

# In the Privy Council.

## ON APPEAL FROM THE COURT OF QUEEN'S BENCH, FOR THE PROVINCE OF QUEBEC (APPEAL SIDE.)

BETWEEN

EDWARD MOORE AND AUGUSTUS R. WRIGHT,  
*(Defendants.) Appellants,*

AND

SIMON PETERS, *Plaintiff; (deceased)*

AND

ELIZA JANE LAMOUREUX, Henry Joseph Peters, Albert Hyacinth  
Peters, Joseph Bernard Peters and Martial Chevalier,

*(Plaintiffs in continuance of suit) Respondents.*

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Canada,  
Province of Quebec,  
District of Quebec.

In the Superior Court.

RECORD

Peters,

Plaintiff.

In the  
Superior  
Court.

vs.

Moore et al.,

Defendants.

No. 49

Interrogatories to be submitted to the witnesses produced and sworn on behalf of the Defendants on the Commission issued to London, in England, in the present cause :

Interroga-  
tories  
submitted  
to and  
answers  
given by  
Walter  
Robert  
Kinipple,  
9th Sept.,  
1895.

10 1st Interrogatory :—What are your names, occupation, residence and age ?

Answer—I say that my name is Walter Robert Kinipple, Civil Engineer, aged 63, 31st July last, my residence 11 Gloucester Terrace, Regents Park, N. W. Our office 3 Victoria street, London, S. W.

2nd Interrogatory :—Have you any interest in the present suit ?

Answer—None whatever.

3rd Interrogatory :—Do you know the parties or any of them, and are you connected with them in any way, and if so, how ?

20 Answer—I know Colonel Moore, having met him in Quebec, in the spring of 1881. I did not know the late Mr. Peters. I am not in any way connected with the parties or ever have been.

4th Interrogatory :—Did you occupy any position as Engineer over the Quebec Harbour Works, constructed in the Port of Quebec, by Messrs. Peters, Moore & Wright, in virtue of the contract between them and the Quebec Harbour Commissioners, dated at Quebec, the second day of May, eighteen hundred and eighty-seven (1887), if so, what was that position ?

Answer—Yes, as chief and consulting Engineer and senior partner in the late firm of Kinipple & Morris.

30 5th Interrogatory :—Please take communication of the final certificate, annexed hereto and marked Defendants' Exhibit No. 1 and dated the fourth day of February, eighteen hundred and eighty-six (1886), and state whether such certificate is a true and correct final certificate of the matters therein referred to with details as to extra work ?

Answer—Such certificate is a true and correct final certificate of the matters therein referred to with details as to extra work.

6th Interrogatory :—Please take communication of the statement annexed hereto, and marked Defendants' Exhibit No. 1A, and state whether such statement is a true, full and detailed statement of the final certificate issued by you covering all works done by the contractors, and allowed by Kinipple & Morris, both under the contract and for extra work ?

40 Answer—Exhibit No. 1A, is a full and detailed statement of the final certificate issued by my late firm and covers the whole of the work executed by the contractors and allowed by Kinipple & Morris both on the contract and for extra work.

7th Interrogatory :—Please state shortly the difference between the two details of the final certificate ?

Answer—There is no difference in the total. One certificate gives the total in a lump sum of \$529,296.31 under the contract and the other does not. Exhibit 1, starts with the original contract sum of \$529,296.31. Exhibit 1A, sets out the details of that amount, the remaining items are alike in both certificates.

p 235-7  
1.40

p 237-40  
1.50

RECORD.

## CROSS-INTERROGATORIES.

In the  
Superior  
Court.

No. 50

Cross  
Interroga-  
tories  
submitted  
to and  
answers  
given by  
Walter  
Robert  
Kinipple,  
9th Sept.,  
1895.

*1st Cross-Interrogatory*:—Are you aware that the firm of Kinipple & Morris, Engineers, were the Engineers who acted for the Quebec Harbour Commissioners under the Contract mentioned in the interrogatories in chief passed before Angers, Notary, at Quebec, on the 2nd May, 1887, and now shewn you as Plaintiff's Exhibit No. 1?

*Answer*—I am aware that Kinipple & Morris were the Engineers who acted for the Quebec Harbour Commissioners under the Contract in the said Cross-Interrogatory mentioned.

*2nd Cross-Interrogatory*:—Were you not a member of the said firm of 10 Kinipple & Morris, and during all the times occupied in the construction of the Harbour Works mentioned in the said contract?

*Answer*—I was a member of the said firm of Kinipple & Morris, during all the time of the construction of the Harbour Works mentioned.

*3rd Cross-Interrogatory*:—Is it not true that the works done by the Contractors Peters, Moore & Wright, under their said Contract with the Quebec Harbour Commissioners were performed under the full and entire direction and control of the firm of Engineers Kinipple & Morris?

*Answer*—I say it is true that the works done by the Contractors Peters, Moore & Wright, under their said Contract with the Quebec Harbour Commis- 20 sioners were performed under the full and entire direction and control of the firm of Engineers Kinipple & Morris.

*4th Cross-Interrogatory*:—Is it not true that the said late Mr. Morris, of the said firm, was the member of your firm who principally supervised the works done by the Contractors Peters, Moore & Wright, under the said contract with the assistance of the local engineers?

*Answer*—I say that Mr. Morris was the member of our firm who proceeded to Quebec to supervise the works done by the Contractors. He was assisted there by my late son and by the local Engineers and what he did there was done on behalf of the said firm and with my sanction and approval. 30

*5th Cross-Interrogatory*:—Is it not true that you only visited the said works performed by Peters, Moore & Wright, after the same had been almost finished, and only on one occasion?

*Answer*—It is true that I only visited the said works performed by Peters, Moore & Wright once, namely in the spring of 1881, when the works were in course of construction and in an advanced stage and when I had an opportunity of minutely examining the structural works in progress.

*6th Cross-Interrogatory*:—You are requested to take communication of Plaintiffs' Exhibit No. 40 being copies of letters the first written by yourself and bearing date of the 20th of April 1887, and addressed to A. H. Verret, Esq., Sec. 40 Treas. to the Harbour Commissioners Quebec. The second written by the late firm of Kinipple & Morris, and dated at London, on the 19th April 1886. The third being a letter written by you to the Defendant Edward Moore, and dated at London, on the 5th day of January 1887, and state whether the same are not true copies written by you and your firm as they purport to be?

*Answer*—I have perused the letters referred to in the said Cross-Interrogatory. I have looked up my letter Books to see if I could find press copies of

p 14-24

No 41  
p 230-2  
l. 35

such letters but I have been unable to find them. I am unable to state from memory whether the said documents are true copies of letters written as they purport to be or not.

*7th Cross-Interrogatory* :—Please look at Plaintiff's Exhibit No. 40, and say is it not true that you wrote the said Edward Moore, to the said effect therein mentioned and was not your letter true—about Dec. 1886 ?

*Answer*—I have looked at the Plaintiffs' Exhibit No. 40, and have read it through. I have no recollection of writing to the said Edward Moore, in the sense quoted in that letter and I have looked up my letter Books for and about that period and have been unable to find any press copy or record of any such letter. If I wrote any such letter (which I may have done) it could only have been meant to refer to details and not to the main features of the Contract and final certificate.

*8th Cross-Interrogatory* : Please look at the letter now shewn to you marked Plaintiff's Exhibit No. 39, and state whether the same does not contain a copy of a letter written by yourself in or about the month of September 1886, to Messrs Moore & Wright, of Portland, and state whether it is not a fact that you personally were not in a position to give a true detailed certificate of the works done by the contractors Peters, Moore & Wright, under the said contract with the Quebec Harbour Commissioners ?

*Answer*—I have referred to my press copy letters during the period referred to, but I have been unable to find any copy of that letter although I recollect having written a letter of a similar nature to the one quoted in the Plaintiffs' Exhibit No. 39. The whole of the details in connection with the granting of the final certificate were prepared by my late partner Mr. Morris, who died about 8 months after that certificate was granted. The details were discussed and settled by myself and my partner on many occasions prior to his death. I therefore say that at the time the detailed certificate was given I was in a position to give same.

*10th Cross-Interrogatory* :—When was the document Defendants' Exhibit No. 1 prepared, and by whom, and from what original sources or entries was it made ?

*Answer*—Exhibit No. 1, was prepared in and prior to January 1886, by myself and my late partner Mr. Morris from the documents in the possession of my firm and other documents to which we had access including the continuous reports that my firm received from the resident Engineer during the progress of the works.

*11th Cross-Interrogatory* :—Would you refer to the entries from which the details mentioned, Defendants' Exhibit No. 1, are taken and state whether it is not true that the same were furnished by the Defendants or one of them or some party on their behalf ?

*Answer*—I say that I am unable at present to refer to the entries from which the details mentioned in Defendants' Exhibit No. 1, were taken but I say that it is not true that the same were furnished by the Defendants or one of them or some party on their behalf.

*12th Cross-Interrogatory* :—Who made the original entries of the details contained in Defendants' Exhibit No. 1, and at what times were these original entries made and by whom and where were the same made ?

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 —  
 In the  
 Superior  
 Court. p. 230  
 —  
 No. 50  
 Cross  
 Interroga-  
 tories  
 submitted  
 to and  
 answers  
 given by  
 Walter  
 Robert  
 Kinipple,  
 9th Sept.,  
 1895. p. 229.  
 continued—

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RECORD.

—  
*In the  
 Superior  
 Court.*  
 —

No. 25

Cross-  
 Interroga-  
 tories  
 submitted  
 to and  
 answers  
 given by  
 Walter  
 Robert  
 Kinipple,  
 9th Sept.,  
 1895.

continued—

*Answer*—I cannot say definitely who were the persons who made the original entries of the said details but they were made by Mr. Morris, Mr. Pilkington, myself and others engaged in connection with the works and acting under the directions of my firm and they were made from time to time as the progress of the work required and they were made partly on the works and partly at the Head Office in London.

*14th Cross-Interrogatory* :—Can you produce the books or documents containing the original entries of the details contained in Defendants' Exhibit No. 1, and can you leave the said original entries or Books in Court in this case until the same is decided ?

10

*Answer*—I am unable to produce the books or documents containing the original entries of the details contained in Defendants' Exhibit No. 1, Many of the books and documents in question were taken over by the Quebec Harbour Commissioners and I have no control over them. Many of the documents which were retained by my firm were after Mr. Morris' death destroyed, I decline to part with the remaining documents in my possession but am ready and willing to give inspection to any of the parties interested therein and on payment of charges to supply copies.

*15th Cross-Interrogatory* :—Will you permit copies to be made of the said original entries ?

20

*Answer*—I will permit copies to be made of any original entries in my possession.

*16th Cross-Interrogatory* :—In whose custody are the said original entries or books containing the said details of Defendants' Exhibit No. 1 ?

*Answer*—Such of the said original entries or books containing the said details of Defendants' Exhibit No. 1, as were not taken over by the Commissioners or otherwise destroyed or mislaid are I believe in my custody but I cannot without much trouble and research find those documents now.

*17th Cross-Interrogatory* :—Had you any personal interview with the Defendants or either of them or with any one in their behalf with reference to the said Exhibit No. 1, or any part thereof and state the substance of said interview or interviews and when and where the same took place ?

*Answer*—I say that I never had any interview with the Defendants or any of them or to my knowledge any one on their behalf in reference to their said Exhibit No. 1, or any part thereof.

*18th Cross-Interrogatory* :—Were you paid for any service in connection with the Document Defendants Exhibit No. 1. and if so by whom and what amount ?

*Answer*—I was not paid for any services in connection with the document Defendants' Exhibit No. 1.

40

*19th Cross-Interrogatory* :—It is not true that the original final certificate dated on the 4th February 1886, and signed by the firm of Kinipple & Morris, was signed by your late partner Mr. Morris and that the same did not contain any details and is it not true that the said firm of Kinipple & Morris never at any time gave the Quebec Harbour Commissioners or the Plaintiff any details whatever of the said final certificate although the Quebec Harbour Commissioners wrote and asked the said firm of Kinipple & Morris, for said details but

that subsequently you received from Colonel Moore, or one of the Defendants' the details of the additional works which appear in the Defendants' Exhibit No. 1, and that availing yourself of these details you prepared said Defendants' Exhibit No. 1, and sent the same to Colonel Moore as appears by your letter to him of the 5th January 1887, a copy of which is contained in Plaintiffs' Exhibit No. 41 ?

RECORD.

In the Superior Court.

No. 50

Cross-Interrogatories submitted to and answers given by Walter Robert Kinipple, 9th Sept., 1895.

continued---

part of Ex No. 41  
p 232  
p. 235-7 l. 40

*Answer*—It is true that the original final certificate dated 4th February, 1886, and signed by the firm of Kinipple & Morris, was signed by my late partner Mr. Morris and that the same did not contain any details. The said firm of Kinipple & Morris never at any time gave the Quebec Harbour Commissioners or save as hereinafter mentioned the Plaintiff any details whatever of the said final certificate. I am not aware that the Quebec Harbour Commissioners ever wrote and asked my firm for said details. My firm subsequent to the 4th February, 1886, at the request of Col. Moore and or his firm supplied to him or them details of the final certificate which said details are represented by the Defendants' Exhibit No. 1. Neither I nor my firm subsequently or at any time received from Col. Moore or one of the Defendants the details of the additional work which appears in the Defendants' Exhibit No. 1, neither I nor my firm therefore could have availed ourselves of any such details in preparing the Exhibit No. 1. It would appear from the said letter of the 5th January, 1887, copy of which is contained in the Plaintiffs' Exhibit No. 41, that I did send the details embodied in Defendants' Exhibit No. 1, to Col. Moore.

*20th Cross-Interrogatory* :—Is it not also true that the details of Defendants' Exhibit No. 1 A were sent to you by Colonel Moore or one of the Defendants and that you signed the same Kinipple & Jaffrey and subsequently sent the same to Colonel Moore or one of the Defendants without the knowledge or consent of the Plaintiff ?

*Answer*—It is true that the details of Defendants' Exhibit No. 1A were sent to me by Col. Moore or one of the Defendants in or about the months of April or May, 1893, and that I signed the same Kinipple & Jaffrey and subsequently sent the same to Col. Moore, or one of the Defendants without the knowledge or consent of the Plaintiff. Before signing the said copy Exhibit No. 1A, I satisfied myself that the details on pages 1, 2 and 3 of Exhibit No. 1A, correctly represented the \$529,296.31, inserted at the top of the Defendants' Exhibit No. 1. The details of pages 1, 2 and 3 of Exhibit 1A, were the figures in the original works contract, and further I satisfied myself that the remainder of the Exhibits No. 1A, was a true copy of my firm's said certificate being Defendants' Exhibit No. 1.

*21st Cross-Interrogatory* :—Is it not true that the details contained in the said Defendants' Exhibit No. 1 were never communicated to the Quebec Harbour Commissioners by you or to the said Plaintiff ?

*Answer*—It is true that the details contained in the said Defendants' Exhibit No. 1 were never communicated to the Quebec Harbour Commissioners by me or to the Plaintiff save as hereinbefore stated.

*22nd Cross-Interrogatory* :—Please state on what data the final certificate was made and where such data was obtained ?

*Answer*—I repeat my answer to Cross-Interrogatory No. 10.

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l. 30

plan

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In the Superior Court.

No 50

Cross Interrogatories submitted

to and

answers

given by

Walter

Robert

Kinipple,

9th Sept.,

1895.

continued—

plan

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23rd Cross-Interrogatory:—Look at Plaintiff's Exhibit No. 24, and state whether the same is not the amended plan referred to in the seventh item of Defendant's Exhibit No. 1 A in the following words, " as per amended plan of June 6th 1879 " and that the same bears the signature of Woodford Pilkington, the resident Engineer, acting as such for the works in question, under your directions and orders ?

Answer—I have looked at the Plaintiffs' Exhibit No. 24, and believe the same is the amended plan referred to in the 7th item of Defendants' Exhibit No. 1A, and that it bears the signature of Mr. Woodford Pilkington, the resident Engineer.

24 Cross-Interrogatory:—Now look at the said plan and read the second 10 and seventh items of the Defendants' Exhibit No. 1 A and state whether the said plan does not show the stone face or wall which was substituted to the timber face and fine concrete 4 x 1 mentioned in the said items 2 and 7 of said Exhibit ?

Answer—I have looked at the said plan and read the 2nd and 7th items of the Defendants' Exhibit No. 1A. The said plan appears to show the stone face of the wall which was substituted for the timber face and fine concrete 4 to 1.

25th Cross-Interrogatory:—(It is) not true that in lieu of the said Timber face and fine Concrete work mentioned in the said items 2 and 7, that a stone face (or wall) was constructed as shown by the said plan Plaintiff's Exhibit No. 25 under your authority and that Plaintiffs' Exhibit No. 7, was the letter of 20 authority duly authorized to be delivered to the Contractors and that under the authority of the same the said stone face or wall was constructed ?

