next few years. With this in view it appears to me that careful consideration should be given to improving the grounds and affording the necessary facilities for the convenience and comfort of the crowds. As it is there are no better provisions now than several years ago, although the conditions are vastly different. Considerable expense would be incurred but it is a matter that should be met even to the extent of foregoing some of the improvements at the Park at the Falls.

*In the Matter
of an
Arbitration*

Exhibits.
Ex. No. 5.
Extract from
Report of
Pk. Comm'rs.
1903.

—continued

Exhibits.
Ex. No. 5.
Extract from
Report of
Pk. Comm'rs.
1908.

Niagara River Boulevard

Exhibits.
Ex. No. 5.
Extract from
Report of
Pk. Comm'rs.
1908.

—continued

In the month of April, active work in preparing for the construction of the Boulevard along the upper Niagara River from the Falls to Fort Erie, was begun, when a complete survey of the length, sixteen miles, was made. Upon carefully considering the plan prepared it was decided to purchase extra width of property to make a full allowance of 100 feet upon which to build a macadam roadway, paths and grass plots, with space for a double track electric railway and a small right of way for telephone lines. The good roads department of the Government was consulted as to the proposed layout and under Mr. A. W. Campbell, Deputy Minister of Public Works, a typical plan was prepared with specifications for road construction. Surveys were then commenced to show the quantity of land to be secured from each owner along the route and information prepared for proceeding with the purchase. This work is now complete and negotiations are in progress with the owners following a general policy outlined by the Board of Commissioners after careful discussion. Some of the extra width has been bought and turned over to the Commission and it is intended to have the whole complete by next spring. 10

The typical plan shows a green plot 15 feet in width adjoining the edge of the bank followed by a roadway 30 feet wide, of which 18 feet is stoned after the manner of macadam roadways. Bordering upon the roadway 25 feet is left for a path and two rows of trees; then 20 feet is reserved for electric railway purposes and the remaining 10 feet is for a pole line for telephone use. Where projections occur in the contour of the shore line, extra width has been taken so that these may be beautified and relieve any monotony from the sameness of employing the typical section throughout. 20

For construction purposes the work has been divided into sections and as the land has been arranged for, these have been thrown open for tender and contracts awarded. Section No. 1, a length of one and one quarter miles above Chippawa, has the roadway completed under the specification prepared, and is in use, while section No. 4 two and three-quarter miles long has been commenced at the Bridgeburg end of the route. Much care has been given to the proper interpretation of the requirements for building to produce a surface that will be satisfactory under the traffic that will pass over it, and special attention has been exercised upon the drainage of the gutters. 30

Simultaneously with the opening of sections of roadway for travel, the problem of maintenance must be thought of. This can be best accomplished with the mileage under control by a diversion into sections after the manner of a railway trackage and keeping at intervals materials for repair work and quarters for the road men. 40

Outlets from the larger ditches are provided by constructing reinforced concrete culverts, while the larger streams are bridged by steel concrete bridges of a design in keeping with the character of the work.

One of these, a forty foot span, is completed at Frenchman's Creek, near Bridgeburg and presents a fine appearance with its cut stone hand rails, and retaining walls of hand laid dry walls holding up the approaches.

The protection of the shore line from erosion by cutting from the river currents has been vigorously carried on and practically all of the lengths originally outlined have been lined with stone riprap laid up along the water's edge. More of this stone work will be required in the future as the currents change and commence to wear away in a new place. It would be advisable to examine the whole frontage and lay out for protection such portions as require it most.

All of which is respectfully submitted.

John H. Jackson,
Superintendent.

(J) *Extracts from Report of Commissioners for Niagara Falls Park for year 1910:*

International Railway Fares

The question of fares on the Park and River Division of the International Railway has been before the Commissioners since 1906, and in 1908 a conference was held between representatives of the Board of Trade from Niagara Falls and Chippawa (the applicants for a reduced scale of charges) and the officials of the International Railway to enquire into the merits of the request. The Company protested its inability to reduce the minimum charge of ten cents on the plea of insufficient earnings to pay more than a merely nominal interest upon the investment. The Commissioners, however, were relieved from making an order on the advice of Sir Amelius Irving, K.C., the Park Solicitor, to the effect that the remedy, if any, lay in an application to the Ontario Railway and Municipal Board. This application was made by the Niagara Falls Board of Trade and argued in Toronto, with the result that the Railway Board decided that it had jurisdiction and ordered a 5-cent cash fare between Bridge Street and a point three miles south thereof. The Court of Appeal, however, reversed this decision, and jurisdiction was placed in the Board of Park Commisisoners as originally provided in the Act of Incorporation of the Railway Company. A hearing before the Park Board was arranged for November 25th, and both parties presented evidence respecting the matter in dispute with the exception of statements of earning power of the Railway Company. These statements have now been furnished, and the Board of Trade has been called upon to file their answer to the same, when it is to be hoped a decision will shortly be reached in this long-standing controversy.

*In the Matter
of an
Arbitration*
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Exhibits.
Ex. No. 5
Extract from
Report of
Pk. Comm'rs.
1908.

—continued

Exhibits.
Ex. No. 5.
Extract from
Report of
Pk. Comm'rs.
1910.

*In the Matter
of an
Arbitration*

(K) *Extracts from Report of Commissioners for Niagara Falls
Park for year 1911:*

Exhibits.
Ex. No. 5.
Extract from
Report of
Pk. Comm'rs.
1911.

International Railway Fares

The progress of the negotiations for reduced fares on the International Railway was referred to in last year's Report and the hope expressed that a final decision in this long-standing controversy would soon be reached. Owing to the complicated nature of the accounts relating to charges, maintenance, and net earnings, caused by the absorption of the Park and River Division of the road by the larger American Company, now known as the International Railway, it became evident to the Commissioners that a compromise settlement would better tend to a lowering of the rates than a decision upon evidence submitted. In order to bring about a settlement on this basis, the Solicitor for the Commissioners, along with the Superintendent, was instructed to carefully consider the schedule of fares in force with that proposed by the Company, and to report any modifications which in their opinion should be made. After some months of negotiation a materially modified schedule, in the interest and convenience of tourists, and the public generally, was arrived at, and formally approved by all concerned, including the Ontario Railway and Municipal Board.

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Exhibits.
Ex. No. 5.
Extract from
Report of
Pk. Comm'rs.
1917.

(L) *Extracts from Report of Commissioners for Niagara Falls
Park for year 1917:*

Joint Intake

In the early months of the year representations were made by the Water Commissioners for the City of Niagara Falls and the International Railway Company to the effect that the water levels at the joint intake used by these two corporations were being lowered as a result of Power Company operations and the abstraction of water above the intake location. It was stated that the City of Niagara Falls had at times been entirely without water for domestic purposes, and the International Railway Company unable to operate its cars, due to the inadequate supply of water. It was further stated that engineers of the Hydro-Electric Power Commission of Ontario had been consulted for the purpose of making an investigation of the water levels to ascertain the relationship that exists between the Power Companies' operations and the water stages at the intake. Some months later this report was presented to the Commissioners, and legal advice was sought respecting the responsibility for maintaining the water supply at this point. It was pointed out that a number of other influences were at work affecting the joint intake, and that the domestic supply of Niagara Falls had failed in the winter season before the large plants had been designed or erected. For instance, the Chicago Drainage Canal taking large quantities of water from Lake

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Michigan permanently lowers the Great Lakes System from that point towards the St. Lawrence outlet. The Power Companies at Niagara Falls, New York, directly affect the river levels by taking water above the upper rapids and not allowing it to pass the lower intakes. The dredging of the natural channels of the Great Lakes system also affects the Niagara River, and the gradual recession of the crest of the Horseshoe Falls is another factor in the general result. At certain seasons the wind action, particularly on Lake Erie, and the interference from ice conditions, serve to lessen the supply of water available for both domestic use and power purposes. From a legal standpoint, the Commissioners were advised that no responsibility rested upon them to restore the levels once existing, and it was further shown that the three Power Companies operating in Queen Victoria Park had agreed with the Commissioners to assume all responsibility for damages caused in the construction and operation of their respective works. The supply of water for domestic use in a Municipality such as Niagara Falls is, however, a very important matter, and to force the Water Commissioners to litigate for the purpose of obtaining a supply for the needs of the city, would lead to a long series of Court actions before any remedy could be obtained. It was, therefore, decided that some remedial works might be constructed, and the responsibility for the cost of the same determined later. The only Company to take exception to this procedure was the Electrical Development Company, which set forth that it was entitled to defend itself against any claim for damage. After designs had been prepared for the construction of a gathering dam to increase the height of water at the joint intake, the Hydro-Electric Power Commission of Ontario became aware of the proposed action of the Commissioners, and undertook to supply the City of Niagara Falls during emergencies, occurring from low water stages by a connection with one of the main water carrying conduits of the Ontario Power Company. This action was made possible when the Power Commission gained control of the Ontario Power Company on August 1st, 1917. The Ontario Power Company itself, while under the original management, had declined to supply the city on emergency occasions, except in case of fire. When the Power Commission proposed to come to the assistance of the Municipality, the new work, although ready for construction, was abandoned temporarily, and the winter of 1917-18 will serve to show whether reliance may be placed upon the new source of supply. Fortunately the Niagara River levels have been higher than the average of the last several years, and this helps to relieve the situation.

40 (M) *Extracts from Report of Commissioners for Niagara Falls Park for year 1918:*

During the month of October the employees of the International Railway Company were on strike to secure higher wages, and the service over the Park and River division between Chippawa and Queenston was

*In the Matter
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Arbitration*
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Exhibits.
Ex. No. 5.
Extract from
Report of
Pk. Comm'rs.
1917.

—continued

Exhibits.
Ex. No. 5.
Extract from
Report of
Pk. Comm'rs.
1918.

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Exhibits.
Ex. No. 5.
Extract from
Report of
Pk. Comm'rs.
1918.

entirely out of commission from October 3rd to October 22nd. The Ontario Railway and Municipal Board were appealed to for the purpose of compelling the Company to provide a service, and after three hearings an order was made directing that passenger cars should be run on Monday, October 21st. A partial service was given from this time until the end of the strike, when the full schedule was again restored.

—*continued* The International Railway Company is applying for an increase in passenger fares due to the increasing cost of supplies and labor. If a new schedule is put into effect it will require the joint approval of the Park Commissioners and the Ontario Railway and Municipal Board. 10

Respectfully submitted,
John H. Jackson,
Superintendent.

January 20th, 1919.

Electric Railway Bridges

The three long through truss steel bridges used by the electric railway in crossing channels among the Dufferin Islands are very ugly features in the charming local landscape. Fortunately they can be used to advantage in other places in connection with the new power constructions, and the International Railway Co. will replace them by small reinforced concrete bridges, the tops of which will rise but little above the tracks, which will be a vast improvement in landscape effect over the existing high truss bridges. It is to be hoped that an arrangement can be made for adding a rock-faced limestone facing and parapet to these concrete structures in order to harmonize them with the local landscape. The parapets and openings should be level, not parallel with the rising grade of the tracks. 20

Exhibits.
Ex. No. 5.
Extract from
Report of
Pk. Comm'rs.
1919.

(N) *Extracts from Report of Commissioners for Niagara Falls Park for year 1919:*

Relocation of Tracks at Queenston

For the purpose of giving access to the generating station, and the bringing in of material and heavy machinery, the Park Commissioners sanctioned a railway connection through the lower gorge to and beyond the Village of Queenston connecting with the Michigan Central Railway. The connection has now been placed, and as intimated in the Thirty-Third Annual Report, a large amount of destruction has taken place among the natural trees which lined the sloping talus ascending from the water's edge. In conjunction with the railway construction an improvement has been arranged in the tracks of the International Railway Company. Instead of winding down the slope the tracks will now extend northerly on Queen Street and reach the lower level through Vrooman's Ravine. For construction purposes a temporary transmission line has been erected from the site of the generating station at Smeaton's Ravine along the top of 30 40

the cliff to a point in the vicinity of Queenston Heights Park where it descends to the railway right-of-way. The poles have been kept as far as possible from interfering with the public view, particularly at Brock's Monument entrance.

Upon the upper level above the generating station the tracks of the International Railway Company will be re-located to parallel the front of the screen house. Considerable damage has been done to the roadbed at this point, and the Commissioners have insisted upon temporary protection for the safety of electric cars carrying tourists.

*In the Matter
of an
Arbitration*

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Exhibits.
Ex. No. 5.
Extract from
Report of
Pk. Comm'rs.
1919.

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International Railway Company

The International Railway Company has made application to the Ontario Railway and Municipal Board for an increased scale of passenger fares over the Park and River division running from Queenston to Chipawa. On account of the agreement with the Park Commissioners for the construction of the electric railway and lands vested in the Commissioners, it is necessary to have the joint approval of the Park Board and the Railway Board. A number of suggestions have been made and new schedules prepared, but no agreement has yet been reached between all parties.

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The Commissioners called the attention of the Board of Railway Commissioners for Canada to the Upper Steel Arch Bridge carrying traffic between Niagara Falls, Ontario, and Niagara Falls, New York, and requested an examination of the structure to settle rumors of its unsafe condition. A complete inspection was made, and the International Railway Company had an independent examination and repairs made where necessary, including painting. No foundation for the rumors of the structure being unsafe for traffic was found, and such slight deterioration as had taken place was completely repaired.

(O) *Extracts from Report of Commissioners for Niagara Falls*
30 *Park for year 1920:*

Exhibits.
Ex. No. 5.
Extract from
Report of
Pk. Comm'rs.
1920.

The tourist traffic to Europe from this continent, even in the poorest years, has a value of \$200,000,000.00 of which amount \$100,000,000.00 is spent upon pleasure such as may be supplied in abundance along the Niagara Frontier. The tourist traffic for all Canada has not yet exceeded \$15,000,000.00 per annum. About one half of the total population of Ontario is directly tributary to Niagara Falls Park, and many millions of people from the United States depend entirely on Niagara Falls for a holiday, while thousands come from abroad. All of these visitors are upon pleasure bent with money in their pockets to spend, and if the Provincial
40 Park and Parkways with possibilities exceeding Norway's Fiords, Switzerland's Peaks, and Italy's Lakes be allowed to retain the power rentals which have been created by the Commissioners until the programme of

*In the Matter
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Exhibits.
Ex. No. 5.
Extract from
Report of
Pk. Comm'rs.
1920.

—continued

development is completed, revenues from tourist traffic will undoubtedly increase until from all sources there will be a surplus to hand to the Government. Last year over 23,000 people, mostly Americans, climbed the 235 steps at Brock's Monument to obtain a view of Lake Ontario and the Niagara Fruit Farms. Visitors to the number of 59,000 walked through the Scenic Tunnel behind the Horseshoe Falls. Over 204,000 took the Belt Line Trip, running through Canada, from Niagara Falls to Queenston and nearly 600,000 persons crossed the Upper Steel Arch Bridge from New York State to Canada. The tourist receipts in 1920 at the restaurant in Queen Victoria Park were over \$56,000.00 an increase of \$28,000.00 10 over 1919, and at Queenston Heights visitors spent over \$35,000.00 in 1920, or over four times the amount expended in the best year heretofore reported. The efforts of the International Railway Company, which purchased the Canadian owned Park and River Railway in 1900, are largely responsible for bringing these visitors in such large numbers to spend money in Canada.

Exhibits.
Ex. No. 5.
Extract from
Report of
Pk. Comm'rs.
1921.

(P) *Extracts from Report of Commissioners for Niagara Falls Park for year 1921:*

“An option was granted to certain English capitalists and electricians to acquire the franchise for constructing and operating the electric 20 railway, as well as the works for generating electricity. The conditions of the option for the railway required that an agreement should have been executed and entered into on or before 1st September, 1891. The parties interested in the enterprise, however, were unable to form a company having the requisite capital, in consequence of which the option lapsed.

“The option for the privilege of using the water of Niagara for generating electricity, granted to the same parties, does not expire until 1st March, 1892, when upon payment of two years' rental in advance, viz., \$50,000, they have the right to acquire the lease of the power on the terms 30 and conditions set out in the agreement dated December 17th, 1889.

“The main objects the Commissioners had in view in promoting the electric railway scheme were: (1) to obtain revenue for the Park maintenance and to assist in the payment of interest on the debentures issued to acquire and improve the property; (2) to increase the number of visitors, primarily for revenue purposes, but also to bring into greater prominence the Canadian Park and the historic environment on the banks of the Niagara River, by connecting it with all the great railway lines of the Continent; (3) to overcome the antagonism of the cabmen, who have persistently opposed the interests of the Canadian Park ever since it was 40 founded.”

(Q) *Extracts from Report of Commissioners for Niagara Falls Park for year 1923:*

Report of the Park Superintendent

To the Commissioners of the Queen Victoria Niagara Falls Park,
Gentlemen:

I beg to submit the following report on the works of maintenance and improvement carried out in the Queen Victoria Niagara Falls Park System during the year ended November 30th, 1923.

10 The property under the control and management of the Commission-
ers extends along the whole of the boundary between the Province of
Ontario and New York State from the City of Buffalo and the Village
of Fort Erie on the south to Niagara and Youngstown at Lake Ontario;
and over five bridges, spanning the Niagara River, assisted by a ferry-
boat connection at Fort Erie, must pass practically all of the exchange
of traffic between the two countries. Excluding the steam railway con-
nections, three of the bridges carry foot passengers and vehicles, while
two of these carry in addition electric cars used to a large extent in the
summer season for tourist excursions. Of the different classes of traffic
20 the rapid increase in the use of the motor has brought very serious re-
sults in the use of the parks and in the congestion of the driveways. While
this condition does not manifest itself continuously during the season,
it is very evident on public holidays, Saturdays and Sundays. The great
bulk of holiday crowds still come to the parks by electric car, but where
these previously comprised almost the total of persons using the picnic
grounds at a given time, they are now added to by a substantial number
of citizens who come by motor, and space to park vehicles must be found.

(R) *Extracts from Report of Commissioners for Niagara Falls Park for year 1924:*

International Railway Company

30 A new stopping point has been established on the Park and River
Division of the International Railway at the Hydro forebay and the stop
formerly designated the Whirlpool has been replaced by two stations
known as Colt's Point and Thompson's Point on the opposite sides of
the Aerial Tramway. Rates of fares were approved for these three stops.

The clearing of the grounds between Niagara Falls and Queenston
was continued and a large area prepared for seeding in the spring. At
Queenston a heavy retaining wall was built on the side of the Parkway
to prevent an embankment under the tracks of the International Rail-
way Company from slipping. The cost of the work was borne in equal
40 portions by the Commissioners and the Railway Company.

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Exhibits.
Ex. No. 5.
Extract from
Report of
Pk. Comm'rs.
1923.

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Exhibits.
Ex. No. 5.
Extract from
Report of
Pk. Comm'rs.
1924.

Exhibit 85

*In the Matter
of an
Arbitration*

Ex. No. 85.
Extract from
Report Niag.
Pks. Comm.
1931.

Forty-Sixth Annual Report of the Niagara Parks Commission, 1931**EXTRACTS FROM FORTY-SIXTH ANNUAL REPORT****INTERNATIONAL RAILWAY COMPANY**

By an agreement dated December 4th, 1891, an arrangement was entered into for the construction of an electric railway from Chippawa to Queenston, following the course of the Niagara River, and by legislative enactment in 1892 the agreement was approved and a company incorporated under the name "The Niagara Falls Park and River Railway Company." The right to operate the railway was to begin on September 1st, 1892, or so soon as any section had been completed, and was to extend for a period of 40 years, or until August 31st, 1932. Provision was made for a renewal period of 20 years at the option of the company. In 1901 the Ontario Legislature passed an act whereby authority was given to the Niagara Falls Park and River Railway Company to sell its assets, business undertakings, property, liabilities, name, franchise and good will to the Buffalo Railway Company incorporated under the laws of the State of New York, and by an act of the Dominion Parliament assented to in 1900, the latter corporation was invested with power to carry on its business in Canada and was empowered to purchase the assets of the Niagara Falls Park and River Railway Company, subject to the jurisdiction and control of the Niagara Parks Commission. 10 20

The Ontario Act of 1901 made slight amendments to the agreement of December 4th, 1891, and the confirming statute of 1892, adding the right to renew the agreement for a second period of 20 years, or until August 31st, 1972. Then in 1902 both the Dominion Parliament and the Ontario Legislature substituted the name "International Railway Company" for the name "Buffalo Railway Company" in their respective enactments in the years 1900 and 1901. Following the legal sanction an agreement of purchase and sale was completed between the companies and the property became vested in the International Railway Company and that corporation operated the railway including the Canadian section of the Belt line or Great Gorge Trip. In the month of July, 1931, the President of the company notified the Commission that the agreement of December 4th, 1891, would not be renewed but would terminate on August 31st, 1932. Although two further periods of 20 years each were available, neither of them are being taken advantage of and the terms of the agreement, in case the company is unwilling to renew, come into effect. The Commission is carefully considering the matter and has engaged expert services to examine the physical property and the legal position. The 30 40

Government has also been advised of the termination of the agreement.

The excess of total revenue over expenditure for the year was \$132,144.23 but the amount paid to the Consolidated Revenue Fund was the sum of \$277,047.92, thus reducing surplus account by \$144,903.69.

The total payments to consolidated revenue fund now amount to \$3,157,604.30.

Capital expenditure during the year amounted to \$76,824.45 and the unfunded capital debt is \$249,893.68.

*In the Matter
of an
Arbitration*

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Exhibits.
Ex. No. 85.
Extract from
Report Niag.
Pks. Comm.
1931.

—continued

Exhibit 80

10 **Forty-Seventh Annual Report of the Niagara Parks Commission, 1932**

EXTRACTS FROM FORTY-SEVENTH ANNUAL REPORT

The total amounts received from privileges, tolls and fees since the inception of the park have been as follows:

1887—\$ 1,716	1897—\$22,421	1907—\$20,498	1917—\$14,099	1927—\$197,893
1888— 4,727	1898— 19,954	1908— 20,503	1918— 11,130	1928— 180,504
1889— 5,705	1899— 20,308	1909— 20,989	1919— 29,624	1929— 182,935
1890— 5,816	1900— 20,537	1910— 21,109	1920— 48,511	1930— 120,503
1891— 5,853	1901— 22,013	1911— 23,024	1921— 39,821	1931— 73,590
1892— 7,628	1902— 20,039	1912— 29,987	1922— 34,514	1932— 21,888
20 1893— 18,511	1903— 20,986	1913— 30,296	1923— 53,197	
1894— 19,684	1904— 17,528	1914— 35,436	1924— 98,722	
1895— 19,894	1905— 20,214	1915— 30,519	1925—126,030	
1896— 17,434	1906— 21,249	1916— 25,819	1926—144,145	

Exhibits.
Ex. No. 80.
Extract from
Report Niag.
Pks. Comm.
1932.

INTERNATIONAL RAILWAY

30 The International Railway Company, successor to and purchaser of the Niagara Falls Park and River Railway, under agreement, dated July 1st, 1902, notified the Commission in July, 1931, that a renewal of the operating agreement of December 4th, 1891, would not be sought at the expiration of the original 40-year term, and that in consequence the said operating agreement would terminate on August 31st, 1932. Because of the inconvenience to the travelling public to be without service over Labour Day, Monday, September 5th, it was by mutual agreement arranged that the Company would continue the electric railway until midnight of Sunday, September 11th. The following day a last trip was taken over the line, from Chippawa to Queenston, and then the property was formally handed over to the Park Commission.

40 Built during 1892-1893, the railway was opened for the carriage of passengers on May 24th, 1893, as a single track line, following the edge of the gorge and the Niagara River throughout its length. The rails were laid for the most part on lands belonging to the Commission. At once successful, arrangements were completed for double tracking and the

*In the Matter
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Exhibits.
Ex. No. 80.
Extract from
Report Niag.
Pks. Comm.
1932.

—continued

construction completed in 1894. In 1895 the Niagara Gorge Railroad from Niagara Falls, New York, to Lewiston was constructed, and by 1899 bridges sufficient for railway traffic were completed at Niagara Falls and Queenston. Thus a route was provided for a belt line service, overlooking the gorge and lower rapids, from the Canadian side, and running through the gorge, at river level, on the American side. This trip was inaugurated with the purchase of the Niagara Falls Park and River Railway by American interests and remained an attractive feature for tourists for thirty years. A steamboat connection at Queenston provided a water route to Toronto and for a time there was a similar means of communication between Chippawa and Buffalo, but the latter proved disappointing and was abandoned. Carrying from a million to nearly two millions of passengers, for a number of years, the traffic fell off rapidly from 1928 and finally the abandonment of the line was inevitable. 10

Exhibit 116

Exhibits.
Ex. No. 116.
Agreement,
Comm'rs of
Q. V. N. F. P.
and Can. Niag.
Power Co.,
April 7, 1892.

Agreement Dated April 7, 1892, Between Commissioners of Queen Victoria Niagara Falls Park and Canadian Niagara Power Co.

An Act to Confirm a Certain Agreement Made Between the Commissioners of the Queen Victoria Niagara Falls Park and the Canadian Niagara Power Company, and to Enable the Said Company to Carry the Agreement Into Practical Effect 20

STATUTES OF ONTARIO (Chap. 8, 55 Vic.)

(Assented to 14th April, 1892).

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario enacts as follows:—

1. The agreement made between the Commissioners for the Queen Victoria Niagara Falls Park and Albert D. Shaw, Francis Lynde Stetson and William B. Rankine, dated seventh day of April, 1892, and as set forth in schedule A hereto, and in this Act hereinafter designated as "the agreement," is hereby approved, ratified, confirmed and declared to be valid and binding on the parties thereto; and each of the parties thereto is hereby authorized and empowered to do whatever is necessary to give effect to the substance and intention of the provisions of the agreement, and is hereby declared to have and to have had power to do all acts necessary to give effect to the same. 30

2. The said Albert D. Shaw, Francis Lynde Stetson, William B. Rankine, and John D. Irwin and Charles J. Holman, together with all such persons and corporations as shall become shareholders in the company hereby incorporated, shall be and are hereby constituted a body corporate and politic by and in the name of the "Canadian Niagara Power Company," and the persons in this section named shall be the provisional directors of the company. 40

3. The company shall have power and authority to construct, maintain and operate works for the production, sale and distribution of electricity and pneumatic power for the purposes of light, heat and power; to construct, maintain and operate intakes, tunnels, conduits and other works in, through and under the lands and water-courses constituting the Queen Victoria Niagara Falls Park, but only in the manner and to the extent to be approved by the Commissioners of the Queen Victoria Niagara Falls Park, and in the manner and to the extent required for the corporate purposes of the company as provided in the said agreement;

10 and said Company shall have power with such pneumatic electric or other conductors or devices as shall have been permitted and approved of by the Commissioners of the Queen Victoria Niagara Falls Park to conduct, convey and furnish or to receive such electricity or power to or from any person, corporation or corporations at any place or places by any means through, under and along any property in respect of which they may have acquired the right, and through, under and along the streets, highways and public places of any municipality or municipalities, or across or along any of the waters within this Province by the erection of the necessary fixtures, including posts, piers or abutments for sustaining

20 the wires or conduits, provided the same are so constructed as not to incommode the public use of such streets, highway and public places, or to impede the access to any house or other building erected in the vicinity of the same, or to interrupt the navigation of such waters. The authority herein given in respect of such streets, highways and public places shall only be exercised subject to such agreement in respect thereof as shall be made between the company and the said municipalities respectively, and under and subject to any by-law or by-laws of the councils of the said municipalities passed in pursuance thereof. The company shall also have power to take and hold stock in any corporation created for or engaged

30 in business of using or supplying water of the Niagara River, or of any corporation created for or engaged in the use of power or light derived from such water and may hold stock in any corporation which shall contract to purchase, lease, or use any power or property of the said company, and its stock may also be owned, held and voted on by any such corporation or person; and the said company, shall have power upon receiving proper authority so to do, to take its lines or conductors across any bridge over the Niagara River, subject always to any agreement that may be entered into with respect thereto, with the owners for the time being, of such bridge. It shall also have power to acquire, upon such

40 terms as may be agreed upon, the agreement mentioned in the first section of this act, and all rights granted thereunder by the said Park Commissioners, and also the benefit of any work that shall have been done and any moneys that shall have been expended in connection with the said works prior to the organization of the said company.