Answer—I say that it is the true that in lieu of the said timber face and fine concrete work a stone face or wall was constructed as shewn by the said plan and I believe that the Plaintiffs' Exhibit No. 7, was the letter of authority referred to in the said Cross-Interrogatory.

26th Cross-Interrogatory:—Is it not a fact that the second and seventh items of the Defendants' Exhibit No. 1 A are not intended to certify that the timber face therein mentioned was ever built or that the fine or 4 x 1 concrete therein mentioned was ever done, but on the contrary do not said items 2 and 7 merely 30 intend to convey that the contractors were entitled to receive the sums mentioned in these items for work substituted for and of equal value to the works mentioned in the items 2 and 7 ?

Answer—I say that the timber facing and fine concrete backing were replaced by a stone facing with a coarser concrete backing and the contract amounts of the former items went in part payment of the two latter items as to the balance an additional sum was allowed to the contractors.

27th Cross-Interrogatory:—If you have answered the sixth interrogatory of the Defendants in the affirmative that is to the effect that Defendants' Exhibit No. 1 A is a true and full detailed statement of the final certificate will you state 40 whether the answer to that interrogatory is intended to convey that the work mentioned in Defendants' Exhibit No. 1 A, was actually performed or whether the details therein given represent the sums of money to which the Contractors were entitled either for the works therein mentioned or for other work substituted in lieu of the work mentioned in such details ?

Answer—I repeat my answer to the Defendant's Interrogatory No. 6 and Cross-Interrogatory No. 26.

28th Cross-Interrogatory :—Look at the second and seventh items Defendants' Exhibit No. 1 A which reads as follows :

2nd Allowed for fine or 4 x 1 concrete rear of timber face of the superstructure of 27 Crib Blocks South Tidal Harbour \$7,593<sup>7</sup>/<sub>16</sub>%.

7th Allowed for fine or 4 x 1 concrete rear of timber face of the superstructure of Wet Dock Crib Blocks as per amended plan of June 5th 1879 \$16, 239.30 and say it is not a fact that the timber face and fine concrete work mentioned in the said items was never done ?

Answer—I repeat my answer to Cross-interrogatory No. 26.

10 29th Cross-Interrogatory :—It is not true that the Defendants' Exhibit No. 1 is incompatible with and contradictory to all the progress estimates made of the work in question ?

Answer—I say that as all the progress estimates were only approximate statements of work done the exhibit No. 1 A, may possibly appear incompatible and contradictory with such estimates but I do not consider that that is a matter of the slightest importance.

30th Cross-Interrogatory :—Is not true that said Defendants' Exhibit No. 1 A is incompatible with every certificate and report that you know of that was given by your firm in relation to the said works ?

20 Answer—I say that it is not true that the said Defendants' Exhibit No. 1 A is incompatible with the certificate and report given by my firm in relation to the said works. On the contrary I say that Exhibit No. 1 A, is compatible in every respect with the certificate being the Defendants' Exhibit No. 1.

31st Cross-Interrogatory :—Is it not true that under the authority of sections 54, 55, 57 and 59 of the contract in question see Plaintiff's Exhibit 2 A, pages 14 and 15, progress estimates of the work were made from time to time and certificates thereof granted by the authority of the Engineers to the contractors Peters, Moore & Wright ?

30 Answer—I say that it is true that under the authority of the sections of the contract herein named progress estimates of the work were made from time to time and certificates thereof granted to the contractors but such estimates and certificates were only approximate.

32nd Cross-Interrogatory :—Is it not true that Plaintiff's Exhibit No. 9 contains a true copy of the details of all the said progress estimates certified to be correct by the authority of the engineers ?

Answer—I cannot say whether Exhibit No. 9 contains a true copy of the details as in the said interrogatory asked, as the progress estimates were prepared and certified by the Resident Engineer and were only approximate in accordance with the terms of the contract.

40 33rd Cross-Interrogatory :—Can you point out any error in the said details of said progress estimates as given in Plaintiff's Exhibit No. 9 ?

Answer—I say that I did not prepare the progress estimates and cannot therefore further answer this Cross-Interrogatory.

34th Cross-Interrogatory :—It is not true that the said details contained in the said progress estimates form the basis from which the Engineers ascertained the details of their final certificate granted on the fourth day of February eighteen hundred and eighty-six ?

Answer—The progress estimates together with other documents and mea-

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 — p 237-40  
 In the Superior Court.  
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 No. 50  
 Cross-Interrogatories submitted to and answers given by Walter Robert Kinipple, 9th Sept., 1895.  
 continued—

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 (25)

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RECORD.

5/

In the Superior Court.

No. 50 Cross Interrogatories submitted to and answers given by Walter Robert Kinnip, 9th Sept 1885 continued

surements formed the basis from which my firm ascertained the details of their final certificate, but the said progress estimates did not alone form the basis.

*34th Cross-Interrogatory* :—It is not true that all the work allowed for in the progress estimates was allowed for by the Engineers in their final certificates?

*Answer*—It is impossible to answer this Cross-Interrogatory in detail without going through all the progress estimates and other documents with the resident Engineer.

*36th Cross-Interrogatory* :—Please refer to the said details of the said progress estimates Nos. 19, 20 and 23 from 1st October 1879 to 3rd December 1879, and state whether it is not true that the sum of \$7,593.<sup>75</sup>/<sub>100</sub> is by the same allowed the contractors for portion of nine Crib Blocks (superstructure) in Masonry containing 12656 feet cube at 60 cts. \$7,593.75 and not for concrete erroneously stated in items second of the Defendants' Exhibit No. 1 A?

*Answer*—I repeat my answer to Cross-Interrogatory No. 26 and I further repeat that as to the progress estimates the same were only approximate and prepared by the resident Engineer and that I am consequently unable to speak as to their degrees of accuracy at the time they were made. Those progress estimates were taken into consideration and dealt with at the time the Defendants Exhibit No. 1, was prepared.

*37th Cross-Interrogatory* :—Please again refer to the details of said progress estimates Nos. 29, 31, 33 and 35 between 1st September, 1880 and 3rd August 1880 and state whether it is not a fact that the sum of \$18,562.50 is allowed the contractors for portion of 55 Crib Blocks (superstructure) in Masonry containing 30937 feet cube, at 60 cents and that the said sum is therein allowed in lieu of the timber face and fine or 4 x 1 concrete mentioned in item No. 7 of Defendants' Exhibit No. 1 A.

*Answer*—I repeat my answer to Cross-Interrogatory No. 36.

*38th Cross-Interrogatory* :—Please also refer to said progress estimates No. 23 of 3rd December 1879 and state whether it is not the fact that the sum of 1124 is allowed the contractors, Peters, Moore & Wright for portion of 1½ Crib Blocks (superstructure) in masonry containing 1873 feet cube at 60 cents and not for fine concrete as erroneously stated in the twentieth item of the Defendants' Exhibit Nos. 1 A (being the second item under the head of additional work.)

*Answer*—I repeat my answer to Cross-Interrogatory No. 36.

*39th Cross-Interrogatory* :—Please look again at said details of progress estimates Plaintiff's Exhibit No. 9 estimates 14, 16, 17, 19, 20, 23, 24, 26, 27, 29, 31, 33 and 35, and state whether it is not true that the following items were allowed as for the cost of the stone face and work therewith connected which was substituted for the timber face and fine or 4 x 1 concrete mentioned in Defendants' Exhibit No. 1, namely :

From Engineers Progress Estimates.

July 9th 1879, No. 14 Stone Wall

480 feet	18" Course	2520 cub. ft.
425 "	16" "	} 1182 cub. ft.
240 "	16" "	

3702 cub. ft. at 60cts. 2,221 00

August 6th 1879 No. 16 Masonry.

1074 feet of 18" Course	5638 feet at 60cts.
964 " " 16" "	1607 " " 60cts.
709 " 2nd 16" "	1181 " " 60cts.
649 " 3rd 16" "	1081 " " 60cts.
577 " 4th 16" "	961 " " 60cts.
577 " 1st 15" "	901 " " 60cts.
150 " 2nd 15" "	234 " " 60cts.

Total Masonry up to date.....

RECORD  
 3,382 80  
 964 20  
 708 60  
 648 60  
 576 60  
 540 60  
 140 40  
 -----  
 \$ 6,961 80  
*in the Superior Court. No. 50 Cross-Interrogatories submitted to and answers given by Walter Robert Kinipple, 9th Sept., 1895. continued---*

September 9th 1879, No. 17 Masonry

1150 feet 18" Courses high	6037
1090 " 1st 16" " "	1812.12
1052 " 2nd 16" " "	1748.95
1052 " 3rd 16" " "	1748.95
1008 " 4th 16" " "	1675.80
874 " 1st 15" " "	1365.62
745 " 2nd 15" " "	1164.06
584 " run 3rd 15th Course	912.00
365 " " 4th 15th "	570.00
140 " " 5th 15th "	218.75

Header tails in above work.

1090	
7 x 2'.25 x 1.33	466.60
2nd 16th Course	448.00
3rd " "	448.00
4th " "	431.00
1st 15th "	351.00
2nd " "	297.00
3rd " "	234.00
4th " "	146.00
5th " "	55.00

\$ 12,077 55

Headers not allowed in previous Estimates.

1st 16" Course	412.96
2nd "	302.00
3rd "	278.00
4th "	245.00
1st 15" "	230.00
2nd "	59.00

1526.96

\$ 916 17

RECORD. September 30th 1879, No. 19, Masonry.

In the Superior Court.	1220 feet	15"	Course	5405	
	1135	" 1st	16th	"	1886.94
	"	"	2nd	"	1886.94
	"	"	3rd	"	1886.94
No. 50	"	"	4th	"	1886.94
Cross	1112	" 1st	15th	"	1737.50
Interroga-	1045	" 2nd	"	"	1633.00
tories	968	" 3rd	"	"	1512.50
submitted	861	" 4th	"	"	1345.31
to and	549	" 5th	"	"	857.81
answers	537	" 1st	14"	"	783.00
given by	238	" 2nd	14"	"	347.00
Walter	Allowed for headers.				
Robert	15763.88				
Kinipple,	<u>4</u>				3941.00
9th Sept.,	Return pieces 6 x 15'. 5 x 1.25				116.00
1895.					<hr/>
continued—					26225.88 at 60cts.
					15,735 52
	October 22nd 1879, No. 20, Masonry.				27892.54 at 60cts.
					16,735 52
	December 3rd 1879, No. 23, Masonry.				35510 cub. ft. at 60cts.
					21,306 00
	"In return."				101 cub. ft. at 60cts.
					60 60
	December 15th 1879, No. 24, Masonry laid.				36312 cub. ft. at 60cts.
					21,787 20
	July 14th 1880, No. 26, Masonry.				29,518 80
	August 11th 1880, No. 27, Masonry.				57309 cub. ft. at 60cts.
					34,385 40
	September 1st 1880, No. 29, Masonry.				at 60cts. 39,600 00
	October 6th 1880, No. 30, Masonry.				77266 at 60cts.
					46,357 80
	November 24th 1880, No. 33, Masonry.				88040.96 cub. ft.
					52,824 57
	August 3rd 1880, No. 35, Masonry.				104640.96 cub. ft.
					62,784 57

Answer—I repeat my answer to Cross-Interrogatory 36.

40th Cross-Interrogatory :—Is it not true that there is no allowance whatever on the progress estimates for the said timber face and fine or 4 x 1 concrete work mentioned in said items 2 and 7 for the reason that the said work was never done?

Answer—I repeat my answer to Cross-Interrogatory No. 36.

41st Cross-Interrogatory :—Look at the Defendants' Exhibit No. 1A and also at the progress estimates and state whether it is not a fact that the true details of the said Defendants' Exhibit No. 1A should not be as follows in order to agree with the said progress estimates.

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DETAILS FROM ENGINEERS' PROGRESS ESTIMATES EXHIBIT NO. 9 OF WOOD AND RECORD.  
IRON IN BILL NO. 1.

			<i>In the Superior Court.</i>
No. 1. Progress estimates Nos. 2, 3, 5, 8, 11 from, 10th July 1878 to 5th December 1878, 9 Crib Blocks (substructure) of 120 ft. (equal to 27 Crib Blocks of 40 ft.) at .....	\$ 3,869 04	\$ 34,821 36	No. 50 Cross- Interroga- tories submitted to and answers given by Walter Robert
Nos. 14, 16, 17.—9th July 1879 to 9th Septem- ber 1879 Portion of 9 Crib Blocks (super- structure) 120 ft. (equal to 27 Crib Blocks of 40 ft.) in Masonry containing 167094 ft. cube at 60cts.....	1,113 96	10,025 64	Kinipple, 9th Sept., 1895. <i>continued—</i>
		\$ 44,847 00	
No. 2. From Engineers' Progress Estimates Nos. 19, 20, 23, 1st October 1879 to 3rd December 1879 Portion of 9 Crib Blocks (superstruc- ture) in masonry containing 12,656.3 ft. cube at 60cts.....			7,593 75
No. 3. From Engineers' Progress Estimates Nos. 2, 4, 6, 7, 9, 10, 12, 15, 18, 21, 10th July 1878 to November 1879 :			
2943 cub yards 4 to 1 Concrete at \$6.25....	18,393 75		
12528 do 8 to 1 do at 4.75....	59,508 00		
54 do 2 to 1 do at 2.00....	108 00		78,009 75
No. 6. From Engineers' Progress Estimates Nos. 16, 17, 19, 27, 29, 31, 6th August 1879 to 6th October 1880, 55 Crib Blocks substructure and piling 717.18 plus 164.01½ equal.....	881 19½	48,465 73	
Nos. 24, 26, 27, 29, 3rd December 1879 to 1st September 1880. Portion of 55 Crib Blocks (superstructure) in Masonry containing 30465.3 ft. cube at .....	343 25½	18,879 02	
		\$ 67,344 75	
No. 7. From Engineers Progress Estimates Nos. 29, 31, 33, 35, 1st September 1880 to 3rd August 1881. Portion of 55 Crib Blocks (superstructure) in Masonry containing 30937.6 ft. cube at 60cts.			\$18,562 50
No. 8. From Engineers Progress Estimates Nos. 21, 28, 30, 32, 33, 34, 5th November 1879 to 3rd Au- gust 1881.			
2475 cub. yards 4 to 1 concrete at \$6.25.....	\$15,468 75		
16720 " " 8 to 1 " at 4.75.....	79,420 00		
110 " " 2 to 1 " at 2.00 .....	220 00		
		\$95,108 75	

<p>RECORD. —  <i>In the Superior Court.</i>          —          No. 50          Cross Interrogatories submitted to and answers given by Walter Robert Kinipple, 9th Sept., 1895.  <i>continued—</i></p>	<p>No. 11. From Engineers Progress Estimates, 29th November 1877 No. 1.          For 25581.9 cubic ft. timber in crib work next Ballast Wharf Per Bill No. 7 at 15c. 3,837 29          9457 ft. sup. for Platform in same at 10c. 945 70          4411 ft. sup. 4" Planking in same at 10c. 441 10          15787 lbs. Iron spikes in same at 05c. 789 35          Towing and sinking ..... 825 00</p> <hr/> <p>No. 12. From Engineers Progress Estimates 29th November 1877 No. 1.          For 16.10 Crib work Blocks at Gas Wharf per Bill No. 8 at ..... 1,340 84 2,191 04          Towing and sinking ..... 704 00</p> <hr/> <p>No. 19. From Engineers Progress Estimates 9th July 1879 No. 14.          1½ Crib Block (substructure of 120 feet equal to 4 Crib Blocks of 40 ft.) at ..... 3,869 04 5,158 72          9th September 1879 No. 17.—Portion of 1½ Crib Block (superstructure of 120 ft. equal to 4 Crib Blocks of 40 ft.) in Masonry containing 2475.40 ft. cube at 60c ..... 1,113 96 1,485 28</p> <hr/> <p>No. 20. From Engineers Progress Estimates 3rd December 1879 No. 23.          Portion of 1½ Crib Blocks (superstructure) in Masonry containing 1573.4 ft. cube at 60.... \$1,124 00</p> <p>No. 21. From Engineers Progress Estimates 5th November 1879, No. 20.          436 cub. yds 4 to 1 concrete at \$6.25.... \$ 2,725 00          1856 " " 8 to 1 " at 4.75.... 8,815 00          8 " " 2 to 1 " at 2.00.... 16 00</p> <hr/> <p style="text-align: right;">\$ 11,556 00</p>
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*Answer*—I have looked at the Defendants' Exhibit No. 1 A, and also at the progress estimates. The progress estimates were as already stated by me prepared by the resident Engineer and I cannot now deal with such documents, they were dealt with at the time the certificate (Defendants' Exhibit No. 1) was prepared.

*2nd Cross-Interrogatory* :—It is not true that the said progress Estimates were all certified to be correct and were correct as far as you know and as far as it was possible to ascertain as the work progressed, and that the same are the best and most reliable details you know of ?

b 237-40  
 b 235-7

*Answer*—I say that the said progress estimates were all certified to be approximately correct and were so far as I know approximately correct at the time they were made.