4. The capital stock of the company shall be the sum of \$3,000,000 to be divided into shares of \$100 each; and the money thereby raised shall

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Exhibits,
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April 7, 1892.*

—continued

*In the Matter
of an
Arbitration*

—
Exhibits.
Ex. No. 116.
Agreement,
Comm'rs of
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and Can. Niag.
Power Co.,
April 7, 1892.

—continued

be applied in the first place to the payment of all fees, expenses and disbursements for the procuring of the passage of this Act, and for making of the surveys, plans and estimates connected with the said works, and all the rest and remainder of such money shall be applied towards making, completing and maintaining the said works and to the other purposes of this Act.

5. The directors may pay or agree to pay in paid up stock or in bonds of the said company, or in both, such sums as they may deem expedient to engineers or contractors, or for right of way or material or plant, buildings or lands, or the construction or equipment of the works or any part thereof, and also subject to the sanction of the vote of the shareholders for the services of promoters or other persons who may be employed by the directors, for the purpose of assisting the directors in the furtherance of the undertaking or the acquiring of the agreement mentioned in section 1 of this Act. 10

6. The directors of the said company shall have power to issue bonds of the company for the purpose of raising money for prosecuting the said undertaking, the whole amount of the issue of such bonds not to exceed in all the sum of \$5,000,000, which shall, as therein provided, be a charge (subject always to the payment of the annual rent to the Commissioners as provided in said agreement) upon the works, franchise and plant of the company and payable at such times and places as the directors shall determine; and the said company hereby incorporated may, from time to time, for advances of money to be made thereon, mortgage or pledge any bonds which they can, under the powers of this Act, issue for construction of the said undertaking, works or otherwise. 20

7. All shareholders in the said company, whether British subjects or aliens, or residents of Canada or elsewhere, have and shall have equal rights to hold stock in the said company and to vote on the same.

8. It shall be lawful for the corporation of any municipality, in any part of which the works of the company or any part thereof pass or are situate, by by-laws specially passed for that purpose, to exempt the said company and its property within such municipality, either in whole or in part, from municipal assessment or taxation, or to agree to a certain sum per annum, or otherwise, in gross, or by way of commutation or composition for payment, or in lieu of all or any municipal rates or assessments to be imposed by such municipal corporation, and for such term of years as to such municipal corporation may seem expedient, not exceeding twenty-one years, and any such by-law shall not be repealed unless in conformity with a condition contained therein. 30

9. The clauses of The Ontario Joint Stock Companies General Clauses Act, save so far as they are varied or inconsistent with this Act, shall be incorporated in this Act. 40

Schedule A

This agreement made this 7th day of April, 1892, between the Com-

missioners for the Queen Victoria Niagara Falls Park acting herein on their own behalf and with the approval of the Government of the Province of Ontario, and hereinafter called the commissioners, of the first part; and Albert D. Shaw of Watertown, in the State of New York, Francis Lynde Stetson, and William B. Rankine of the City of New York, hereinafter called the company of the second part.

And whereas for convenience and to prevent ambiguity it is agreed and understood by and between the said parties hereto and is hereby declared as follows, that is to say:

10 (a) The expression "the park" whenever it occurs herein shall be understood to mean the park proper, namely, the Queen Victoria Niagara Falls Park south of its original boundary in front of the Clifton House and running easterly to Niagara River.

(b) The expression "the Commissioners" wherever it occurs herein shall be understood to mean not only the commissioners of the Queen Victoria Niagara Falls Park—as representing the Government of the Province of Ontario in the premises—named as parties hereto of the first part, but also their successors and assigns and those who for the time being may be the commissioners of the Queen Victoria Niagara Falls
20 Park, or other representatives of the Government of Ontario in the premises.

(c) The expression "the company" wherever it occurs herein shall be understood to mean not only the individuals above named as the parties hereto of the second part, but also their and each of their heirs, executors, administrators, and assigns, and the company to be incorporated as hereinafter mentioned, and its successors and assigns.

And whereas the company have applied to the commissioners for the right to take water from the Niagara River at a certain point or points in the park, in order that the company may thereby generate and develop
30 electricity and pneumatic power for transmission beyond the park.

And whereas it is the intention of the company to apply to the Legislature of Ontario at its present session for a charter of incorporation to enable them and such others as may be associated with them in the undertaking to construct and operate the said works hereinafter defined.

And whereas the company desire to secure the right to construct their works in the park, and commissioners have agreed to permit such construction upon the terms and for the considerations hereinafter expressed and contained, or intended so to be.

Now, therefore, this agreement witnesseth as follows, that is to say:—

40 (1) For the purpose of generating electricity and pneumatic power to be transmitted to places beyond the park, the commissioners hereby grant to the company a license irrevocable save as hereinafter limited, to take water from the Niagara River, between the head of Cedar Island the main land south thereof, and lead such water, by means of the natural channel between Cedar Island and the main land and the further extension of the channel, to supply works to be erected and constructed by the

*In the Matter
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Exhibits.
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*In the Matter
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company in buildings and power houses on the main land within the park, on a location near the foot of the high bluff between the Carmelite Monastery and the rear of the Table Rock House, which location shall occupy a tract of land of not more than 1,200 feet in length by not more than 100 feet in width, such location of buildings and power houses from time to time to be erected as shall be hereafter settled within the aforesaid limits by the commissioners.

(2) The company shall have the further right to excavate tunnels to discharge the water led from the Niagara River to the said buildings and power houses so that such water by means of such tunnels shall emerge below the Horse Shoe Fall at or near the water's edge of the Niagara River. 10

(3) The right to take water from the Niagara River for the purposes aforesaid shall be subject to the rights existing and heretofore granted under the three following agreements, namely:

(a) The agreement between the commissioners and the corporation of the town of Niagara Falls, dated the first day of September, 1899, and the right of granting at the expiration of the said agreement, the use of the said amount of water to the said town or to any other parties.

(b) The agreement for the construction of the electric railways in accordance with the Act of the Legislature of Ontario entitled An Act to incorporate the Niagara Falls Park and River Railway Company, and subject to the point of intake of water to generate electricity under the terms of the agreement being fixed by the Commissioners as may be found necessary. 20

(c) The agreement made with Sutherland Macklem for the supply of water for the mansion and grounds known as Clark Hill.

(4) The license hereby granted is for the term of twenty years, commencing with the first day of May, 1892, the company paying therefor at the clear yearly rental of twenty-five thousand dollars (\$25,000) during the first ten years (the rent to be computed from the first day of November, 1892); The rental for the period from the first day of May, 1892, to the first of November, 1894, which is fixed at fifty thousand dollars (\$50,000), having been paid to and accepted by the commissioners in two payments of the sum of fifteen thousand dollars (\$15,000) and the further sum of thirty-five thousand dollars (\$35,000) paid by the company at or prior to the execution and delivery of this instrument; the rent for the remainder of the first ten years of the term to be payable in half yearly payments and at the end of each six months, to wit, on the first days of May and November of each and every year, the first of such semi-annual payments to be made on the 1st day of May, 1895. 30 40

The rental for the second ten years of the term payable half yearly on the first days of May and November as above, shall be as follows:

The eleventh year	\$26,000
The twelfth year	27,000
The thirteenth year	28,000

The fourteenth year	29,000
The fifteenth year	30,000
The sixteenth year	31,000
The seventeenth year	32,000
The eighteenth year	33,000
The nineteenth year	34,000
The twentieth year	35,000

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10 Provided always that if any part of the said rent, whether payable under this paragraph or in respect of the renewal term or terms in the following paragraph, shall be in arrear for three months whether legally demanded or not, the commissioners, or if not then an existing corporation, the government of the Province of Ontario, may re-enter on the premises, or on any part thereof in the name of the whole and thereupon this agreement shall determine, and the remainder of the term then current shall terminate as well as any renewal or renewals thereof which under this agreement may be claimed.

20 (5) If at the end of the said period of twenty years the company desire to renew for a further period of twenty years, and shall give notice in writing to the commissioners at least twelve months before the expiration of the twenty years period, they shall be entitled to and shall receive a further lease of such rights for the period of twenty years more at the rental of thirty-five thousand dollars (\$35,000) per annum, and similarly the company shall be entitled at their option to three further renewals at a like rental of thirty-five thousand dollars (\$35,000) per annum, the object and intention of this stipulation being to confer upon the company the right to an original term of twenty years at the rentals hereinbefore specified, and to four further terms or periods of twenty years each at a rental of thirty-five thousand dollars (\$35,000) per annum, making one hundred years in all, and the company shall then
30 give up, or at the expiration of the first term of twenty years or any subsequent term of twenty years, if unrenewed in accordance with this agreement, the works, premises, rights and privileges by this agreement granted or created without any claim for compensation with liberty to the company to remove their machinery. In case the company desire to terminate the lease, they may do so during the first period of twenty years upon three months notice in writing to the commissioners, or in case the commissioners are not then an existing corporation, the Government of the Province of Ontario, payment of rent up to the time of such notice being made upon the giving of such notice.

40 (6) In respect of all the rights and authorities which the commissioners, by the agreement, have conferred or agreed to confer upon the company to exercise in and about the execution of the works to be constructed, and operating or working the same, and of all other matters herein agreed upon, the company will indemnify the commissioners in respect of the exercise of said rights by the company, and will hold them safe from any liability to any person whomsoever.

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*In the Matter
of an
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—continued

(7) For the transmission of electricity and pneumatic power to points beyond the park the company shall have the right to convey the same by wires, cables or other appliances in conduits beneath the surface of the park:* And the company may pass a conduit under the electric railway within the park to enable electricity or pneumatic power to be conveyed between the railway and the edge of the cliff as far as the Niagara Falls and Clifton Suspension Bridge.

(8) For the purposes of construction the company shall have the power to construct coffer dams across both upper and lower ends of the natural channel between Cedar Island and the main land, and to erect a temporary incline from the Falls View Station of the Canada Southern Railway to receive supplies and machinery delivered by the said railway and shall deposit excavated material in such places as the commissioners may direct, and at all times to erect and maintain a submerged dam for the purpose of directing water from the river to the aforesaid natural channel. 10

(9) The commissioners shall not grant or confer upon any other company or person any right to take or use the waters of the Niagara River within the limits of the park so long as this agreement is in force, nor will the commissioners themselves engage in making use of the water to generate electric or pneumatic power except for the purposes of the park, saving always insofar as regards the exceptions contained in paragraph 12 of this agreement. 20

(10) The company undertake to begin the works hereby licensed to be constructed by them on or before the first of May, 1897; and to have proceeded so far with the said works on or before the first of November, 1898, that they will have completed water connections for the development of 25,000 horse power and have actually ready for use, supply and transmission, 10,000 developed horse power by the said last mentioned day.

(11) The company whenever required shall from electricity or pneumatic power generated under this agreement supply the same in Canada (to the extent of any quantity not less than one-half the quantity generated) at prices not to exceed the prices charged to cities, towns and consumers in the United States at similar distances from the Falls of Niagara for equal amounts of power and for similar uses, and shall whenever required by the Lieutenant-Governor-in-Council make a return of prices charged for such electricity or power, verified under oath by any chief officer of the company, and if any question or dispute arises involving the non-supply or prices of electricity or power for consumption in Canada the High Court of Justice of Ontario shall have jurisdiction to hear and determine the same and enforce the facilities to be given or the prices to be charged. 30 40

(12) The company may agree with the electric railway company for the supply of electricity to work the said railway and also supply electricity for any other purpose within the park.

(13) If the company should at any time or times continuously neglect for the space of one year effectually to generate electricity or pneumatic

power as hereby agreed by the company, unless hindered by unavoidable accident, the Lieutenant-Governor-in-Council may then and from thenceforth declare this agreement, the liberties, licenses, powers and authorities thereby granted and every one of them to be forfeited and thenceforth the same shall cease and determine and be utterly void and of no effect whatever.

10 (14) All works to be done and executed by the company in order to carry out the rights hereby granted to them and the manner in which the same may from time to time be proposed to be performed or varied, as well as the exercise of powers within the park, shall, before being com-
menced, be submitted by the company to the commissioners for approval, by suitable plans, profiles, specifications and elevations, as the case may require, the intention being that the buildings and works shall not detract from the park design and not in any way disfigure the park, of which disfiguring or not the commissioners are to be the sole judges, and shall not be adopted or proceeded with before the approval thereof in writing shall have been given by the Commissioners.

20 And for greater certainty but not so as to restrict the generality of the foregoing terms of this paragraph it is hereby declared that such approval shall be required in the matters following:—

(a) The excavation of the channels to lead the waters of the Niagara from the point or points of intake to the location of the power houses, including the precautions necessary in relation to making openings under the railway for the admission of the waters of the river, and including the wheel pits, tunnels and portals to discharge the same, and the point of such discharge below the Falls.

30 (b) The selection of the site on which the buildings and power houses are to be located in accordance with the limits fixed by paragraph 1, and the general design and form of such buildings as suitable to the surroundings of the site selected. (See paragraphs 1 and 3.)

(c) The construction of the conduits whereby the cables, wires, pipes, to convey the electricity or pneumatic power to points without the park. (See Paragraph 7).

(d) The construction and position of coffer dams, incline plane, buildings for temporary use during construction and position of tramways for use during construction and for the removal of excavated or refuse material. (See paragraph 8).

40 (e) The change of the rising main of the town of Niagara Falls water supply, and also the operations of the company, are not to interfere with the regular working of the railway or its safety.

(15) The parties hereto shall use their best endeavors to procure, and either party hereto may apply to the present Legislature of Ontario at its present session for an act of incorporation enabling the parties hereto of the second part, or those who may be associated with them in the undertaking to carry on such works as an incorporated company, with sufficient powers to enable them to raise such capital by bond, debenture, stock,

*In the Matter
of an
Arbitration
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Exhibits.
Ex. No. 116.
Agreement,
Comm'rs of
Q.V.N.F.P.
and Can. Niag.
Power Co.,
April 7, 1892.*

—continued

*In the Matter
of an
Arbitration*

Exhibits.
Ex. No. 116.
Agreement,
Comm'rs of
Q.V.N.F.P.
and Can. Niag.
Power Co.,
April 7, 1892.

—continued

mortgage or otherwise, as may be deemed sufficient to carry out the fore-going contract and to enable them to construct and operate effectively the said works as hereinbefore provided for; and either party hereto may at the present session of the Legislature apply to said Legislature for an Act to ratify and confirm this agreement.

(16) The rents hereby agreed to be paid are hereby declared to be a first and preferential charge upon the said works, and the company shall not have power to create any lien, charge or encumbrance upon the said works or any of them, by bond, debenture, mortgage or otherwise, which would interfere with or prevent the commissioners from procuring pay-ment of the rent hereby reserved or any part thereof; and no simple con-tract creditor or other creditor of the company shall have any claim against the said works or any part thereof in priority of the claim of the commissioners for rent. 10

(17) Upon the due organization and formation of the corporation in-tended to be formed as hereinbefore provided, and when this agreement shall have been duly transferred to such corporation and it shall have assumed the same, the said parties of the second part shall thereby be relieved from personal responsibility for the performance of this agree-ment. 20

In witness whereof the corporate seal of the commissioners has been hereunto affixed by the chairman, who has also signed the same; and the parties hereto of the second part have hereunto set their hands and seals the day and year aforesaid.

Signed, sealed and delivered
in the presence of
JAMES WILSON

C. S. GZOWSKI	(Seal)
Chairman	
ALBERT D. SHAW	(Seal)
FRANCIS LYNDE STETSON	(Seal)
WM. B. RANKINE	(Seal)

Exhibit 126

30

Exhibits.
Ex. No. 126.
Agreement
between
Comm'rs. for
Q.V.N.F.P.
and Can.
Niagara Power
Co., July 15,
1899.

An Agreement between Commissioners for the Queen Victoria Niagara Falls Park, and the Canadian Niagara Power Company, dated July, 1899, and Order-in-Council confirming same, Including Plan.

AGREEMENT

This agreement made this fifteenth day of July, 1899, between the Commissioners for the Queen Victoria Niagara Falls Park, acting herein on their own behalf and with the approval of the Government of the Province of Ontario, and hereinafter called the Commissioners of the first part, and the Canadian Niagara Power Company, of the second part.

Whereas by the Act of the Legislature of Ontario passed at a session held in the sixty-second year of Her Majesty's reign, chaptered 11, and by section 35, it is enacted as follows: 40

“The Commissioners of the Queen Victoria Niagara Falls Park, with the approval of the Lieutenant-Governor in Council, and the Canadian

Niagara Power Company may enter into an agreement for the surrender and abandonment of the sole or exclusive right to use the waters of the Niagara River within the limits of the said Park granted by the agreement bearing date the seventh day of April, 1892, between the Commissioners of the Queen Victoria Niagara Falls Park acting herein on their own behalf and with the approval of the Government of the Province of Ontario and therein called the Commissioners of the first part, and Albert D. Shaw of Watertown, in the State of New York, Francis Lynde Stetson and William B. Rankine of the City of New York, in the State
 10 of New York, therein called the company of the second part, and set out in chapter 8 of the Statutes of Ontario, 1892, upon such terms and conditions as to abatement of rent, the extension of time for the completion of the contract under the said agreement or any variation of the said contract and for other purposes in connection therewith as may to such Commissioners and to the Lieutenant-Governor in Council appear to be necessary or in the public interest, and any such agreement so entered into shall be binding and effectual according to its terms."

Now therefore this agreement witnesseth and it is hereby agreed by the parties to these presents as follows, that is to say:

20 1. The location of buildings and power houses as defined by paragraph 1 of the agreement of the 7th April, 1892, above recited, is changed to the location shewn on the plan annexed marked A, and the points of intake and discharge indicated and laid down on such plan are hereby declared to be the location settled according to the provisions of the agreement of the 7th April, 1892, as if the same had been described and selected in terms of said agreement with the approval of the Commissioners.

30 (a) And these presents testify approval by the Commissioners of the location of the building and works with their accompanying requirements to be done and executed by the Company in respect of the powers to be exercised within the Park, which, by paragraph 14 of the agreement of the 7th April, 1892, are to be subject to the approval of the Commissioners.

40 (b) The expression "general plans and specifications or general specifications" mean, and are to be taken to mean, the plans and specifications submitted by the Company to the Commissioners for approval, of which one complete set will remain in the possession of the Commissioners and the other in the possession of the Company; and both duly identified at the time of the execution of these presents, under the corporate seals of the respective parties hereto, as also under the hands of the head office thereof.

(c) Such general plans and general specifications shall form part of this agreement and are as to their approval by the Commissioners to be controlled by the designs and changes therefrom appearing upon the annexed plan marked "A" and the terms in these presents set forth, which plan and terms shall be taken as varying the said general plans and specifications and the agreement of the 7th April, 1892.

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(d) As to the provisions of paragraph 14, sub-section A of the agreement of the 7th April, 1892. "In respect of the excavation of the channels to lead the waters of the Niagara from the point or points of intake to the location of the power houses, including the precautions necessary in relation to making openings under the railway for the admission of the waters of the river, including the wheel pits, tunnels and portals to discharge the same, and the point of such discharge below the Falls."

The Commissioners hereby approve of the location of the said works described in the above sub-section as indicated upon the plan hereto attached, to be constructed in detail as in the general plans and specifications of works to be done, as by the plan hereto attached are changed or varied. 10

Provided that the Company do obtain an instrument under the corporate seal of the Niagara Falls Park and River Railway Company granting to the Company, with the approval of the Commissioners signified as parties thereto, the right to make openings at the points of intake under the railway in accordance with the plan marked "A" hereunto attached and having relation to the general plans and specifications above mentioned, and also that the Company do obtain the approval of the proper authority for the construction of bridges to carry the railway over such openings, and that in respect of such works as affect the railway or any damages sustainable thereto, the agreement shall provide that the Railway Company shall have no recourse against the Commissioners. 20

(e) As to the provisions of sub-section (b) of paragraph 14; the site of the building and power house as laid down on the plan annexed, to be in accordance with the general design and form as in general plans and general specifications.

(f) As to the provisions of sub-section (c) of paragraph 14: the construction of the conduits to convey electricity or pneumatic power without the Park in furtherance of paragraph 7 of the agreement of the 7th April, 1892, shall be conveyed only by means of conduits beneath the Park at such depth as the Commissioners may from time to time determine. 30

(g) The Company shall remove all surface soil from the site or sites of the work, and deposit the same as when and where directed by the Commissioners.

Such surface soil shall be available for any purposes within the Park for which the Commissioners may have use as they may be necessary or convenient, and they may use and apply the same to such uses, without any compensation being made to the Company therefor, nor shall the Company be thereby relieved from the covering up and filling with good soil as a top dressing of any of the refuse or excavated materials which the Company are by these presents required to distribute and cover up with good soil. 40

(h) The removal and distribution of excavated or refuse material

from the excavations of the channels from the point or points of intake for the foundations, construction of the building and power house, wheel pits, sluiceway, tunnel and portal to discharge the waters at foot of the cliff below the Falls, conduits with the Park to convey the electricity or pneumatic power to places beyond the Park, and from any other works which are agreed to be done by the Company, by these presents, or by the agreement of the 7th April, 1892, shall be distributed and deposited wholly or in part as the Commissioners may from time to time require and point out at the localities hereinafter specified.

10 (1) Either by way of extension of the foreshore of the Niagara River in an easterly direction from the edge of the Horse Shoe Fall southward along the river bank, in accordance with the alignment shown by red lines on the annexed plan marked "new shore line to which excavated material shall be deposited." Such material along such line shall be protected at the base or where in contact with the water by massive stone riprap.

(2) Or in filling up the natural stream of the Niagara River flowing between Cedar Island and the mainland or any part thereof.

(3) Or in raising the level of the west bank or shore of Cedar Island.

20 (i) And all the area or space over which such material shall be distributed shall be covered over with good soil, and put in condition for sowing grass seeds or planting.

(j) If there be any material which the Commissioners deem to be in excess of their requirements of distribution or the requirements of the Company, it shall be taken away by the Company and disposed outside the Park limits.

30 (k) The excavated or refuse material taken out at the portal at foot of the cliff below the Falls and not required by the Company, shall be distributed at some point or points below the cliff as the Commissioners may from time to time point out, but shall not require to be covered with good soil.

(l) Tramways for construction purposes shall be placed or changed only on the approval of the Commissioners; steam power for drilling, excavating or hauling materials, or driving machinery, shall not be used on the surface of the park, but below the cliff only, but steam power may be used on the surface of the park for furnishing compressed air for drilling and other purposes connected with the works.

40 (m) So soon as the Commissioners deem that in the execution of any of the works to be by the Company done or performed, or preparations for the same, the main travel driveway through the park, or other Park Road, or pathway now in use, is or about to be incommoded or interfered with, the Company shall forthwith make such deviations of the said driveway or other ways as the Commissioners shall direct and require, although such deviation of the driveway may require a bridge to be built from Cedar Island to the mainland. The safety of any bridge to be built, and provisions for the public safety at such deviation shall

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not be inferior to those of other bridges or ways presently in use within the park.

(n) Whereas by paragraph 6 of these presents the period of time in paragraph 10 of the agreement of the 7th April, 1892, relating to the completion of water connections for the development of 25,000 horse power and having actually for use, supply and transmission 10,000 developed horse power is extended to the first day of July, 1903, and subject in the case of non-completion on the said day last mentioned to the forfeiture of all licenses and powers as by said paragraph 10 is provided; such provisions for forfeiture in said paragraph 10 being wholly irrespective of the provisions for forfeiture provided by paragraph 4 of the agreement of the 7th April, 1892, in case matters might arise giving occasion for the exercise of forfeiture; and whereas time is made of the essence of the contract for the observance by the company of the several provisions contained in both said paragraphs 10 and 4 and each of them, it is hereby further agreed that in respect of all other matters by the company agreed to be done by the period hereinafter limited such as distribution and removal of excavated or refuse material and finish and ornamentation of surfaces, including the perfected condition of the roads, bridges, and other works, not necessarily affecting the development and transmission of the electrical or pneumatic power above described as the Commissioners may require to be done, completed and made perfect in accordance with the general specifications as varied by the plan hereto annexed, shall be done and completed by the first day of July, 1904, in every respect in perfect condition. 10 20

(o) If the company should not complete the works lastly mentioned, namely, distribution and removal of excavated or refuse material and finish and ornamentation of surfaces, including the perfected condition of the roads and bridges and other works lastly mentioned, and deliver them over to the Commissioners in good and complete order and condition to their satisfaction, on or before the 1st day of July, 1904, the Company shall pay to the Government of Ontario, by way of ascertained damages, the several sums hereinafter mentioned, that is to say, the sum of five hundred dollars per week, for each week that the same, or any parts of said works, remain incomplete after such time, whether the contract has been forfeited by the several conditions in these presents or in the agreement of the 7th of April, 1892, or abandoned by the company or not. 30

(p) In the event of the works as hereinbefore specially specified in the preceding sub-section lettered (o) not being completed within twelve months after the first day of July, 1904, the company shall pay the sum of ten thousand dollars (\$10,000), in addition to the sum of five hundred dollars for each and every week as aforesaid. Such sums of five hundred dollars per week and the sum of ten thousand dollars shall be considered as ascertained and liquidated damages. 40

2. The said agreement of the 7th April, 1892, in respect of the

amount of rentals and period for which the same is payable is hereby amended by providing that from and after the first day of May, 1899, the rent payable under the said agreement in lieu of that specified in paragraph 4 thereof shall be up to the first day of May, 1949, the sum of fifteen thousand dollars per annum, payable half-yearly on the same days and times as specified in said paragraph 4 of said agreement and in addition thereto payment at the rate of the sum of one dollar per annum for each electrical horse power generated and used and sold or disposed of over ten thousand electrical horse power up to twenty thousand electrical horse power and the further payment of the sum of seventy-five cents for each electrical horse power generated and used and sold or disposed of over twenty thousand electrical horse power up to thirty thousand electrical horse power and the further payment of the sum of fifty cents for each electrical horse power generated and used and sold or disposed of over thirty thousand electrical horse power; that is to say, by way of example, that on generation and use and sale or disposal of thirty thousand electrical horse power the gross rental shall be \$32,500 per annum payable half-yearly, and so on in case of further development as above provided, and that such rates shall apply to power supplied or used either in Canada or the United States. Such additional rentals as shall be payable for and from such generation and sale or other disposition as aforesaid to the Commissioners shall be payable half-yearly at the rate above specified on the first days of November and May in each year for all power sold in the said several half-yearly periods from the day of sale; and within ten days after said first days of November and May in each year on which such additional rentals shall be payable respectively the treasurer, or if no treasurer, the head office of the company shall deliver to the Commissioners a verified statement of the electrical horse power generated and used and sold or disposed of during the preceding half year, and the books of the company shall be open to inspection and examination by the Commissioners or their agent for the purpose of verifying or testing the correctness of such statement, and if any question or dispute arises in respect of such return or if any statement delivered at any time by the company to the Commissioners of the quantity or amount of the electrical horse power generated and used and sold or disposed of or of the amount payable for such additional rentals the High Court of Justice of Ontario shall have jurisdiction to hear and determine the same and to enforce the giving of the information required.

3. All the provisions of the agreement of the 7th April, 1892, applicable to the rent thereby reserved, including the proviso in paragraph 4, relating to the re-entry and forfeiture in case of rent being in arrear, shall be applicable to the rentals payable under these presents.

4. After the first day of May, 1949, the same rentals as are hereby reserved shall continue to be paid by the said company unless the Lieutenant-Governor-in-Council shall desire a readjustment of the said rent, in which case the rentals for a further period of twenty years shall

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be readjusted by agreement and in the absence or failure of agreement by the parties hereto then the rentals for such further term shall be ascertained by three arbitrators, or a majority of them, one of whom shall be named and appointed by the Commissioners, another by the company and the third by the Chief Justice or senior presiding Judge of the Provincial Court of Ultimate Appellate Jurisdiction for Ontario, and the award of such arbitrators shall be subject to the same provision of law as if the said arbitrators had been appointed by the said parties upon a voluntary reference under the Revised Statute of Ontario respecting arbitrators and references, and the Lieutenant-Governor-in-Council may in the like manner for two further periods of twenty years each, require a readjustment of said rentals, in which case the same shall be determined as aforesaid, and at the expiration of such three periods of twenty years each the term so limited by these presents shall determine and end in accordance with all provisions contained in paragraph 5 of the agreement of the 7th April, 1892. Either party to such arbitration may appeal from any such award upon any question of law or fact to the said Provincial Court of Ultimate Appellate Jurisdiction for Ontario, and the said Court shall have the same jurisdiction therein as a judge has on an appeal from a report or certificate under section 4 of the aforesaid Revised Statute respecting arbitrators and references. And it is hereby further agreed that at any time not less than three years before the period at which such third renewal of twenty years shall terminate the Lieutenant-Governor-in-Council, and notice thereof to the company given, may require the company to continue its operations for a further period of twenty years, to commence from the termination of such third renewal, at the same rentals as shall have been paid during the said third renewal period of twenty years, or at a readjustment of said last mentioned rentals for such further period of twenty years by agreement, and in the absence or failure of agreement by the parties hereto, then the rentals for such further term of twenty years shall be ascertained by arbitration in manner and form according to the provisions for arbitration hereinbefore contained, and in the event of such option being so exercised the terms and provisions of the agreement of the 7th April, 1892, and of these presents shall extend and bind the parties hereto until the said period of twenty years shall have elapsed and expired, but the exercise of such option requiring such further renewal by the Lieutenant-Governor-in-Council shall not change, alter or affect the provisions in respect of the termination of the liberties, licenses, powers and authorities contained in paragraph 5 of the agreement of the 7th April, 1892, and so declared applicable at the termination of the said last mentioned or fourth renewal.

5. Paragraph 9 of the agreement of the 7th April, 1892, shall hereafter and henceforth be null and of no effect, it being agreed that the Commissioners will not themselves engage in making use of the water to generate electric or pneumatic power except for the purposes of the

park, and saving the provisions contained in paragraph 12 of the agreement of the 7th April, 1892. Provided that in case the said Commissioners shall have granted to any other person or corporation license to use the waters of said Niagara or Welland rivers and by reason of failure of such person or corporation to carry on the work so licensed the said Commissioners find it necessary to forfeit said license and take over said works, this clause shall not prohibit said Commissioners from operating such works for the generation and transmission, sale or lease of electricity or power.

10 6. The provisions in paragraph 10 for the completion of the works therein specified are extended to the First day of July, 1903, and if not then completed the Lieutenant-Governor-in-Council may declare the agreement of the 7th April, 1892, and its variations by these presents, and also these presents, the liberties, licenses, powers and authorities so granted and every of them to be forfeited and void, and thenceforth after such declaration the same shall cease and determine and be utterly void and of no effect whatever.

20 7. So long as the agreement of the 7th April, 1892, as varied hereby, and these presents are in force, the Commissioners undertake and agree that the amount of rentals which may be fixed and charged for the right to use the waters of the Niagara or Welland rivers within the Park for the purpose of generating electricity by any other company or person shall not be at less rentals than is provided and reserved by these presents, and, further, that any such company shall be subject to the like restrictions as in paragraph 11 of the said agreement of the 7th April, 1892. Provided, however, that notwithstanding anything in this paragraph contained, the rentals so to be fixed and charged against any other company or person may be reduced below the rentals provided and reserved by these presents so far only as such reduction may fairly and

30 reasonably be allowed in respect of the increased cost of the construction of the canal or of canal and tunnel within the Park, by reason of its greater length or other ground of expense in its or their construction, whether required for supply or waste, through the Park to the point of discharge into Niagara River in excess of the distance between the power house of the Niagara River Power Company and the point of discharge into the Niagara River, such reduction not to be an amount sufficient to give any undue advantage as against the parties of the second part except by reason of such increased cost of canal or tunnel or both, as the case may be.

40 8. The Commissioners agree to grant as may be requested by the Company and the Niagara Falls Park and River Railway Company the right to use the waters of the Niagara River up to the 1st day of July, 1903, to generate electricity from the plant of the said railway company, or such other plant as the company may substitute for or add thereto under the agreement with the said railway company to be used beyond the Park and in such manner as is provided by the agreement of the

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27th November, 1897, made between the party hereto of the second part, as therein defined The Niagara Falls Park and River Railway Company, and the Commissioners party hereto of the first part, but the exercise of such powers, nor the quantity of power thereby generated shall not be allowed or taken to be in diminution of the quantity of power to be completed and had ready for use, supply and transmission as required by paragraph 10 of the agreement of the 7th April, 1892, as by these presents amended and extended and as to such electric power to be generated under the powers contained in the agreement of the 27th November, 1897, and to be extended in accordance with these presents as aforesaid up to the first day of July, 1903, it is hereby agreed that the powers and provisions contained in paragraph eleven of the agreement of the 7th April, 1892, shall apply to and form part of these presents up to the first day of July, 1903. 10

9. Nothing herein contained shall affect the provisions of the agreement of the 27th November, 1897, made between the Canadian Niagara Power Company, of the first part, the Niagara Falls Park and River Railway Company, of the second part, and the Commissioners of the Queen Victoria Niagara Falls Park, of the third part.

10. The said company shall not amalgamate with any other corporation or company heretofore or hereafter incorporated by or under the laws of the Dominion of Canada or by or under authority of the Province of Ontario or which shall be hereafter be licensed by the said Commissioners to take and use the water of the Niagara or Welland Rivers or both for the purpose of generation and transmission of electricity without the consent of the Lieutenant-Governor-in-Council to such amalgamation, nor shall they enter into any arrangement or agreement for that purpose with any such company which may directly or indirectly have that effect, or which may or shall have the effect of keeping up the price or prices of said power, nor shall they enter into an agreement with any such company for pooling the receipts of the said company, or of any part thereof, with those of such other company, nor which shall provide for or have the effect of establishing a common charge or schedule of charges for the use of the said power or any part thereof. 20 30

11. It is further agreed that if from any cause the supply of water at the point of intake as by these presents defined be diminished, the company shall have no claim or right of action against the Commissioners, but may deepen such point of intake to such extent as to restore the supply of water to the volume or quantity necessary for the purposes of the company, and that the granting or licensing of rights to the company by these presents or the agreement of the seventh day of April, 1892, as hereby extended shall not give the company any right of action against other licensees or grantees of the Commissioners in respect of any diminution not substantially interfering with the supply necessary for the company, nor so long as such necessary supply can be obtained by means of deepening at said point of intake. 40

12. And the said parties hereto mutually and respectively covenant, promise and agree with each other to carry into effect, perform and fulfil all the provisions and stipulations in these presents contained and to be carried into effect, observed, performed and fulfilled by the said parties respectively.

13. The provisions of the agreement of the 7th April, 1892, are to stand except where hereby expressly varied, and this agreement shall be read with the agreement of the seventh day of April, 1892, as though the two instruments formed one agreement.

10 14. This agreement shall have no force or effect until approved by the Lieutenant-Governor-in-Council.

In witness whereof the corporate seal of the Commissioners has been hereunto affixed by the Chairman, who has signed the same; and the company has hereto affixed its corporate seal under the hands of W. H. Beatty, vice-president of the said company, and W. B. Rankine, secretary of the said company.

Corporate seal of the Canadian
Niagara Power Company.
Signed, sealed and delivered in the
20 presence of 'James Wilson',
As to the signature of W. H.
Beatty and W. B. Rankine.

THE CANADIAN NIAGARA
POWER COMPANY,

By W. H. BEATTY,
Vice-President.

W. B. Rankine, Secretary.

Corporate seal of the Commis-
sioners for the Queen Victoria
Niagara Falls Park.
Witness: James Wilson,
As to signature of J. W. Langmuir

THE ~~COMMISSIONERS OF~~
THE QUEEN VICTORIA
NIAGARA FALLS PARK,

By J. W. LANGMUIR,
Chairman.

TO HIS HONOUR

30 THE HONOURABLE SIR OLIVER MOWAT, G.C.M.G., Member of the Queen's
Privy Council for Canada, and Lieutenant-Governor of the Province of
Ontario.

REPORT of a Committee of the Executive Council on matters referred to
their consideration.

PRESENT

The Honourable

Mr. Hardy

in the Chair

Mr. Ross

Mr. Gibson

Mr. Harcourt

Mr. Dryden

Mr. Harty

Mr. Davis

40

Approved and ordered,
20th July, A.D. 1899.

O. MOWAT.

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—continuel

ON MATTERS OF STATE

May it please Your Honour.

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Upon the recommendation of the Honourable the Attorney-General, the Committee of Council advise that the undermentioned agreements with reference to the use of the waters of the Niagara River within the limits of the Queen Victoria Falls Park, copies of which are hereto annexed, namely:—

—continued

- (1) Agreement bearing date the 15th day of July, 1899, and made between the Commissioners for the Queen Victoria Niagara Falls Park of the First Part and the Canadian Niagara Power Company of the Second Part. 10
- (2) Agreement bearing date the 15th day of July, 1899, and made between the Canadian Niagara Power Company of the First Part, the Niagara Falls Park and River Railway Company of the Second Part and the Commissioners for the Queen Victoria Niagara Falls Park of the Third Part, and
- (3) Agreement bearing date the 15th day of July, 1899, and made between the Commissioners for the Queen Victoria Niagara Falls Park of the First Part, the Canadian Niagara Power Company of the Second Part, and Albert D. Shaw, Francis 20

Lynde Stetson and William B. Rankine of the Third Part.
be approved of by Your Honour.

Respectfully submitted

A. S. HARDY
Chairman.

18th July, 1899.

J. R. CARTWRIGHT,
C. E. C.

I hereby certify that the above is a true copy of an Order made upon the 20th day of July, 1899, by His Honour the Honourable Sir Oliver Mowat, G.C.M.G. Lieutenant-Governor of the Province of Ontario in Council. 30

(Signed).....

Clerk, Executive Council, Ontario.

Exhibit 115

Agreement, Canadian Niagara Power Co. of the First Part, Niagara Falls Park & River Railway Co. of the Second Part, and Commissioners for Queen Victoria Niagara Falls Park of the Third Part, July 15, 1899.

*In the Matter
of an
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—
Exhibits.
Ex. No. 115.
Agreement,
Can. Niag.
Power Co.,
Niag. Falls Pk.
& River Ry.
Co. and
Comm'rs. for
Q.V.N.F.P.,
July 15, 1899.

THIS AGREEMENT made this fifteenth day of July, 1899, between the Canadian Niagara Power Company (hereinafter called Power Company) party of the first part, and the Niagara Falls Park and River Railway Company (hereinafter called Railway Company), party of the second
10 part, both corporations of the Province of Ontario, and the Commissioners for the Queen Victoria Niagara Falls Park (hereinafter called Commissioners) party of the third part.

Whereas by an agreement of even date herewith between Commissioners and Power Company modifying a certain other agreement dated 7th April, 1892, between Commissioners and certain persons therein called Company as set out in Chapter 8 of the Statutes of Ontario, 1892, the works in said agreements specified and the location thereof in the Queen Victoria Niagara Falls Park are defined and settled upon certain terms and conditions;

20 And whereas such works contemplate, among other things, the construction of water channels involving openings under the tracks of the Railway Company within said Park and the construction of bridges across such openings to carry the railway over the same, as shown upon the plan attached to the agreement above mentioned of even date herewith, which plan relates to certain general plans of Power Company submitted October 5, 1898, to be approved of this day by Commissioners and particularly as shewn on general plan No. 4, Plate No. 3, to be approved of even date herewith;

30 And whereas it is desirable for the protection of the respective rights in the premises of all the parties hereto and for the purpose of ensuring the public safety that some agreement should be made in respect of such works as they affect such crossings and such proposed bridges.

Now therefore this agreement witnesseth and it is hereby agreed by the parties to these presents as follows:

1. Railway Company hereby grants to Power Company the right to make and maintain such openings under railway in accordance with such general plans and specifications above mentioned at the sole expense of Power Company, and only in such manner as shall not in any way interfere with the operation of the railway and as shall be approved by
40 the Minister of the Department of Public Works for Ontario or other proper authority.

2. Power Company agrees at its own expense to construct said bridge or bridges in accordance with such plans having the prior approval of said Department or other proper authority, and of Commissioners and to maintain the same without expense to Railway Company.

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Power Co.,
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& River Ry.
Co. and
Comm'rs. for
Q.V.N.F.P.,
July 15, 1899.

—continued

3. Railway Company agrees that in respect of such works as affect the railway or any damages sustainable thereto Railway Company shall have no recourse against Commissioners.

4. It is further agreed by and between the parties to this agreement that the grant of the right to make and maintain the works as hereby granted is to extend not only to the works which the Power Company deem requisite and sufficient in the first instance, to do, perform, and execute, but shall extend to other or further enlargements of the works or renewals thereof and to deepening the channel or channels of the opening or openings into the Niagara River so that the same works or openings in the whole do not extend beyond the width of opening or openings into the Niagara River contemplated as the ultimate extent of width of such opening or openings as in the said plans set forth. Provided that the Commissioners without being under any duty or liability to exercise such rights may at any time as by them deemed necessary or desirable, execute, do or perform any of the works or rights above granted in which case or cases, all such works so executed shall be at the expense of the Commissioners and only in such manner as shall not (as provided by the Statutory agreement of the fourth day of December, 1891, between the Commissioners and the Railway Company, save as varied hereby) in any way interfere with the operation of the railway and as approved by the proper authority; and in respect of the execution of the said works when done by the Commissioners or by their authority the Commissioners shall hold the Railway Company harmless in respect of all damages and costs.

In witness Whereof the parties hereto have duly executed these presents, the Commissioners by their Chairman and their corporate seal hereunto affixed and each of the Companies by affixing its corporate seal under the hands of its officers duly authorized thereto.

THE CANADIAN NIAGARA POWER COMPANY

(Seal) By (Signed) W. H. Beatty 30
(Signed) Wm. B. Rankine Vice President
Secretary

THE NIAGARA FALLS PARK AND RIVER RAILWAY COMPANY

By (Signed) W. Caryl Ely (Seal)
President.

THE COMMISSIONERS OF THE QUEEN VICTORIA NIAGARA FALLS PARK

By (Signed) J. W. Langmuir
Chairman.

(Seal)

Signed, sealed and delivered 40

in the presence of

James Wilson (Signed)

as to signature of W. H. Beatty and W. Caryl Ely

James Wilson (Signed)

as to signature of J. W. Langmuir.

Exhibit 67
Niagara Falls Park & River Railway Company
Balance Sheet

	Dec. 31 1893	Dec. 31 1894	Dec. 31 1895	Dec. 31 1896	Dec. 31 1897	Dec. 31 1898	Dec. 31 1899	Dec. 31 1900	Dec. 31 1901	June 30 1902
Assets										
Cost of Road and Elec. Equipment	\$ 854,012.27	1,060,693.77	1,061,693.01	1,062,038.81	1,060,438.81	1,062,807.05	1,066,419.39	1,081,951.00	1,095,013.83	1,097,728.48
Including Franchise	49,767.92	59,284.20	59,284.20	59,284.20	59,284.20	60,346.79	62,283.23	66,397.24	66,397.24	66,397.24
Double Track to Date	57,093.03	52,487.96	51,611.78	51,396.78	51,396.78	51,396.78	56,127.84	56,781.26	59,432.00	59,522.05
Rolling Stock	54,222.54	19,203.91	19,213.91	19,213.91	19,213.91	19,213.91	19,213.91	19,213.91	19,213.91	19,213.91
Properties—Land etc.	18,298.81	13,892.04	17,205.49	17,205.49	17,205.49	17,205.49	17,205.49	17,205.49	17,205.49	17,205.49
Whirlpool Incline										
Clifton Incline										
Total	\$1,033,394.57	1,207,561.88	1,209,008.39	1,209,139.19	1,207,539.19	1,210,970.02	1,221,249.86	1,241,548.90	1,257,262.47	1,260,067.17
Stores in Hand		2,038.00	1,200.00	300.00			1,153.70	100.00	10.00	1,566.40
Sundry Debtors	2,801.37	4,008.76	6,266.11	8,621.51	5,361.38	7,412.44	1,788.11	3,139.03	2,640.84	4,094.55
Unearned Insurance				1,471.47	781.58	785.47	1,123.20	407.87	415.58	
Cash on Hand	13.44	6.05	44.27	16,980.81	29,762.08	17,960.92	4,274.80	1,465.62	7,574.64	17,939.34
Power House—Fire Account								2,416.21		
Pan American Stock									3,000.00	
Total Assets	\$1,036,209.38	1,213,614.69	1,216,518.77	1,236,512.98	1,243,444.23	1,237,128.85	1,229,589.67	1,249,077.63	1,270,903.53	1,283,667.46
Liabilities										
Capital Stock (Paid In)	\$ 335,580.00	462,940.00	573,155.00	592,360.00	592,360.00	592,360.00	600,000.00	600,000.00	600,000.00	600,000.00
Due for Advances	696,233.68	772,611.40	687,299.23	104,798.80	192,293.54	257,837.45	15,000.00	28,308.23	37,896.32	38,933.80
Sundry Creditors	5,443.31	3,902.78	4,163.71	4,263.12	2,013.50	960.36	8,993.02	5,242.36	6,953.50	600,000.00
Bonds—Advances				600,000.00	539,993.32	485,903.29	600,000.00	600,000.00	600,000.00	600,000.00
Accrued Interest				14,321.88	12,868.17	11,575.52				
a/c Payable Allied Companies							899.37	28,467.45	752.91	29,581.75
Unpaid Pay Rolls							1,069.63	1,137.57	1,793.63	641.59
Accrued Taxes									342.98	104.42
Unearned Fire Insurance										427.49
Power House, Fire Acct.										13,978.41
Car House, Fire Acct.										
Surplus	1,047.61	25,839.49	48,099.17	79,230.82	96,084.30	111,507.77	3,637.65	14,077.98	23,164.19	
Total Liabilities	\$1,036,209.38	1,213,614.69	1,216,518.77	1,236,512.98	1,243,444.23	1,237,128.85	1,229,589.67	1,249,077.63	1,270,903.53	1,283,667.46
Capital Stock Subscribed	500,000.00	600,000.00	600,000.00	600,000.00	600,000.00	600,000.00	600,000.00	600,000.00	600,000.00	

*In the Matter
of an
Arbitration
Exhibits,
Ex. No. 67,
Balance Sheet,
Niagara Falls Park
and River Ry.
Co., June 30,
1902.*

INTERNATIONAL RAILWAY COMPANY

Park and River Division

Cost of Road and Equipment

In the Matter
of an
Arbitration

Ex. No. 67.
Balance Sheet,
Niag. Falls Pk.
and River Ry.
Co., June 30,
1902.

Year

—continued

Cost of Road and Equipment June 30, 1902, as shown
on books of Park & River Railroad Company Addi-
tions made by International Ry. Co. 1902-1929\$1,260,067.17

1903	A.F.E. 157	Building Steel Concrete Culvert and making 40 ft. fill at Bowman's Ravine Viaduct, Township of Stamford, Wellington County, Ont.—	10
		1903\$ 10,329.19	
		1904 5,213.38	
		1905 7,551.11	
		1906 187.61	
		<u>23,281.29</u>	
1903	A.F.E. 169	One Sturgess Governor 15000 ft. lbs. capacity for N.F. Park & River Ry. Power House	865.00
1903	A.F.E. 191	Running of 2" Water Pipe from the N. Falls P&R Ry. Power House about 800 ft. to the Public Water Works Main to be used for Fire Protection for the N.F. P&R Ry. Power House (Power House Fire Acct.)	250.00
1903	A.F.E. 233	Vch. B 515—Purchase of Right of Way from Dr. Glasgow	75.00
		Vch. D 32—Purchase of Right of Way from Nancy C. Glasgow	300.00
1903	A.F.E. 237	N. Falls Park & River Ry. Power House Intake, Dredging and Excavating for a total depth of 8 ft. of water at mean River level at the portion of intake between the Ice Rack of the extended Intake and present temporary ring coffer dam outside of Ice Rack	546.87
1903	A.F.E. 260	Cost of stringing 7 miles of Booster Feeder from the Water Power Plant toward Queenston	7,740.13
1904	A.F.E. 309	Canadian Hydraulic Power Development, Increase in Headrace Capacity, Reconst. of Ry. Bridges & Bridge Abutments, Extension of Forebay, excavation of Rock for Wheel Pit extension and for	40

			penstock increase, removal of dam at mouth of tunnel and repairs to Power House floor, extension of Forebay northerly	63,554.11
1904	A.F.E.	311	Canadian Hydraulic Power Development, One 2000 H.P. D.C. Generator and Turbine and installation of same, and one 15 ton Electric Crane erected..	69,528.31
10	1904	A.F.E.	312 Canadian Hydraulic Power Development, Engineering and contingencies...	7,314.40
	1904	A.F.E.	313 Canadian Hydraulic Power Development, Extension to draft tubes of present turbines, installation of 3-200 K.W. D.C. Generators complete, additional switchboard and wiring	14,317.73
	1904	A.F.E.	397 Installing new continuous Joints and Bonding, Park & River line	149.10
	1904	A.F.E.	433 Whirlpool Rapids Incline-Installing new emergency hand brake complete with governor to properly regulate speed of car, place brake on car and all necessary erecting	470.77
20	1904	A.F.E.	435 Installing guard rail on most dangerous curves between Chippawa and Queenston	269.30
	1906	A.F.E.	480 New Dufferin Island Bridge	4,719.21
	1907	A.F.E.	536 Highway Bridge over Intake to Canadian Hydraulic Plant, Queen Victoria Park	8,580.00
30	1907	A.F.E.	539 Lowering iron rods in Icerack, building concrete wall in Wheel Pit between No. 1 Turbine and Ice overflow and spreading crushed stone over basement floor	570.71
	1908	A.F.E.	715 Siding into Plant of Canadian-Niagara Power Co. as per voucher 3551. The siding to be built at Power Cos. Expense our portion of same to be charged on your books to our account and our charges for switching done for you from time to time hereafter to be placed to our credit instead of being paid in cash until amount of charge has been cancelled	396.57
40				

In the Matter of an Arbitration
 --
 Exhibits.
 Ex. No. 67.
 Balance Sheet,
 Niag. Falls Pk.
 and River Ry.
 Co., June 30,
 1902.

—continued

<i>In the Matter of an Arbitration</i> — Exhibits. Ex. No. 67. Balance Sheet, Niag. Falls Pk. and River Ry. Co., June 30, 1902. —continued	1908	A.F.E. 727	Making additions to ground return on Park & River and Upper Steel Arch Bridge	1,166.67	
	1910	J. Vcher 207	Purchase of Land — Bowmans Ravine, Township of Stamford	133.80	
	1910	A.F.E. 857	Constructing concrete sidewalk and iron Fence from Upper Steel Arch Bridge to Clifton Incline	1,360.34	
	1911	J. Vcher 707	Sale of Land to D. R. Wilkie and R. A. Smith	522.50	10
	1911	C. Vcher 3688	Sale of land to R. Maculin	720.00	
	1914	A.F.E. 1272	Semi Vestibuling 18-600 type Open Cars—Car 650, 651, 652, 653, 655, 665, 669, 673, 674, 677, 678, 679, 685, 686, 687, 688, 682, & 684	972.31	
	1915	A.F.E. 1410	100 Marker Lamps for 25 N. Falls & Park & River Cars—Car No. 650, 651, 652, 653, 655, 656, 659, 665, 668, 669, 670, 673, 674, 677, 678, 679, 682, 684, 685, 686, 687, 688, 722, 732 & 745	375.00	20
	1915	A.F.E. 1455	Changing 18-600 type 14 Bench Open Cars from 2-57 Motors to 4-57 Motors—Gear Ratio to be 16 x 69 double trolley stands, two Fuse boxes and changing B 29 controller from 2 to 4 motors—Cars 650, 651, 652, 653, 655, 665, 669, 673, 674, 677, 678, 679, 682, 684, 685, 686, 687 & 688	10,116.64	
	1916	A.F.E. 1464	Improvements ordered by Dominion Railway Board—		30
			1. Installing new safety switch at Front St. Queenston increasing radius of curve just above the Dock, cutting back bank and purchase of property		
		2. Renewing C-1 Culverts on Park & River line, installing new guard rails at entrance to curves, ballasting track between Upper Bridge and Bridge St. and constructing drain tile	12,616.54	40	
1918	A.F.E. 1585	Extend 1 & 2 Culverts on each side of Right of Way, north of Whirlpool Car House, 24 ft.	1,071.67		
1921	A.F.E. 1715	Building New Toilet, Whirlpool Incline	483.27		

	1921	A.F.E. 1721	Constructing Telephone Line from Niagara Falls, N.Y., to Queenston, Ont...	1,849.30		<i>In the Matter of an Arbitration</i>
	1921	A.F.E. 1790	Building an extension to present waiting room to conform to lines of present structure 16 ft. x 24 ft. at Bridge St., N. Falls, Ont.	2,346.59			Exhibits. Ex. No. 67. Balance Sheet, Niag. Falls Pk. In the Matter and River Ry. Co., June 30, 1902.
	1923	A.F.E. 1891	Installing Safety Devices — One Way Chapman Signal, Queenston Hill.....	313.15		— <i>continued</i>
10	1923	J.V. 6190	Sale of Property at Bridge St., N. Falls, Ont., known as Elgin House Property to Edw. M. Noonan	<u>4,766.00</u>		
	1923	J.V. 6362	Sale of Property to Niagara Falls Power Co. known as Plat. No. 55 Dufferin Island Strip	<u>\$15,750.00</u>		
	1923	J.V. 6362	Sale of Property 62.51% of Plat. No. 58 known as Kellar Macklem Farm	<u>13,783.45</u>		
	1923	J.V. 6492	Sale of Property — Kellar Macklem Farm	<u>2,618.81</u>	<u>32,152.26</u>	
20	1923	J.V. 6463	Sale of Property to Hydro Elect. Power Co., Queenston, Ont.—Military Reserve	<u>26,250.00</u>		
			Elliott Wynn Property ..	<u>200.00</u>	<u>26,450.00</u>	
	1923	J.V. 6551	Sale of Property, Front and & Bridge Sts., N. Falls, Ont., to Michigan Central R.R.Co....	<u>344.37</u>		
		J.V. 6190	Sale of Property, Front and Bridge Sts., N. Falls, Ont., to E. M. Noonan	<u>4,861.75</u>	<u>5,206.12</u>	
30	1924	J.V. 7317	Sale of Property to Queenston, Ont., King, Clarence, Queen & York Sts.		<u>42.00</u>	
	1925	J.V. 7433	Sale of land known as Colt Point, N. Falls, Ont., R.of.W Sale of land known as MacPherson & Hicks Prop.	<u>306.60</u>		
	1925	A.J.V. 16346	Sale of Parcel of Land to the Village of Chippawa, Ont., from Kellar Macklem Farm	<u>3,926.09</u>	<u>4,232.69</u>	
40	1925	J.V. 7593	Sale of land known as Cliff House & Bridge St. Property and retirement of Building thereon		<u>129.25</u>	
	1926	A.F.E. 2019	Renewing Special Work, Queen St. south of Kent St., Queenston, Ont.....		<u>10,964.89</u>	
					1,019.32	

*In the Matter
of an
Arbitration*
—
Exhibits.
Ex. No. 67.
Balance Sheet,
Niag. Falls Pk.
and River Ry.
Co., June 30,
1902.