*43rd Cross-Interrogatory* :—It is not true that the said details of the said progress certificates are incompatible with and contradictory to the details contained in Defendants' Exhibit No. 1, A inasmuch as the said progress Estimates do not allow for the Timber face and fine or 4 × 1 concrete mentioned in Defendants' Exhibit No. 1, which work was not done, but on the contrary do allow for the work substituted in lieu of the same, and which was done ?

10 *Answer*—I say that on the facts stated the progress estimates may on their face appear incompatible with and contradictory to the details contained in Defendants' Exhibit No. 1 A, but I say that such incompatibility or contradiction is immaterial inasmuch as the Exhibit No. 1 A, superceded all the progress estimates.

*44th Cross-Interrogatory* :—Look at Plaintiff's Exhibit No. 20, and state whether the same was not signed by your late partner Mr. Morris, on behalf of Kinipple & Morris and whether the said document was not prepared by the local or resident Engineer of the works in Quebec, with the approval of your firm, and state whether it is not a fact that your said firm approved of the correctness thereof and did your said firm thereby admit and specially allow for the cost of the said stone face the following amounts ?

Bill No. 1 Masonry. \$26129.37  
 Bill No. 4 Masonry. 59784.45 and for

total value of Timber work and Masonry \$168,311.90, and is it not a fact that the said Allowances so made in said Exhibit are incompatible with Defendants' Exhibit No. 1 A ?

30 *Answer*—I have looked at the Plaintiff's Exhibit No. 20, and say that the same was signed by my late partner Mr. Morris, on behalf of Kinipple & Morris, and was a certificate to the effect that the document so signed was a correct copy of the statement of account prepared by the Commissioners and submitted to my firm as Arbitrators and adjudicated by us by our award dated 4th April, 1882 I believe that the said document was prepared by the resident Engineer of the works in Quebec, on behalf of the Harbour Commissioners but whether or not with the approval of my firm I cannot say. It is not a fact that my firm approved of the correctness of such statement neither did my firm thereby or otherwise admit and specially allow for the cost of the said stone facing in the manner pointed out in the said Cross-Interrogatory and I refer to my answer to Cross-Interrogatory No. 43.

40 *45th Cross-Interrogatory* :—Is it not true that the cost of the stone wall or face was met by the savings to be made by omitting the constructing of said Timber face and fine or 4 × 1 concrete mentioned in said items 2, 7 and 20, of Defendants' Exhibit No. 1A ?

*Answer*—I repeat my answer to Cross-Interrogatory No. 26.

*46th Cross-Interrogatory* ;—Is it not true that the Defendants' Exhibit No. 1 A, is incompatible with the details given in the following Exhibits of the Plaintiff to wit Exhibits Nos. 22, 24, 20, 28, 29 and 32 ?

*Answer*—I say that the details given in the Exhibits Nos. 22, 24, 20, 28, 29, 32, may or may not be incompatible with the Defendants' Exhibit No. 1A, but

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 p. 206<sup>201</sup> p 212 p 213

RECORD.

I say that the Defendants' Exhibit N. 1A, supercedes the other Exhibits referred to in the said Cross-Interrogatory.

In the Superior Court.

No. 50

Cross Interrogatories submitted to and answers

47th Cross-Interrogatory:—Is it not true that the said Engineers Kinipple & Morris, through their resident Engineer granted certificates to the contractors of the work done from time to time in order to enable the contractors to receive payments for the work done under the terms of the said contract?

Answer—I say that it is true that the said Engineers Kinipple & Morris, through their resident Engineer, granted certificates based on progress estimates under the contract for the works of the contractors in order to enable the contractors to receive payments for the work done under the terms of the said contract. 10

48th Cross-Interrogatory:—Is it not true the Plaintiff's Exhibit No. 10, now shewn to you comprises true copies of the said certificates so made by the said resident engineers?

Answer—I am unable to say whether the Exhibit No. 10, now shewn to me comprises true copies of the said certificates made by the said resident engineers.

49th Cross-Interrogatory:—Is it not true that the said estimates were made in good faith by the resident engineers and were correct or as nearly so as it was possible to obtain at the time?

Answer—I say that the estimates were made in good faith by the resident engineers but were only approximate. 20

50th Cross-Interrogatory:—Please look at Plaintiff's Exhibit No. 29, and state whether the same does not comprise true copies of the following letters. A letter dated in London, May 31st 1877, to the Harbour Commissioners Quebec, and signed by the firm of Kinipple & Morris. A letter dated at Quebec, on July 18th 1878, addressed to said Harbour Commissioners and signed by the resident engineer of the said work Woodford Pilkington?

Answer—I say that I have looked at the Plaintiff's Exhibit No. 29, and have no reason to doubt but that the same comprises a true copy of my firm's letter of the 31st May 1877, to the Harbour Commissioners, Quebec, but I have not compared it with the original press copy. I am unable to say whether the copy letter of the 18th July 1878, addressed to the said Harbour Commissioners and purporting to be signed by the resident engineer of the said works. Woodford Pilkington is correct or not. 30

51st Cross-Interrogatory:—Look at the Plaintiff's Exhibit No. 17, and state whether the same is not a true copy of synopsis of accounts brought down to the close of the working season of 1881, the original of which was signed by Woodford Pilkington, under date at Quebec, December 14th 1881, and that the said synopsis referred to the works done by Peters, Moore & Wright, under the said contract? 40

Answer—I have looked at Plaintiff's Exhibit No. 17, but am unable to say whether the same is or is not a true copy of the synopsis of accounts in the said Interrogatory referred to as I have not got the original. I believe the original is in Canada.

52nd Cross-Interrogatory:—Look at Plaintiff's Exhibit No. 16, and state whether the same is not a true copy taken from the books kept by the resident Engineer of the synopsis of estimates up to the close of the season 1880, of the

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p 213-15

not printed no 17 same as A 40 p 574-6

not printed

said works done under the said contract showing the amount of work done by Moore & Wright, to amount to \$353,863.26, and the amount of work done by the Plaintiff Simon Peters, to amount to the sum of \$217,615.38 ?

*Answer*—I have looked at the Plaintiff's Exhibit No. 16, and I cannot say whether it is a true copy from the Books in the said Interrogatory referred to, as I have not got those books in my possession.

10 *53rd. Cross-Interrogatory* :—Is it not a fact that the value of the work originally contemplated to be done under the said contract, that is originally contemplated before the said Harbour Commissioners availed themselves of their said option of substituting a stone face in lieu of a timber and concrete face was calculated and based on the specification, Bill of Quantities and Tender prices and amounted to the sum of \$529,296.31, which was the bulk or lump price mentioned in the said contract ?

*Answer*—I say that the value of the work originally contemplated to be done under the said Contract before the said Harbour Commissioners availed themselves of their said option of substituting a stone facing in lieu of a timber and concrete face was calculated and based upon the specification Bill of quantities and tender prices and did amount to the sum of \$529,296.31.

20 *54th Cross-Interrogatory* :—Is it not true that the said work originally contemplated to be done under the said contract (before the substitution of the said stone face in lieu of the concrete and timber face) was the work mentioned on Plaintiff's Exhibit No. 13, now shewn to you and detailing, the value of the work and shewing that the same amounted as per said tender specification and Bill of Quantities to the sum of \$529,296.31, which was the bulk or lump Contract price less the \$25,000 mentioned in clause 14 of Plaintiff's Exhibit 2 A, page 5, and which sum of \$529,296.31, is the amount mentioned in the first item of the detailed final certificate a copy of which is now exhibited to you ?

30 *Answer*.—I am unable to say that the said work originally contemplated to be done under the said contract as in the said Cross-Interrogatory mentioned, was the work mentioned in the Plaintiff's Exhibit No. 13, now shewn to me.

*55th Cross-Interrogatory* :—If you do not admit the correctness of Defendants' said Exhibit No. 13, as shewing particulars how the contract bulk or lump price was made up, please point out in what respect it is erroneous and produce the statement prepared by the Engineers Kinipple & Morris, shewing the particulars of the work contracted to be performed by Peters, Moore & Wright, which was to entitle them under the said contract to the said contract price \$529,296.31.

40 *Answer*—I know nothing of Defendants' Exhibit No. 13, as I have never seen that document. I am unable to produce the statement prepared by my firm showing particulars of the work directed to be performed by Peters, Moore & Wright, which was to entitle them under the said contract to the said contract price \$529,296.31, for the reasons already given by me, but it would seem that the Plaintiff's Exhibit No. 13 has been prepared from the original works contract.

*56th Cross-Interrogatory* :—Do you swear positively that Plaintiff's Exhibit No. 13 is not correct in any particular and if so point out in what particulars it is not correct ?

*Answer*—I cannot say whether Plaintiff's Exhibit No. 13 is correct or not, but a comparison of that statement with the works contract ought to show whether the same is correct or not.

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In the Superior Court.

No. 50

Cross-Interrogatories submitted to and answers given by Walter Robert Kinipple, 9th Sept., 1895. continued---

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RECORD.

*In the Superior Court.*

No. 50

Cross Interrogatories submitted to and answers given by Walter Robert Kinipple, 9th Sept., 1895.

*continued—*

*57th Cross-Interrogatory* :—Is it not true that owing to the substitution of the stone face or wall for the Timber and Concrete : all the work mentioned in Plaintiff's Exhibit No. 27, became unnecessary to be done and was not done by the contractors ?

*Answer*—I repeat my answer to Cross-Interrogatory No. 36.

*58th Cross-Interrogatory* :—Is it not true that all of the said work mentioned Plaintiff's Exhibit No. 27, was contemplated to be done under the terms of the said contract had the said stone face or wall not been substituted in lieu of the timber and concrete face ?

*Answer*—I say that had the stone face not been substituted in lieu of the timber and concrete the contract in this respect so far as relates to the timber and fine concrete would have been unaltered.

*59th Cross-Interrogatory* :—Is it not true that owing to the said substitution of the said stone face (or wall) for the said Timber and Concrete face that the following work became unnecessary to do and was not done namely. The Concreting originally intended to be placed behind the timber face of 27 and 55 and 4 extra Cribs respectively as per Bill of Quantities pages 50 and 73 (Plaintiff's Exhibit No. 2A), making a total of the value of Concreting not done of \$27,681.25 to wit :

Fine or 4 x 1 Concrete not done		
Bills 1 281.25 x 27	7593.75	
" 4 327.50 x 55	18562.50	
4 extra Cribs 281.25 x 4,	1525.00	

20

27681.25

*Answer*—I repeat my answer to Cross-Interrogatory 36.

*60th Cross-Interrogatory* :—Are you prepared to swear that any part of the work detailed in the last interrogatory No. 59, was done or performed under the said contract and if you swear that any part of it was, point out what part of it and to what extent the said work was done ?

*Answer*—I repeat my answer to Cross-Interrogatory 36.

30

*61th Cross-Interrogatory* :—Is it not true that owing to the said Commissioners having availed themselves of the said option and ordered the Construction of the said stone face (or wall) in lieu of the Timber and Concrete above mentioned the following work became necessary to be done and was done in and about the construction of the said stone face (or wall) ; namely :—

The Construction of 128964, 2 feet cube of stone face (or wall) including rough Bouchard to same at 60 cts. per cubic foot making a total of 76378.00 ?

*Answer*—I am unable to answer as to the quantity of stone used in the construction of the face of the wall.

*62th Cross-Interrogatory* :—Please refer to Plaintiff's Exhibit No. 9, being Progress Estimates and particularly to pages 5, 7, 9, 10, 12, 13, 16, 17, 20, 22 and 24, thereof and state whether it is not a fact that the cost and value of the said stone face (or wall) was estimated by the resident Engineers, and in the said Progress Estimates at 60c. per cubic foot ?

*Answer*—I have referred to the Plaintiff's Exhibit No. 9, being progress estimates and particularly to the pages in the said Cross-Interrogatory mentioned,

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and it would appear therefrom that the estimated approximate cost and value of the said stone face or wall was estimated by the resident Engineers at 60 cents per cubic foot.

*63rd Cross-Interrogatory* :—Are you prepared to swear that any part of the work detailed in the preceding interrogatory was not necessary or was not done, or performed under the said contract for the said works and if you swear that any part of the said work mentioned in the preceding interrogatory was not done or was not necessary to be done under the said contract, indicate what portion was not done and what portion thereof was unnecessary to be done ?

10 *Answer*—I am not prepared to swear that any part of the said work detailed in the preceding Interrogatory was necessary or unnecessary or was done or not done, having regard to the length of time which has elapsed since this work was dealt with.

*64th Cross-Interrogatory* :—Would you please refer to the Plaintiff's Exhibit No. 2A, comprising the said specification Bill of Quantities, Tender and Conditions of the Contract and read paragraphs eleven and forty-eight at pages five and twelve (5 and 12) and state whether it is not a fact that the value of all the work that was rendered unnecessary to be done owing to the substituting of the said stone face in lieu of the timber and concrete face, was calculated by the  
20 Engineers at the prices mentioned in the said Tender and Bill of Quantities and that all the work that was rendered necessary to be done by the said change was also calculated by the Engineers as per said Tender and Bills of Quantities and that the difference of cost occasioned by the said change amounted to the said sum of \$18,393.58 and to which was added a sum of 2 $\frac{3}{4}$  per foot for rough Boucharding as mentioned in Plaintiff's Exhibit No. 1 A ?

*Answer*—I say that in addition to the Contract sum for the timber face there was an additional sum allowed for the extra work in connection with the stone face. I cannot now speak as to details of how this additional sum was arrived at—the matter was dealt with and adjusted at that time.

30 *65th Cross-Interrogatory* :—Is it not true that the rough Boucharding amounted to the sum of \$3,546.51 ?

*Answer*—I believe that the rough Boucharding amounted to a sum of \$3,546.51 or thereabouts.

*66th Cross-Interrogatory* :—Is it not true that all of the additional work allowed in the said Engineers detailed certificate dated 5 January, 1887, and signed Walter Robert Kinipple was allowed and intended to be allowed in accordance with the said contract at the prices specified in the said Tender and Bill of Quantities.

40 *Answer*—All additional works were allowed for in accordance with the terms of the contract, but I am unable to say whether they were based on the prices specified in the said Tender or Bill of Quantities or other prices.

*67th Cross-Interrogatory* :—Please look at Plaintiff's Exhibit No. 15 dated 9th April, 1877, and purporting to be a memorandum made at the time to ascertain the contract price as per said Tender and Bill of Quantities of the said stone face in lieu of the timber and concrete face and state whether or not the same or a similar memorandum was not the result of the calculations then made of the cost of the said stone face as per said contract and bill of quantities shewing the

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In the Superior Court.

No. 50

Cross-Interrogatories

submitted

to and

answers

given by

Walter

Robert

Kinipple,

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continued—

cost of the stone wall to be \$73,831.39 to which had to be added a sum of \$3,546.51 for rough Boucharding ?

*Answer*—I repeat my answer to Cross-Interrogatories 64 and 66, I cannot now speak as to the details, and additional sum allowed for the stone face.

*68th Cross-Interrogatory* :—If you state that Plaintiff's Exhibit No. 15 does not correctly show the calculation made or agreed to for the purposes of the said contract by the Engineers please state in what particulars it is incorrect and produce a copy of the calculation made for that purpose by the Engineers.

*Answer*—I repeat my answer to Cross-Interrogatory No. 67.

*69th Cross-Interrogatory* :—Please look at Plaintiff's Exhibit No. 8 dated 12th April, 1877 and purporting to be a memorandum made at that time to ascertain the price to be paid to Peters, Moore & Wright for the work therein mentioned at the prices which they had tendered as per bill of quantities shewing the price for said work which consisted in all the dredging concreting and labor depositing stone ballast and clayey materials under said contract to amount to \$383,427.55 and that such calculation was verified and approved of by the Engineers and actually formed a basis of the contract price by adding thereto the sum of \$146,868.76 for the balance of the work to be done under said contract as shewn on the first page of Exhibit No. 13 for wood and iron work &c ?

*Answer*—I say that I have looked at the Plaintiff's Exhibit No. 8, purporting to be dated 12th April, 1877 and I say that I know nothing whatever of the said statement.

*70th Cross-Interrogatory* :—Look at item 22 of Defendants' Exhibit No. 1 A being a true copy of the detailed certificate granted by Kinipple & Morris to the contractors which item reads as follows.

" In stone wall and rough Bouchard to same \$21,940.61 " and say is it not true that said item represents the said sum of \$18,393.58 plus 3,546.51 for rough Boucharding ?

*Answer*—I have looked at item 22 of Defendants' Exhibit No. 1 A. I believe it is true that the said item in the said interrogatory referred to represents the said sum of \$18,393.58 plus \$3,546.51 for rough Boucharding making together \$21,940.61 or thereabouts.

*71st Cross-Interrogatory* :—Is it not true that the Plaintiff's Exhibit No. 15 correctly shews the calculation that had been made at the time of the passing of the said contract as to the cost of the changes that would be necessitated by substituting the said stone face in lieu of timber and concrete above mentioned ?

*Answer*—I say that I know nothing whatever about the Plaintiff's Exhibit No. 15.

*72nd Cross-Interrogatory* :—If you swear that Plaintiff's Exhibit No. 15 does not correctly show the calculation that had been made at the time of the passing of the said contract as to the cause of the change mentioned in preceding interrogatory please state in what particular the said Exhibit No. 15 is erroneous, and produce a copy of the statement made for the purpose of the said contract showing how the said sum of \$21,940.61 became payable for additional work, as mentioned in the said detailed certificate ?

*Answer*—I repeat my answer to Cross-Interrogatory No. 71.

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73rd Cross-Interrogatory :—Look at Plaintiff's Exhibit No. 18 and state whether the same is not correct, being the details of understated quantities, and if you say it is not, point out in what respect is it not?

Answer—I have looked at the Plaintiff's Exhibit No. 18, I know nothing whatever about the Exhibit, and it is impossible for me to state whether the same is correct or not.

74th Cross-Interrogatory :—Can you swear that that the said Plaintiff's Exhibit No. 18 is incorrect in any detail and if so point out the error?

Answer—I repeat my answer to Cross-Interrogatory No. 73.

10 75th Cross-Interrogatory :—Look at Plaintiff's Exhibit No. 19 and after having compared with any documents you see fit state whether you can swear that there is any error in the same and if so point out or indicate the items that are erroneous and why they are erroneous and in what respect?

Answer—I have looked at the Plaintiff's Exhibit No. 19, I have no documents with which to compare the said Exhibit so as to point out whether there is any and if so what error in the same.

76th Cross-Interrogatory :—Having taken communication of Plaintiff's Exhibit No. 19 are you not of the opinion that the same is correct and true?

20 Answer—I am unable to express any opinion as to whether the Plaintiff's Exhibit No. 19 is correct or not.

77th Cross-Interrogatory :—Look at Plaintiff's Exhibit No. 28 and state whether the same is not a true copy of the Engineer's calculation showing cost of said stone wall per foot, which calculation is to be found in the book kept by the Engineers and the resident Engineers of the said works?

Answer—I have looked at the Plaintiff's Exhibit No. 28, but I am unable to state whether the same is a true copy or not of the Engineer's calculation showing cost of said stone wall per foot inasmuch as I have not examined it with the book containing the Engineers calculation, same not being in my possession.

30 78th Cross-Interrogatory :—Is it not a fact that had the work mentioned in item 7 been done, the charge therefor would have been \$18,562.50 and not \$16-239.30 and that the said calculation in item 7 is erroneous?

Answer—I am unable at this time to answer the said Cross-Interrogatory further than already dealt with by my previous answers.

79th Cross-Interrogatory :—Is it not a fact that according to contract prices bill of quantities the bills charged in items 3, 8 and 21 of the said Defendant's Exhibit No. 1 A are as per bills of quantities overcharged, the overcharge in item No. 3 being \$1,457.90 and the overcharge in item No. 8 being \$8,561.15 and the overcharge in item No. 21 being \$215. Will you swear that they are no overcharges in said items 3, 8 and 21?

40 Answer—In order to fully answer this Interrogatory it would necessitate a lengthy examination of documents many of which said documents are I believe at present in Quebec. I do not believe that there was any overcharge in the adjustment.

80th Cross-Interrogatory :—Is it not true also that there is an error in item No. 1 of the said Exhibit which allows for wood and iron work the sum of \$43-389 whereas the true amount allowable as per bills of quantities was \$44,877 making a difference of \$1,458?

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*Answer*—I say that in the final certificate all details were adjusted and that certificate is absolutely correct and I do not believe that there is an error in item No. 1 A as in the said Cross-Interrogatory suggested.

*81st Cross-Interrogatory*:—Is it not a fact that there is error in the sixth item of the said Exhibit No. 1A which allows \$63,893.25 for wood and iron work whereas the true price as per bills of quantities was \$67,344 making a difference of \$3,451.50 ?

*Answer*—I say that in the final certificate all details were adjusted and that there is no error in the 6th item of the said Exhibit 1 A.

*82nd Cross-Interrogatory*:—Look at item 11 and state whether is not error in the said item which allows \$4,184.21 instead of the sum of as per bills of 10 quantities which amount to \$6,838.44 namely error to the extent of \$2,654.23 ?

*Answer*—I say that in the final certificate all details were adjusted and that certificate is absolutely correct. I do not believe that there is an error in item 11 of said Exhibit No. 1 A.

*83rd Cross-Interrogatory*:—Look at item 12 of the said Exhibit and state whether there is not an error in the same to the extent of \$190.12 the correct amount allowable being \$2,895.14 instead of \$2 705.02 ?

*Answer*—I say that in the final certificate all details were adjusted and that certificate is absolutely correct. I do not believe that there is an error in item 12 of said Exhibit No. 1A. 20

*84th Cross-Interrogatory*:—Is there not also error in the 19th item of the said Exhibit to the extent of \$216 the amount allowable as per bills of quantities being \$6,644 instead of \$6,428 as stated in said item ?

*Answer*—I say that in the final certificate all details were adjusted and that certificate is absolutely correct. I do not believe thae there is an error in item 19 of said Exhibit No. 1A.

*85th Cross-Interrogatory*:—Will you swear that Defendants' Exhibit No. 1 is true and correct in all respect ?

*Answer*—I swear to the best of my information, knowledge and belief that the Defendants' Exhibit No. 1A is true and correct in all respects. 30

*86th Cross-Interrogatory*:—Is it not true that the work actually done and performed by the contractors Peters, Moore & Wright was all taken into consideration allowed for by the engineers, and all work not done by the contractors deducted as per contract.

*Answer*—I say that on the final adjustment everything that had been done and everything that had not been done was taken into consideration and dealt with.

The foregoing answers having been read over to the witness he persists in the truth of the same and every of them declaring that they contain the truth and hath signed. 40

WALTER ROBERT KINIPPLE.

I hereby certify that the above named Walter Robert Kinipple was duly sworn by me before his above deposition was taken.

HENRY GOODWIN STEPHENSON.

Commissioner.

Canada, }  
 Province of Quebec, }  
 District of Quebec. }

In the Superior Court.

The 7th day of December, 1895.

PRESENT: The Honorable Mr. Justice ROUTHIER.

No. 2453.

Simon Peters, . . . . . Plaintiff.

vs.

Edward Moore *et al.*, . . . . . Defendants.

RECORD

In the  
 Superior  
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No. 51  
 Plaintiff's  
 Evidence  
 Deposition  
 of James  
 Woods,  
 7th Dec.  
 1895.

EVIDENCE ON THE PART OF THE PLAINTIFF IN THIS CAUSE.

JAMES WOODS, of Quebec, in the District of Quebec, Sec'y Treasurer Quebec Harbour Commissioner, aged 52 years, being duly sworn upon the Holy Evangelists, doth depose and say: I do know the parties in this cause; I am not related, allied or of kin to, nor in the service or domestic of either of them, or interested in the event of this suit:

Q. In your quality as secretary of the Quebec Harbour Commission you have certain documents in your possession, which you have been summoned to produce this morning?

The Defendants object to the production of all statements, progress estimates, documents, estimates, and reports of any kind issued prior to the issue of the final certificate by the chief engineers in February, 1886: Objection reserved by the Court. A. Yes, sir.

The parties admit that on the fourth February, eighteen hundred and eighty-six (1886) Messrs Kinipple & Morris, chief engineers for the Quebec Harbour Commissioners, issued a final certificate for the works done by Peters, Moore & Wright, in the following form, to wit:

" Harbour Improvements Works, Louise Embankment, Contract No. 1, Final Certificate.

" We hereby certify that Messrs. Peters, Moore & Wright are entitled to a final payment under their contract, of the sum of fifty-two thousand and eleven dollars (\$52,011)." (Signed), KINIPPLE & MORRIS.

Q. Have you these documents with you? A. I have a portion of them.

Q. Are you in possession, Mr. Woods, of the estimates which were sent in by the contractors from time to time? A. No, I am not in possession of these estimates: the engineer is.

Q. The progress estimates? A. The same way, sir.

Q. Certificates for payments? A. I have these.

Q. Would you produce them, please? A. Yes.

Witness produces certificates.

Q. You cannot leave any of these in Court? A. No, I would give copies.

Q. Have you printed material on which to make these copies? A. I am not sure.

RECORD.

Mr. Woods states that he will leave the said certificates of payment in court for the purposes of the trial, which certificates are marked Plaintiff's Exhibit at enquête A1, and are to be replaced by copies.

There are in all thirty-six certificates of payment, and there are also two receipts signed by the contractors, copies of which receipts I produce as Plaintiff's Exhibit at enquête A2.

Q. Have you got, Mr. Woods, the cheques paid to the contractors? A. I have got all the cheques except two cheques of 1887. In going over the cheques I find the bank did not return these two of 1887. These I will find. All the others I have got.

Q. All payments made by the Quebec Harbour Commissioners to the contractors? A. Yes. The cheques I am willing to leave until the suit is closed, and I now file them as Plaintiff's Exhibit at enquête A3.

Q. Mr. Woods, have you a synopsis account to the close of 1880, made by the engineers? A. I have got a general statement of account made by Mr. Pilkington; but there is no statement in the letter. The statement has been taken out of it, and is not there nor in the office.

Q. Of what date? Mr. Pilkington was the resident engineer for the Quebec Harbour Commissioners? A. Resident engineer for the Quebec Harbour Commissioners. I made a mistake: it is a report on the statement of account furnished by Messrs. Moore & Wright in connection with the closing of their contract for the Harbour Improvements.

Witness produces a document.

Q. What date is that? A. Eleventh January, 1882.

I produce a copy of this report as Plaintiffs' exhibit at Enquête A4.

Q. Have you not a synopsis of the estimates to the close of 1880? A. I produce a letter dated 19th December, 1881, signed by Woodford Pilkington, the resident engineer of the works in question. The statements connected with it I have not got.

Letter is filed as Plaintiffs' Exhibit at Enquête A5.

Q. The next document which you have would you produce it, please? A. The next one is a letter enclosing a general statement of account by Pilkington. The statement is not there. This letter is filed as Plaintiff's Exhibit at Enquête A6.

The next document asked for is Pilkington's statement, with explanatory remarks of the value of the work done on the outer crib work at schedule rates, 10th December, 1878. The statement is embodied in the letter.

Said letter is filed as Plaintiff's Exhibit at Enquête A7. The next is a letter dated 3rd December, 1879, from contractors asking for advance of five thousand dollars, paid Mr. Peters.

Said letter is filed as Plaintiff's Exhibit at Enquête A8. The next one is from Peters, Moore & Wright, 30th June, 1880, respecting advance of five thousand made to them last winter and deducted from last certificate.

Said letter is produced as Plaintiffs' Exhibit at Enquête A9. The next is dated 20th April, 1887, from W. R. Kinipple, his reply to letter of 18th March last requesting the late firm of Kinipple & Morris to furnish data on which they have allowed \$52,011 in their final certificate in connection with Messrs. Peters, Moore & Wright's contract for the Harbour Improvements.

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Letter is filed as Plaintiffs' Exhibit at enquête A 10.

Q. Have you letters of sixth and ninth December, 1881? A. Yes.

Produced and filed as Plaintiffs' Exhibit at enquête A 11. I file as Plaintiffs' Exhibit at enquête A 12 letter by contractors to Commissioners, of date ninth November, 1881.

I have got the final certificate here: that you don't want?

Q. No? A. I have got another letter here of twenty-ninth April, 1886, from Kinipple & Morris to the Harbour Commissioners, which letter I file as Plaintiffs' Exhibit at Enquête A 13.

10 Q. These are all the documents which have been asked of you? A. These are all the documents which are mentioned in my subpoena that I could find. There are some that I could not find, and there are a great many that have been asked for and are in the possession of the chief engineer. There are copies of letters that he has in his letter-book that did not go through my hands.

It is admitted by the parties that the letters produced and filed by Mr. Woods are what they purport to be, and that the signatures thereon are genuine.

This admission is given on the part of the Defendants without admitting the relevancy of the production of the letters or the accuracy of the facts stated therein.

20 I, the undersigned, do hereby certify that the foregoing deposition is a true and correct transcription of my shorthand notes.

M. J. MORRISON,  
Stenographer.

ST. GEORGE BOSWELL, of Quebec, in the District of Quebec, Chief Engineer of Quebec Harbour, aged 40 years, being duly sworn upon the Holy Evangelists, doth depose and say:

I do know the parties in this cause; I am not related, allied or of kin to, nor in the service or domestic of either of them, or interested in the event of this suit.

30 Q. In your quality of chief engineer, Mr. Boswell, you have certain documents in your possession relating to the harbour works, which you have been summoned to produce in this case. Would you kindly produce such of them as you have? The first on the list—The synopsis of Estimates to close of 1880. Have you got that? A. I have that: but these documents are all the property of the Commission, and I have no authority to part with them. I now exhibit a statement signed by Woodford Pilkington, bearing date the fifth October, 1881, and being synopsis of accounts brought down to the close of the working season of 1881.

Q. The works were then finished, were they not? A. The works were 40 then finished.

Q. Completely finished: there was nothing more to do? A. Well, no, there was nothing done after that to speak of.

Q. Will you verify that account with the account produced in the record? A. I will verify the accuracy of Plaintiff's Exhibit No. 17 with the original.

Q. Will you produce such documents mentioned in that list as you have?

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*p 514-6  
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*p 212  
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p 213-15  
serve as pat No 29*

A. Progress Estimates of resident engineer. I exhibit a book containing the progress estimates made at the time that the works were being constructed.

Q. These progress estimates were made by whom? A. They were made up by myself and the contractors' engineer, working together.

Q. And these progress estimates were then accepted by the then resident engineer of the Quebec Harbour Works? A. Well, he may have modified them occasionally. I think, generally speaking, they will be found to agree with the payments, but you have to check them over.

Q. But as they are in that book they are such as he approved of? A. No, I don't know that they are. They were sent in to him, and he may have made certain changes. 10

Q. Will you please verify this book of progress estimates with Plaintiffs' Exhibit No. 9? A. I will verify them. The next is a synopsis of estimates to the close of the season of 1880, shewn in the same book.

Q. Will you please verify that synopsis with Plaintiffs' Exhibit No. 16? A. I will. The next is a report by Woodford Pilkington, 11th January, 1882, to A. H. Verret. A press copy of that is in the letter-book at page 412. The original I have not got.

Q. Will you verify that with Plaintiffs' Exhibit at Enquête A14? A. Yes. Objected to: Objection reserved by the Court. The next is a report of Woodford Pilkington, dated 12th October, 1880, to A. H. Verret. A copy of that is in the 20 letter-book at page 207. I will verify that with the copy, Plaintiffs' Exhibit at Enquête A15. The next is a general statement of account, Woodford Pilkington, to A. H. Verret, 19th December, 1881. A copy of the letter transmitting the report is in the press letter-book, but there is no statement, and the statement cannot be found. There is no statement in the original letter. Mr. Woods found the original letter, but there is no statement.

Q. There is no statement found either by Woods or yourself? A. No. The next is notes on statement of arbitration Woodford Pilkington sent Kinipple & Morris on the 26th January, 1882. I will verify these with Plaintiffs' Exhibit at Enquête A16. The next is a copy of the Engineer's calculations of cost of 30 stone wall, which is in the book already exhibited. I will verify this with Plaintiffs' Exhibit at Enquête A17. Report of Woodford Pilkington to Quebec Harbour Commissioners, 18th July, 1878. A copy of that is in the press book, and I will verify that with Plaintiffs' Exhibit at Enquête A18.

Q. Are there any other documents? A. No: the rest of the list consists of letters, and I presume that most of them are in the books, and I have not had time to look over them.

Q. There is nothing else that you have, Mr. Boswell? A. As I say, all these letters or the great majority of them, are in the press book, and I have not gone over the press book to see if they are there. Some of them are, I know. 40

The Defendants admit that Plaintiffs' Exhibit at enquête A19, now filed, is a true of a letter written by the engineers, Kinipple & Morris, to A. H. Verret, of 15th April, 1885.

Attorneys for Defendants.

Q. Please produce the letter-book and refer to the letters asked for.

*p 532-3*

(Witness refers to letter-book). A. Here is a letter of June 27th, 1877.

Defendants object to the production of this letters on the ground that it is secondary evidence: objection maintained.

Witness: I have no letters written by Kinipple & Morris, written from England at all.

Q. Neither have you one of the seventeenth September, 1877? A. No.

Q. Have you got one written on the eighteenth March, 1878, by Mr. Pilkington to Kinipple & Morris?

The Defendants declare that they will produce the original or a copy of a letter dated 12th December, 1878, addressed by Kinipple & Morris to Messrs. Peters, Moore & Wright, referring to alleged clerical error in dredging.

Letter is afterwards produced and filed as Plaintiffs' Exhibit at enquête A20. A. The next one is a letter of 18th March, 1878. I don't find any such letter, but there is a press copy of a letter of thirteenth March, 1878, addressed to Kinipple & Morris by Mr. Pilkington.

Defendants object to the production of this letter as being secondary evidence: Objection maintained.