—continued

1926	A.F.E. 2076	Installing Feeders on Lower Bridge, 1,000,000 CMLC Feeder on Lower Bridge & 500,000 CM Feeder between Brocks Monument & Lower Bridge and 2,000 ft. north on Queen Street	3,761.92	
1926	A.J.V. 18389	Removing track and overhead in siding from Chippawa Loop to Michigan Central RR Siding	<u>3,328.15</u>	
1927	A.F.E. 2299	Purchase of Property northeast intersection of Front St. and proposed extension of St. Davids Rd., Queenston, Ont.	1,500.00	10
1927	J.V. 8470	Retirement of Buildings located on Cliff House and Bridge St. Property, N. Falls, Ont.	<u>8,361.46</u>	
1928	A.F.E. 2398	Relocating tracks to new location on Fill at Canadian End Lewiston & Queenston Bridge.		
		1928 A.F.E. 2398	\$276.00	
		1929 A.F.E. 2514	746.57	
1929	A.F.E. 2663	Realigning tracks, removing canopy, moving building and constructing new Concrete platform at Bridge St., Niagara Falls, Ont. ..	700.00	20
1929	A.F.E. 2526	Building an addition to a small building in Parking Yard at West End of Falls View Bridge to be used as Ticket Office	586.10	
1929	A.F.E. 2652	Constructing a concrete retaining wall 50 ft. long, 13 ft. high, 5'6" wide at base and 1 ft. 3" wide at top, River Rd. at Ellis St., Niagara Falls, Ont.	2,668.64	30
1931	J.V. 9550	Sale of portion of property at Niagara Falls, Ont., known as Stamford Car House	<u>76.05</u>	
1929	A.J.V. 23176	Retirement of 510 ft. of track on P&R Div. Queen Victoria Park, Table Rock House to North End of Gauntlet track A.F.E. 2559	<u>909.97</u>	

Total Cost of Road & Equipment..\$1,423,172.11

Exhibit 55**Agreement Between Canadian Niagara Power Co. and I. R. Co., June 21, 1903, re Construction of Intake Bridge***In the Matter
of an
Arbitration**—
Exhibits.
Ex. No. 55.
Agreement,
between Can.
Niag. Power
Co. and
Int. Ry. Co.,
June 21, 1903.*

MEMORANDUM OF AGREEMENT, made this 21st day of June, in the year of our Lord One Thousand Nine Hundred and Three:

BETWEEN:

CANADIAN NIAGARA POWER COMPANY

(hereinafter called "Power Company"),

OF THE FIRST PART,

10

AND

INTERNATIONAL RAILWAY COMPANY

(hereinafter called "Railway Company"),

OF THE SECOND PART.

WHEREAS Power Company has obtained the consent of the Commissioners of The Queen Victoria Niagara Falls Park, to deposit in the channel of the Niagara River, adjacent to Cedar Island, above the Intake of Railway Company leading to its power house, part of the waste material arising from the construction of the wheel pit and other works of the Power Company; and

20 WHEREAS the deposit of such waste material in the channel of the said River at that point will make necessary the extension of the said intake to a point further out in the channel of the said River; and

WHEREAS it is desirable that some agreement should be made in respect of such works;

30 NOW THEREFORE this agreement witnesseth that in consideration of the promises, and of the sum of One Dollar of lawful money of Canada, paid by each to the other, at or before the sealing and delivery hereof, (the receipt whereof is hereby acknowledged), each of the said parties hereto, for itself, its successors and assigns, covenants and agrees with the other, its successors and assigns, respectively, as follows:—

1. Railway Company hereby grants to Power Company, so far as it legally may, permission to deposit said waste material in the channel of the Niagara River, but only in such manner that no such waste material shall be deposited in said channel further out from shore than the end of Railway Company's intake extension.

2. Power Company agrees, at its own expense, to construct said intake extension, and to complete the same on or before August 1st, 1903, in accordance with the plan hereunto annexed.

*In the Matter
of an
Arbitration
—
Exhibits.
Ex. No. 55.
Agreement,
between Can.
Niag. Power
Co. and
Int. Ry. Co.,
June 21, 1903.*

—continued

3. Power Company further agrees that it will construct said intake extension to the satisfaction of a person to be appointed by the Railway Company for that purpose, and in such a manner that the operation of the Railway Company's power house and railway will not be interfered with during the construction of the said intake extension.

4. Power Company further agrees to so remove obstructions out of the Niagara River, and to so excavate as to make a channel of the depths and extent shown on the said plan hereunto annexed.

5. Power Company further agrees to indemnify and save harmless Railway Company from all suits or actions of every name and description brought against Railway Company for or on account of any damages received or sustained during the construction of the said works by any party or parties by or from Power Company, its servants or agents, in the construction of the said works, or by or in consequence of any negligence in guarding the same, or any improper materials furnished by Power Company used in its construction, or by or on account of any act or omission of Power Company, its servants or agents. 10

6. Power Company further agrees that in the event of any interference with the operation of the Railway Company's power house and railway being occasioned during the construction of the said works, by the failure to construct the said works in accordance with the provisions of clause 3 of this Agreement, Power Company will, upon demand by Railway Company, immediately furnish Railway Company with such Power as it may require, up to an amount equal to Railway Company's total present development, without cost to Railway Company, and will indemnify Railway Company for loss of rent of power, if any, and for all other damages that Railway Company shall sustain by reason of such interference. 20

7. Power Company further agrees to repair such portion of the crib-work between the intake of the Railway Company and the intake of the waterworks of the Town of Niagara Falls, as lies to the East of the present bridge of the Railway Company, if called upon by the Railway to so repair. 30

8. Railway Company agrees to furnish and place in position across said intake, upon abutments to be provided by Power Company, a plate girder bridge, suitable for light highway traffic in connection with the Park roadway to be hereafter constructed by the said Commissioners.

9. And Inasmuch as this is, and is intended to be, the corporate obligation of the two parties hereto respectively, their successors and assigns, all individual liability of the stockholders and trustees or directors of either and each of the corporations parties hereto, is expressly waived, and no party or person claiming hereunder shall at any time or place allege or assert any such individual liability in respect of any 40

obligation or default under this agreement, or any commitment thereon, and no recourse thereon shall be had against any such stockholder, trustee or director.

10. IN WITNESS WHEREOF, the parties hereto have hereunto affixed their Corporate Seals, evidenced by the signatures of their respective officers thereunto legally authorized.

	Signed, Sealed and Delivered In Presence of	}	CANADIAN NIAGARA POWER COMPANY
Seal	Attested		(Signed)
10	Secretary		By W. B. RANKINE,
Seal	Attested		INTERNATIONAL RAILWAY COMPANY
	R. P. RANKINE, Secretary	(Signed)	By W. CARYLE ELY, President.

*In the Matter
of an
Arbitration*
—
Exhibits.
Ex. No. 55.
Agreement,
between Can.
Niag. Power
Co. and
Int. Ry. Co.,
June 21, 1903.

—continued

Exhibit 135

Extract from Minute Book of Board of Water Commissioners for the City of Niagara Falls, Ont., Special Meeting, July 18, 1903. Produced by Respondent.

20 *Extract From Minute Book of Board of Water Commissioners, for the City of Niagara Falls, Ontario:
Special Meeting—July 18th, 1903*

Exhibits.
Ex. No. 135.
Extract from
of Board of
Minute Book
Water
Comm'rs. for
City of
Niagara Falls,
Ontario.
July 18, 1903.

Present—A Full Board

A communication from Superintendent Rothery of the International Ry. Co. asking the Board to favourably consider the proposition of the Ry. Co. that the Town contribute more liberally than \$500.

Mr. Rothery suggested that the Commission contribute \$1,000.

30 **RESOLVED** that this Commission favour paying \$915.00 towards the retaining wall excavation and that the Solicitor prepare an agreement to provide that the Board of Water Commissioners will contribute Nine Hundred and fifteen dollars as their proportion of the expense of improving the combined intake of the International Railway and the Town Water Works; said \$915 to be paid as follows: one-half upon completion of the work, balance three months after completion, and that a

In the Matter of an Arbitration

copy of this resolution be sent Mr. J. C. Rothery, Superintendent of International Railway.

Meeting Adjourned,

JOHN ROBINSON,
Secretary.

GEORGE HANAN,
Chairman.

I, the undersigned, Clerk of the Corporation of the City of Niagara Falls, hereby certify the foregoing to be a true and correct copy of Extract from Minutes of Water Commission of the said City. Given under my hand and the seal of the said Corporation this 11th day of February, 1935. 10

J. C. E. PANACEES,
Clerk.

—continued

Exhibit 128

A Portion of an Extract From Minute of Meeting of Park Commissioners Held at Toronto, on 16th January, 1904.

(9). Apart from the increased revenue received by the Commissioners for granting the privilege, the Park greatly benefits by the largely increased number of visitors brought to it through connecting the New York State Radial System with the Canadian at the Falls. 20

Exhibit 118

Agreement dated June 2, 1930, between the Water Works Commission of Niagara Falls and Niagara Parks Commission, and the Corporation, City of Niagara Falls.

MEMORANDUM OF AGREEMENT made in triplicate this 2nd day of June, 1930.

Between:

THE BOARD OF WATER COMMISSIONERS,
of the Corporation of the City of Niagara Falls, (Hereinafter called the "Water Commission"), 30

OF THE FIRST PART

—and—

THE NIAGARA PARKS COMMISSION
(Hereinafter called the "Parks Commission"),

OF THE SECOND PART

—and—

THE CORPORATION OF THE CITY OF NIAGARA FALLS,
(Hereinafter called the "Corporation"),

OF THE THIRD PART

WHEREAS the Corporation established the Water Commission for the construction, control, management and operation of the water works of 40

Exhibits.
Ex. No. 128.
Extract from minute of meeting of Park Commissioners, Jan. 16, 1904.

Exhibits.
Ex. No. 118.
Agreement, Water Works Comm. of Niagara Falls and Niag. Parks Comm. and Corp. of City of Niagara Falls, June 2, 1930.

the Corporation under By-Law Number 146 of the Corporation dated the 11th day of June, 1886, pursuant to the provisions of the Municipal Waterworks Act,

AND WHEREAS the said By-Law remains in force and the powers, rights, authorities and privileges of the Corporation in respect of the said water works are exerciseable by the Water Commission pursuant to the statutes in that behalf,

AND WHEREAS under agreements dated the 1st day of September, 1889, the 9th day of December, 1895, and the 26th day of March, 1910, respectively, between the Commissioners of the Queen Victoria Niagara Falls Park and the Corporation, a supply of water was provided for the use of the Commissioners for the Park purposes, from certain mains of the Corporation,

AND WHEREAS the Water Commission deems it expedient to construct a new and enlarged pumping station and filtration plant at a point in the Village of Chippawa, in the Township of Stamford, for the purpose of supplying water therefrom to the Parks Commission and the inhabitants of the Municipality of the City of Niagara Falls generally, instead of from and through the present pumping station of the Water Commission as now located in the Queen Victoria Park,

AND WHEREAS the Water Commission desires to carry a wash-water drain or outlet and an intake pipe from the location of the proposed new waterworks filtration plant at Chippawa to the Niagara River and to the Welland River, respectively, as indicated on the annexed plan, both of which connections will involve trenching excavations across the Niagara River Parkway, and being the lands of the Parks Commission,

AND WHEREAS the construction of the said proposed new pumping station and filtration plant will make possible the removal of the Head House of the Water Commission at the present intake in the Queen Victoria Park,

AND WHEREAS the Corporation and the Water Commission have requested the Parks Commission to make a contribution toward the cost of the proposed new pumping station and filtration plant at Chippawa in view of the fact that the location of the said new pumping station and filtration plant at Chippawa will leave the Queen Victoria Park available for Park purposes only, and have further requested the Parks Commission to make a present payment for a supply of water to the Parks Commission for the period ending March 31st, 1931, upon certain terms and conditions,

AND WHEREAS the parties hereto have agreed to enter into this agreement,

NOW THEREFORE THIS AGREEMENT WITNESSETH in consideration of

*In the Matter
of an
Arbitration*

—
Exhibits.
Ex. No. 118.
Agreement,
Water Works
Comm. of
Niagara Falls
and Niag.
Parks Comm.
and Corp. of
City of
Niagara Falls,
June 2, 1930.

—continued

*In the Matter
of an
Arbitration*

—
Exhibits.

Ex. No. 118.
Agreement,
Water Works
Comm. of
Niagara Falls
and Niag.
Parks Comm.
and Corp. of
City of
Niagara Falls,
June 2, 1930.

—continued

the mutual covenants and agreements herein contained and subject to the terms and conditions hereinafter set out, the parties have agreed as follows:

1. The Parks Commission undertake and agree to pay to the Corporation the sum of \$74,000 so soon as the Corporation or the Water Commission has removed the machinery from the present pumping station and removed the Head House and built up the intake wall and is supplying water to the Parks Commission, all as hereinafter provided.

2. The Water Commission undertakes and agrees with the Parks Commission to supply to the Parks Commission up to 50 million gallons 10 of water per annum for the period ending March 31st, 1931, without further or additional charge against the Parks Commission for such supply of water during said period. The Parks Commission shall be liable, however, to pay to the Water Commission for any water supplied in excess of the said 50 million gallons per annum on the basis of the prevailing rate actually charged to the maximum consumer of the Water Commission.

3. The Water Commission undertakes and agrees with the Parks Commission that from and after the said 31st March, 1931, it will continuously supply the Parks Commission with a metered supply of all 20 water the Parks Commission may reasonably require from time to time, from the mains mentioned in Paragraph 8 hereof and from the main at the Junction of the Thorold Stone Road and Victoria Avenue in the City of Niagara Falls, on the basis of the prevailing rates actually charged to the maximum consumer of the Water Commission.

4. In case the Water Commission shall be prevented from delivering a supply of water to the Parks Commission by a strike, riot, fire, conflagration, invasion, explosion, act of God or the public enemies, or any other reasonable cause beyond its control (such as fire breaking out requiring the shutting off of water for other purposes), then the Parks Commission 30 shall not be obligated to pay for such supply during such period and the Water Commission shall not be obligated to deliver such supply during such period, but nothing herein contained shall be construed as permitting the Water Commission to refuse to deliver such supply of water, or the Parks Commission to refuse to receive the same as soon as the cause of interruption is removed, and each of the parties hereto shall be prompt and diligent in removing and overcoming such cause or causes.

5. The Water Commission shall at its own cost and expense and with all reasonable dispatch, remove its machinery from its present pumping station in the Queen Victoria Park, and remove its Head House at 40 the intake in the said Park, and build up the intake wall in the said Park to the surface of the ground. The said present pumping station shall not be removed but shall become and remain the property of the Parks Com-

mission without any right of compensation from or any claim against the Parks Commission in respect thereof.

6. The Water Commission shall have the right to carry the wash-water drain or outlet under the Niagara River Parkway in the location shown on the annexed plan in an excavation large enough to accommodate a pipe thirty-six inches (36") in diameter, and the right to carry the intake pipe under the said Parkway in the location shown on the said annexed plan in an excavation of sufficient dimensions to accommodate a pipe forty-eight inches (48") in diameter, with a further right to duplicate the intake pipe installation if and when the water consumption of the new pumping station shall make such duplication necessary. Any such pipes that are placed under the said Parkway shall have a distance of four feet (4') between the top of the said pipes and the surface of said Parkway.

7. The Water Commission undertakes and agrees with the Parks Commission to install the drain and intake pipes at such seasons as will cause a minimum of interference with traffic on the said Niagara River Parkway and to backfill and resurface the excavations to the satisfaction of the Parks Commission.

8. The Water Commission shall maintain and operate at all times a main of not less than eight inches in diameter and not more than twelve inches in diameter in the location of the present rising mains connecting the site of the present pumping station in the Queen Victoria Park with the Falls View Reservoir and also a main of not less than eight inches in diameter and not more than twelve inches in diameter in the location of the present twelve inch main running northerly through the said Park to the Clifton Hill, with liberty to the Water Commission to operate, maintain and renew the present rising mains and twelve inch main if desired.

9. And the Water Commission shall have the right and privilege from time to time on all necessary and proper occasions, to enter in and upon the Park with such mechanics, operatives or workmen, tools, implements, trucks and vehicles, as the Water Commission require for the purpose of carrying out the works hereinbefore described and maintaining the said works after the same shall have been constructed and put in operation, and the Water Commission shall, as soon as possible, restore the surface of any ground within the Park that may be disturbed or affected, to its original condition to the satisfaction of the Parks Commission.

10. And the Corporation and the Water Commission do hereby severally assign and surrender to the Parks Commission all the terms, rights and interest by the Corporation and/or the Water Commission held, had or enjoyed.

(a) By and under a certain Indenture of Lease made the first day of September, 1889, between the Parks Commission and the Corporation

*In the Matter
of an
Arbitration*

Exhibits.
Ex. No. 118.
Agreement,
Water Works
Comm. of
Niagara Falls
and Niag.
Parks Comm.
and Corp. of
City of
Niagara Falls,
June 2, 1930.

—continue—

*In the Matter
of an
Arbitration*

—
Exhibits.

Ex. No. 118.
Agreement,
Water Works
Comm. of
Niagara Falls
and Niag.
Parks Comm.
and Corp. of
City of
Niagara Falls,
June 2, 1930.

—continued

of all that certain parcel or tract of land situate lying and being in the Queen Victoria Park more particularly described in the said Indenture, and

(b) By and under a certain Indenture of Lease made the 9th day of December, 1895, between the Parks Commission and the Corporation of all that certain parcel or tract of land situate lying and being in the said Queen Victoria Park more particularly described in the said Indenture, and

(c) By and under Resolution No. 53 of the year 1908 of the Parks Commission passed on the 11th day of April, 1908, in respect of additional land and an additional rising main in the said Queen Victoria Park, and 10

(d) By and under an Agreement dated the 26th day of March, 1910, between the Corporation, the Water Commission and the Parks Commission in respect of the extension of the then water works system in the said Queen Victoria Park as more particularly described in the said Agreement, and

(e) By and under Resolution No. 28 of the year 1922 of the Parks Commission passed on the 28th day of June, 1922, in respect of an additional cable conduit through the Queen Victoria Park, and any other right, title, interest or estate now held or claimed by the Corporation or the Water Commission in connection with the water works system of the City of Niagara Falls in respect of any part of the said Queen Victoria Park; and all parties hereto do hereby mutually release one another from all claims and demands in respect to and of and under the said leases and agreements. 20

11. The Corporation hereby authorized, ratifies and approves the entering into this agreement by the Water Commission.

12. The Corporation undertakes and agrees with the Parks Commission that it will forthwith on the execution of this agreement by the Parks Commission pass a By-law authorizing the withdrawal and dismissal, without costs, of the action now pending in the Supreme Court of Ontario by the Corporation against the Parks Commission, by Writ of Summons issued the 14th day of October, 1924, for damages alleged to have been sustained by the Corporation as set out in the said Writ, and authorizing the execution and delivery to the Parks Commission forthwith of a general release of all claims in respect of the said cause of action and of any other claim, demand, matter or thing existing up to the present time. 30

13. This agreement is conditioned upon the same being duly authorized by By-law of the Council of the Corporation. 40

14. This agreement shall enure to the benefit of and be binding upon the successors and assigns of each of the parties hereto.

IN WITNESS WHEREOF the parties hereto have hereunto set their corporate seals under the hands of their proper officers duly authorized in that behalf.

Signed, Sealed and Delivered
In the Presence of
(Sgd.) DOROTHY BENSON.

}	.....	Mayor
	.....	Clerk
	.....	Chairman
	.....	Secretary
	NIAGARA PARKS COMMISSION	
	.....	Chairman
.....	Secretary	

*In the Matter
of an
Arbitration*

Ex. No. 118.
Agreement,
Water Works
Comm. of
Niagara Falls
and Niag.
Parks Comm.
and Corp. of
City of
Niagara Falls,
June 2, 1930.

—continued

Exhibit 68

Profit and Loss Account
Niagara Falls Park & River

In the Matter
of an
Arbitration
—
Exhibits:
Ex. No. 68.
Profit and
Loss Account,
Niagara Falls Park
& River Div.,
Sept. 11, 1932.

Year Ended	Receipts	Total Operating Expenses	Operating Income	Non- Operating Income	Gross Income	Deductions from Gross Income				Total Deductions from Gross Income	Profit or Loss	
						Rental Paid	Village of Chippawa	Interest on Funded Debt	Depre- ciation			Taxes
December 31,	1893 \$ 58,064.08	34,135.06	23,929.02		23,929.02	5,000.00				19,976.63	1047.61	
" "	1894 62,471.41	42,994.40	19,477.01		19,477.01	10,000.00				34,268.89	24,791.88	
" "	1895 63,678.65	37,403.43	26,275.22		26,275.22	10,000.00				38,535.00	22,929.78	
" "	1896 38,191.67	31,208.13	6,983.54		6,983.54	10,000.00				28,115.19	31,131.62	
" "	1897 52,696.39	33,671.02	19,025.37		19,025.37	10,000.00				25,878.85	16,853.48	
" "	1898 50,680.06	32,863.94	17,816.12		17,816.12	10,000.00				23,239.69	15,423.57	
" "	1899 64,216.10	34,323.39	29,892.71		29,892.71	7,777.78				30,203.43	8,088.50	
" "	1900 65,149.04	42,134.05	23,014.99		23,014.99	10,000.00				30,730.62	17,715.63	
" "	1901 268,212.39	69,356.77	198,855.62		198,855.62	10,000.00				31,613.45	157,242.17	
Jan. 1 to June 30,	1902 23,519.35	22,740.83	778.52		778.52	5,000.00				15,952.72	20,174.20	
June 30,	1903 101,348.10	43,841.07	57,507.03		57,507.03	10,000.00				30,000.00	17,507.03	
" "	1904 124,201.58	43,617.62	80,583.96		80,583.96	10,000.00				30,000.00	40,583.96	
" "	1905 149,716.76	56,898.05	92,818.71		92,818.71	10,000.00				30,000.00	52,818.71	
" "	1906 154,322.70	74,961.74	79,360.96		79,360.96	10,000.00				30,000.00	39,360.96	
" "	1907 155,320.67	76,924.34	78,396.33		78,396.33	10,000.00				30,000.00	38,396.33	
" "	1908 142,516.02	60,638.05	81,877.97		81,877.97	10,000.00				30,000.00	35,877.43	
" "	1909 133,514.02	52,165.21	81,348.81	6,625.69	87,974.50	10,000.00				30,000.00	46,240.54	
" "	1910 153,339.75	59,054.43	94,285.32	6,696.53	100,981.85	10,000.00				30,000.00	50,482.18	
" "	1911 162,171.66	53,567.54	108,604.12	7,303.86	115,907.98	10,000.00				30,000.00	44,325.73	
" "	1912 149,505.71	55,688.12	93,817.59	8,349.94	102,167.53	10,000.00				30,000.00	54,239.95	
" "	1913 147,557.56	58,424.49	89,133.07	6,950.15	96,083.22	10,000.00				30,000.00	43,967.93	
" "	1914 154,449.79	69,412.03	85,037.76	6,195.93	91,233.69	10,000.00				30,000.00	40,114.36	
" "	1915 128,199.95	68,138.80	60,061.15	6,137.79	66,198.94	10,000.00				30,000.00	40,682.30	
" "	1916 121,242.88	122,103.22	102,860.34	6,430.01	96,430.33	10,000.00				30,000.00	18,248.76	
" "	1917 137,404.22	76,589.01	60,815.21	6,211.64	67,026.85	10,000.00				30,000.00	147,607.64	
" "	1918 113,514.45	78,865.20	34,649.25	7,504.00	42,153.25	10,000.00				30,000.00	15,155.92	
" "	1919 179,127.67	103,455.66	75,672.01	8,365.83	84,037.84	10,000.00				30,000.00	6,329.00	
December 31,	1920 208,223.35	141,429.39	66,793.96	9,872.49	76,666.45	10,000.00				30,000.00	36,054.20	
" "	1921 218,434.18	164,648.06	53,786.12	14,450.99	68,237.11	10,000.00				30,000.00	34,474.50	
" "	1922 107,605.18	126,445.39	18,840.21	36,295.92	17,455.71	10,000.00				30,000.00	25,980.42	
" "	1923 183,368.54	205,091.23	21,722.69	20,536.82	1,185.87	10,000.00				30,000.00	31,466.20	
" "	1924 184,465.78	198,194.87	13,729.09	26,188.95	12,459.86	10,000.00				30,000.00	91,731.75	
" "	1925 215,406.57	212,870.64	2,535.93	29,430.85	31,966.78	10,000.00				30,000.00	78,932.83	
" "	1926 188,388.12	204,565.61	16,177.49	26,811.24	10,633.75	10,000.00				30,000.00	63,324.28	
" "	1927 202,400.04	204,539.17	2,139.13	27,166.55	25,027.42	10,000.00				30,000.00	87,778.49	
" "	1928 164,649.18	176,726.56	12,077.38	21,457.28	9,379.90	10,000.00				30,000.00	70,426.74	
" "	1929 166,249.54	174,284.73	8,035.19	31,102.95	23,067.76	10,000.00				30,000.00	99,271.73	
" "	1930 133,050.32	162,176.29	29,125.97	26,125.16	3,000.81	10,000.00				30,000.00	73,871.26	
" "	1931 90,377.06	127,353.49	36,976.43	19,153.68	17,822.75	10,000.00				30,000.00	103,895.26	
Jan. 1 to Sept. 11, 1932	43,964.38	63,440.02	19,475.64	10,663.66	8,811.98	7,500.00				20,901.64	112,303.72	
Total	\$5,260,914.87	3,798,941.05	1,461,973.82	376,027.91	1,838,001.73	385,277.78	821.76	1,169,416.11	633,629.72	220,257.12	2,409,402.49	571,400.76

Niagara Falls Park & River Railway Company
Profit and Loss Account

	1893	1894	1895	1896	1897	1898	1899	1900	1901	
Receipts	\$ 58,064.08	62,471.41	63,678.65	38,191.67	52,696.39	50,680.06	64,216.10	65,149.04	268,212.39	Exhibits, Ex. No. 68.
Expenses	\$ 3,541.42	9,613.26	8,132.81	6,759.21	5,831.69	6,951.05	3,921.31	3,240.78	4,095.87	Profit and Loss Account, Niagara Falls Park & River Div., Sept. 11, 1932.
General Office, Legal and Management	1,255.10	3,840.79	3,731.74	2,430.69	2,852.86	3,122.98	3,378.71	2,538.54	2,547.00	—continued
Taxes and Insurance	7,759.10	10,033.53	4,033.46	3,630.20	2,548.68	1,901.73	3,378.71	765.74	714.95	
Advertising & Printing										
Transportation Expenses										
10 Wages Conductors, Motormen & Supplies....	10,905.66	11,433.50	11,292.74	9,702.40	10,737.89	11,071.50	13,619.99	16,402.50	29,697.11	
Cost of Power										
Wages, Supplies, Fuel, Queenston	1,862.83	1,744.14	1,984.82	1,559.78	1,382.11	1,254.93	3,378.17	7,537.08	3,923.32	
Wages, Supplies, Niagara Falls	1,685.95	2,371.02	2,034.49	1,571.39	2,420.79	1,823.72	3,378.17	7,537.08	3,923.32	
Maintenance										
Rolling Stock	2,931.55	3,237.85	3,108.03	3,568.80	2,592.76	3,055.34	2,221.14	2,632.04	5,162.34	
Electric Line	472.17	411.40	664.33	651.40	709.13	869.94	438.06	1,586.87	4,025.51	
Roadbed, Tracks & Bridges	572.16	308.91	2,307.91	1,334.26	2,146.14	2,685.68	5,131.23	4,626.13	7,825.53	
Buildings			113.00		148.37	127.07	576.38	1,020.99	898.93	
Power Plant Equipment							55.31	167.60	3,825.65	
Misc. Equipment							172.64	192.50	169.34	
20 Commissions Paid Agents	3,149.12							237.17	1,022.91	
Rent of Buildings, Tracks etc.								28.37	107.26	
Injuries & Damages								1,157.74	5,341.05	
Debts Unrecoverable			2,300.60				1,410.45			
Total Operating Expenses	\$ 34,135.06	42,994.40	37,403.33	31,208.13	33,671.02	32,863.94	34,323.39	42,134.05	69,356.77	
Operating Income	\$ 23,929.02	19,477.01	26,275.22	6,983.54	19,025.37	17,816.12	29,892.71	23,014.99	198,855.62	
30 Rental Paid Commission	5,000.00	10,000.00	10,000.00	10,000.00	10,000.00	10,000.00	7,777.78	10,000.00	10,000.00	
Interest Paid on Advances	19,976.63	34,268.89	38,535.00	28,115.19	25,878.85	23,239.69	30,203.43	30,730.62	31,613.45	
Total	\$ 24,976.63	44,268.89	48,535.00	38,115.19	35,878.85	33,239.69	37,981.21	40,730.62	41,613.45	
Profit or Loss	\$ 1,047.61	24,791.88	22,259.78	31,131.65	16,853.48	15,423.57	8,088.50	17,715.63	157,242.17	

In the Matter of an Arbitration — Exhibits, Ex. No. 68. Profit and Loss Account, Niagara Falls Park & River Div., Sept. 11, 1932. —continued

In the Matter
of an
Arbitration

Niagara Falls Park & River

Profit and Loss Account

Year Ended June 30th

	1902	1903	1904	1905	1906	1907	1908	1909	1910	1911	1912	1913
Receipts	\$23,519.35	101,348.10	124,201.58	149,716.76	154,322.70	155,320.67	142,516.02	133,514.02	153,339.75	162,171.66	149,505.71	147,557.56
Expenses												
Gen. Office, Legal & Management	1,022.91	3,571.82	3,518.22	3,934.86	7,749.47	13,150.76	12,829.49	7,540.67	4,325.60	3,216.91	3,045.66	4,192.75
Insurance	1,440.00	85.39	272.25	1,607.99	921.79	449.81	1,030.63	2,159.48	2,875.00	2,875.00	2,875.00	2,875.00
Advertising & Printing	341.98	3,002.85	3,582.19	5,088.67	6,180.75	5,350.20	4,052.58	1,147.57	1,955.63	650.11	38.42	874.60
Injuries & Damages	13,667.86	3,238.10	8,955.47	18,418.38	23,644.33	24,741.11	20,389.65	23,329.72	167.50	124.27	61.60	26,374.40
Transportation Expenses		16,025.71							25,864.21	26,194.76	27,927.46	
Wages, Conductors, Motormen & Supplies												
Cost of Power												
Wages, Supplies, Fuel	1,694.53	6,285.76	14,589.58	10,369.49	11,714.69	9,000.60	7,278.15	6,330.94	6,240.73	5,761.51	5,790.92	5,796.41
Maintenance	215.93											
Rolling Stock	1,189.46	3,128.49	3,806.07	4,075.40	6,404.32	7,545.07	4,211.24	4,772.08	6,235.57	1,796.98	1,384.50	2,657.26
Electric Line	278.90	600.60	639.68	943.55	5,227.76	997.25	1,059.77	1,323.23	729.52	1,027.13	2,567.58	768.86
Road Bed, Track & Bridges	2,578.21	6,606.25	7,332.53	11,670.44	11,414.10	14,209.04	7,936.54	2,708.07	7,224.08	7,711.81	9,527.45	11,552.04
Buildings	119.59	663.79	671.66	495.08	1,260.73	526.71	226.54	362.36	204.97	1,368.54	387.55	501.98
Commission Paid Agents	106.07	717.70	249.97	294.19	443.80	953.79	1,623.46					
Total Operating Expense	22,740.83	43,841.07	43,617.62	56,898.05	74,961.74	76,924.34	60,638.05	52,165.21	59,054.43	53,567.54	55,688.12	58,424.49
Operating Income	778.52	57,507.03	80,583.96	92,818.71	79,360.96	78,396.33	81,877.97	81,348.81	94,285.32	108,604.12	93,817.59	89,133.07
Non-Operating Income												
Misc. Rents, Land & Buildings								5,522.22	5,944.88	6,487.17	6,752.16	6,386.90
Income from Securities Owned								600.00	600.00	600.00	738.00	430.50
Interest on Deposits									151.65	216.69	859.78	132.75
Install. Lighting System Q.V. Pk. Comm.								503.47				
Total Non-Operating Income								6,625.69	6,696.53	7,303.86	8,349.94	6,950.15
Gross Income	778.52	57,507.03	80,583.96	92,818.71	79,360.96	78,396.33	81,877.97	87,974.50	100,981.85	115,907.98	102,167.53	96,083.22
Deductions from Gross Income												
Rental Paid Commissions	5,000.00	10,000.00	10,000.00	10,000.00	10,000.00	10,000.00	10,000.00	10,000.00	10,000.00	10,000.00	10,000.00	10,000.00
Interest on Funded Debt	15,952.72	30,000.00	30,000.00	30,000.00	30,000.00	30,000.00	30,000.00	30,000.00	30,000.00	30,000.00	30,000.00	30,000.00
Depreciation							6,240.54	8,150.09	13,788.20	18,272.43	14,699.22	11,814.29
Taxes		*	*	*	*	*	*	2,332.09	2,867.92	3,395.60	3,500.38	4,154.57
Total Gross Income Deductions	20,952.72	40,000.00	40,000.00	40,000.00	40,000.00	40,000.00	46,240.54	50,482.18	56,656.12	61,668.03	58,199.60	55,968.86
Profit or Loss	\$20,174.20	17,507.03	40,583.96	52,818.71	39,360.96	38,396.33	35,637.43	37,492.32	44,325.73	54,239.95	43,967.93	40,114.36

* Taxes included in figure for General Office, Legal, Insurance, Advertising & Printing for these years.