Q. You know the handwriting of Mr. Pilkington, I presume? A. Yes.

Q. Can you state whether that is in the handwriting of Mr. Pilkington or not?

20 Witness refers to letter contained in the letter-book in reference to which the last proceeding objection was made.

A. I believe it to be.

Q. This book is a book belonging to the Quebec Harbour Commissioners?

A. Yes.

Q. And it was the book used during... A. That is the book used by Mr. Pilkington during his residence in Quebec.

Q. You know that personally? A. I know that personally.

Q. And this letter, would you look at the signature at the end of it, and can you say that that is the signature of Mr. Woodford Pilkington? A. Yes, I 30 believe it to be—in fact, I am sure of it.

Q. And you know that Mr. Pilkington was resident engineer of the works at the time? A. Yes.

Q. And you know that he is now in England? A. Well, no, I don't know where he is. He was in England about a year ago.

Q. He is not in Canada? A. I don't know where he is. I have not the slightest notion.

By the Court: Do you know if these letters were ever addressed or sent to Messrs Kinipple & Morris? A. No, I have no personal knowledge they were ever sent.

40 Mr. Gibsone: They are, however, kept on record in your office as having been sent? A. Certainly, that is the supposition, that the letters in that book were all posted to Kinipple & Morris.

Q. You have no reason to believe it was not sent? A. No.

Q. Have you any reason to believe it was sent? You, at the time these letters were written, were acting as assistant to Mr. Pilkington? A. I was acting as Mr. Pilkington's assistant under Kinipple & Morris, the chief engineers.

Q. So that you were actually in daily intercourse with Mr. Pilkington who wrote this letter? A. Yes.

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Q. You also, Mr. Boswell, had occasion to consult with Mr. Pilkington concerning these matters? A. Certainly. Not as to matters of interpretation of the contract: he did that himself.

Q. But you consulted with him respecting— A. As far as the carrying on of the work and the payments went.

Q. Then, from your whole knowledge of the circumstances you believe that the letter that is written there was regularly sent to Kinipple & Morris? Objected to:

Q. You know the regular course of business followed by Mr. Pilkington? A. Yes. 10

Q. In the regular course of business was that letter sent or not? A. That I couldn't say. The regular course is that the letters he wrote he copied in that and other books, and, presumably, posted them. That is all I know, I don't know what happened to them.

Plaintiffs' Attorney asks that under these circumstances he be allowed to produce and file the letter in question, and his request is refused by the Court.

Q. The next letter is April 29th, 1878? A. That letter is not here. There is a gap from April 18th to May 1st.

Q. Please produce the following letters which passed between the resident engineer and the engineers in chief on the following dates: 17th July, 1878, 17th May, 1879, 14th December, 1879, to be found in the letter-book which you have? Defendants' counsel objects to the production of the said letter-book containing copies of these letters or of copies of the said letters, the same being secondary evidence: Objection maintained. 20

Q. The only letters which you have are letters contained in that letter-book? A. That is all. I have a number of letters written by Kinipple & Morris to Pilkington.

Q. The originals? A. Yes. I haven't got them here.

The examination of the witness is continued to a further sitting of the Court.

On the fourteen December instant the examination of Mr. St. George Boswell is continued: 30

Q. Look at Plaintiff's Exhibit at Enquête A40 and state whether the same is an original document signed by yourself and Mr. Pilkington bearing date the 14th December, 1881? (Exhibit is handed to witness.) A. This is an original document.

Q. Signed by yourself and by Mr. Pilkington? A. Signed by myself and Mr. Woodford Pilkington. I don't say that this is the exact one that was sent, but that is an original document that was taken out of the office.

Q. Look at Plaintiff's Exhibit at Enquête A41 and state whether the same is a true copy certified by you of the progress estimates? A. Yes, these are true copies of the estimates in the record book in the office. 40

Q. Would you state whether Plaintiff's Exhibit at Enquête A16 is a true and certified copy of the engineer's notes taken from the books also in your office? A. Yes, as the certificate shews here, it is taken from one of the press books.

Q. Would you look also at Plaintiffs' Exhibit at enquête A14 and state whether that is a true and certified copy of the document which it purports to be. A. Yes.

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same as No 9  
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same as A.4

*Q.* Mr. Boswell, Exhibit at enquête A40, does not correspond in all particulars with the final certificate issued by the engineers. Objection to: Objection reserved. *A.* This document Plaintiffs' Exhibit at enquête A40 is supposed to be a synopsis of accounts brought down to the close of the working season of 1881: and I think it was prepared for the purpose of making a report to the Harbour Commissioners by the resident engineer. The total balance is shewn to be \$40,861.22.

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10 *Q.* According to that the total balance of the account of the joint contractors, Peters, Moore & Wright, found by the resident engineer, was the figures you have given \$40,861.22? *A.* Yes.

*Q.* As a matter of fact, after two arbitrations, the certificate of February, 1886, for fifty-two thousand dollars was given by the chief engineer? *A.* Was given by the chief engineer.

*Q.* Upon what basis was this document prepared, Plaintiffs' Exhibit at enquête A40? *A.* It was prepared from the bills of quantities in the bulk sum contract with an addition of any work and a deduction for the work not executed.

20 *Q.* It was, however, as you have said, not adopted by the chief engineer in giving his certificate, in any case? *A.* I couldn't say.

*Q.* You can, however, say that the total balance does not agree with the amount of the final certificate issued? *A.* No, it does not.

*Q.* The whole of this document is not in your hand-writing? *A.* Well, not Mr. Pilkington's signature; the rest of it is.

*Q.* Are these figures in red yours? *A.* Yes, these are all mine. The whole of it with the exception of Mr. Pilkington's signature.

*Q.* I notice on the first sheet "Deductions from contract \$84,234.47. At the final settlement deductions greatly exceeding this sum were agreed to, were they not? *A.* Yes, I believe they were.

*Q.* The deductions amounted to? *A.* One hundred and sixteen thousand dollars, I think.

30 *Q.* And of course there must have been large additions to what was allowed for in that Exhibit A40 in order to make the final balance larger than that found to be in Exhibit A40, in view of the increase in the deductions? *A.* Yes, certainly, it would have been so.

*Q.* Will you refer to this account, Plaintiff's Exhibit at Enquête A40, and state whether the concrete in the substructure in Bills 1 and 4 as allowed for there is in the original Bills? *A.* Well, I will have to see the original Bills. (Witness refers to Blue Book.) Well, I find the concrete in the substructure in the Blue Book for twenty-seven cribs would amount to \$50,581.25, and here in Plaintiff's Exhibit at Enquête A40 the concrete in the substructure is \$54,250.00.

40 That is in the substructure of Bill No. 1 of Tidal Harbour.

*Q.* Is that the 4 to 1 concrete that is referred to at page 48 of the Blue Book? *A.* I take the 4 to 1 concrete and the 8 to 1 concrete and the two together amount to.

*Q.* That includes both? *A.* That includes both.

*Q.* Was this work done? *A.* The fine concrete?

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*Q.* Yes. *A.* It was not actually done. There was an arrangement made by which the 8 to 1 concrete was used and they were to get paid for it.

*Q.* Substituted and enriched 8 to 1 for the 4 to 1? *A.* Substituted and they got paid for the two.

*Q.* On the same basis? *A.* As if it had been done.

*Q.* Did this arrangement apply both to the wet dock and tidal Harbour substructure? *A.* Yes.

*Q.* Mr. Boswell, you were on the works from the beginning to the end of the Peters, Moore & Wright's contract, were you not? *A.* Yes, I was.

*Q.* There were, in fact, very considerable changes made in the works from the contract? *A.* Yes, a great many. 10

*Q.* Is the statement, Plaintiffs' exhibit at enquête A40, made up upon the basis of the works as done, as you viewed it at that time? *A.* The statement is made up and is supposed to be the money equivalent of the work done by the contractors, as interpreted by the resident engineer from his contract.

*Q.* So that in some instances it represents the work actually done: in others it represents the cost provided for in the contract for work contracted for, for which that was substituted? *A.* Certainly.

*Q.* With respect to the changes that were made, do you recollect that the height of the substructure in the wet dock was increased from the contract plans? *A.* No, it was not. The substructure in the tidal harbour was four feet above 20 low water, and the substructure in the wet dock was put three feet above low water, and to bring the top of the substructure in the wet dock to the same level as in the tidal harbour so that the masonry would all begin on the same level there was a capping put on the south wet dock cribs, but that concreting was all put in with the superstructure.

*Q.* That is to say, a portion of the superstructure in the tidal harbour was actually built as part of the substructure in consequence of this change? *A.* There was a difference of a foot.

*Q.* That is to say a foot which went into the substructure actually, but which was provided for as part of the superstructure in the contract? *A.* I can- 30 not quite say where the substructure begins and the superstructure ends—whatever you like to call it. The wood work was at a uniform height throughout from one end of the wall.

*Q.* But not as contracted for? *A.* Certainly, because it was a wooden face right up the coping originally.

*Q.* Well, when that came to be changed for masonry? *A.* Well, the masonry was put twenty feet high throughout, and we might call the coping on top of the cribs part of the superstructure or part of the substructure. The only thing is the concrete behind the elm capping in the wet dock was considered 40 part of the superstructure.

*Q.* And was really provided for in the bills of quantities for the superstructure? *A.* Yes, I suppose it was.

*Q.* To some extent, anyway, if not entirely? *A.* Because in the original bills of quantities in the wet dock the concreting only comes up to three feet above low water.

Q. Now, there was another change, Mr. Boswell, was there not, in that the wall of the superstructure of the wet dock was moved on the same alignment as the substructure? A. The engineers never made a change.

Q. It was so built, was it not? A. Yes, it was built in that way. That is the cribs were pushed in. The cribs of the wet dock were pushed in, I think six inches, or something like that, but it was not done by instructions of the engineers.

Q. Would it have been possible, once the masonry wall was substituted for the timber, to have built the works, still having the superstructure on a different alignment from the substructure? A. The substructure should actually have stood out the six inches. As it is now the masonry wall overhangs the sheet piling. It was intended to have been flush with the sheet piling, and allow the gauge piling stand out, so that it was really an error in building the works.

Q. After the account, Plaintiff's Exhibit at Enquête A40, was prepared, the whole of the accounts with respect to the contract including the claims of the joint contractors, were submitted to the Chief Engineers, were they not? (Objected to as being irrelevant: Ojection reserved by the Court.) A. Well, I know that before the arbitration took place Mr. Morris himself was out here in Quebec and went into the whole thing, the contractors' claims and the Engineers' statements.

Q. Can you state whether this account, Plaintiff's Exhibit at Enquête A40, formed the basis of the Harbour Commissioners' contention with respect to the contractors' claims? A. That I couldn't say.

Q. Now, you know, Mr. Boswell, that as a matter of fact there were a number of statements of accounts, which differed materially, prepared both by the resident Engineer, on the one hand, and the contractors on the other? A. Well, I am not sure about that. The resident Engineer prepared, certainly, this statement, Plaintiff's Exhibit at Enquête A40. He may have prepared others. Mr. Morris took whatever information was given to him by the resident Engineer, taking the contractors' statement, and made out a statement of his own, taking consideration of the documents placed before him.

Q. And his statement differed from both the statements of the resident engineer and the statement of the contractors? A. I think so.

Q. Now, this memorandum, Plaintiff's Exhibit at Enquête A16, was made by whom, do you know? A. It was made by Mr. Pilkington.

Q. And it embodied Mr. Pilkington's views with respect to some of the matters which were in dispute. Do you know, as a matter of fact, anything of this beyond the fact that a copy of it in the handwriting of Mr. Pilkington is in the books which are of record in your office? A. That is all.

Q. That is all you know of it? A. That is all I know of it.

Q. You don't know whether it was used at the arbitration or no? A. No.

Q. This statement, Plaintiff's Exhibit at enquête A40, is not made up on the basis of the progress estimates, is it, Mr. Boswell? A. I have no doubt that the information supplied by the progress estimates was made use of in making out this statement.

Q. But it was not prepared upon the basis of the progress estimates? A. It was prepared on the basis of their contract.

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RECORD.

At 1 o'clock the Court adjourns till 2 P. M. At 2 P. M. Cross-examination of Mr. St. George Boswell is continued as follows :

*Q.* You have produced a report, Plaintiffs' Exhibit at enquête A14? *A.* No, I didn't produce it. They produce it: I only certified it.

*Q.* It was produced by you as being a copy of a report of which a press copy was contained in the books in your charge? *A.* This is a certified copy of a letter.

*Q.* Contained in the press copy-book? *A.* Yes, this is a copy from pages 409, 410, 411 and 412 of the letter-book.

*Q.* Have you any personal knowledge of the original having been sent? *A.* All I know is that the book in which the original of this was found was a press book used by Mr. Pilkington, the resident engineer, for copying all his correspondence connected with the Harbour Works.

Plaintiffs' Attorney: And it was signed by him? *A.* Yes, it is signed by him.

Defendants' Attorney: You are unable to state, I gather, whether or not this report was ever sent in? In any case, you have no personal knowledge of its ever having been sent in to the Commissioners? *A.* I don't know; but the original ought to be with the secretary treasurer.

*Re-examined subject to objections.*

*Q.* Mr. Boswell, would you look at the second column of this statement, Plaintiff's Exhibit at Enquête A 40, and see what it is headed? *A.* Yes, the second column is headed "Payments made".

*Q.* Is it not a fact that the payments therein entered are the payments made on the progress estimates? *A.* Yes, I fancy they are. These would be the payments made in the progress estimates.

*Q.* What is the total of payments by the progress estimates in the second column? *A.* These are not the payments: these are the total estimates.

*Q.* By the progress estimates? *A.* Yes, up to and including October 5th, 1881, is \$618,024.62; but these are not the payments, as this includes the ten per cent.

*Q.* So they are the total amounts of the value of work done? *A.* The value of work done up to that date.

*Q.* As per progress estimates? *A.* Certainly.

*Q.* Where were the items in the first column taken from? *A.* The items in the first column must have been taken from the bills of quantities and from the records of any extra work due to changes in the contract kept in the Harbour Engineer's office.

*Q.* Would you compare the figures in the first column, \$68,650.00, \$33,214.50, \$34,000.00, and \$48.00, and see whether they compare with the Blue Book, page 75? (Witness refers to Blue Book.) *A.* These are the same as the amounts shewn in the original contract.

*Q.* And consequently were taken from that? *A.* Taken from the Blue Book. As I say, that was made out partly from the original contract and partly from the records of changes made during the progress of the work.

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Q. So that the first column shews the work done? A. The first column is supposed to show the value of the work done. The second column, the value that has been paid for the work, the amount of money allowed for the work.

Q. As per progress estimates? A. Yes.

Q. And the third column is the total balance, the whole as appearing by this exhibit? A. Yes; it speaks for itself.

Q. Would you compare the amount of the first item of that account with the progress estimates 2 to 12 and also 13 and 14 and state whether these three amounts are or not the amount represented as \$39,980.08, being the first item of the account? A. Yes, the amount shewn in the progress estimates for the south tidal harbour cribs amounts to \$39,980.08.

Q. And that is the first item mentioned in this account. Plaintiff's Exhibit at Enquête A40? A. The first item in this account, Plaintiff's Exhibit at Enquête A40, is for the same item, the tidal harbour.

Q. The first column is for the different figures in the Blue Book and the extras mentioned? A. I say this is made up from the original contract, and from the details of extras due to the changes in the contract, which were kept in the harbour engineer's office.

Q. Mr. Boswell, the adding of one foot to the substructure of the wet dock by means of this elm capping decreased the height of the stone wall then by the one foot by which the height of the substructure was increased? A. No; because the wall was never intended, the stone wall was never intended to be more than 20 feet high, and it remained twenty feet high: but in the original contract it states that the wet dock cribs are to end at three feet above low water, that is, the tops of the cribs in the tidal harbour end at four feet above low water and then the balance of the work was continued in the fine concrete backing faced with timber.

Q. That was to be the original contract? A. That was the original work: then this timber facing and fine concreting was done away with, and a stone face was substituted. The stone was to begin on the same level, and there was a difference of one foot between the two, which had to be made up with the elm capping on top of the wet dock cribs.

Q. Wasn't the wall intended to be the same level from one end of the wall to the other? A. Certainly.

Q. And as first intended also? A. No. As first intended the wet dock cribs were a foot lower than the tidal harbour cribs.

Q. But the superstructure of the wet dock cribs, was that not? A. No. the coping level was the same, so that the superstructure would be twenty-one feet in one case and twenty feet in the other.

Q. Was there any increase in the total quantity of concrete by that change? A. It did not make a particle of difference.

Q. You have stated, Mr. Boswell, I believe, that the stone wall was not brought forward in the wet dock, but that the cribs set back. Did this change increase the quantity of concrete? A. No, the thickness of the wall was exactly the same. It was merely changed in position.