**Niagara Falls Park & River
Profit and Loss Account**

In the Matter
of an
Arbitration
—
Exhibits,
Ex. No. 68.
Profit and
Loss Account,
Niagara Falls Park
& River Div.,
Sept. 11, 1932.
—continued

	Yr. Ended June 30, 1914	Yr. Ended June 30, 1915	Yr. Ended June 30, 1916	Yr. Ended June 30, 1917	Yr. Ended June 30, 1918	Yr. Ended Dec. 31 1919	Yr. Ended Dec. 31, 1920
Receipts	\$154,449.79	128,199.95	121,242.88	137,404.22	113,514.45	179,127.67	208,223.35
Expenses							
Gen. Office, Legal & Management	10,848.58	10,557.07	12,043.81	10,796.51	9,295.01	6,617.95	12,750.03
Insurance	2,875.00	2,630.59	2,347.82	1,720.06	2,124.02	2,267.48	2,159.90
10 Advertising						2,251.98	2,934.68
Injuries & Damages	5,714.21	878.06	152,204.08	1,774.30	152.20	340.23	727.04
Transportation Expenses	1,905.18	1,126.32	1,470.36	832.75	1,847.21	1,267.86	2,223.02
Wages, Cond. Mot. & Supplies	25,288.84	24,098.84	25,161.36	28,442.10	28,418.30	45,012.02	57,351.51
Cost of Power							
Wages, Supplies & Fuel	6,565.67	8,941.29	6,105.52	6,754.82	7,724.70	12,595.56	13,667.00
Maintenance							
Rolling Stock	2,546.96	4,272.36	4,018.52	2,113.52	5,128.61	1,610.81	6,116.62
Electric Line	1,103.96	3,219.15	3,769.04	2,741.01	6,380.89	5,890.72	9,698.14
Roadbed, Track & Bridges	12,117.20	11,880.20	16,462.84	20,617.09	17,794.26	23,418.74	26,270.92
Buildings	446.43	534.92	519.87	796.85		2,182.31	7,530.53
Total Operating Expenses	\$ 69,412.03	68,138.80	224,103.22	76,589.01	78,865.20	103,455.66	141,429.39
Operating Income	\$ 85,037.76	60,061.15	<u>102,860.34</u>	60,815.21	34,649.25	75,672.01	66,793.96
Non-Operating Income							
Misc. Rents, Land & Buildings	\$ 6,115.91	5,956.67	6,194.46	6,016.63	7,389.95	7,905.43	7,429.49
Income from Securities Owned						460.40	2,443.00
Interest on Deposits	80.02	181.12	235.55	195.01	114.05		
Total Non-Operating Income	\$ 6,195.93	6,137.79	6,430.01	6,211.64	7,504.00	8,365.83	9,872.49
Gross Income	\$ 91,233.69	66,198.94	<u>96,430.33</u>	67,026.85	42,153.25	84,037.84	76,666.45
Deductions from Gross Income							
Rental Paid Commission	\$ 10,000.00	10,000.00	10,000.00	10,000.00	10,000.00	10,000.00	10,000.00
Interest on Funded Debt	30,000.00	30,000.00	30,000.00	30,000.00	30,000.00	30,000.00	30,000.00
Depreciation	6,849.02	4,453.41	6,878.70	6,352.82	1,511.86	1,732.65	65,176.76
Taxes	3,702.37	3,496.77	4,298.61	5,518.11	6,970.39	6,250.99	5,964.19
Total Gross Income Deductions	\$ 50,551.39	47,950.18	51,177.31	51,870.93	48,482.25	47,983.64	111,140.95
Profit or Loss	\$ 40,682.30	18,248.76	<u>147,607.64</u>	15,155.92	<u>6,329.00</u>	36,054.20	<u>34,474.50</u>

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**Niagara Falls Park & River
Profit and Loss Account
Year Ended December 31st**

	1921	1922	1923	1924	1925	1926	1927	1928	1929	1930	1931	Jan. 1- Sept. 11- 1932
Receipts	\$218,434.18	107,605.18	183,368.54	184,465.78	215,406.57	188,388.12	202,400.04	164,649.18	166,249.54	133,050.32	90,377.06	43,964.38
Expenses												
Gen. Office, Legal & Management	26,744.51	22,759.08	60,305.67	62,446.99	64,609.52	62,528.29	67,557.16	41,149.52	44,891.10	43,942.04	36,394.75	20,645.34
Insurance	668.89	646.92	1,931.25	1,931.25	1,776.00	1,776.70	1,776.75	1,687.15	1,518.96	1,723.35	1,920.81	1,778.49
Advertising	1,241.00	415.31	2,903.98	2,255.99	2,237.51	2,857.46	4,512.00	4,082.84	4,532.78	3,978.97	2,703.33	1,163.48
Injuries & Damages	1,095.86	13,549.77	15,493.80	13,250.25	18,662.69	16,396.63	15,640.88	14,924.00	11,909.31	10,858.11	6,246.30	3,463.80
Transportation Expenses	3,200.12	6,728.62	4,124.71	2,832.89	2,942.38	3,129.81	3,464.56	3,592.17	3,051.89	3,054.98	2,184.61	1,097.02
Wages, Cond. Mot. & Supplies	60,736.25	50,861.06	58,025.69	55,307.44	61,323.19	57,320.44	56,453.10	53,377.85	50,293.34	47,206.19	33,813.78	15,260.12
Cost of Power												
Wages, Supplies, Fuel	10,524.62	9,105.48	13,324.20	13,931.48	13,951.07	15,556.44	16,462.95	16,167.32	15,711.53	15,195.65	14,475.73	6,583.04
Maintenance												
Rolling Stock	43,719.61	10,039.87	16,183.69	15,701.03	15,761.55	12,344.30	13,350.10	13,803.89	12,772.44	11,189.63	10,358.58	4,570.97
Electric Line	5,165.82	874.20	3,682.83	3,611.92	4,170.27	4,369.42	5,028.72	4,560.71	4,664.87	4,604.60	2,692.63	1,584.13
Roadbed, Track & Bridges	8,267.79	11,097.85	27,087.38	24,927.88	24,926.26	25,651.97	17,392.30	20,265.08	20,809.53	18,047.50	14,832.79	6,560.71
Buildings	3,283.59	367.23	2,028.03	1,997.75	2,510.20	2,634.15	2,900.65	3,116.03	4,128.98	2,375.27	1,680.18	732.92
Total Operating Expense	\$164,648.06	126,445.39	205,091.23	198,194.87	212,870.64	204,565.61	204,539.17	176,726.56	174,284.73	162,176.29	127,353.49	63,440.02
Operating Income	\$ 53,786.12	18,840.21	21,722.69	13,729.09	2,535.93	16,177.49	2,139.13	12,077.38	8,035.19	29,125.97	36,976.43	19,475.64
Non-Operating Income												
Misc. Rents, Land & Bldgs.	\$ 10,607.20	16,135.15	20,037.14	25,729.93	29,167.15	26,432.79	26,735.52	21,070.98	29,978.53	25,648.25	18,896.25	10,281.91
Income from Securities Owned	3,843.79	19,299.07	144.64	70.13	127.10	118.34	109.57	100.80	96.42	48.21	257.43	381.75
Interest on Deposits	3,843.79	861.70	355.04	388.89	136.60	260.11	321.46	285.50	1,028.00	428.70	257.43	381.75
Total Non-Operating Income	\$ 14,450.99	36,295.92	20,536.82	26,188.95	29,430.85	26,811.24	27,166.55	21,457.28	31,102.95	26,125.16	19,153.68	10,663.66
Gross Income	\$ 68,237.11	17,455.71	1,185.87	12,459.86	31,966.78	10,633.75	25,027.42	9,379.90	23,067.76	3,000.81	17,822.75	8,811.98
Gross Income Deductions												
Rental Paid Commission	\$ 10,000.00	10,077.04	10,077.04	10,077.04	10,077.04	10,077.04	10,077.04	10,077.04	10,077.04	10,077.04	10,077.04	7,551.36
Interest on Funded Debt	30,000.00	30,000.00	30,000.00	30,000.00	30,000.00	30,000.00	30,000.00	30,000.00	30,000.00	30,000.00	30,000.00	20,901.64
Depreciation	44,703.97	15,240.01	42,051.92	42,051.92	42,051.92	42,051.92	42,051.92	42,051.92	42,051.92	42,051.92	42,051.92	29,298.47
Taxes	9,513.56	13,605.22	8,416.92	9,263.73	13,162.10	16,278.28	13,325.20	26,522.67	14,810.06	18,765.49	12,352.01	11,789.89
Total Gross Income Ded.	\$ 94,217.53	68,922.27	90,545.88	91,392.69	95,291.06	98,407.24	95,454.16	108,651.63	96,939.02	100,894.45	94,480.97	69,541.36
Profit or Loss	\$ 25,980.42	51,466.56	91,731.75	78,932.83	63,324.28	87,773.49	70,426.74	99,271.73	73,871.26	103,895.26	112,303.72	78,353.34

Exhibit 101.
PARK AND RIVER RAILWAY COMPANY
Statement of Revenue, Car Miles Operated and Passengers Carried

Year Ended	Revenue			Express and Mail	Other Operating Revenue	Total	Non-Operating Revenue		Passenger Train Miles	Freight Train Miles	Passengers Carried
	Passenger Revenue	Switching Revenue	Operating Revenue				Operating Revenue	Revenue			
1898	\$ 49,701.53					49,701.53	1,141.22	50,842.75	223,273		421,446
1899	48,207.22					48,207.22	11,153.11	59,360.33	261,905	255	462,256
1900	52,600.84					52,600.84	9,881.87	62,482.71	277,686		503,876
1901	71,190.85			79.06		71,269.91	15,755.34	87,025.25	277,302	1,080	668,699
1902	228,813.48	1,254.50		111.97		230,179.95	27,912.29	258,092.24	431,855		1,650,464
1903	75,425.35	8,790.50				84,215.85	17,132.25	101,348.10	308,449	7,640	546,560
1904	94,668.07	21,127.00				115,795.07	8,406.51	124,201.58	301,258	18,580	1,100,008
1905	111,957.59	30,486.53				142,444.12	7,272.64	149,716.76	347,401	26,100	1,323,212
1906	131,039.08	14,770.07				145,995.69	8,327.01	154,322.70	368,926	13,725	1,403,318
1907	143,921.34	4,717.58		186.54		149,119.63	6,201.04	155,320.67	371,648	2,769	1,414,021
1908	133,068.84	1,181.35		480.71		135,840.84	6,675.18	142,516.02	368,279		1,221,782
1909	129,439.46	650.00		539.33		132,514.02	6,625.69	139,139.71	356,652		1,180,882
1910	136,784.75	14,076.93		826.71		153,339.75	6,696.53	160,036.28	330,512		1,295,485
1911	151,865.11	7,841.32		623.34		162,171.66	7,303.86	169,475.52	333,195		1,331,645
1912	140,400.95	6,890.64		725.52		149,505.71	8,349.94	157,855.65	316,683		1,339,458
1913	138,320.07	5,951.05		608.35		147,557.56	6,950.15	154,507.71	297,985		1,365,661
1914	148,898.17	2,640.75		662.28		154,449.79	6,195.93	160,645.72	295,048		1,431,699
1915	125,060.68	346.26		431.60		128,199.95	6,137.79	134,337.74	272,226		1,227,709
1916	115,855.60	2,695.77		621.13		121,242.88	6,430.01	127,672.89	272,034		1,212,043
1917	133,193.92	1,287.08		722.89		137,404.22	6,211.64	143,615.86	262,221		1,335,579
1918	108,960.46	2,349.28		947.13		113,514.45	7,504.00	121,018.45	274,328		1,155,160
1919	121,268.54	2,955.06		1,133.90		131,435.99	7,967.68	139,403.67	276,340		1,296,560
1920	171,528.68	5,754.21		1,077.85		181,284.61	8,988.56	190,273.17	322,943		1,666,534
1921	211,887.80	3,878.72		1,152.65		218,434.18	14,450.99	232,885.17	349,356		1,880,620
1922	101,386.47	1,133.01		749.80		107,605.18	36,295.92	143,901.10	273,503		1,166,218
1923	179,139.32	1,538.58		648.36		183,368.54	20,536.82	203,905.36	329,971		1,950,629
1924	184,068.64	806.62		619.91		184,465.78	26,188.95	210,654.73	329,634		1,950,629
1925	212,917.93	293.05		705.57		213,406.57	29,430.85	244,837.42	359,262		1,487,103
1926	186,118.13	47.50		731.62		188,388.12	26,811.24	215,199.36	321,446		1,206,120
1927	200,014.87	90.60		736.76		202,400.04	27,166.55	229,566.59	319,909		1,075,358
1928	162,236.78	52.50		763.45		164,649.18	31,102.95	197,352.49	290,875		835,462
1929	160,334.02	3,699.00		710.64		166,249.54	26,125.16	197,352.49	274,016		731,139
1930	129,283.71	675.00		707.91		133,050.32	19,153.68	159,175.48	217,669		485,576
1931	87,725.97	45.00		747.27		90,377.06	10,663.66	109,530.74	133,332		230,429
1932	42,585.33			483.53		43,964.38		54,628.04			

In the Matter of an Arbitration
Ex. No. 101.
Claimant's Statement
Revenue, car miles operated and Passengers carried, Park & River Div.,
Sept. 11, 1932.

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To Sept. 11 1932

Exhibit 79

*In the Matter
of an
Arbitration*

Statement from the Public Service Commission of the State of New York

Exhibits,
Ex. No. 79.
Statement from
Public Service
Comm. State
of New York,
March 24, 1932.

INTERNATIONAL RAILWAY COMPANY

Year	Year	By Fare	By Transfer	
1920	1920	171,038,470	65,701,490	
1921	1921	154,235,638	59,136,215	
1922	1922	105,757,858	38,674,935	
1923	1923	140,951,169	51,308,352	
1924	1924	148,331,220	55,675,277	
1925	1925	137,715,108	54,838,643	10
1926	1926	134,053,077	53,718,699	
1927	1927	121,288,510	46,852,429	
1928	1928	114,637,138	43,637,705	
1929	1929	112,006,718	42,024,912	
1930	1930	98,761,805	37,579,834	

(From Public Service Commission, March 24th, 1932)				
1931—Street Cars		80,474,249	31,241,575	
Buses		51,829	19,322	
Total		80,526,078	31,260,897	20

STATE OF NEW YORK
Department of Public Service

PUBLIC SERVICE COMMISSION, ALBANY

March 24, 1932

Wilson, Bunnell & Borgstrom, Ltd.,
A. E. K. Bunnell,
388 Yonge St.,
Toronto 2,
Canada.

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Dear Sir:

In response to your request of March 22 please find enclosed a statement showing passengers carried on the International Railway Company for the years 1920 to 1930 inclusive both by fare and by transfer.

Very respectfully,

(Sgd.) FRANCIS E. ROBERTS,
Secretary.

Enclosure—1

INTERNATIONAL RAILWAY COMPANY

Year	Railway		Bus	
	Revenue Passengers	Transfer Passengers	Revenue Passengers	Transfer Passengers
1932	63,788,394	25,571,677	35,768	12,299
1933	56,690,680	23,192,055	35,562	11,911
1934 (9 mos. ended Sept. 30, 1934)	44,356,716	(Data not yet received)		

*In the Matter
of an
Arbitration*
—
Exhibits,
Ex. No. 79.
Statement from
Public Service
Comm. State
of New York,
Jany. 9, 1935.
—continued

10

NIAGARA GORGE RAILROAD COMPANY

1920	605,850	
1921	321,837	1,210
1922	303,894	2,507
1923	350,771	993
1924	356,277	1,626
1925	428,395	10,735
1926	390,003	6,587
1927	415,048	
1928	348,053	481
20 1929	321,797	
1930	238,695	
1931	165,026	
1932	108,807	
1933	119,869	
1934 (9 mos. ended Sept. 30, 1934)	134,543	(Data not yet received)

STATE OF NEW YORK

Department of Public Service

Ex. No. 79.
Statement from
Public Service
Comm. State
of New York,
Jany. 29, 1935.

30

PUBLIC SERVICE COMMISSION, ALBANY

January 29, 1935.

Messrs. Wilson & Bunnell, Engineers,
388 Yonge Street,
Toronto, Canada.

Gentlemen:

(Attention: Mr. Norman D. Wilson)

In compliance with your request of January 24, 1935, there is for-

*In the Matter
of an
Arbitration*
—
Exhibits.
Ex. No. 79.
Statement from
Public Service
Comm. State
of New York,
Jany. 29, 1935.

warded herewith a statement showing revenue passengers of the railway and bus departments of International Railway Company for the years 1932 and 1933 and for the first nine months of 1934. Also for Niagara Gorge Railroad Company for the years 1920 to 1933 inclusive, and the first nine months of 1934.

Enclosed is a bill for twenty cents covering the statutory fee for this tabulation.

—continued

Very respectfully,

(Sgd.) FRANCIS E. ROBERTS,
Secretary.

10

Enclosure

Exhibits.
Ex. No. 94.
Valuation
Estimate
Reproduction
Cost of
Rolling Stock
prepared and
produced by
F. S. Beattie,
August 31,
1932.

Exhibit 94

Valuation Estimate

VALUATION ESTIMATE

BY

OTTAWA CAR MFG. CO., LTD., OTTAWA, ONT.

FOR

INTERNATIONAL RAILWAY CO., BUFFALO, N.Y.

SUMMARY

ROLLING STOCK CANADIAN DIVISION 20

REPRODUCTION COST AS OF AUG. 31, 1932.

ITEM	REPRODUCTION COST
Passenger Cars	\$ 120,343.00
Service Cars	28,049.29
Total	\$ 148,392.29

INTERNATIONAL RAILWAY CO., BUFFALO, N.Y. ROLLING STOCK PRICES

BY

OTTAWA CAR MFG. CO., LTD., OTTAWA, ONTARIO 30

	600 Open Type Car	700 Closed Type Car	Shear Plow	Flat Car	Line Car
Cost of Car					
Complete	\$11,843.65	\$13,906.13	\$7,978.59	\$11,023.02	\$6,796.31
6% Sales Tax ..	710.61	834.38	478.71	661.38	407.77
Freight on Trucks, to Ottawa	58.00	58.00		58.00	

Freight to Niagara Falls ...	253.80	229.28	140.40	295.11	135.00
Unloading at Niagara Falls ...	25.00	25.00	25.00	25.00	25.00
Total Price at Niagara Falls ...	\$12,891.06	\$15,052.79	\$8,622.70	\$12,062.51	\$7,364.08

*In the Matter
of an
Arbitration*
—
Exhibits.
Ex. No. 94.
Valuation
Estimate
Reproduction
Cost of
Rolling Stock
prepared and
produced by
F. S. Beattie,
August 31,
1932.

NOTE:—Electrical and Airbrake Equipment, also Trucks, In-
cluded in the above prices.

INTERNATIONAL RAILWAY CO., BUFFALO, N.Y.

—continued

DETAIL SUMMARY

10

ROLLING STOCK CANADIAN DIVISION

REPRODUCTION COST AS OF AUG. 31, 1932.

Class	Type	Car No.	No. of Cars	Unit Price	Reprod. Cost
Passenger Cars					
600	Double Truck	678, 79, 82, 84,	7	\$12,891.06	\$90,237.42
	Open	85, 86, 87.....			
700	Double Truck				
20	Closed	722,732	2	\$15,052.79	\$30,105.58
Service Cars					
C	Plow Car Ped- estal type	38	1	\$ 8,622.70	\$ 8,622.70
E	Flat Car				
	Double Truck.	2	1	\$12,062.51	\$12,062.51
	Line Car Ped- estal type.....	32	1	\$ 7,364.08	\$ 7,364.08
					\$148,392.29
					\$148,392.29

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OTTAWA CAR MFG. CO., LTD., OTTAWA, ONT.

VALUATION ESTIMATES

FOR

INTERNATIONAL RAILWAY CO., BUFFALO, N.Y.

7—Double Truck, Open Cars, 42'8": 600 Type

Cost of Car F.O.B. Ottawa: Body, Electrical, Air Brakes and Trucks, with cast iron (chilled tread) wheels	\$ 11,843.65
6% Sales Tax	710.62

In the Matter
of an
Arbitration
—
Exhibits.
Ex. No. 94.
Valuation
Estimate
Reproduction
Cost of
Rolling Stock
prepared and
produced by
F. S. Beattie,
August 31,
1932.

Freight on Trucks from Montreal		
One Pair Trucks weight 15,600 Lbs.		
Minimum Freight Weight 20,000 Lbs. @ .29c		58.00
Freight to Niagara Falls		
Weight 37,000 Lbs.—Due to length over 36' 0"		
An extra ½ car required, add 10,000 Lbs.		
Total Freight Weight 47,000 Lbs. @ .54c		253.80
Unloading		25.00
Total Price Each, on Rails Niagara Falls, Ontario	\$	12,891.06 10

—continued

2—Double Truck, Double End, Closed Cars, 37' 2"
700 Type Car.

Cost of Car F.O.B. Ottawa: Body, Electrical, Air Brakes and Trucks, with steel wheels	\$	13,906.15
6% Sales Tax		834.36
Freight on Trucks from Montreal		
One Pair Trucks weigh 15,600 Lbs.		
Minimum Freight Weight—20,000 Lbs. @ .29c		58.00
Freight to Niagara Falls		
Weight 42,460 Lbs. @ .54c		229.28 20
Unloading		25.00
Total Price Each, on Rails Niagara Falls, Ont.	\$	15,052.79

1—Shear Plow, Double End 31' 0"

Cost of Car F.O.B. Ottawa: Body, Electrical and Trucks, with cast iron wheels	\$	7,978.59
6% Sales Tax		478.71
Freight to Niagara Falls		
26,000 Lbs. @ .54c		140.40
Unloading		25.00 30
Total Price, on Rails Niagara Falls, Ont.	\$	8,622.70

1—Double Truck, Double End, Flat Car, 38' 4"

Cost of Car F.O.B. Ottawa: Body, Electrical, Air Brakes, and Trucks	\$	11,023.03
6% Sales Tax		661.38
Freight on Trucks from Montreal		
One Pair Trucks weigh 15,600 Lbs.		
Minimum Freight Weight—20,000 Lbs. @ .29c		58.00

Freight to Niagara Falls	
Weight 44,650 Lbs. due to length over 36' 0" an extra 1/2 car required add 10,000 Lbs.	
Total Freight Weight 54,650 Lbs. @ .54c	295.11
Unloading	25.00
Total Price, on Rails Niagara Falls, Ont.	\$ 12,062.51

In the Matter of an Arbitration
—
Exhibits. Ex. No. 94.
Valuation Estimate
Reproduction Cost of Rolling Stock prepared and produced by F. S. Beattie, August 31, 1932.

1—Line Car, Double End 17' 6"

10	Cost of Car F.O.B. Ottawa: Body, Electrical and Trucks, with cast iron wheels	\$ 6,793.31
	6% Sales Tax	407.77
	Freight to Niagara Falls	
	Approximate Weight 25,000 Lbs. @ .54c	135.00
	Unloading	25.00
	Total Price, on Rails, Niagara Falls Ont.	\$ 7,364.08

—continued

INTERNATIONAL RAILWAY CO., BUFFALO, N.Y.

PRICES OF

ELECTRICAL EQUIPMENT, MOTOR EQUIPMENT & TRUCKS

20		600 Double Truck Open Type Car	700 Double Truck Closed Type Car	Single Shear Plow	Double Truck Flat Car	Single Truck Line Car
	Electrical Equipment	.... \$6,571.30	\$6,571.30	\$3,604.00	\$6,571.30	\$3,604.00
	Air Brake Equipment	.... 638.70	638.70		688.70	
	Trucks	.... 1,390.50	1,772.63	680.33	1,772.63	680.33
	Body	.... 3,243.15	4,923.52	3,694.26	1,990.39	2,511.98
30		<u>\$11,843.65</u>	<u>\$13,906.15</u>	<u>\$7,978.59</u>	<u>\$11,023.02</u>	<u>\$6,796.31</u>

Exhibit 122

Schedule: Canadian Division, Passengers and Passenger Revenue, 1928, 1929, 1930, 1931

1928	Revenue Passengers	%	Passenger Revenue	%	Aver. Fare
Belt Line	182,488	19.6	\$97,354.23	60.3	53.3c
Boat	39,919	4.3	15,138.96	9.4	37.1
Other Interline	35,081	3.7	5,080.76	3.2	14.0

Exhibits. Ex. No. 122.
Schedule Division passengers and passenger revenue, 1928-29-30-31.

<i>In the Matter of an Arbitration</i> — Exhibits. Ex. No. 122. Schedule Division passengers and passenger revenue, 1928-29-30-31.	Local	673,485	72.4	43,816.38	27.1	6.5	
	Total	930,973	100.0%	161,390.33	100.0%	17.3	
	1929						
	Belt Line	174,873	20.9	93,674.11	59.0	53.6	
	Boat	36,567	4.4	14,208.37	9.0	38.8	
	Other Interline	21,144	2.5	3,424.07	2.2	16.2	
	Local	602,878	72.2	47,176.67	29.8	7.8	
	Total	835,462	100.0%	158,483.22	100.0%	18.9	10
	1930						
	Belt Line	133,130	18.2	71,089.89	55.5	53.4	
	Boat	33,918	4.6	12,000.18	9.4	35.3	
	Other Interline	18,281	2.5	3,284.46	2.6	17.1	
	Local	545,810	74.7	41,730.38	32.6	7.6	
Total	731,139	100.0%	128,104.91	100.0%	17.5		
1931							
Belt Line	92,454	19.0	49,445.01	58.4	53.5		
Boat	22,816	4.8	7,771.01	9.2	34.0	20	
Other Interline	12,306	2.5	2,137.77	2.5	17.3		
Local	358,000	73.7	25,339.84	29.8	7.0		
Total	485,576	100.0%	84,693.63	100.0%	17.4		
Percentage for 4 years:							
Belt Line	582,945	19.6	311,563.24	58.5	53.4		
Boat	133,220	4.4	49,118.52	9.2	36.9		
Other Interline	86,812	2.9	13,927.06	2.6	16.0		
Local	2,180,173	73.1	158,063.27	29.7	7.2		
Total	2,983,150	100.0%	532,672.09	100.0%	17.8	30	
Average fare all passengers other than Belt Line					9.25c		

Exhibit 173**INTERNATIONAL RAILWAY COMPANY****RENTALS RECEIVED****FROM****CLIFTON INCLINE AND WHIRLPOOL INCLINE****1920-1932 INCLUSIVE**

Exhibits.
Ex. No. 173.
Rentals
Received from
Clifton Incline
and Whirlpool
Incline,
1920-1932.

Year	Clifton	Whirlpool	
1920	\$ 1,872.52	\$ 3,959.01	40
1921	3,282.68	5,726.46	
1922	8,307.53	6,970.29	
1923	11,472.77	7,727.97	

1924	12,355.39	7,787.19
1925	13,946.27	7,800.27
1926	12,140.01	7,352.66
1927	14,262.14	7,680.74
1928	13,291.15	7,779.83
1929	15,799.53	14,179.00
1930	12,359.90	13,288.35
1931	9,565.35	9,330.90
1932*	3,824.92	6,456.99

*In the Matter
of an
Arbitration*
—
Exhibits.
Ex. No. 173.
Rentals
Received from
Clifton Incline
and Whirlpool
Incline,
1920-1932.

—continued

10

Total	\$132,480.16	\$106,039.66
*9 months 11 days		

Exhibit 175

Sources of Passenger Revenue as Percentage of Total Passenger Revenue 1928-1931.

Source	1928	1929	1930	1931	Average	Exhibits. Ex. No. 175. Sources of passenger revenue as percentage of total passenger revenue, 1928-1931.
Belt Line	60.3	59.1	55.5	58.4	58.5	
Steamship Line	9.4	9.0	9.4	9.2	9.2	
Other Interline	3.2	2.2	2.6	2.5	2.6	
20 Local Pass.	27.1	29.8	32.6	29.8	29.7	
	100. %	100. %	100. %	100. %	100. %	

Exhibit 123

SCHEDULE

Percent of Passenger Revenue Earned Monthly on Park and River Division, International Railway.

Month	1928	1929	1930	1931	Average	Exhibits. Ex. No. 123. Schedule per cent. of passenger revenue earned monthly on P. & R. Div., Int. Ry. Co., 1928-1931.
30 January	1.7	1.4	1.6	1.9	1.7	
February	2.5	2.2	2.6	2.5	2.4	
March	1.6	1.5	1.4	1.8	1.6	
April	1.7	1.7	1.6	2.4	1.8	
May	3.8	3.1	4.3	6.2	4.4	
June	10.8	11.3	15.4	11.8	12.3	
July	24.4	25.0	25.0	23.7	24.5	
August	30.8	30.9	29.9	28.4	30.0	
September	15.9	16.4	11.5	15.6	14.8	
October	3.6	3.6	3.8	3.2	3.6	
November	1.6	1.7	1.6	1.2	1.5	
40 December	1.4	1.2	1.2	1.1	1.2	
	100.0	100.0	100.0	100.0	100.0	
Total Passenger Revenue	\$161,390	\$158,483	\$128,104	\$84,694		

Exhibit 194

Drains and Culverts

Exhibits.
Ex. No. 194.
(part).
Statement,
drains and cul-
verts, showing
reproduction
cost, present
value and sal-
vage value.
1935.

Reproduction costs as agreed to by both parties				\$ 28,184.58	
Present value as shown				16,347.46	
Salvage value as shown				Nil	
	Reproduction		Present	Salvage	
	Cost	Deduction	Value	Value	
1. Retaining Wall, station 242 plus 00 ..	\$ 2,221.68	—	\$ 2,221.68	Nil	
2. Concrete Culvert, station 319	2,678.39	—	2,678.39	Nil	10
3. Concrete Culvert, station 325 plus 70 ..	1,252.25	—	1,252.25	Nil	
4. Concrete Culvert, Bowman's Ravine ..	13,946.28	70% \$ 9,762.39	4,183.89	Nil	
5. Concrete Culvert, station 500 plus 71 ..	547.89		547.89	Nil	
6. Retaining Wall,	2,881.15	50% 1,440.57	1,440.58	Nil	
7. Small Pipes and Culverts	8,656.94	634.16	8,022.78	Nil	20
	<hr/>	<hr/>	<hr/>	<hr/>	
	\$ 32,184.58	\$ 11,837.12	\$ 20,347.46	Nil	
Less agreed reduc- tion of	4,000.00		4,000.00		
	<hr/>	<hr/>	<hr/>	<hr/>	
	\$ 28,184.58	\$ 11,837.12	\$ 16,347.46		
	<hr/>	<hr/>	<hr/>		

Exhibit 3

**File of correspondence between I.R.C. and Niagara Parks Commission,
from July 27, 1931, to June 20, 1934.**

INTERNATIONAL RAILWAY COMPANY

30

July 27, 1931.

Niagara Parks Commission
Niagara Falls, Ontario
Gentlemen:

The agreement of December 4, 1891, under which we have been operating our Canadian Division, provides that if we desire to renew for a further period of 20 years, we shall so notify your Commission before September 1, 1931.

We have decided that we will not seek a renewal at the expiration of

Exhibits.
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the original period of 40 years. The agreement will, therefore, terminate on August 31, 1932.

We shall be glad to discuss at any time the details to be provided for in terminating the agreement.

Very truly yours,
S/ B. J. YUNGBLUTH
President.

NIAGARA PARKS COMMISSION

July 31, 1931.

10 Dear Mr. Yungbluth:

I beg to acknowledge your letter of July 27th intimating that the agreement of December 4th, 1891, will be terminated by the International Railway Company on August 31st, 1932. The attention of the Commission will be drawn to this matter at its first meeting.

Yours very truly,
S/ JOHN H. JACKSON
General Manager.

B. J. Yungbluth, Esquire,
President and General Manager
International Railway Company
20 210 Pearl Street
Buffalo, N.Y.

INTERNATIONAL RAILWAY COMPANY

May 27, 1932

Niagara Parks Commission
Niagara Falls, Ontario
Gentlemen:

The agreement covering the lease of our Canadian Division will expire on August 31, 1932, and we have informed you of our intention to discontinue our operation on that date.

30 In view of the fact that cessation of operation on August 31 would inconvenience the traveling public over the Labor Day holiday, we are willing to continue service on the Canadian Division until midnight, Sunday, September 11, 1932, upon the understanding and condition that the said continuation will not be considered or treated as an extension of the agreement, but will be entirely without prejudice to the rights and position of both parties to the said agreement.

Very truly yours,
S/ B. J. YUNGBLUTH
President.

40 Accepted for Niagara Parks Commission.

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of an
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—continued

NIAGARA PARKS COMMISSION

May 30, 1932.

Dear Mr. Yungbluth:

This will acknowledge receipt of your letter of May 27th, 1932.

Yours very truly,

S/ JAMES R. BOND
Superintending Engineer.

B. J. Yungbluth, Esquire,
President and General Manager
International Railway Company
Buffalo, N.Y.

10

NIAGARA PARKS COMMISSION

July 29, 1932.

Dear Mr. Yungbluth:

Referring to your letter of May 27th, I beg to advise you that the Parks Commission is agreeable to your continuation of the electric railway service on the Canadian Division until midnight, Sunday, September 11, 1932, the operation to be without prejudice to the rights of the parties to the agreement of December 4th, 1891.

Yours very truly,

S/ JOHN H. JACKSON
General Manager.

20

B. J. Yungbluth, Esquire,
President and General Manager
International Railway Company
Buffalo, N.Y.

INTERNATIONAL RAILWAY COMPANY

August 15, 1932.

Niagara Parks Commission
Niagara Falls, Ontario
Gentlemen:

30

During the past several months, as no doubt you have been advised, we have furnished your valuation engineers with considerable data in aid of their valuation of our Park & River Division formerly known as The Niagara Falls Park & River Railway. In view of the time that has elapsed since your engineers entered upon their work of valuation, we assume that they have completed their task and submitted their report to you. We are desirous of determining by agreement with you the sum which shall represent fair and adequate compensation to us for our rail-

ways, equipment, machinery and other works which, under the terms of the agreement entered into December 4, 1891, between our respective predecessors in interest, become your property on August 31, 1932, at midnight.

It is our desire in this instance, as it has been in the past, to suit your convenience as to time and place of meeting. Will you kindly suggest some time prior to August 31, 1932, when we may meet with you at your office for the purpose of reaching an agreement as to the amount of compensation to be paid to us as provided in the above mentioned agreement.

10

Very truly yours,

S/ B. J. YUNGBLUTH
President.

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NIAGARA PARKS COMMISSION

August 20, 1932.

Dear Sir:

I wish to acknowledge receipt of your letter of the 15th instant, relative to the termination of the lease of the Park and River Division of the International Railway Company, and in reply would advise that Mr. Jackson is away on holiday. Your letter will be brought to his at-
20 tention immediately upon his return.

Yours very truly,

S/ JAMES R. BOND
Superintending Engineer.

B. J. Yungbluth, Esquire
President & General Manager
International Railway Company
210 Pearl Street
Buffalo, N.Y.

NIAGARA PARKS COMMISSION

September 10, 1932.

30

Dear Mr. Yungbluth:

Your letter of the 15th ultimo came to my attention on my return to the office.

As you suggest, it seems desirable and indeed the agreement expressly contemplates that the parties shall make an effort to agree upon the amount of compensation. Clause 26 of the agreement provides that the compensation shall be fixed by mutual agreement, or, in case of difference, by arbitration. It must, therefore, be ascertained whether there is a real difference between us. I shall be glad, therefore, if you would
40 telephone me a few tentative dates convenient to you. I assume you will

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have present with you one of your associates and probably your counsel and if that is so, I will do the same.

It is needless to discuss the basis on which compensation is to be ascertained prior to the meeting, but I may say the view of the Commission is that the railways, equipment, machinery and other works have no value except a scrap value.

Possibly when your Company considered the question of renewal it was under the impression that the rental could not be less than the present rental. I may say that the terms of the agreement in this regard would not be insisted on, but as I understood your conversation with me some 10 months ago, your Board of Directors had canvassed this situation and decided not to seek a renewal even upon modified terms.

Yours very truly,

S/ JOHN H. JACKSON...
General Manager.

B. J. Yungbluth, Esquire
President and General Manager
International Railway Company
Buffalo, N.Y.

INTERNATIONAL RAILWAY COMPANY

July 28, 1933

20

Niagara Parks Commission
Niagara Falls, Ontario
Gentlemen:

We have been hoping to meet with your Board to determine by agreement the sum which would represent fair and adequate compensation to us for our railways, equipment, machinery and other works, formerly owned by Niagara Falls Park and River Railway Company, which, under the terms of the agreement dated December 4, 1891, between our respective predecessors in interest, became your property on August 31, 1932, at midnight, subject, of course, to the payment of compensation as provided in the agreement. We have been encouraged in that hope by Mr. Jackson's letter of September 10, 1932, in reply to our letter of August 15, 1932, in which we requested that you suggest some time prior to August 31, 1932, when we could meet with you at your office for the purpose of reaching an agreement as to the amount of compensation to be paid to us. In response to Mr. Jackson's suggestion that we telephone him a few tentative dates on which we could meet with you, we telephoned Mr. Jackson on September 21, 1932, when he stated that he would give us four days notice of the date on which it would be convenient for you to meet with us. Again on September 28, 1932, we telephoned Mr. Jackson and inquired whether he had any suggestion as to a date on which the meeting could be held, to which he replied that the matter was in the 30 40

hands of your solicitors and he would communicate with us as soon as he was in a position to suggest a date.

We quite appreciate that the subject matter of the proposed conference is one which has necessitated the expenditure of some time. We trust, however, that we shall not seem to be unduly pressing if we suggest that the proposed meeting be held in the near future. Mr. Jackson has informed us that he is planning to be absent from his office during the month of August. We, therefore, suggest that a meeting for the purposes stated be held at your offices in Niagara Falls, Ontario, at some time convenient for you between the first and the fifteenth days of September this year.

Very truly yours,

S/ B. J. YUNGBLUTH
President.

NIAGARA PARKS COMMISSION

August 5, 1933

Dear Sirs:

I wish to acknowledge receipt of your letter of July 28th relative to a meeting with the Niagara Parks Commission to discuss matters pertaining to the former Niagara Falls Park and River Railway.

At the present time our General Manager, Mr. Jackson, is away on holiday and will not be back until the first portion of September. Immediately upon his return this matter will be brought to his attention.

Yours very truly,
S/ JAMES R. BOND
Superintending Engineer.

International Railway Company
Walbridge Building
Court and Franklin Streets,
30 Buffalo, N.Y.

INTERNATIONAL RAILWAY COMPANY

Niagara Parks Commission
Niagara Falls, Ontario
Gentlemen:

September 15, 1933

Please refer to our letter of July 28, 1933.

More than a year has elapsed since our railways, equipment, machinery and other works valued at approximately two and a half million dollars were taken by you under the terms of the agreement dated December 4, 1891, subject to the payment of fair and adequate compensation therefor. In conformity with the terms and spirit of that agreement, we

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have repeatedly attempted to meet with your Board for the purpose of fixing by mutual agreement the amount of compensation to be paid to us. We regret that our repeated efforts have failed. The agreement clearly indicates that you and we shall make a sincere effort to fix by mutual agreement the amount of compensation to be paid so that unnecessary costs and expenses of an arbitration proceeding and appeals incident thereto may be saved to the taxpayers of Ontario and ourselves.

Not only have we desired to fix by mutual agreement the amount of compensation to be paid to us, but we have desired to and have co-operated with you in every manner possible. Long prior to August 15, 1932, we furnished your valuation engineers with considerable data in aid of their valuation of our property. When we wrote you on August 15, 1932, stating that we were desirous of determining by agreement the amount of compensation to be paid to us and asking you to suggest some time prior to August 31, 1932, when we could meet with you at your office for the purpose of reaching an agreement, we did not conceive the possibility of the delays which have ensued. When we wrote you on July 28, this year, suggesting that a meeting for the purposes stated be held at your offices in Niagara Falls, Ontario, at some time convenient to you between the 1st and 15th days of September, this year, we expected and respectfully submit we had a right to expect co-operation from you.

It is still our desire to serve your convenience and again we request you to designate a time and place in the near future when we may meet for the purpose of fixing by mutual agreement, if possible, the amount of compensation to be paid to us for our property. We think it quite unfair that we have been deprived of our property so long a time. Common fairness and justice require active co-operation by you to the end that the amount of compensation to be paid to us shall be determined and paid. Why may we not have that co-operation?

Very truly yours,

INTERNATIONAL RAILWAY COMPANY

By S/ B. J. YUNGBLUTH
President.

NIAGARA PARKS COMMISSION

Toronto, October 19, 1933.

B. J. Yungbluth, Esquire,
President,
International Railway Co.,
Buffalo, N.Y.,
U.S.A.

Dear Sir:

A copy of your letter of the fifteenth of September, to the Niagara

Parks Commission has been forwarded to me, as chairman of the Commission.

You are doubtless aware of the reorganization of the Commission quite recently, and of the absence of some of the members. There has therefore been some difficulty in arranging a meeting of the Commission to discuss the matters referred to in your letter. I am hoping that we shall have a meeting at an early date, and following that meeting, I shall communicate with you further.

10 In the meantime, I have had a chat with Mr. McCarthy, and am looking forward to seeing him again, relative to the matters mentioned in your letter. I had delayed replying in the hope that I might be able to give you a definite date when the Commission might be meeting. However, I am writing you tentatively now, so that you may know this matter is being given attention by the new Board.

Yours very truly,

S/ NORMAN SOMMERVILLE

INTERNATIONAL RAILWAY COMPANY

March 22, 1934.

20 Niagara Parks Commission
Niagara Falls, Ontario

Gentlemen:

Since August 15, 1932, we have repeatedly attempted to meet with you for the purpose of determining by mutual agreement the sum which shall represent fair and adequate compensation to us for our railways, equipment, machinery and other works which, under the terms of an agreement dated December 4, 1891, between our respective predecessors in interest, became your property on August 31, 1932, at midnight, subject to the payment of compensation to us as provided in the agreement. In particular please refer to our letters to you dated August 15, 1932, July 30 28, 1933, and September 15, 1933.

On October 20, 1933, we received a letter from Mr. Norman Somerville, K.C., your chairman, dated October 19, 1933, in which he stated that a copy of our letter of September 15, 1933, had been forwarded to him, that he expected to have a meeting of your Commission at a then early date and would communicate with us further. We have received no communication from you or your chairman since October 20, 1933.

Mr. D. L. McCarthy, K.C., who has been acting on our behalf, advises us that during the past several months he has made repeated efforts to arrange a meeting through your chairman without any success whatever.

40 Not only have we desired to fix by mutual agreement the amount of compensation to be paid to us but we have co-operated with you in every manner possible. Long prior to August 15, 1932, we furnished

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your valuation engineers with considerable data in aid of their valuation of our property. When we wrote you on August 15, 1932, stating that we were desirous of determining by mutual agreement the amount of compensation to be paid to us and asked you to suggest some time prior to August 31, 1932, when we could meet with you at your office for the purpose of reaching an agreement, we did not conceive the possibility of the delay which has ensued. When we wrote you on July 28, 1933, suggesting that a meeting for the purposes stated be held at your offices in Niagara Falls, Ontario, at some time convenient to you between the 1st and 15th days of September of that year, we expected and respectfully submit we had a right to expect co-operation from you. While our patience was strained when again we wrote you on September 15, 1933, it was then inconceivable that you would continue to ignore the clear provisions of the agreement between our respective predecessors in interest dated December 4, 1891. That agreement clearly implies, if it does not expressly state, that you and we shall make a sincere effort to fix by mutual agreement the amount of compensation to be paid so that large and wholly unnecessary costs and expenses of arbitration and possible appeals incident thereto may be saved to the taxpayers of your Province and to ourselves.

We have done everything possible to meet with you and carry out the spirit and the terms of the agreement. That which perhaps should have been apparent to us more than a year ago is now made perfectly plain—you do not propose to attempt to fix by agreement the amount of compensation to be paid to us. It is grossly unjust to deprive us of our property longer. Therefore, we have no alternative but to proceed to arbitration.

Pursuant to the terms of the agreement dated December 4, 1891, we name Mr. R. S. Robertson, K.C., as our arbitrator and hereby demand that you name your arbitrator as required in said agreement, failing which we shall take the necessary steps under the provisions of the Arbitration Act to compel you to name an arbitrator so that arbitration proceedings may be commenced forthwith.

Very truly yours,

INTERNATIONAL RAILWAY COMPANY

By S/ B. J. YUNGBLUTH
President.

NIAGARA PARKS COMMISSION

March 28, 1934.

Dear Sirs:

Your letter of March 22nd received. Written with legal precision and breathing out threats, it omits, perhaps inadvertently, certain import-

ant features. In fact it contains only a record of I.R.C. letters and leaves a very unfinished picture. Permit me to add to the recital:

May 26th, 1932.

Mr. Yungbluth conferred with Mr. Jackson at the Park Offices and stated that I.R.C. was entitled to "reproduction value, less depreciation," for its properties. It was then made quite plain to Mr. Yungbluth that the view of the Parks Commission was that due compensation consisted of "scrap value."

September 10th, 1932.

10 Letter from Mr. Jackson to Mr. Yungbluth asking for tentative convenient dates and whether Counsel would be present. This letter repeated the position of the Commission, namely, that the railways, equipment, machinery and other works had no value except a "scrap value," and advised that the full terms of the agreement would not be insisted upon if a renewal were desired.

November 19th, 1932.

Mr. Yungbluth conferred with Commissioner, the Hon. J. D. Chaplin, M.P., in St. Catharines, for the best part of a Saturday afternoon, when the various phases incident to the termination of the agreement of December 4th, 1891, were discussed at length and the position of the Commission stated.

During the first half of 1933 Mr. Yungbluth appeared to desire a conference with myself as General Manager of the Commission, and finally called at the Park Offices on June 1st to arrange for a definite appointment. This meeting took place on July 20th, when it was found that there was some uncertainty about a number of properties and Mr. Yungbluth undertook to supply the deficiency. Nothing further has been heard, however. Again, at this meeting it was disclosed that after allowance for depreciation, obsolescence and all items of deterioration, I.R.C. demanded \$2,500,000 as due compensation for its properties, a figure so startling that the Commission has been unable to find a formula for bridging the distance between the two viewpoints, although it has made diligent search.

It is the duty of the Commission to save the taxpayers of the Province from unnecessary costs and expenses, but where is the stopping place on the road from "scrap value" to \$2,500,000 for 11 miles of electric railway abandoned after losing well on to a million dollars in the last 12 years of its fitful life, and at the rate of over \$100,000 per annum latterly.

40 The International Railway Company knew the views of the Commission from the very beginning, and was in no way prevented or hindered from appointing an arbitrator. It was obviously the anxiety of I.R.C. to discuss the matter with the Commission that has caused the delay.

This Commission has never failed to co-operate with I.R.C., not

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only regarding the Park & River division but in every other particular, and notably on the two occasions when the Falls View Bridge was threatened with disastrous competition. Furthermore the Commission protected I.R.C. beyond its legal obligations during the whole period of its electric railway ownership.

Your Counsel, Mr. D. L. McCarthy, K.C., knows from the Chairman of this Commission that the matter has been referred to W. N. Tilley, K.C., with a view to arranging for the very conference you desire, and it is undoubtedly due to the engagements of both Counsel that this has not taken place. 10

While Engineers employed by the Commission have had certain statements it is not yet known definitely and precisely the items which vest in the Parks Commission, and it is suggested that such a catalogue should be in the Commission's hands, when a conference could still take place if you think it desirable.

It is a matter for regret that some of the terms in your letters should have been used, for this has not been the attitude of the parties toward each other in the past, nor need it be now or in the future. Indeed the elapsed time is not so great when all of the circumstances are taken into consideration. 20

It goes without saying that the Commission will carry out its legal obligations in regard to the agreement of December 4th, 1891, but I shall await a reply to this letter.

Yours very truly,

S/ JOHN H. JACKSON
General Manager.

International Railway Company
Buffalo, N.Y.

INTERNATIONAL RAILWAY COMPANY

April 9, 1934 30

Niagara Parks Commission
Niagara Falls, Ontario

Gentlemen:

We acknowledge the receipt of your letter dated March 28, 1934. It appears to us quite obvious from your letter that you seek further to delay the performance of your plain duty to compensate us for our rail-ways, machinery, equipment and other works by now engaging in cor-respondence concerning relatively immaterial matters. While we do not propose to aid you in the furtherance of any such purpose, we feel com-pelled to comment upon certain statements in your letter. Our omission to comment upon all of them is not to be deemed an admission of their accuracy. 40

If there is any "uncertainty about a number of properties," this is the first time it has been suggested to us. Surely any "uncertainty" now claimed to exist should have been resolved in the time that has elapsed since your valuation of the property. Mr. Yungbluth at no time undertook to supply any claimed "deficiency."

We have never known the views of the Commission as to the amount of compensation to be paid to us. We have earnestly and patiently endeavored to learn them in order to determine whether we could agree upon the subject and thereby avoid the unwarranted and useless expense of arbitration proceedings. We have not taken seriously the theory advanced by Mr. Jackson at the time of the interview mentioned in your letter that compensation should be based upon "scrap value." We have not sought an agreement upon theories. We have sought a businesslike discussion and agreement upon a business proposition. An initial disagreement as to theories certainly did not stand in the way of an endeavor by the parties to arrive at an agreement. We cannot but draw the conclusion that you shared this view from your letter of September 10, 1932, in which you said:

20 "As you suggest, it seems desirable and indeed the agreement expressly contemplates that the parties shall make an effort to agree upon the amount of compensation. Clause 26 of the agreement provides that the compensation shall be fixed by mutual agreement, or, in case of difference, by arbitration. It must, therefore, be ascertained whether there is a real difference between us. I shall be glad, therefore, if you would telephone me a few tentative dates convenient to you. I assume you will have present with you one of your associates and probably your counsel and if that is so, I will do the same.

30 "It is needless to discuss the basis on which compensation is to be ascertained prior to the meeting, but I may say the view of the Commission is that the railways, equipment, machinery and other works have no value except a scrap value."

In accordance with Mr. Jackson's suggestion, we telephoned him on September 21, 1932, and he then stated he would give us four days' notice of the date on which it would be convenient for you to meet with us. We have never received such notice.

We have given your engineers all the information and furnished them with all the data they requested. We have co-operated with them 100%. If after all the time that has elapsed since your engineers made 40 their valuation of the property you do not know "definitely and precisely the items which vest in the Parks Commission," we are at a loss to know the reason.

If for the purposes of a conference you now require from us a "catalogue," why did you not need it on September 10, 1932, when you wrote your letter above quoted? After all the hindrance and delay which have ensued, we do not now propose to furnish you with a "catalogue."

*In the Matter
of an
Arbitration*
—
Exhibits.
Ex. No. 3.
File of Cor-
respondence
between Int.
Ry Co. and
Niag. Pks.
Comm. from
July 27, 1931,
to June 20,
1934.

—continued

*In the Matter
of an
Arbitration*

—
Exhibits.
Ex. No. 3.
File of Cor-
respondence
between Int.
Ry Co. and
Niag. Pks.
Comm. from
July 27, 1931,
to June 20,
1934.

—*continued*

A "catalogue" would not further enlighten you; its preparation would cause further delay.

We are advised by Mr. McCarthy that Mr. Tilley and he were in entire agreement as to the desirability of a conference between you and ourselves, but that apparently no steps have been taken by you towards that end.

While the statement in your letter of March 28, 1934, "It was obviously the anxiety of International Railway Company to discuss the matter with the Commission that has caused the delay," is entirely in error as to incidental delays, it is essentially true in its charge that to the Company must be ascribed the effort to avoid an arbitration, with its attendant costs. We were anxious "to discuss the matter with the Commission" because the agreement provides that the parties shall endeavor to determine by mutual agreement the amount of compensation to be paid to us. We know of no better way to approach an agreement than "to discuss the matter." In view of our repeated efforts during the last year and seven months to meet with you for the purpose of determining by mutual agreement, if possible, the amount of compensation to be paid to us and in view of your acts tantamount to a refusal to meet with us, we demand that you name your arbitrator in accordance with the terms of the agreement dated December 4, 1891. 10

Very truly yours,

INTERNATIONAL RAILWAY COMPANY

By S/ B. J. YUNGLUTH
President.