Q. Originally, you have stated, the concrete was to be 4 to 1 and 8 to 1 in the substructure. This was changed to 8 to 1, was it not? A. No. It was

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found that the 4 to 1 could not be kept separate from the 8 to 1. There was to be a facing of 4 to 1, and 8 to 1 behind, with a panel between. That was found to be impossible to do owing to the water; so the contractors said: We will enrich the 8 to 1 by putting in a quantity of cement equivalent to what we would have to use in the 4 to 1; so the actual concrete put in was not 8 to 1.

Q. Was this a saving? A. They were supposed to put in the extra cement and distribute it over the concrete. No.

Q. So it made no change? A. No.

Q. On the labor didn't it make a little saving? A. On the labor it would, if they had kept the two separate, but they could not do it, and the engineers accepted this modification. 10

Q. So there the result was the same as if they had followed the original contract? A. Yes.

Q. Just think for a moment and say was there not a great saving of labor in the putting in of that concrete? A. Of course there was a saving of labor. Not only a saving of labor, but it was almost practically an impossibility to do the work at all.

Q. As originally intended? A. Certainly. They would have had to make a crib work with shutters that were moveable as the concrete advanced, and of course the object was to save this work, which was almost impossible to do.

Q. And would there not have been a saving of labor in the putting in of the concrete? A. No, I don't think the putting in would have made very much difference. 20

Q. The putting in of the concrete altogether instead of keeping it separate, would there not be a saving of labor in that? A. No; the crib was a certain width and two feet of that crib had to be panelled off for the fine concrete; the shutters had to be put down to keep the fine concrete from the 8 to 1 concrete and that was a great labor.

Q. Would it not be a considerable saving of labor, instead of keeping the two concretes apart to put them all in together, would that not be a saving of labor? A. That is what I say, it was. They had to put this panel in between 30  
the two. There was no difference in the making of the concrete, because all the concrete was made four to one originally, and then they put in the large stone, which brought it up to 8 to 1; so that in the making of the concrete there was no difference.

*Re-cross-examined.*

Q. I understood you to say that the increase in the height of the substructure in the wet dock did not increase the quantity of concrete in the substructure. Is it not a fact that the cribs in the substructure were larger and covered a greater area than the base of the superstructure; in other words, that the concrete in the substructure extended further towards the north from the south face than it did in the superstructure? A. Yes, it did. Very little, though; there might be a difference of a foot or something like that—not much. The cribs were ten feet wide, and the wall was eight and a half, something like that. 40

Q. Could you tell from the scale on the plan, Plaintiff's Exhibit No. 23, what the width of the substructure and what the width of the superstructure

plan

were? A. Before I went into that I would like to see the original contract, the original timber face drawing to see whether this is there or not. I am only speaking from memory.

Q. Are you able to state from that the exact breadth of the substructure filled with concrete? A. Do you wish for the width of the concrete in the substructure? According to this scale it is under twelve feet, a little under twelve feet wide—that is, at the top of the substructure in the wet dock, as shewn on this plan, Plaintiff's Exhibit No. 23, contract drawing 22.

Q. Now, on the works the concrete in the substructure in the wet dock was  
10 carried to the level of the elm capping? A. No, it is not shewn so here.

Q. I ask you, as a matter of fact, was it not so on the works? A. I am not prepared to say it was at all. Here it is shewn not to be; it is shewn to be carried out to the back of the superstructural wall, and the presumption is it was built as shewn on the plan.

Q. In the original contract of which you have spoken, in which the timber face and fine concrete were provided, they shewed twenty-one feet in height from the superstructure to the substructure in the Tidal Basin? A. Yes, they shewed twenty-one feet in height for the superstructure.

Q. Which twenty-one feet were to have been filled with 4 to 1 and 8 to 1  
20 concrete with timber face? A. Yes.

Q. And when the substitution took place the elm capping was put in with concrete behind it, and the stone wall was built twenty feet only? A. That is all, of twenty feet only; so that the elm capping replaced a part of the timber face and some of the fine concrete.

Q. And behind the elm capping was 8 to 1 fine concrete? A. Yes.

Q. Did that not have the effect of making a difference in the quantity of concrete in the superstructure? A. It would only make the difference of the width between the timber face originally and the rock elm capping—perhaps about two or three inches. I forget how thick the original timber face was.

Q. It did make a difference in the quantity of four to one concrete, did it  
30 not? A. No, there was no four to one put in at all. There was no 4 to 1 concrete put in the superstructure at all.

Q. But there was a larger quantity of 8 to 1 than there would have been, or than was provided for in the original contract? A. More 4 to 1 concrete than provided for in the original contract.

Q. That is to say, there was a greater quantity of 8 to 1 than 4 to 1 so provided? A. No. I say that the 8 to 1 concrete actually put in amounted or ought to have amounted as the 8 to 1 and 4 to 1 in the original contract, with the exception of the difference between the width of the elm capping and the  
40 original timber face. The back of the wall was the same width, the same size in every way; the only difference was the difference between the area of the capping and of the original timber face.

Q. You were examined with respect to the progress estimates. In the first statement that was made by Mr. Morris, the Chief Engineer, from the statements prepared by the resident Engineer and the contractors, were the progress estimates used at all? A. Well, I don't really know how he made his statement.

Q. Were they made the basis at all of the statement which he ultimately made and handed in? A. They should have been, because there are details of

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changes and extra work that only appear in the progress estimates. That is the only record.

*Q.* Were they wanted in any way a part from that? *A.* Certainly not. If there had been no changes, they could say: here is your proportion of the bulk sum that you have completed.

*Q.* And except in so far as they were a record or the only record of the changes in, or additions to, the work, were they made use of at all? *A.* No, that was their only use.

*Q.* In the wall as actually built was not a part of the space which was to have been occupied by fine concrete in the original plans actually occupied by 8 to 1 concrete and partly by the stone of the masonry wall? *A.* No, the whole of the fine concrete not only a part but the whole of the fine concrete was replaced either by masonry or by 8 to 1 concrete, the great bulk of it by the masonry.

*Q.* Part of the space to be occupied by fine concrete was filled with 8 to 1 concrete and part by the masonry wall? *A.* Certainly: but that is not your first question.

*Q.* Can you state what the relative proportion occupied by the timber and the fine concrete as compared with the relative proportion occupied by the stone and the coarse concrete? *A.* No, I could not. 20

*Q.* Did you ever figure it out? *A.* No, I never have.

I, the undersigned, do hereby certify that the foregoing deposition is a true and correct transcription of my shorthand notes.

M. J. MORRISON,  
Stenographer.

No. 53.  
Plaintiff's  
Evidence  
Deposition  
of H.  
Verret,  
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1895.

AMBROISE HECTOR VERRET, of Quebec, in the District of Quebec, Provincial Auditor, aged years, being duly sworn upon the Holy Evangelists, doth depose and say: 30

I do know the parties in this cause; I am not related, allied or of kin to, nor in the service or domestic of either of them, or interested in the event of this suit.

*Q.* You were formerly secretary treasurer of the Quebec Harbour Commissioners? *A.* Yes.

*Q.* Would you look at Plaintiffs' Exhibit No. 11, produced in this case, and state whether the same was made out by you and signed by you in your quality as secretary treasurer of the Quebec Harbour Commissioners? (Exhibit is handed to witness.) *A.* Yes, that is correct. That is my signature, and this document was made under my supervision. 40

*Q.* Can you state whether the contents of that paper are true? *A.* As I signed it, it must be true. I am sure at the time it must have been controlled by myself.

*Q.* This is a list of the payments of moneys to the contractors Peters, Moore & Wright, under the contract of second May, 1877, for the building of the Harbour Works, Louise Basin? *A.* Yes.

*Q.* There are a few items written there as advance? *A.* Yes.

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Q. With the exception of these advances, can you state whether the other amounts mentioned therein are moneys paid to the parties on account of work done under that contract? A. No doubt about that, sir.

Q. The first column of figures is the list of money paid to whom, please? A. Well, you know, the money was always paid to Peters, Moore & Wright.

Q. The moneys so paid were divided, were they not, by the certificates of payment assigning a portion to each of the contractors? A. There was always two cheques made on every payment, but they were both made to the order of Messrs. Peters, Moore & Wright in payment of the certificate.

10 Q. That is to say, Peters, Moore & Wright were really one party *quoad* the Commissioners and were treated as such as regards all payments? A. Yes, sir.

Q. Would you look at these certificates of payment and say whether you find upon them a statement of the amount due divided between the contractors, so much for Mr. Peters and so much for Messrs. Moore & Wright? (Plaintiff's Exhibit at Enquête A 1, is handed to witness). A. It is on all the certificates. It was always the same.

Q. The legal payment was to Peters, Moore & Wright? A. The legal payment was to Peters, Moore & Wright.

20 Q. But each of them contained the division between the contractors themselves? A. Yes.

Q. And the cheques were made separately in order that Peters might get his proportion and Moore & Wright might get their proportion? A. I suppose it is so. The Commissioners have always ignored the arrangement between them, if there was any, as I am sure there was; but the cheques were always made in the name of Peters, Moore & Wright, even when the certificate was divided, as it is stated here.

Q. What was the object of making two cheques to make the payments instead of one cheque? A. I am satisfied that the object was to pay to Peters the amount that he was entitled to receive, and to Moore & Wright—that they were treated on the same footing.

30 Q. And the amount of each cheque was for the amount mentioned in the division at the end of each of the certificates of payment? A. Always, sir.

Q. Do you recollect, Mr. Verret, in your quality of secretary treasurer of the Quebec Harbour Commissioners, having written a letter to Kinnipple & Morris asking them for the details of their final certificate of fifty-two thousand and eleven dollars (\$52,011)? A. Well, sir, I believe I did. It is a long time that I have left the Commission myself, and my memory may not be very correct; but I am under the impression that I did.

Q. Do you recollect having received that letter, Plaintiff's Exhibit at Enquête A10? A. I received that letter.

40 Q. You received that letter in your quality as Secretary-Treasurer? A. I did, yes sir.

*Cross-Examined.*

Q. Mr. Verret, would you be good enough to refer to certificate 25 and state whether it is not a fact that the certificate does not show any division of the amount or specifically an appropriation in favor of either Mr. Peters on the one

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continued—

hand or Moore & Wright on the other of the amount payable under it? *A.* Yes, that is so. Certificate 25 forms part of Plaintiff's Exhibit at Enquête A1.

*Q.* Mr. Verret, certificate No. 26 of the fourteenth July, 1880, does not shew, I believe, for what purpose even the money was payable, but just generally that it was payable to Peters, Moore & Wright? There are no remarks at all?

*A.* No remarks at all, sir.

*Q.* Certificate 33, of date the twenty-third November, 1880, does not either shew the division in favor of either party, does it? *A.* There is a division, but the parties to receive the money are not indicated.

*Q.* Certificate No. 34, of the third August, 1881, does not either indicate to whom the money is to be paid beyond generally to Peters, Moore & Wright? 10

*A.* That is so.

*Q.* And it is equally so of certificates 35, of the third August, 1881, and certificate 36, of the fifth October, 1881? *A.* It is so.

*Q.* With respect to Plaintiff's Exhibit 11, I presume that when you say that it is a correct statement you refer to the ink figures and not to any pencil figures that may be hereon? *A.* The pencil figures, I don't know who made them; but they were not on the document when I delivered the document and signed it.

*Q.* Now, there are a certain sums on this exhibit, towards the end, which are not charged as being payable in respect, on the one hand, of the dredging and concrete, or, on the other hand, of crib work, iron work, masonry etc.? *A.* 20 Yes.

*Q.* These are two items marked for advances of ten and twenty thousand dollars respectively, the payment made to Beaucage & Chateauvert, \$6,577: a payment made to Mr. Bossé, \$1,200; and a payment to the Union Bank of \$20,000? *A.* Yes, sir.

*Q.* There is also marked as being charged against Peters, Moore & Wright jointly a sum of one thousand seven hundred and ninety-nine dollars and sixty-six cents (\$1799.66)? *A.* Yes.

*Q.* This is the share which the Harbour Commissioners charged to them for legal and notarial expenses? *A.* Yes, sir, under the contract. 30

*Q.* Now, Mr. Verret, all these payments which were made, were made upon progress estimates issued under clause 59 of the contract, which provided that such progress estimates "shall not be allowed to constitute any legal evidence as to the facts therein stated or to be taken as statements of the rate of progress of the works at the time they were made but shall only be considered and taken as approximate estimates and guides to the Commissioners or their engineers for regulating the amount of any advances"? *A.* Exactly so.

*Q.* Now, is it not a fact that when the Commissioners came to settle with Peters, Moore & Wright upon the contract these progress estimates were entirely disregarded, except in so far as they were evidence of so much money having 40 been paid to the contractors? *A.* That is all. That is what I remember.

*Q.* The whole contract was gone into by the engineers from the beginning to the end at the final settlement, and they did not take into account the progress estimates? Objected to: Objection reserved by the Court. *A.* That is a fact, according to my opinion—what I remember.

*Q.* What you remember that occurred at the time? *A.* Yes, that occurred at the time.

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Plaintiffs' Attorney: At what time? A. At the time I was there,—during all the progress of the work.

Defendants' Attorney: You were the secretary treasurer of the Harbour Commissioners, Mr. Verret, from the time of the beginning of the works in 1877, during the whole of the time the works progressed to their termination at the end of 1881, and at the time the final certificate was given by the chief engineers in February, 1886? A. Yes, sir.

Q. And you continued for some time after that to be? A. Until 1890.

Q. After the termination of the works, Mr. Verret, in 1881, there were lengthy negotiations between Peters, Moore & Wright, on the one hand, and the Commissioners on the other, for the settlement of the contract? A. There was, yes, sir.

Q. There was also an arbitration before the Dominion Board of Arbitrators with respect to the whole contract? A. Yes, sir.

Q. And this arbitration was practically valueless: the Commissioners refused to be bound by it, and I think the contractors did also. Objected to: Objection reserved by the Court. A. Yes, sir.

Q. During these negotiations of which you have spoken for the settlement and during the arbitration did the engineers in chief take into consideration the progress estimates otherwise than as evidence of payments that were made upon them? Objected to: Objection reserved by the Court. A. I don't know, sir.

Q. In their dealings with the Harbour Commissioners did the chief engineers take into consideration or base their estimate of the amount coming to the contractors in any way upon the progress estimates? Objected to. A. I cannot tell.

Q. Did the engineers ever obtain from you copies of these certificates or of the payments that had been made? A. Of the certificates that were issued?

Q. Yes. A. There is no doubt if they asked for them they had them. I could not have refused; but I don't remember of giving them any copies, but I am sure that I would not refuse them if they did ask for them.

Q. I believe, as a matter of fact, that you did send a statement of the amounts paid to the contractors, Peters, Moore & Wright, to the engineers? A. I believe I did.

Q. For the purposes of the final certificate? A. Yes, sir, I did. I remember now having sent that.

Q. These payments were simply the block sum, I think? A. I believe so, yes, sir.

*Re-examined.*

Q. Mr. Verret, I call your attention to these certificates of payment referred to by Mr. Stuart, Nos. 25, 34 and 36. Is it not a fact that there is a note at the bottom of each of these certificates showing that the total amount to be paid thereunder was for dredging and concreting, which was the work of Moore & Wright, the Defendants? A. That is correct, sir. Of these certificates the amounts pertained to Moore & Wright, although it was paid to Peters, Moore & Wright by the Commissioners.

Q. Would you also look at certificate No. 35 and state for what work that appears to have been paid. A. That certificate, according to what I remember, must have been paid Peters himself, although, as I said before, always to Peters, Moore & Wright.

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continued—

Q. The cheques were always drawn to Peters, Moore & Wright, treating the contractors as one party to the contract? A. As one party, yes, sir.

Q. Would you look, please, at certificate No. 33, and see whether there is not there a division awarding so much to each party? (Witness refers to certificate No. 33.) A. Yes, sir; the certificate is for thirty-three thousand dollars, a block sum, and there is, according to the remarks there, there was \$6,318.75 to Peters and the balance to Moore & Wright.

Q. Look at certificate No. 1, if you please, and state whether the notes there do not also shew what money is paid. (Witness refers to certificate.) A. This is very plain. Mr. Peters' money is there. Mr. Peters is entitled to receive the sum of twelve thousand three hundred dollars and nineteen cents and Moore & Wright eight thousand four hundred and sixty-six dollars and forty-eight cents, total \$20,766.67, paid that day under that certificate to Peters, Moore & Wright.

A. And these payments on these certificates appear by Plaintiff's Exhibit at Enquête No. 11, upon which you have already given evidence? A. That is correct, yes, sir.

I, the undersigned, do hereby certify that the foregoing deposition is a true and correct transcription of my shorthand notes.

M. J. MORRISON,  
Stenographer.

20

No. 54  
Admission  
by Defen-  
dants' with  
respect to  
letter of  
9th Dec.,  
1895.

The Defendants admit that the letter produced and filed by Plaintiffs as exhibit at Enquête A 21, being a letter of date the 4th February, 1886, signed Kinipple & Morris and addressed to A.-H. Verret, as also the letter dated 18th March, 1887, signed A.-H. Verret and addressed to Messrs. Kinipple & Morris, and which is filed as Plaintiffs' Exhibit at Enquête A 22, are what they purport to be.