NIAGARA PARKS COMMISSION

April 20, 1934.

Dear Sirs:

Your letter of April 9th received. It is passing strange that officials of the International Railway Company have not taken seriously the view that due compensation consisted of scrap value, for it is very difficult to see how it could have been brought more clearly to the attention of I.R.C., and that view represents the firm conviction of the Commission. 30

To be specific about the properties requiring further information, reference should be made to the undertaking to say whether the following vested in this Commission:

1. Land outside of the right of way at Queenston Heights.
2. The track at Queenston Dock jointly used by the electric railway and the Hydro-Electric Power Commission of Ontario.
3. Lands in the Village of Queenston not recently used for railway purposes. 40

4. The spur from the main line on Queen Street in the Village of Queenston to the Queenston Bridge.

Obviously mutual recriminations will not be helpful in reaching a settlement. An Arbitrator to represent the Commission will therefore be named, and you will be advised in a few days.

Yours very truly,

S/ JOHN H. JACKSON
General Manager.

International Railway Company
10 Buffalo, New York.

*In the Matter
of an
Arbitration*
—
Exhibits.
Ex. No. 3.
File of Cor-
respondence
between Int.
Ry Co. and
Niag. Pks.
Comm. from
July 27, 1931,
to June 20,
1934.

—continued

NIAGARA PARKS COMMISSION

April 30, 1934.

Dear Sirs:

Referring to my letter of April 20th, I have now to advise you that the Niagara Parks Commission has appointed D. B. Hanna, Esquire, to act as its Arbitrator in the matter of determining the amount to be paid to the International Railway Company as due compensation for the railways, equipment, machinery and other works, pursuant to the terms of the agreement of December 4th, 1891.

20

Yours very truly,

S/ JOHN H. JACKSON
General Manager.

International Railway Company
Buffalo, New York.

INTERNATIONAL RAILWAY COMPANY

June 7, 1934.

Niagara Parks Commission
Niagara Falls, Ontario

Gentlemen:

30

Attention: Mr. John H. Jackson, General Manager

In your letter dated April 30, 1934, you advised us that you had appointed D. B. Hanna, Esq., to act as your arbitrator in the matter of determining the amount to be paid to us for our railways, equipment, machinery and other works under the terms of an agreement dated December 4, 1891. Last week Mr. R. S. Robertson, K.C., appointed as our arbitrator under the terms of that agreement, sought to confer with Mr. Hanna relative to the proposed arbitration proceeding. Mr. Hanna advised him that he had received no notice of his appointment either

*In the Matter
of an
Arbitration*

Exhibits.
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respondence
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1934.

from the Government or from Niagara Parks Commission and, therefore, declined to confer with Mr. Robertson upon the subject. If Mr. Hanna is to act as arbitrator for Niagara Parks Commission, will you not kindly so advise him so the proceeding will not be further delayed?

Yours very truly,

INTERNATIONAL RAILWAY COMPANY

By S/ B. J. YUNGBLUTH
President.

—continued

NIAGARA PARKS COMMISSION

June 9, 1934. 10

Dear Sirs:

Your letter of June 7th received. D. B. Hanna, Esquire, of the City of Toronto, was advised some days ago of his appointment as one of the arbitrators under the terms of the agreement dated December 4th, 1891.

Yours very truly,

S/ JOHN H. JACKSON
General Manager.

International Railway Company
Buffalo, New York.

20

INTERNATIONAL RAILWAY COMPANY

June 20, 1934.

Niagara Parks Commission
Niagara Falls, Ontario

Gentlemen:

Attention: Mr. John H. Jackson, General Manager

Since receiving your letter dated April 30, 1934, in which you advised that you had appointed D. B. Hanna, Esquire, to act as your Arbitrator in the matter of determining the amount of compensation to be paid to us under the terms of the agreement dated December 4, 1891, Mr. R. S. Robertson, K.C., appointed as our Arbitrator in the matter has attempted on several occasions to discuss with Mr. Hanna the subject of a third Arbitrator. Mr. Hanna has consistently declined to discuss the subject, stating that he has no authority to do so. Likewise, Mr. McCarthy's attempts to procure the appointment of a third Arbitrator, in conjunction with Mr. Tilley, have been unavailing. 30

Therefore, you will please be advised that we shall make application to His Lordship, Sir William Mulock, Chief Justice of Ontario, at his Chambers at Osgoode Hall, Toronto, on the 22nd day of June, 1934, at 10:30 o'clock in the forenoon of that day or as soon thereafter as we may be heard for the appointment of a Third Arbitrator to determine the amount of compensation to be paid to us for our railways, equipment, machinery and other works, including also the works in Chippawa and Queenston, pursuant to the terms of the said agreement between the Commissioners for the Queen Victoria Niagara Falls Park and Edmund
 10 Boyd Osler and others, dated December 4, 1891.

*In the Matter
 of an
 Arbitration
 --
 Exhibits.
 Ex. No. 3.
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 respondence
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 Comm. from
 July 27, 1931,
 to June 20,
 1934.*

Let me add that upon such application the correspondence exchanged between you and us or parts thereof may be read.

—continued

Yours very truly,

INTERNATIONAL RAILWAY COMPANY

By S/ B. J. YUNGBLUTH
 President.

DESCRIPTION AND DETAILS	TOTAL	LABOR UNIT COST	LABOR COST	MATERIAL UNIT COST	MATERIAL COST	TOTAL COST	PERCENTAGE OF VALUE	DEPRECIATED VALUE
<u>Wheel Pits.</u>								
Wheel Pits as they now exist shown on our plan P-10. Taken from actual measurements.								
The details of the work to be done and the cost to do same as of August 31st, 1932.								
The depreciated value is as shown.								
Our replacement cost	46,473.57							
" depreciated value.....	41,047.16							
" salvage value.....	Nil.							
Excavation solid rock	2,488 e.f.	11.00	27,368 00			27,368 00	100%	27,368.00
Concrete for dividing wall & new wheel pit	206 "	2.50	512 50	7.00	1,455 00	1,947 50	80%	1,558.00
Forms	2868 s.f.	.26	717 28	.15	430 35	1,147 60	80%	918.08
Masonry wall at top	2376 e.f.	.38	831 60	.50	1,188 00	2,019 60	90%	1,817.64
Structural steel erected & painted 70.49 tons	140,980y			.06 1/2	7,763 90	7,763 90	50%	3,876.95
Plus 5% overhead and job expense			29,429 38		10,807 26	40,236 60		35,530.67
Plus 10% profit and main office overhead						2,011 83	5%	1,776.93
						42,248 43		37,315.60
						4,224 84	10%	3,731.56
						<u>46,473 27</u>		<u>41,047.16</u>

In the Matter of an Arbitration Exhibits Ex. No. 189(a) Data on wheelpits.

PROJECT International, Inc. SHEET NO. 1.

DATE Dec. 1954. THE FRID CONSTRUCTION CO., LIMITED
 FOR Niagara Parks Commission **BILL OF QUANTITIES**

NAME OF WORK Intake.

DESCRIPTION AND DETAILS	TOTAL	LABOR UNIT COST	LABOR COST	MATERIAL UNIT COST	MATERIAL COST	TOTAL COST	PRESENT PERCENTAGE OF VALUE	DEPRECIATED VALUE
<u>Intake at Power House - built 1902.</u>								
As per plan F-6.								
Concrete in very poor condition. Replaced.		2.25	9,739 00	6.00	7,206 00	6,739 00	100%	9,739.00
Steel ice fenders in poor condition.		1.00	1,201 00	.10	1,557 30	3,407 00	30%	2,522.10
Our replacement cost.....	33,123.11	.15	2,335 98	.06	2,004 00	3,863 25	30%	1,167.97
" depreciated value.....	17,699.36	.30	115 50	.06	2,046 48	115 50	100%	115.50
" salvage value.....	Nil.					2,004 00	40%	801.60
						2,046 48	40%	819.59
Excavation solid rock	5,884 c.y.	30.00	22 98	36.00	1,860 00	1,860 00	30%	495.00
Concrete for walls and piers	1,201 "			1.60	1,260 00	1,260 00	30%	378.00
Forms shipped to contour	16,573 s.f.				26 81	49 79	60%	29.57
Back fill	385 c.y.				513 00	513 00	50%	256.50
Ice fenders and erected - outer	33,400'							
" fenders " " inner	34,100'							
Coffer dam	766' dia.							
Pumping	342 l.f.							
Plank walks								
Pipe Rail erected								
Plus 5% overhead and job expense			12,414 43		16,863 59	28,678 02	5%	15,324.13
Plus 10 profit & M in office overhead						1,435 90		766.20
						30,111 92		16,090.33
						3,011 19	10%	1,609.03
						33,123 11		17,699.36

In the Matter of an Arbitration - Exhibits. Ex. No. 189(b) Data on intake.

PROJECT International Y. Co. THE FRID CONSTRUCTION CO., LIMITED
 FOR Niagara Parks Commission **BILL OF QUANTITIES**

DATE Dec. 1934. SHEET NO. 1.

NAME OF WORK **Bridge No. 8.**

DESCRIPTION AND DETAILS	TOTAL	LABOR UNIT COST	LABOR COST	MATERIAL UNIT COST	MATERIAL COST	TOTAL COST	PERCENTAGE OF VALUE	DEPRECIATED VALUE
Bridge No. 8								
Highway Bridge Over Intake. See Plan 1064.								
through Plate Girder Bridge encased in concrete, built 1904, Hamilton Bridge Co. Limited under contract.								
Concrete in fair condition.								
Our replacement value.....	15,167.03							
" depr listed value.....	11,440.32							
" salvage value.....	Nil.							
Concrete "A" 2000' abutments	70 c.f.	1.26	87 50	6.00	480 00	567 50		
" " 2500' abutments	113 1/2 "	1.25	141 87	6.50	737 75	879 62		
Forms general	241 "	1.00	241 00	6.00	1,446 00	1,687 00		
for panels	16,246 s.f.	.12	1,949 40	.08	1,299 60	3,249 00		
Reinforcing mesh 776 sq. yds.	844 s.f.	.20	168 80	.05	26 32	194 12		
Rubbing concrete	7,000 s.f.	.01	70 00	.01 1/2	108 00	178 00		
Reinforcing steel	2300 "	.03	69 00			69 00		
	6.13 tons	10.00	61 50	50.00	308 50	367 80		
			<u>2,788 87</u>		<u>4,340 17</u>	<u>7,129 04</u>	80%	5,705.23
Plus 5 Overhead and job expense						356 46	5%	286.16
Plus 10 profit and Main office overhead						7,485 46	10%	5,983.39
						<u>746 54</u>		<u>598.85</u>
Structural steel - supplied, erected and painted Hamilton Bridge Co. Limited						8,234 03	70%	5,567.82
						<u>6,913 00</u>		<u>4,863.10</u>
						<u>15,167 03</u>		<u>11,440.32</u>

In the Matter of an Arbitration
 Exhibit Ex. No. 189(d)
 Data on Bridge No. 8 highway over intake.

**STATUTES OF LEGISLATURE OF ONTARIO PRINTED FOR
CONVENIENCE OF REFERENCE.**

*Statutes of
Legislature
of Ontario.*

—
No. 1.

Act
incorporating
Niagara Falls
P. & R. Rly.
April 14, 1892.

CHAPTER 96.

An Act to Incorporate the Niagara Falls Park and River Railway Company, with Schedules Attached. (Chap. 96 of 55 Vict., 1892).

CHAPTER 96.

An Act to incorporate the Niagara Falls Park and River Railway Company
(Assented to 14th April, 1892)

WHEREAS the Commissioners of the Queen Victoria Niagara Falls
10 Park, acting on their own behalf as well as on behalf and with the approval
of the Government of the Province of Ontario did, on the fourth day of
December, 1891, enter into an agreement (fully set out in the schedule B.
hereto) with Edmund Boyd Osler, Herbert Carlyle Hammond, William
Hendrie, and Richard Bladworth Angus, in the said agreement described as
the company, whereby it was agreed that in consideration of certain mat-
ters therein contained the said company would build an Electric Railway so
as to furnish better access to the public property of Ontario at the Falls of
Niagara, known as the Queen Victoria Niagara Falls Park proper; and
whereas by the said agreement it was provided that the railway to be
20 worked by electricity should pass through the said Park according to plans
and specifications, to be approved of by the Commissioners, and by the
Commissioner of Public Works of the Province of Ontario, and that the
right of way through the Park proper should be provided by the commis-
sioners, and that the right of way from Queenston to the Park proper
should be provided by the commissioners on the terms in the said agreement
specified; and whereas it is desirable that the aforesaid parties in the said
agreement described as "the company" be duly incorporated and be em-
powered by means of an Act of incorporation of the Legislature of Ontario
to raise capital to carry out the terms of the said agreement and exercise
30 such other powers as are hereby conferred;

Preamble.

Therefore Her Majesty, by and with the advice and consent of the
Legislative Assembly of the Province of Ontario, enacts as follows:—

1. The agreement between the Commissioners for the Queen Vic-
toria Niagara Falls Park and the said Edmund Boyd Osler, Herbert
Carlyle Hammond, William Hendrie and Richard Bladworth Angus,
dated the fourth day of December, 1891, and as set forth in schedule
"B." hereto, and in this Act hereinafter designated as "the agreement,"
is hereby approved, ratified, confirmed and declared to be valid and
binding on the parties thereto; and each of the parties thereto is hereby
40 authorized and empowered to do whatever is necessary to give effect to

Agreement
between Park
Commission-
ers and cor-
poration con-
firmed.

No. 1.
Act
incorporating
Niagara Falls
P. & R. Rly.
April 14, 1892.

—continued
Incorporation.

Personal lia-
bility of cor-
porators.

Powers of
company.
Location of
line.

Extension.

Hotels.

Rev. Stat.
c. 170.

Wharves, etc.

Steamers and
vessels.

the substance and intention of the provisions of the agreement, and is hereby declared to have and have had power to do all acts necessary to give effect to the same.

2. The said Edmund Boyd Osler, Herbert Carlyle Hammond, William Hendrie, and Richard Bladworth Angus, together with all such persons and corporations as shall become shareholders in the company hereby incorporated, shall be and are hereby constituted a body corporate and politic by and in the name of "The Niagara Falls Park and River Railway Company."

3. Subject to paragraph (f) in the first part of the agreement 10 relating to the personal liabilities and engagements of the individual parties to the agreement, and subject also to the other provisions of the said agreement the company by this Act incorporated shall have power to acquire upon such terms as may be agreed upon, all rights and powers granted by the agreement by the Park Commissioners, and also the benefit of any work that has been done, and any moneys that have been expended in connection with the said electric railway or works prior to the organization of the said company, and the personal liability to the Park Commissioners or others thereunder shall not cease or determine until the works and equipment in paragraph (f) in the first 20 part of the agreement shall have been constructed and ready for operation as in said paragraph provided.

4. The company shall have power and authority—

(1) To construct and operate an electric railway from the waters of the Niagara river along the top of the west bank of the Niagara river from some point in the village of Queenston, in the county of Lincoln, to the village of Chippawa, to be known as the High Level Railway from Queenston to the southern end of the Queen Victoria Niagara Falls Park, such Electric Railway to be laid out, constructed and operated in accordance with the terms provided by the agreement. 30

(2) To construct and operate extensions of the said electric railway from Chippawa to Fort Erie, and from Queenston to the town of Niagara as may be determined.

(3) To acquire, own, erect and manage one or more hotels at or near the Niagara Falls and elsewhere near the line of Railway, but the powers of expropriation in *The Railway Act of Ontario* shall not apply to this sub-section.

(4) To erect wharves, piers, docks, stations, power houses work-shops and offices, and to purchase lands for any of the company's such purposes and to sell and convey such portions of any of such lands as 40 may be found superfluous for any such purpose.

(5) To construct, purchase, charter and navigate steamers and vessels for the purpose of traffic in connection with said railway, and to establish connections between their wharves, piers and docks and their

said railway at such point or points as such connections may be required. The powers of expropriation in *The Railway Act of Ontario* shall not be exercised by the company in respect of the water frontage in Queenston at present owned by the Niagara Navigation Company to the extent of 325 feet in a southerly direction from the north limit of the wharf of the said company as at present constructed.

Act
incorporating
Niagara Falls
P. & R. Rly.
April 14, 1892.

—continued

(6) To take and hold stock in any navigation or steamboat company.

Stock in
steamboat
company.

(7) To take stock in any company or companies formed or to be
10 formed for the construction of elevators, lifts or others works along the
Niagara river.

In elevator
companies.

(8) The company shall also have the power to acquire the whole or any part of the stock of any street car company heretofore or hereafter incorporated according to the laws of this Province and which touches or connects with the line or lines of railway hereby authorized, or any of them. The company shall also have power to run its cars on the lines of any street car company, having first obtained permission from such company so to do.

In street car
companies.

(9) Subject to the recommendation of the Park Commissioners
20 approved by the Lieutenant-Governor in Council, the company shall
have the power by expropriation or otherwise to acquire the right to
convey electricity required for the working of the railway and lighting
the same, over, through or under lands other than the right of way of
the Railways by this Act authorized to be built, as well as the right of
way, and to lay conduits under or erect poles and wires on or over such
lands as may be determined by the company, and the rights and liabilities
of the company in respect thereof shall be the same as is provided
by *The Railway Act of Ontario*, in respect of other lands required for the
use of the railway, and also when the right to convey such electricity
30 has been conceded to the company by the parties having a right to make
such concession and along and upon any of the public roads and high-
ways or across any of the waters in this Province by the erection of the
necessary fixtures, including posts, piers or abutments, for sustaining
the cords or wires of such lines, or the conduits for such electricity,
provided such works are not so constructed as to incommode the public
use of such roads or highways, nor to be a nuisance thereto, or to impede
the free access to any house or other building erected in the vicinity of
same or to endanger the same, or injuriously to interrupt the navigation
of such waters, and electricity so conveyed shall not be used for any
40 other purpose than to work and light the said railway. The rights
hereby conferred upon the company shall not be exercised within the
limits of the Queen Victoria Niagara Falls Park without the consent
of the Commissioners thereof on the approval of the Lieutenant-Gov-
ernor in Council.

Conduits.

5. The clauses and provisions of *The Railway Act of Ontario* and the amendments thereto, except subsection 18 of section 9 and, save as

Certain pro-
visions of Rev.
Stat. c. 170 to
apply.

Statutes of
Legislature
of Ontario.

No. 1.

Act
incorporating
Niagara Falls
P. & R. Rly.
April 14, 1892.

—continued

barred, varied or excepted by this Act including the Act passed in the 53rd year of Her Majesty's reign, and chaptered 45, shall form part of this Act, and the following provisions of the said Railway Act as amended shall be excluded in respect of the Park Proper as in the agreement defined, nor be exercisable in relation thereto by the company by this Act incorporated, viz:—"Powers" except in so far as the exercise of sub-section 10 and the borrowing powers of the company are of the powers to be exercised over the whole undertaking, "plans and surveys," "lands and their valuation," "mines," "highways and bridges," "fences" except subject to section 6 of this Act, "proceedings where additional space required," "traffic arrangements." 10

Powers of
Lieutenant-
Governor in
Council.

6. The Lieutenant-Governor in Council may from time to time, as may be deemed expedient, amend, change and alter as regards the company any or all of the provisions of section 30 of *The Railway Act of Ontario* or the sub-sections thereof, and make such amendments, changes or alterations applicable to the whole or any part or parts of the said railway of the said company.

A copy of any such orders in council shall be filed with the clerk of every municipality through which the said railway, or any part thereof, shall be operated. 20

Motive power.

7. The Railways shall be operated by electric power only but between Queenston and the Whirlpool, the Lieutenant-Governor in Council may permit electric power to be dispensed with temporarily for the use of steam power to be generated by anthracite coal.

Capital stock.

8. The capital stock of the said company shall be the sum of \$1,000,000, to be divided into shares of \$100 each, and the money thereby raised shall be applied, in the first place, to the payment of all fees, expenses and disbursements for the procuring the passing of this Act, and for making the surveys, plans and estimates connected with the railway, and all the rest and remainder of such money shall be applied towards making, completing and maintaining the said railway, and to the other purposes of this Act. 30

Provisional
directors.

9. The persons named in the first section of this Act shall be and are hereby constituted a board of provisional directors of the said company, three of whom shall be a quorum, and shall hold office as such until other directors shall be appointed, under the provisions of this Act, by the shareholders and shall have power and authority to fill vacancies occurring therein, to associate with themselves therein not more than three other persons, who shall thereupon become and be directors of the company equally with themselves, to open stock books and procure subscriptions for the undertaking, to make calls upon subscribers, to cause surveys and plans to be made and executed, to call a general meeting of the shareholders for the election of directors as hereinafter provided, and generally to do all such other acts as a board of directors under the *The Railway Act of Ontario* may lawfully do. 40

Rev. Stat. c.
170.

10. When and as soon as shares to the amount of \$300,000 of the capital stock of the company shall have been subscribed, and 25 per centum shall have been paid into a chartered bank of the Dominion, having an office in the Province of Ontario, the provisional directors, or a majority of those present at a meeting duly called for the purpose, shall call a meeting of the subscribers for the purpose of electing directors, giving at least four weeks' notice in the *Ontario Gazette*, and in one newspaper published in the town of Niagara Falls, of the time, place and object of such meeting, and at such general meeting the shareholders present, either in person or by proxy, who shall at the opening of such meeting have paid ten per centum on the stock subscribed by them, shall elect seven persons to be directors of the said company, in manner and qualified as hereinafter described, which said directors shall constitute a board of directors; and the sum so paid shall not be withdrawn from the bank except for the purposes of this Act.

*Statutes of
Legislature
of Ontario.*

No. 1.

Act
incorporating
Niagara Falls
P. & R. Rly.
April 14, 1892.

—continued

First annual
meeting.

11. Thereafter the general annual meeting of the shareholders of the said company shall be held in the city of Toronto or elsewhere, as the directors may deem most convenient, on such days and hours as may be directed by the by-laws of the said company, and public notice thereof shall be given at least four weeks previously in the *Ontario Gazette*, and once a week for the same period in some newspaper published in the said town and in each of the counties from which a bonus may have been received.

Annual meet-
ings.

12. A majority of the directors shall form a quorum for the transaction of business, and the said board of directors may employ one or more of their number as paid director or directors: provided, however, that no person shall be elected a director unless he shall be the holder and owner of at least ten shares of the stock of the said company, and shall have paid up all calls upon the stock.

Quorum of
directors and
appointment
of paid
director.

13. The provisional or elected directors of the company may in their discretion exclude anyone from subscribing for stock in the said company, or may before allotment cancel the subscription and return the deposit of any person, if they are of the opinion that such person would hinder, delay or prevent the company from proceeding with and completing their undertaking under the provisions of this Act, or that such person's membership is for other reasons undesirable, and if, at any time, more than the whole stock shall have been subscribed the said board of directors shall allocate or apportion it amongst the subscribers as they shall deem most advantageous and conducive to the furtherance of the undertaking.

Power of
directors to
exclude per-
sons from sub-
scribing for
stock.

14. It shall be lawful for the directors in procuring subscriptions for stock to allot such stock in such amounts and subject to the payment of such calls of such amount and at such times and at such discount as they may think fit, or they may agree for the sale of such

Allotment of
stock.

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Power to
make certain
payments in
stock.

Exemption
from taxation.

Power to
become parties
to promissory
notes, etc.

stock, or any part thereof, at such price as they may think fit, and may stipulate for the payment of the purchase money at the time of subscription, or by instalments, and the amount of every such instalment, as and when payable, shall be deemed to be money due in respect of a call made in accordance with the provisions contained in section 35 of *The Railway Act of Ontario*, and non-payment of any such instalment shall carry with it all the rights, incidents and consequences as mentioned in the said Act, as in the case of a call due by a shareholder on a share.

15. The said directors may pay, or agree to pay, in paid up stock, 10
or in bonds of the said company, such sums as they may deem expedient, to engineers or contractors, or for right of way, or material or plant, or rolling stock, buildings or lands, and also subject to the sanction of a vote of the shareholders, for the services of the promoters or other persons who may be employed by the directors for the purpose of assisting the directors in the furtherance of the undertaking, or purchase of the right of way, or material, plant or rolling stock, whether such promoters or other persons be provisional or elected directors or not, and any agreement so made shall be binding on the company.

16. It shall be lawful for the corporation of any municipality, 20
through any part of which the railways of the said company pass, or are situate, by by-laws specially passed for that purpose, to exempt the said company and its property within such municipality, either in whole or in part, from municipal assessment or taxation, or to agree to a certain sum per annum, or otherwise, in gross, or by way of commutation or composition for payment, or in lieu of all or any municipal rates or assessments to be imposed by such municipal corporation, and for such term of years as to such municipal corporation may seem expedient, not exceeding twenty-one years, and any such by-law shall not be repealed unless in conformity with a condition contained therein. 30

17. The said company shall have power and authority to become 40
parties to promissory notes and bills of exchange for sums not less than one hundred dollars, and any such promissory note made or endorsed by the president or vice-president of the company and countersigned by the secretary and treasurer of the said company and under the general or special authority of a majority of a quorum of the directors, shall be binding on the said company; and every such promissory note or bill of exchange so made shall be presumed to have been made with proper authority, until the contrary be shewn, and in no case shall it be necessary to have the seal of the said company affixed to such promissory note or bill of exchange; nor shall the president or vice-president, or the secretary and treasurer, be individually responsible for the same, unless the said promissory notes or bills of exchange have been issued without the sanction and authority, either general or special, of the board of directors, as herein provided and enacted: provided, however, that noth-

ing in this section shall be construed to authorize the said company to issue notes or bills of exchange payable to bearer, or intended to be circulated as money, or as the notes or bills of a bank.

18. The directors of the said company shall have power to issue bonds of the company for the purpose of raising money for prosecuting the said undertaking, the whole amount of the issue of such bonds not to exceed in all the sum of \$45,000 for each mile of the said railway and the actual cash value of the wharves, piers, docks, steamers, vessels and other water craft, incline railways, elevators and hotels of the company and the equipment thereof respectively, but such bonds shall be limited as a charge so as not to interfere with the terms of section 26 of the agreement; and the amount of compensation under section 26 for the railway, its equipment, machinery and works between Queenston and Chippawa shall not include the value of hotels, vessels, steamboats, nor the value of any other equipment or works than such as may be incidental to the use of electric power, nor any excess of the value of the class of work prescribed by the plans and specifications which shall have been approved by the Commissioner of Public Works, nor stocks in navigating companies, or in companies building or operating elevators or incline railways, nor the cost or value of elevators or inclined railways, except the elevators or inclined railways expressly authorized to be built or acquired under the agreement, nor of any other works not expressly and specifically provided for by the said agreement set forth in the schedule hereto.

19. The said company hereby incorporated may, from time to time, for advances of money to be made thereon, mortgage or pledge any bonds which they can under the powers of this Act issue for construction of the said railway or otherwise, subject to the provisions in the preceding section contained.

20. All shareholders in the said company, whether British subjects or aliens, or residents of Canada or elsewhere, have and shall have equal rights to hold stock in the said company and to vote on the same and to be eligible to office in the said company.

21. Before proceeding with the construction of the said railways, plans and maps shewing the location thereof, with profile, cross sections and specifications, and determining and including the width of right of way where not already expressly provided and specified in the agreement shall be submitted to and approved by the Commissioner of Public Works; and the said company shall also submit in detail, to the Commissioner of Public Works, plans and drawings of the carriages or coaches proposed to be used for passenger traffic, for his approval, and the same shall be approved of by him before the said carriages or coaches shall be used upon the said railways, and before proceeding with any changes or expansions in the plans and specifications affecting

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the system of the renewal of the construction of the said railways and the building of the said carriages or coaches such changes, expansions or renewals shall be subject from time to time to the inspection, direction and approval of the Commissioner of Public Works on such terms as he may require of the company, and copies of all such railways, plans, with cross-sections and specifications shall be deposited in the Department of Public Works for Ontario.

Erection of
telephone and
telegraph
wires and
electric works.