QUEBEC, 9th December, 1895.

CARON, PENTLAND & STUART,  
Attorneys for Defendants.

30

No. 55  
Plaintiff's  
Evidence  
Deposition  
of Edward  
Moore  
9th Dec.  
1895.

EDWARD MOORE, of Déering, Maine, Engineer and Contractor, aged 57 years, being duly sworn upon the Holy Evangelists, doth depose and say: I do know the parties in this cause.

Q. Would you look at exhibit No. 31 of Plaintiff in this case, and state whether the same is an original, or whether you have the original? (Witness takes communication of exhibit). A. I am unable to state.

Q. The handwriting is that of . . . ? A. The handwriting, I should say, is that of the late J. Vincent Brown, the Contractors' engineer.

Q. Is he dead now? A. He is now dead.

Q. He was the Contractors's engineer? A. He was the contractors' engineer and agent.

Q. The signatures, are those of Brown himself? A. The signatures I should say, was in the handwriting of the late J. Vincent Brown. The lead penciling is not in his hand.

Q. Would you look at Plaintiffs' Exhibit No. 21 and state whether you have the original of that. (Exhibit is shown to witness). A. I have not the original of that paper. This is a copy made of a statement that was prepared at the close of the work by some one whether our engineer or the Contractors', I am unable to state.

Q. In whose handwriting is this paper, please? A. It is in the handwriting of Mr. A. H. Jacobs, who was at the time the clerk for Messrs. Moore & Wright.

Q. He was confidential clerk, wasn't he, Col. Moore? A. Well, no more so than any clerk would be.

10 Q. No more than any clerk would be? A. That held his position.

Q. From his position, was he not? A. He was the chief clerk.

Q. And he had your confidence? A. Certainly.

Q. The original of this, you say, was made by J. Vincent Brown, or somebody else. Well, would this somebody else be yourself? A. No, sir, it might be Mr. Peters. It might be some one of ourselves.

Q. Would you look at it closely, and say whether the same is not really your work? A. It is not our work all together. It is in part the work which came under Mr. Peters, and in part. . . .

20 Q. I do not refer to the items of work contained in that, I want to know who composed the original of that document, whether it was not yourself? A. I am unable to state. It was not myself, because it is largely the timber work which I had no part in.

Q. With regard to the items of work in which you had part, did you give those items to Brown, or to Jacobs? A. Not always, the engineer was the party that was the most familiar with the details of the work.

Q. In fact, you relied upon him, I suppose? A. Almost entirely.

Q. That is J. Vincent Brown, who is now dead. A. J. Vincent Brown, and our foreman engineer Mr. J. B. Navarre and Mr. D. E. Woodford for a short time.

Q. You therefore had confidence in Brown, as you relied upon him? A. We had confidence in him, yes sir, or he would not have been in our employ.

30 Q. By the bye, hadn't Mr. Jacobs the right to use your signature? He was chief clerk, and had he not the right to use your signature for matters connected with those works? A. Do you mean my signature individually?

Q. I mean the signature of Moore & Wright? A. He had power of attorney to use the signature of Augustus R. Wright, my partner, and myself, for certain matters.

Q. Which included the matters concerning these Harbour Works? A. It did not, it did in reference to all money matters.

Q. Consequently matters connected with this contract, as well as other money matters? A. I do not understand your question.

40 Q. You say that Jacobs had a right to use the signature of yourself and of Augustus R. Wright, your partner, concerning all money matters, is that what you say? A. All money matters connected with our firm—disbursements and payments of bills, drawing money from the bank.

Q. Would you look at Plaintiffs' Exhibit No. 22 and state is that not in the handwriting of Mr. Jacobs, of whom you have spoken just now? A. That is in the handwriting of Mr. Jacobs.

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continued—

Q. This Exhibit No. 22 appears to be a copy of a statement signed by J. Vincent Brown, contractors' engineer, does'nt it? A. It does, it has the appearance, in fact, it is marked copy.

Q. And at the foot it would appear to have been signed by J. V. Brown. Evidently it is copied from some statement which Mr. Brown has made? A. By Mr. Jacobs.

Q. Would you produce the estimates made from time to time by Mr. J. V. Brown? A. The staten ents of accounts?

Q. No, the estimates. made as the work proceeded,—the contractors' estimates? A. You mean the statements that were prepared by Mr. Brown, and furnished to the engineers to enable us to receive payments upon the work. 10

Q. Yes, I mean that. A. I shall be unable to produce these, I may have some few scattered ones, but at the close of the work they were largely left in the hands of Mr. Brown.

Q. I think I have the original of these statements, would you please look at them? (A number of papers are handed to the witness, of which he takes communication).

Said papers are filed as Plaintiff's Exhibit at Enquête A 23.

Q. These estimates are in the handwriting, are they not, of the late J. Vincent Brown, and signed by him, are they not? A. These statements are in the handwriting of J. Vincent Brown, they are not estimates—the estimates we received from the engineer. These are simply statements that were drawn up for the purpose of arriving at an estimate or pay-bill from the engineers, and, in many cases, many instances, these were varied somewhat.

Q. That is to say that when the statements were sent in to obtain the engineer's estimates they were sometimes cut down? A. He cut them down so that they do not show the estimates we received at that date.

Q. The statements of which you have just spoken relate to the work done by Moore & Wright exclusively, I think? A. Having examined Plaintiffs' Exhibit at Enquête A 23 I should say that all the items in that statement belong to the portion of the work which has been done by Moore & Wright. 30

Q. Would you look at Plaintiffs' Exhibit at Enquête A 24 now produced and filed, and state whether the same are not the estimates also made by the late J. Vincent Brown, being for the work of Simon Peters in connection with the works in question? A. Plaintiffs' Exhibit at Enquête A 24 contains statements made up in the handwriting of Mr. Brown, and statements made by some parties who I am not familiar with the handwriting of,—covering certain portions of timber work, and figures and other matters which I am not familiar with.

Q. Would you please indicate those that are made, not by Brown? A. The slip being the first page of that Exhibit; the lead pencil figuring on the first page and on the second page, and the slip between the fifth and sixth page in writing and numerals; lead penciling and memorandum on the eighth page, lead penciling on the ninth, lead penciling on the tenth, lead penciling on the thirteenth, and lead penciling on the fourteenth. 40

Q. Now, with the exception of those that you have mentioned, the rest is in the handwriting of the late Mr. Brown? A. With the exception of those that I have mentioned, the rest is in the handwriting of the late Mr. Brown.

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Q. And, they appear to be statements similar to the statements produced Plaintiff's Exhibit at Enquete A23? A. They do.

Q. The list you have referred to attached to the first page, it appears to be merely a list of payments, does it not? A. I could not say what they represent.

Q. It is headed, is it not, List of payments made Simon Peters? A. It is headed, quotation marks, List of payments made Simon Peters.

Q. But, it appears to be a list of the certificates given? A. It appears to be list of certificates; it is numbered from one to thirty-three, shewing a total amount of ninety-five thousand eight hundred and fifty-three dollars and ninety-  
10 three cents, (\$95,853.93).

Q. With the exception of the lead penciling, then, on these papers, the only writing in ink that does not appear to be in the handwriting of Mr. Brown is, as you have stated, between the fifth and sixth pages. You do not know that handwriting, is that not the handwriting of Mr. Navarre? A. I am unable to say as I am not familiar enough with his handwriting, and it has been a long time since I have had anything to do with it, but I am rather under the impression that is in the handwriting of Mr. Navarre, though I am not willing to swear to it.

Q. And, these statements relate to the work in question? A. These statements evidently relate to the work in question.

20 Q. Would you look at Plaintiff's Exhibit No. 33, and state whether it is not a fact that the letters and telegrams thereto attached, and purporting to be signed by you, were signed by you? (Witness takes communication of Exhibits.) A. Exhibit 33 contains a telegram which, I have no doubt, was sent and signed by myself and my partner Mr. Wright: contains three letters that were signed by me.

Q. The letters are in your handwriting? A. The letters are in my handwriting. The other documents are copies of letters which I should have to read over and examine carefully before I could state what they were.

30 Q. Please look at the letter dated April 3rd, 1879, forming part of Exhibit No. 33, and state whether the same is not a letter written to the contractors Peters, Moore & Wright by the resident engineer? A. The letter purports to be a letter written by the resident engineer, Mr. Woodford Pilkington, but it is not a true copy of the letter that was furnished to the contractors of the time the contract was taken.

Q. Isn't that the original signature of Woodford Pilkington, the resident engineer? A. That may be.

Q. I ask you whether it is or not, to the best of your knowledge and belief? A. It has the appearance of the signature of Woodford Pilkington.

40 Q. You know the signature of Woodford Pilkington pretty well? A. I have seen it a great many times.

Q. Have you any reason to suppose that is not his signature attached to that letter? A. Oh no-

Q. You believe it is his signature? A. I believe it is his signature.

Q. You have no doubt upon that? A. I have no doubt.

Q. Would you look also at the letter dated October 13th, 1880, and forming part of Plaintiffs' Exhibit No. 33, and state whether the same is not a copy of a letter written to Peters, Moore & Wright by the resident engineer and which

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copy was furnished from your office to the late Mr. Peters? *A.* I am unable to state whether that is a correct copy of the letter referred to, but a similar letter was sent to the contractors. I will look over and see if I have not the original.

*Q.* Is not that copy, however, one that has been furnished from your office to Mr. Peters? *A.* That I am unable to say, but it has the appearance of being in the handwriting of one of our clerks that was in the office at that time, but as to its correctness I am unable to state from memory.

*Q.* Is it not a fact that when you received letters from the resident engineer that you retained the original, and sent Mr. Peters a copy of the letter received?

*A.* No, sir, it is not.

*Q.* That was not the case? *A.* That was not the case. Generally all letters referring to the timber and iron work, the originals were taken by Mr. Peters, and all letters referring to the dredging and concrete the originals were retained by Moore & Wright, and copies furnished vice-versa.

*Q.* The clerk who wrote that is Mr. Glackmeyer. Is he living or dead? *A.* I think that is in the handwriting of Alfred Glackmeyer, and I think he is dead, I am not certain.

*Q.* Would you look at the letter of the 14th November, 1881 being part of Plaintiffs' exhibit No. 33, and state whether or not that letter is a copy of a letter that was sent to the contractors, as appears by the same? (Witness takes communication of letter.) *A.* This appears to be a copy of a letter purporting to have been sent to the contractors by Woodford Pilkington. This letter is also in the handwriting of Mr. Glackmeyer, a former clerk of ours, but I am unable to state as to its correctness.

*Q.* Do you recollect, Colonel Moore, having received a letter of which this is a press copy, of the 20th October, 1881, forming part of that Exhibit No. 33? *A.* This also purports to be a letter from Woodford Pilkington, the resident engineer, to Messrs. Peters, Moore & Wright, a copy of a letter, but I am unable to state whether we received the original of that, or not.

*Q.* Can't you recollect whether or not you received the original of that? *A.* That is asking rather too much.

*Q.* You cannot recollect that? *A.* No, to go back to a mass of letters I will look the matter up. If I have the original, I will produce it.

*Q.* Look at Plaintiff's Exhibit No. 34, and say whether it is not a letter sent by the resident engineer to the contractors? (Witness takes communication of letter.) *A.* I should say that this is an original letter from Woodford Pilkington, the resident engineer, to the contractors, Messrs. Peters, Moore & Wright.

*Q.* Look at Plaintiff's Exhibit No. 35, and state whether the same is not an original letter from the engineers in chief to the contractors? (Witness takes communication of Exhibit.) *A.* Exhibit No. 35 I have no doubt is an original letter from Kinipple & Morris to the contractors, Peters, Moore & Wright.

*Q.* Is not Plaintiff's Exhibit No. 36 an original from the resident engineer to the contractors? (Witness takes communication of Exhibit.) *A.* I have no doubt that Exhibit No. 36 is an original letter from Woodford Pilkington the resident engineer of the works to Peters, Moore & Wright.

*Q.* Is not Plaintiff's Exhibit No. 37 an original letter written by your firm of Moore & Wright to the late Mr. Peters? (Witness takes communication of

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Exhibit No. 37.) A. I have no doubt that Exhibit No. 37 is a letter from our office, in the handwriting of Mr. Glackmeyer, signed by our firm, and sent to Mr. Peters. RECORD.

Q. The Exhibit No. 38 is also an original letter sent by the firm of Moore & Wright to the late Mr. Peters? A. Exhibit No. 38 is a letter from our office to the late Mr. Peters, written by our clerk, Mr. Jacobs, signed by Moore & Wright, by him, no doubt with our authority.

Q. Would you look at Plaintiff's Exhibit No. 39, attached to the Commission, and state whether the same is not a letter written by yourself, as it pur-  
10 ports to be? A. Exhibit 39 is a letter from me to the late Simon Peters, and is in my handwriting.

Q. Would you look at the next letter, Plaintiff's Exhibit No. 40, attached to the Commission, and state whether it is not also an original letter of yours? A. Plaintiff's Exhibit 40 is a letter written by me to the late Mr. Peters, and is signed by me.

Q. Look at the letter of 5th January, 1887, being part of Plaintiff's Exhibit No. 41, and state whether the said letter was not written by the Engineer-in-Chief, Mr. Kinipple, to yourself. (Witness takes communication of said letter.) A. Yes.

20 Q. Look at the three plans, Plaintiff's Exhibits 23, 24 and 25, and state whether the same are not three of the working plans of the works in question? A. They are not three of the working plans. They represent plans which were made later. Exhibit 23 is one of the contract plans made by the Engineers at the time of the substitution of the timber face and fine concrete for the stone wall, and coarse concrete backing. That plan, under orders of July, 1879, was changed, and alterations made in the works. Exhibit 25 is a copy of a plan made by the resident Engineer, and sent to the contractors. Exhibit No. 24 is a copy of that plan containing certain memoranda upon it, placed there by the contractors' engineer and Mr. Boswell, now Chief Engineer of the Harbour Works.

30 Q. Exhibit 23, which is called "Contract drawing No. 22" on its face. Would you state again, please, what that shows? A. Exhibit 23 is the contract drawing No. 22, which was furnished by the Engineers for the building of a stone or masonry face to the wall, in lieu of the timber face and fine concrete, and coarse concrete.

Q. Do you remember, Colonel Moore, how many cubic feet the wall shows of measurement, the stone wall, by the plans? A. I can give you that in cubic yards, or I will compute it, and reduce it to cubic feet, if you wish.

Q. If you please, give us the feet? A. At the close of the work, we made the contents of the masonry face to the walls 4,258 cubic yards, or 105,695 cubic feet of masonry.

40 Q. Who made that calculation? A. I made the calculation.

Q. You did yourself? A. I did from the plans, the engineer made it, and others made it.

Q. Do you know what the engineer's calculation was, the engineer of the Harbour Works, the resident engineer, Mr. Pilkington? A. I don't know what his calculation was. I know what the calculation of his assistant, Mr. Boswell, was.

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Q. What was that? A. 4285. I find, in making my figures, there was an error in giving the quantities as I computed them differently from the 4258. The total contents of the masonry face of the wall was 4258 cubic yards, and that put into feet makes 114,966.

Q. What was the total length of the wall? A. The total length of the wall, as I remember it, was 1240 feet in the tidal basin, 2310 feet in the wet dock. I will not be sure if it is 2200 or 2300. I am unable to answer without referring to further documents as to the exact length of the wall.

Q. In reality, on the works, was not the wall longer than that? Are you taking now the measurement on the plan, or, are you giving the actual measurement? A. I am giving the measurement on the contract plans. That was your question, as I understood it first.

Q. On the works themselves, was the wall not longer than that? A. Well, it may have been a little longer. I am not prepared to say just what the exact measurement of the wall was. There was a difference in the length of the wall from the contract drawings on the two docks. The tidal basin wall exceeded the length of the contract drawings, if I remember correctly, and the wet dock basin wall was a little less than the drawings.

Q. You cannot recollect how much more, or how much less these drawings were? A. No, I cannot tell. It was a fraction.

Q. Do you know the height of the wall? Q. The height of the wall was 20 feet, including coping.

Q. Would you look at the statement, Plaintiff's Exhibit at Enquête A 25, and state whether the same is not a statement made in the handwriting of Mr. Jacobs, copied from one made by Mr. Brown, engineer on the works? A. Exhibit A 25 is a press copy in the handwriting of our clerk, Mr. A. H. Jacobs.

Q. Would you look at these three letters, and say whether they were written and signed by you? (Letters are handed to witness). A. These three letters are all in my handwriting, and signed by me, and mailed to the late Mr. Peters. The said letters are filed as Plaintiff's Exhibits at Enquête A 26, A 27 and A 28.

Q. Now, you have been asked to produce the correspondence in relation to your Exhibit 1 A attached to the Commission in this case. Would you please do so? A. I now produce and file it as Plaintiffs's Exhibits at Enquête A 29, A 30 and A 31. That is all the correspondence in 1893 that related to that certificate, or any other, but there was correspondence from the time the contract closed up to the time that we received the certificates, most of which was placed in the case of Peters, Moore & Wright against the Quebec Harbour Commissioners.