22. For the purpose of operating and lighting the said railway, the company shall have power to erect poles or make conduits for wires, and to construct and maintain telegraph or telephone lines along the lines of railway, and connect the same with their offices, stations and other works, and for any of such purposes shall have all the powers conferred upon telegraph companies by chapter 158 of the Revised Statutes of Ontario, 1887, and may take tolls or fees for the use of the telegraph or telephone lines by the public. 10

Transfer of
stock.

23. Shares in the capital stock of the company may be transferred by any form of instrument in writing, but no transfer shall become effectual unless the stock or scrip certificates issued in respect to shares intended to be transferred are surrendered to the company, or the surrender thereof dispensed with by the company. 20

Regulations
as to transfer
of shares.

24. The directors may from time to time, make such regulations as they shall think fit, for facilitating the transfer and registration of shares of stock, and the forms in respect thereof, as well in this Province as elsewhere, and as to the closing of the register of transfers for the purpose of dividends, as they shall find expedient, and all such regulations, not being inconsistent with the provisions of this Act, and of *The Railway Act of Ontario*, as altered or modified by this Act, shall be valid and binding.

Rev. Stat.
c. 170.

Form of
conveyances.

25. Conveyances of land, to the said company, for the purpose of and powers given by this Act, made in the form set out in the schedule "A" hereunder written, or to the like effect, shall be sufficient conveyance to the said company, their successors and assigns, of the estate and interest, and sufficient bar of dower respectively of all persons executing the same; and such conveyances shall be registered in the same manner, and upon such proof of execution as is required under the registry laws of Ontario; and no registrar shall be entitled to demand more than seventy-five cents for registering the same, including all entries and certificates thereof, and the certificates endorsed on the duplicates thereof. 30

Power to purchase whole
lots in certain
cases.

26. Whenever it shall be necessary for the purpose of procuring sufficient lands for stations or gravel pits, or for constructing, maintaining and using the said railways, and in case, by purchasing the whole of any lot or parcel of land over which the railways are to run, the 40

company can obtain the same at a more reasonable price, or to greater advantage than by purchasing the railway line only, the company may purchase, hold, use, and enjoy such lands, and also the right of way thereto, if the same be separated from their railway, and may sell and convey the same, or any part thereof, from time to time as they may deem expedient; but the compulsory clauses of *The Railway Act of Ontario* shall not apply to this section, nor shall the same apply to the Park Proper.

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Commence-
ment and com-
pletion of
railway.

27. The construction of that portion of the said railway lying
10 between Queenston and Chippawa, and on the high level, shall be com-
pleted in accordance with section 15 of the agreement, unless extended
by the Lieutenant-Governor in Council, and shall be duly operated dur-
ing the existence of the said agreement and subject to the terms thereof,
and the construction of the said railway, between Niagara and Queens-
ston and between Chippawa and Fort Erie, shall be commenced within
five years, and be completed within seven years, after the passing of
this Act.

28. In respect of the low level railway mentioned in section 20 of
the agreement, and the terms and conditions on which the same may be
20 built and operated as in the agreement is provided, the Lieutenant-Gov-
ernor in Council, in the event of the company in the agreement men-
tioned, or the company hereby incorporated if it shall have duly acquired
the rights of the company in the agreement mentioned in pursuance of the
powers contained in section 3 of this Act, having duly exercised the option
given to build and proceed forthwith with the building and operat-
ing the low level railway as in the agreement provided, may extend to
the company in the agreement mentioned or to the company hereby
incorporated the powers in this Act contained in respect of such matters
and powers as are by this Act conferred to build and operate the high
30 level railway subject to the power of revocation by the Lieutenant-
Governor in Council of such right to build and operate the said low
level railway in the event of the said low level railway not being built
and fully equipped for operation in accordance with the agreement
and within the period by the agreement required to build the same and
have the same ready for operation and duly operating the same during
the existence of the said agreement and subject to the terms thereof;
and in the event of the company in the agreement mentioned or the com-
pany hereby incorporated, if it shall have duly acquired the rights
of the company in the agreement mentioned in respect of the said low
40 level railway declining to build the low level railway as by the said
agreement provided, the Lieutenant-Governor in Council may grant to
any person or persons individually or grant to any person or persons
a charter of incorporation by Letters Patent under the Great Seal.
All such powers which by this Act may be conferred upon the company
in the agreement mentioned or on the company hereby incorporated, to

Construction
of low level
railway.

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build and operate the low level railway as in the agreement mentioned in respect of such matters, subject to the due operation of the said low level railway during the existence of the said agreement and subject to the terms thereof, and such further powers as are by this Act conferred upon the company by this Act incorporated, to build and operate the high level railway, together with such rights and powers to raise capital for such purposes as to the Lieutenant-Governor in Council may seem to be expedient and necessary, and such charter of incorporation by Letters Patent under the Great Seal shall, and is hereby declared to be as valid and effectual as an Act of the Legislature of Ontario; provided always that such Letters Patent shall be laid before the Legislature at the first session ensuing the granting thereof. 10

SCHEDULE "A."

(Section 25).

Know all men by these presents, that I (*or we*) (*insert the name or names of the vendor or vendors*), in consideration of

dollars paid to me (*or us*), by the Niagara Falls Park and River Railway Company, the receipt whereof is hereby acknowledged, do grant and convey unto the said company, and I (*or we*) (*insert the name or names of any other party or parties*) in consideration of 20

dollars paid to me (*or us*), by the said company, the receipt whereof is hereby acknowledged, do grant and release all that certain parcel (*or those certain parcels*), (*as the case may be*), of land situated (*describe the lands*), the same having been selected and laid out by the said company for the purposes of its railway, to hold with the appurtenances unto the said the Niagara Falls Park and River Railway Company, their successors and assigns (*here insert any other clauses, covenants or conditions required*) and I (*or we*) the wife (*or wives*), of the said do hereby bar my (*or our*) dower in the said lands.

As witness my (*or our*) hand and seal (*or hands and seals*), this 30
day of one thousand, eight

hundred and

Signed, Sealed and delivered }
in presence of }

[L S]

SCHEDULE "B."

(Section 1.)

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of Ontario.*No. 2.
Agreement
between
Comm'rs. for
Q.V.N.F.P.
and Osler,
Hammond,
Hendrie and
Angus.
Dec. 4, 1891.

This agreement, made this fourth day of December, one thousand eight hundred and ninety-one, between the commissioners for the Queen Victoria Niagara Falls Park, acting herein on their own behalf as well as on behalf and with the approval of the Government of the Province of Ontario, and hereinafter called "the commissioners" of the first part, and Edmund Boyd Osler and Herbert Carlyle Hammond, both of the city of Toronto, in the Province of Ontario, brokers, William Hendrie, of the city of Hamilton in the said Province, contractor, and Richard Bladworth Angus, of the city of Montreal, in the Province of Quebec, gentleman, hereinafter called "the company" of the second part;

Whereas the company desires to construct and operate an electric railway along the top of the west bank of the Niagara River from the village of Queenston, in the county of Lincoln, to the village of Chippawa, in the county of Welland, and to extend the same as they may deem advisable to the town of Niagara, in the said county of Lincoln, and to the village of Fort Erie, in the said county of Welland, and to establish steamboat connections at the places named, or some of them, and the said railway between Queenston and Chippawa is hereinafter referred to as "the high level railway;"

And whereas it is the intention of the company to apply to the Legislature of Ontario at its next session for a charter of incorporation to enable them and such others as may be associated with them in the undertaking to construct and operate the said railway and other works hereinafter referred to, and to execute effectively the engagements entered into herein on their part;

And whereas the company desire to secure the rights of way to construct their said railway through and in the Queen Victoria Niagara Falls Park, which is the property of the commissioners, and through and over other lands of the commissioners, and also through and over lands held or contracted for by the commissioners under contracts with and licenses from the owners thereof respectively, and the commissioners have agreed to provide such rights of way upon the terms and conditions and for the considerations hereinafter expressed and contained or intended so to be;

And whereas the company desire to secure the option of constructing and operating the "low level railway" as hereinafter defined and also certain privileges in the Park and along the Niagara River and its western bank which option and privileges the commissioners have agreed to give to the company for the time and upon the terms and conditions and for the considerations hereinafter expressed;

And whereas for convenience and to prevent ambiguity it is agreed

and understood by and between the said parties hereto and is hereby declared as follows, that is to say:—

(a) The expression “park proper” wherever it occurs herein shall be understood to mean the Queen Victoria Niagara Falls park south of its original boundary in front of the Clifton house and running easterly to the Niagara river.

(b) The expression “low level railway” wherever it occurs herein shall be understood to mean a line of railway under the cliff which forms the west bank of the Niagara river, and as near to the edge of the waters of the river as circumstances will permit and extending as the commissioners may determine from within that part of the park proper below the bank to the north limit of the lands of the commissioners being the south limit of the military reserve at Queenston or between such intermediate points as the commissioners may determine. 10

(c) The expression “the company” wherever it occurs herein shall be understood to mean not only the individuals above named as parties hereto of the second part, but also their and each of their heirs, executors, administrators and assigns and the company to be incorporated as hereinbefore mentioned and its successors and assigns.

(d) The expression “the commissioners” wherever it occurs herein shall be understood to mean not only the parties hereto of the first part but also their successors and assigns and those who for the time being may be the commissioners of the Queen Victoria Niagara Falls park. 20

(e) In the event of the company failing to secure at the next session of the Legislature of Ontario such charter as will enable them to carry out effectively the building of “the high level railway” and to acquire the other rights and properties in fulfillment of the objects hereinbefore recited, they will under the authority of the commissioners in so far as the said authority may have effect under the powers vested in the commissioners or otherwise if such powers be sufficient for the purpose and with the resources of the company and as an unincorporated partnership or otherwise build, equip and operate the said high level railway as hereinafter provided and such other works as may be required of the parties of the second part to be by them done or acquired under the terms of this agreement. 30

(f) The company to be incorporated as aforesaid shall assume all the liabilities and engagements which are assumed and entered into herein by the parties hereto of the second part and their personal liability to the commissioners shall cease and determine when such liabilities and engagements have been assumed by such company and in the event of the said parties being unable to secure incorporation such personal liabilities and engagements shall cease when the said high level railway shall have been constructed from Queenston to Chippawa and shall be 40

fully equipped and ready for operation and after that event the said liabilities and engagements including the payment of rent after the first year's payment shall be enforced against the said railway and its appurtenances, including all works to be acquired or built by the company as by this agreement is provided, or against the said incorporated company as the case may be, and not against the parties hereto of the second part, their heirs, executors, administrators or assigns or any of them, except in so far as they may have incurred liability as members of such incorporated company, but they shall nevertheless be personally liable for the cash payment and the first year's rent and for the building and equipping of the said high level railway.

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Now therefore this agreement witnesseth as follows, that is to say:—

1. The commissioners do hereby license and permit the company to construct a first class electric railway with single or double tracks as may hereafter be agreed upon between them and the company in and through the park proper from its northern to its southern boundary and on and over the other lands of the commissioners from the northern boundary of the park proper to a point in or near the village of Queenston, and so far as the license of occupation recently obtained by the chairman of the commissioners from the militia department extends, and the commissioners will provide the right of way therefor of the required widths the railway herein referred to being part of the high level railway and the same shall be in accordance with the provisos, conditions and agreements hereinafter contained.

2. The company shall construct, equip and operate the said railway and shall extend the same to Chippawa creek with sufficient sidings and equipments to meet the development of traffic. It shall not, however, be compulsory upon the company to operate the railway between the first day of December and the first day of March in each year except between the Grand Trunk railway station at the town of Niagara Falls and the upper islands within the park proper.

3. The said railway is to be four feet eight and a half inches gauge and is to be laid with steel rails of not less than forty-five pounds to the lineal yard, fastened with fish plates, the formation ballast, bridges and all other structures to be of such material and to be built between Chippawa and Queenston according to plans and specifications to be approved of by the commissioners and by the Commissioner of Public Works of the Province of Ontario.

4. The location of the said railway in the park proper and on that portion of the commissioners' property known as "the chain reserve" extending from the north boundary of the park proper to the north boundary of the town of Niagara Falls shall be as the commissioners may decide.

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5. No sidings are to be laid down in the park proper without the assent of the commissioners, but any sidings which they may determine to be required in the public interest shall be constructed by the company, the right of way for the same being provided by the commissioners of a width not exceeding twelve feet.

6. The right of way through the park proper shall be twelve feet for a single track where the railway is built on the surface. In cuttings and embankments the width is not to exceed twelve feet at grade.

7. The railway is to be constructed upon the chain reserve along and on top of the bank of the river north of the park proper so far as it can be conveniently used to reach Queenston, but deviations may be made to avoid large expenditure. 10

8. For the right of way over the chain reserve north of the park proper in so far as regards the extent of the present and any future interest of the commissioners therein and the benefit of the contracts already entered into between the commissioners and various land owners for purchase of right of way and for the deviations above mentioned including the lands by such contracts acquired or thereby intended so to be, the company shall pay to the commissioners the sum of ten thousand dollars, which payment is to be made in cash by the company to the commissioners when they have decided upon the location of the said high level railway and have given their assent to the commencement of the work of construction, and the commissioners shall have no further claim against the company for land damages, or for lands injuriously affected by the construction or operation of the railway (unless the same shall not be constructed in accordance with the plans and specifications provided for by paragraph 3 of this agreement) or in respect of any claims for working the said railways or works. Any territory required for deviations or otherwise in addition to the above shall be provided and paid for by the company who in acquiring such other territory and until they receive the requisite rights, powers and franchises by Act of the Legislature of Ontario, may exercise all the rights, powers and franchises possessed by, and if necessary, in the name of the commissioners. 20 30

9. At terminal points, namely Queenston and Chippawa, the company shall construct sufficient landing places in the form of wharves to receive steamers. Such structures shall be built on plans to be approved of by the commissioners. At Chippawa terminus the company shall provide sufficient ground for terminal buildings with all necessary accommodation, and also sufficient ground for like terminal and necessary accommodation at Queenston if the land embraced in the license of the militia department be inadequate for the purpose. 40

10. The company shall not erect any buildings or sheds within the

limits of the park proper without special permission from the commissioners, and shall not carry on any work thereon that will in any way disfigure it, of which works, whether disfiguring or not, the commissioners are to be the sole judges. The company are to have the full use of all plans and surveys in possession of the commissioners or made at their instance, but such plans and surveys are not to be taken as the decision of the commissioners in respect of any works herein agreed to be done or which may hereafter be proposed to be done.

11. The company shall have the right to construct and operate
 10 inclined railways and elevators at such points north of the Niagara Falls
 ferry as may be approved of by the commissioners, and the company
 may use such portions of the chain reserve and thence down to the water
 as may be required for such construction and operation. The com-
 pany shall also have the right to acquire and operate such inclined
 railways and lifts which have already been constructed north of the
 ferry together with the machinery and works connected therewith upon
 payment in cash to the proprietors or occupiers thereof respectively of
 the amount that may be fixed by arbitration or by private arrangement
 or otherwise for obtaining possession from the present occupiers there-
 20 of, including costs incurred by the commissioners. The company may
 exercise and the commissioners do hereby empower the company to ex-
 ercise such rights and powers as the commissioners possess in respect
 of the acquisition of such works, and if necessary, the company may do
 so in the name of the commissioners.

12. The company shall and they do hereby undertake that they
 will with due diligence and within a reasonable time, and without any
 delay that is avoidable, and not later than six months from the date
 hereof, take steps to acquire the rights and properties in the next pre-
 ceding paragraph mentioned, including the rights now claimed by
 30 occupancy or otherwise, and will pay the compensation money therefor
 so soon as the same has been ascertained, and the costs of the commis-
 sioners aforesaid, and on the acquisition thereof, the company shall hold
 the same under the commissioners free from any claim against the
 commissioners by or in right of said proprietors or occupiers, which
 holdings under or attainments to the commissioners shall not make the
 company liable to pay any rents other than they have herein agreed
 to pay. If the company shall not have acquired the said rights and
 properties within two years from the date hereof, the commissioners
 may acquire the same, and may use them to all intents and purposes as
 40 if this agreement had never been entered into, and free from any claim
 by the company to enjoy the same, or any benefits or rights connected
 therewith.

13. The commissioners shall not grant or confer upon any other
 company or person any right to construct and operate any railway or
 tramway within the limits of the park, or any right to construct and

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operate lifts or inclined railways north of the Niagara Falls ferry and on any part of the chain reserve, or on the slope between the chain reserve and the river, except as is hereinafter provided in connection with the low level railway, and so long as this agreement is in force the commissioners will not themselves engage in any such construction or operation.

14. The commissioners will assent to an arrangement being made between the company and the municipal corporation of the town of Niagara Falls for the supply to the company of power for working the railway and the machinery necessary to operate and light the railway, and if an arrangement satisfactory to the company cannot be made between the company and the said municipal corporation, the commissioners will grant to the company such necessary rights as will enable them to procure from the waters above the falls the power required for the above purposes. 10

15. The company do hereby undertake to build the said high level railway between Chippawa creek and Queenston in every respect fit for traffic not later than the first day of September next, and in the event of the company not being able to procure the right of way between the park proper and Chippawa in time to enable them to finish the whole work within that time, the commissioners will give a reasonable extension of time for finishing that section of the work. 20

16. The company may commence the construction of the said railway whenever the location has been decided upon by the commissioners, and the plans and specifications approved in accordance with paragraph 3 of this agreement, and the right to operate the same shall begin on the first day of September next, or so soon (before or after that date) as the said railway or any section thereof has been constructed and is ready for operation, and shall extend to a period of forty years from the said first day of September, one thousand eight hundred and ninety-two, and shall be renewable on the request by the company for a further period of twenty years as hereinafter provided. 30

17. If at the end of the said period of forty years the commissioners shall demand from the company for the further period of twenty years the payment of a greater clear annual sum than the sum hereby and hereinafter agreed to be paid for the said period of forty years, then if the parties hereto cannot agree as to the same, the amount to be paid for such further period, not less than the rents previously paid, shall be ascertained by three arbitrators or a majority of them, one of whom shall be named and appointed by the commissioners, another by the company (the parties hereto of the second part) and the third by the Chief Justice or senior presiding Judge of the provincial court of ultimate appellate jurisdiction for Ontario, and the award of such arbitrators shall be subject to the same provision of law as if the said arbi- 40

trators had been appointed by the said parties upon a voluntary reference under the Revised Statute of Ontario respecting Arbitrations and References. Either party to such arbitration may appeal from the award upon any question of law or fact to the said provincial court of ultimate appellate jurisdiction for Ontario and the said court shall have the same jurisdiction therein as a Judge has on an appeal from a report or certificate under section 4 of the aforesaid Revised Statute respecting Arbitrations and References.

18. If the company desire to renew for such further period of
 10 twenty years, notice of such desire to renew shall be given by the company to the commissioners in writing at least twelve months before the expiration of the forty year period.

19. In addition to all other payments to be made by the company to the commissioners as hereinbefore stated, for right of way and for the privileges hereinbefore mentioned, the company shall pay to the commissioners a clear annual sum of ten thousand dollars by way of rental for each and every year until the termination of the said period or term of forty years and if the company exercise the option of operating the said railway for the second period they will pay to the
 20 commissioners, by way of rental, the sum which may be mutually agreed upon as such rental, or which may be fixed by arbitration as aforesaid. All payments to be made to the commissioners quarterly, and to be calculated from the first day of September, one thousand eight hundred and ninety-two, whether the railway be completed or not. The rent shall be paid although the company may not by virtue of this agreement be able to exercise the rights and powers to construct and operate the said railway, it being understood that the commissioners do not guarantee the rights, interests and franchises hereby conveyed to the company, and do not covenant for the quiet enjoyment thereof, except as
 30 against the acts of the commissioners and their successors, and anyone claiming by, through or under them.

20. The commissioners reserve the right upon six months notice being given in writing by them to the company, to authorize the company to build and operate the said low level railway, and if at any time within the six months after such notice shall have been given the company declare by notice in writing to the commissioners that they are about to proceed with the work, the company shall build the said low level railway and have the same ready for operation within twelve months after notice hereinbefore mentioned shall have been given by
 40 the commissioners to the company. The commissioners shall provide the right of way for such railway, subject to the like terms which the parties hereto have agreed upon in respect of the extent of the interest of the commissioners over the chain reserve for the high level railway. If the notice be to build the railway to any point short of Queenston the company shall nevertheless have the right to extend the same at

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low level to Queenston, and as far as the lands of the commissioners extend, that is to say, to the south boundary of the military reserve at Queenston, and the company shall have the right to build on such land and to make such connections between the said low level railway and the said high level railway as may be required in the public interest.

21. In the event of the notice to construct such low level railway being given by the commissioners to the company at any date previous to first September, one thousand eight hundred and ninety-seven, the company shall for the privilege of building such railway and for the right of way from the park proper to the south boundary of the said military reserve at Queenston, and for the aforesaid connections pay to the commissioners a further annual rental of seven thousand five hundred dollars in quarterly payments during the whole period of occupation under the terms of this agreement by the company, such rental to begin at the end of twelve months from the time of the giving of the said notice by the commissioners. 10

22. In the event of the commissioners not giving notice in writing on any date previous to first September, one thousand eight hundred and ninety-seven, that they require the construction of the said low level railway to be proceeded with, and of the company declaring by notice in writing as aforesaid that they are about to proceed with the work, the amount of the annual rent in respect of such low level railway to be paid by the company to the commissioners shall be determined by arbitration in the manner provided by section 17. 20

23. In the event of the company declining to build the low level railway, upon either notice hereinbefore provided, the commissioners may grant the power to any other company or persons to build and operate such low level railway. The omission by the company of the giving of the notice in writing, declaring their liability to proceed with the work above provided for shall be deemed conclusive of the refusal by the company of the option to build the said low level railway. 30

24. In the event of the company exercising the option to construct and operate the said low level railway, the mode of construction and form of road-bed thereof, the class of carriages to be used for the same and all regulations relating to the safety and the use of the railway and its equipments shall be such as the commissioners shall require and approve.

25. The term of years for operating the low level railway shall terminate at the termination of the time hereinbefore provided for operating the said high level railway and shall be subject to renewal, expiration, determination or arbitration in respect of valuation of charge thereon for rent, compensation and liens in favour of bondholders or the company as the case may be in the same manner as is hereinbefore and hereinafter provided in respect of the high level railway, and in 40

the event of the company not constructing the low level railway in pursuance of any notice to be given to the company or option hereinbefore conferred upon the company then the commissioners may confer upon any other company or persons who shall construct and operate the said low level railway as hereinbefore provided, the right to construct elevators at such points as the commissioners may select for the purpose of passenger traffic to and from the low level railway to the top of the cliff, and under such regulations as the commissioners may prescribe, due compensation to be made to the company parties hereto as may be agreed upon in respect of the arrangements and facilities required to transfer such passenger traffic to and from the low level railway to the top of the cliff, and in case of difference, to be ascertained by arbitration as hereinbefore provided by paragraph 17 of this agreement.

26. If at the end of the said period of forty years, the company are unwilling to renew, or at the end of the further period of twenty years, if the company continue to hold for such further period, the company shall be duly compensated by the commissioners for their railways, equipment, machinery and other works including the low level railway, if the same shall have been constructed and then held by the company under this agreement, as also the high level railway from Chippawa to Queenston, and including also their works in Chippawa and Queenston, but not in respect of any franchises for holding or operating the same, such compensation to be fixed by mutual agreement, or in case of difference, by arbitration as in paragraph 17 of this agreement, but the failure before the expiration of any such term, to fix such compensation in manner aforesaid, or to pay before such expiration, the amount of compensation so fixed, shall not entitle the company to retain possession meanwhile of the said railways, equipment, machinery and works, by this agreement to be constructed or operated, but the same shall nevertheless and notwithstanding that the commissioners may have taken possession thereof remain subject to such liens and charges save as to possession as aforesaid, as may exist in favour of bond-holders or debenture-holders of the company and the company shall retain a lien or charge thereon, save as to possession as aforesaid for the compensation of their railway, equipment, machinery and works to be agreed upon as aforesaid, or so to be awarded to them provided, however, that all such liens and charges shall not exceed the amount that may be agreed upon or may be awarded for such compensation as aforesaid.

27. In respect of all rights and authorities which the commissioners by the agreement, have conferred or have agreed to confer upon the company to exercise in and about the execution of the works to be constructed, and operating or working the same, and of all other matters herein agreed upon, the company will indemnify the commissioners in respect of the exercise of said rights by the company, and will hold them free from liability to any person or persons whomsoever.

*Statutes of
Legislature
of Ontario.*

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No. 2.
Agreement
between
Comm'rs. for
Q.V.N.F.P.
and Osler,
Hammond,
Hendrie and
Angus.
Dec. 4, 1891.

—continued

*Statutes of
Legislature
of Ontario.*

No. 2.
Agreement
between
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Angus.
Dec. 4, 1891.

—continued

28. The rights conferred by this agreement upon the company, and the liabilities undertaken by the company, shall not be construed to be conditional upon the company procuring the Act of incorporation herein provided for.

29. Subject always to the terms and provisions of this agreement, and to the rights of the commissioners as the owners in fee simple of the right of way in the park proper and on the chain reserve, the said railways and their equipment and the other works constructed or required under this agreement, shall upon such construction or acquisition, as the case may be, be vested in and shall be the property of the company who shall, subject as aforesaid, be entitled to operate, manage and control the same during the period or periods respectively above mentioned, it being however hereby declared, understood and agreed, that at the end of the said first or second periods, as the case may be, the whole of the company's said high level railway from Queenston to Chippawa, and the said low level railway, if then held by the company under this agreement, together with their equipment and the machinery and works aforesaid, including the elevators or lifts acquired or built and including also the works in Queenston and Chippawa shall become the property of the commissioners, subject to the payment of compensation to be agreed upon or awarded as the case may be, and as is hereinbefore provided for. 10

30. The parties hereto shall use their best endeavours to procure, and either party hereto may apply to the Legislature of Ontario at its next session, for an Act of incorporation, enabling the parties hereto, of the second part and those who may be associated with them in the undertaking to carry on the said railways and works as an incorporated company with sufficient powers to enable them to raise such capital by bond, debenture, stock, mortgage or otherwise, and as may be deemed sufficient to carry out the foregoing contract, and to enable them to construct and operate effectively, the said railways and steamboats and other works as is hereinbefore provided for, and either party hereto may at the next session of the said Legislature or otherwise apply to the said Legislature for an Act to ratify and confirm this agreement. 30

31. The rents hereby agreed to be paid are hereby declared to be a first and preferential charge upon the said railways and works and the company shall not create any lien, charge or incumbrance upon the said railways or works or any of them by bond, debenture, mortgage or otherwise which will interfere with or prevent the commissioners from procuring payment of the rent hereby reserved or any part thereof and no simple contract creditor or other creditor of the company is to have any claim against the said railway or works or any part thereof in priority to the claim of the commissioners for rent. 40

32. The company's tariff for passenger fares shall be a reasonable one and shall be subject to the approval of the commissioners provided

however that the commissioners shall not have the right to insist upon such a tariff as will prevent the company operating the said railway or railways at a fair profit but it shall be their privilege to exact from the company the imposition of reasonable rates only.

In witness whereof the corporate seal of the commissioners has been hereunto affixed by their chairman who has also signed the same, and the parties hereto of the second part have hereunto set their hands and seals the day and year aforesaid.

*Statutes of
Legislature
of Ontario.*

No. 2.
Agreement
between
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Q.V.N.F.P.
and Osler,
Hammond,
Hendrie and
Angus.
Dec. 4, 1891.

—continued

10 Signed, sealed and delivered by
the chairman of the commis-
sioners in the presence of

C. S. GZOWSKI, Jr.,

and by the said Edmund Boyd
Osler, Herbert Carlyle Ham-
mond and William Hendrie in
the presence of

R. A. SMITH,

and by the said Richard Blad-
worth Angus in the presence of

20 A. R. G. HEWARD,
Montreal.

and by the said Edmund Boyd
Osler personally as well as
through his attorney Herbert C.
Hammond in presence of

R. A. SMITH.

[SEAL]. C. S. GZOWSKI,
Chairman.

[SEAL]. E. B. OSLER,
per H. C. HAMMOND,
Attorney.

[SEAL]. H. C. HAMMOND,

[SEAL]. WM. HENDRIE,

[SEAL]. R. B. ANGUS,

[SEAL]. ED'D. B. OSLER.