Q. Is all the correspondence relating to Exhibit 1 A of yours produced in this case? A. It is all the correspondence that related to Exhibit 1 A, but there was other correspondence, as I have already stated, in reference to the details of the final certificate of fifty-two thousand odd dollars, which was passing between the contractors and the engineers from the time we made our first application.

Q. You say that these three letters are all that relate to exhibit 1 A. There was no other correspondence relating to exhibit 1 A but these three letters? A. I repeat my answer.

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p. 565-6 l. 35 }  
p. 566 l. 15 }  
p. 237-40 l. 30 }  
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Q. Would you look at your exhibit 1 A annexed to the Commission in this cause. (Witness takes communication of exhibit 1 A.) You have taken communication of that exhibit, have you not? A. In a general way. I have not examined all the details.

Q. Where was that exhibit prepared and written out? A. The details of that certificate?

Q. Where was that written, that paper? Where was it prepared is the question that is asked you? A. Allow me to answer the question in my own way, and I will answer your question at the same time.

10 Q. You must answer the question asked you. A. I will answer it. The details of that certificate were prepared at Quebec, and at Portland, during the time from the close of the contract, in 1881, until the summer of 1885. That document is the result of these details and was prepared at Portland by myself and our engineer, the late Mr. Brown. It was made up by details furnished by Mr. Brown, Mr. Woodford Pilkington, the resident engineer, and put in shape and sent to London in accordance with the terms of the contract.

Q. Now, you say that this document 1 A was made in Portland, Maine, in the United States of America? A. I would state that exhibit 1 A was made in Portland, and copied from other data made at Quebec, and in London.

20 Q. Was this made in your office at Portland? A. It emanated from our office in Portland.

Q. Was it then sent to Mr. Kinipple in London, England, for his signature? A. It was.

Q. Did you read that document before it went to London? A. I probably did.

Q. Did you examine it to see the details in that document before it was sent to Mr. Kinipple for signature? A. I probably did.

Q. You are not quite sure that you did or not? A. I am quite sure.

30 Q. Then you did examine the details of this before it was sent to Kinipple for signature? A. I think I did.

Q. Did you not? Can you say whether you did so? (Witness refers to document.) A. I am not fully sure whether this is the exact document that I sent as I have no copy of it, except the copy that I have taken from this since its return, and a copy of it was in the hands of the late Mr. Brown, but I examined the document that was sent over to London, and I think that is an exact copy of it.

40 Q. Is not this the document that was returned to you from London with the signature of.... A. It is the document that was returned, but as to the exact document, I am not willing to swear to it, Mr. Gibsone, because I have some doubts, of its being the exact document. I think it is a copy made up.

Q. You do not think that was the document you sent to London? A. I would not swear to it, because the paper of it is different from what we used in our office, and I would not swear it is the same document after this length of time, but I think it is a copy very similar to the one I sent.

Q. Do you credit the 20th answer given by Mr. Kinipple on the Commission to England, when he says: "It is true that the details of Defendants' Exhibit 1A were sent to me by Col. Moore, or one of the Defendants, in or about the

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month of April or May 1893, and that I signed the same Kinipple & Jeffrey, and subsequently sent the same to Col. Moore, or one of the Defendants, without the knowledge or consent of the Plaintiff. Before signing the said copy, Exhibit 1A, I satisfied myself that the details of pages 1, 2, 3 of Exhibit 1A correctly recited that \$529,296.31 inserted at the top of Defendants' Exhibit No. 1, the details of pages 1, 2 and 3 of Exhibit 1A were the figures of the original works contract and further I satisfied myself that the remainder of the Exhibit 1A was a true copy of my firm's said certificate, being the Defendants' Exhibit No. 1."

A. I credit his answer.

Q. Then, are you now satisfied that the document, Exhibit 1A, was the 10 document you sent to Mr. Kinipple for signature? A. I repeat my former answer with reference to the certificate.

Q. You repeat your former answer. You are not sure then then, yet, whether that was the document you sent to London? A. I am not sure, because, even in his testimony, he says the details.

Q. You are not sure yet that was the document you sent to London? A. No, sir, I am not, and I will not be willing to swear to it.

Q. When you sent that document to London that you did send, you wrote, I suppose, at the same time? A. I did, and the copy of letter is enclosed.

Q. Which letter is that, please? Is Plaintiff's Exhibit at Enquête A29 a 20 copy of the letter you sent enclosing 1A, to Mr. Kinipple for signature? A. No, sir.

Q. Where is the letter that you wrote to Mr. Kinipple enclosing that document to London? A. It must be in the possession of Mr. Kinipple.

Q. Have you any copy of that letter? A. I am not sure whether I have, but I think I have.

Q. You think you have? A. I think I have a copy. I should have a copy.

Q. You are sure to have a copy? A. No, I am not sure to have a copy, because, oftentimes I did not keep copy of my letters, and then again, copies have got misplaced. 30

Q. So you are not sure whether you have it or not? A. No, I am not sure.

Q. Are you willing to look for it? A. Certainly.

Q. Tell me, how is it you stated just now that these letters were the whole of the correspondence, that there was no other correspondence in reference to that document but these three letters? A. I said in 1893, in regard to your request.

Q. Then, previous to 1893, this document had been sent to Mr. Kinipple. A. Yes.

Q. When was it sent to him, please? A. I am unable to state the exact dates, because we sent a number of different statements from time to time, but 40 it was between 1885, I think was the year we first commenced sending statements, and asking for our final certificate up to the time which he returned the latter document 1 A, which is the last document that we received from him in reference to that.

Q. So that the document 1 A, or the original of it was sent to Mr. Kinipple for his signature some time or another between 1885 and 1893, is that it? A. Yes, sir, with the other statements.

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Q. And you cannot specify any year nearer than that time? A. Not at present. By looking over correspondence, if I have any copies of the correspondence.

Q. Can you tell me the date of the letter which immediately preceded that of the 22nd April 1893, having any reference to this exhibit 1 A? A. No, sir. Some weeks. I think months, I couldn't state now.

Q. Can you see by looking at your letter book? A. I do not copy my letters in my letter book.

Q. Don't you have a letter book? A. I have a letter book on firm's business, but not in reference to this matter. I draft all of my letters, and file the copy.

Q. Was this because it was not sufficiently important? A. No. In all my own matters—outside of our firm, I would state for your information that this portion of the work of Moore & Wright was taken from the firm while we were upon the works, and became my individual property.

Q. So that you are individually the only person interested, and for that reason, when you wrote letters, you did not copy them? A. I did not copy them in our firm's books, and I have no private one.

Q. Now, I notice that in this letter of the 22nd April, 1893, you sign it Peters, Moore & Wright. Had you any authority from Mr. Peters to write such a letter as that? A. I had the same authority that Mr. Peters used in connection with the works on all matters connected with the contract, of signing the firm's name of Peters, Moore & Wright by Simon Peters.

Q. All the work had been done by the fall of 1881, had it not? A. Certainly.

Q. This letter is dated in 1893? A. Yes.

Q. And there was no partnership existing between yourself and Mr. Peters? A. No, sir, there was not.

Q. And you considered then, from the year 1881, when the works were closed, up to the year 1893, that you had the right to sign Mr. Peters' name? A. I did so by his permission.

Q. You say now by his permission? A. Yes.

Q. Do you mean to state Col. Moore, under oath, now, that Mr. Peters knew anything of that letter whatever, or that he gave any permission to you to write it, whatever? A. I will not say that Mr. Peters gave me permission to write that particular letter, but all correspondence and all statements sent by the contractors to the engineers were sent through me.

Q. And you did not consult Mr. Peters about this letter of the 22nd April, 1893, Plaintiff's Exhibit at Enquête A29? A. I did not.

Q. So you wrote this letter of your own accord? A. I did, sir.

Q. Now, as regards this Exhibit No. 1A, do you mean to convey to us the impression that the late Vincent Brown would, contrary to your wish or desire, have made this statement Exhibit No. 1A? A. I don't think he would.

Q. You remark that at the head of this Exhibit, it is dated 27th January, 1886, do you? A. Yes, sir.

Q. That is the same date, is it not, that was at the head of your Exhibit No. 1? A. It is of the same date, and it is very largely the same.

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Q. Did you not have that dated at the same date as the other Exhibit of Defendants No. 1 for the purpose of leading to the conclusion that it had been written at the same time? A. No, sir, I did not.

Q. Why did you date it 27th January, 1886? A. Because all, excepting the first two pages, is a copy of the document, Defendants' Exhibit No. 1 annexed to the Commission.

Q. And, did you think, therefore, that you were justified in adding these two pages, and putting the date of the 27th January, 1886? Did you think that would justify you in putting that date at the head of that certificate?

A. Because that is the date of the final certificate.

Q. Well, that was to lead to the conclusion then that this document was made on that day? A. Not at all, No, sir.

Q. Why did you put a date at all then if you did not want it to be known what date it bore? Why did you put a date? What was the object of that date? A. Object: Because it was a part of the final certificate, the final certificate issued, Exhibit No. 1, annexed to the Commission.

Q. You can surely understand my question, Col. Moore, you said that the two first pages of this Exhibit 1 A have been added to the information contained in the Exhibit No. 1, annexed to the Commission, as you state that you dated it 27th January, 1886. I want to know what your object was in dating it at that time, when you sent it to be signed in London? A. The only object I had in dating it the 27th January, 1886, was that it is a part, or the whole of Exhibit 1, which is dated 27th January, 1886?

Q. Exhibit No. 1 was dated on the 27th January 1886? A. It bears that date, if I remember.

Q. And these two sheets, the first two sheets of Exhibit 1 A, bear the same dates? A. The first two sheets of Exhibit 1 A bear the same date.

Q. Nevertheless, that was not the date they were made out? A. I would not answer to that, Mr. Gibsone. As I say to you, the details of this certificate were made out in 1885,—perhaps a little prior to that—up to that document. I think that was the last statement that was forwarded to the engineers.

Q. You are aware, are you not, that anyone looking at this certificate, it having been signed under that date, would naturally presume it was made on that date? A. The certificate, Defendants' Exhibit No. 1, annexed to the Commission, bears date the 27th January, 1886, and appears to have been signed on the 5th January, 1887, and was made up from time to time during the year 1885, in London, prior to its date.

Q. Now, I am not asking you anything about Exhibit No. 1 attached to the Commission. You have given us that information. Would you please answer the question I have put to you, which is: You are aware, are you not, that anyone looking at this certificate, it having been signed under that date, would naturally presume it was made on that date? A. It would be taken as having been made, naturally.

Q. Are you aware that if Mr. Kinipple had signed that document, Exhibit 1A, under that date, that he would have committed a forgery? (Objected to as irrelevant: Objection maintained.)

Q. Now, at what dates does Mr. Kinipple appear to have signed that certificated 1A? A. 15th May, 1893.

Q. When did you get it from him? A. May 25th, 1893.

Q. Mr. Kinipple states in his answer 20, that I have just read to you, that the details of that Exhibit 1A are the details of the original works contract. Is that so, or not? A. I am hardly able to answer that question put in that form.

Q. The original works contract consisted, did it not, of the works originally contemplated to be done, the details of which are given in the Blue Book, Plaintiff's Exhibit 2A, previous to the substitution of the stone wall for the timber face and fine concrete, are they not? A. The details of the contract are included in the Blue Book.

10 Q. That is the original works contract? A. The original works contract is included in what we term the Blue Book.

Q. Will you now state whether or not the details of Exhibit No. 1A are the details of the original works contract, as stated by Mr. Kinipple? A. The details of Exhibit 1A are the details of the work, as done and allowed for by the Engineers in their final certificate.

Q. Will you now state whether or not the details of Exhibit 1A are the details of the original works contract as stated by Mr. Kinipple? A. It all came in under the original contract for the works, but alterations and changes were made from time to time in the works, so that the quantities are not the same as  
20 they are in the Blue Book—additional work.

Q. Then, I understand you to say that the details in this Exhibit 1 A are not the details that are contained in the Blue Book, but they are the details of the work actually done? A. Actually done, or, as allowed for by the engineers.

Q. Then, Mr. Kinipple made an error, did he not in that answer of his when he said they were the details of the original works contract? A. I do not remember what his answer was.

Q. What Mr. Kinipple says is this, in his twentieth answer: "The details of pages 1, 2 and 3 of the Exhibit No. 1 A were the figures in the original works contract." A. Yes sir.

30 Q. Is that correct? A. That is correct.

Q. Then, the details of pages 1, 2 and 3 of that certificate were the details that are mentioned in the Blue Book, Exhibit 2 A? A. They are the details under the terms of the contract.

Q. Mentioned in that Blue Book? A. Mentioned in that Blue Book.

Q. Being the details of the original works contract, the amounts of the various bills mentioned in that exhibit will, of course, agree with the Blue Book? A. They would, if they had been carried out in accordance with the Blue Book, but they are not.

40 Q. As regards these three first pages, is it contended by you that they were the works done and performed by the contractors, or that they were the works contemplated by the original contract? Which of the two? A. They are the works that were performed by the contractors,

Q. Then, do you mean to say that the contractors performed the works mentioned in the Blue Book? Were there not changes in the works? A. There were changes.

Q. Would you refer to the Blue Book, page 99, and would you tell me the amount of bill No. 1—the works contained in bill No. 1? (Witness refers to

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Blue Book) A. One hundred and thirty thousand, four hundred and fifty dollars and fifty cents (\$130,450.50.)

Q. I think you will find a small error in this Exhibit 1A. The amount will not be the same. I think there is a mistake of 10c. in the addition. Will you just say if the amount there is not given of bill No. 1, as one hundred and thirty thousand four hundred and fifty dollars and forty cents (\$130,450.40)? A. There are three items, and if you want me to compute the three items, to find out if there is ten cents, difference.

Q. Yes, compute the three items? (Witness makes a calculation). A. I make these three items one hundred and thirty thousand four hundred and fifty dollars and forty cents.

Q. There is therefore an error of ten cents, is there not, between the Blue Book and the certificate 1A, as regards bill No. 1? A. There is a difference of ten cents between the Blue Book and the Exhibit 1A.

Q. That ten cents would be against Peters, would it not? A. I could not say.

Q. You can tell by the work that has been done there, couldn't you? A. No, sir, because a portion of this is in concrete, and a portion of it is in timber lining.

Q. Look at the Bill No. 2, please, and see whether there is not an error there also? A. Would you give the amount in the Blue Book?

Q. In the Blue Book it is three hundred and twenty-eight dollars and sixty-one cents? A. Exhibit 1A is three hundred and eighty-six dollars and sixty-one cents.

Q. There is therefore an error of fifty-six dollars? A. There is a difference between the Blue Book and the Exhibit. I make it fifty-eight dollars.

Q. Well, in bill No. 3, the amount in the Blue Book is... A. Seventeen thousand four hundred and eighty-six dollars and thirty-four cents.

Q. And the amount in 1A? A. Is the same.

Q. Bill No. 4, the amount in the Blue Book is? A. One hundred and eighty-one thousand and sixteen dollars.

Q. And the amount in 1A? A. And the amount in 1A, bill No. 4, for the three items covering bill No. 4, if my computation is right, one hundred and eighty-three thousand eight hundred and two dollars and forty-five cents (\$183,802.45).

Q. Making a difference of two thousand seven hundred and eighty-six dollars and forty-five cents, is that not so? A. The computation shows a difference between the two documents of two thousand seven hundred and eighty-six dollars and forty-five cents (\$2786.45).

Q. The amount of bill No. 5, in the Blue Book, is how much? A. One hundred and fifty-nine thousand six hundred and seventy-five dollars (\$159,675).

Q. And in Exhibit 1A it is the same? A. It is the same.

Q. And bill No. 6, the amount in the Blue Book is? A. Three thousand five hundred and five dollars and forty-eight cents (\$3505.48).

Q. In Exhibit No. 1A it is the same? A. Yes.

Q. Bill No. 7 in the Blue Book is? A. Six thousand eight hundred and thirty-eight dollars and forty-four cents (\$6838.44).

what folks!

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Q. And in Exhibit 1A it is? A. Four thousand one hundred eighty-four dollars and twenty-one cents (\$4184.21).

Q. Making a difference of? A. A difference between the two, two thousand six hundred and fifty-four dollars and twenty-three cents, (\$2,654.23).

Q. Bill 8 in the Blue Book is how much? A. Two thousand eight hundred and ninety-five dollars and fourteen cents (\$2,895.14).

Q. And in Exhibit 1A? A. Two thousand seven hundred and five dollars and two cents, (\$2,705.02).

10 Q. And the difference is? A. I make a difference between the two of one hundred and ninety dollars and twelve cents, (\$190.12).

Q. Now, in the Blue Book, is it not a fact that the total amounts between the Blue Book and Exhibit 1A agree as regards Bills Nos. 9, 10, 11, 12, 13 and 14? A. I find that the Bills 9, 10, 11, 12, 13 and 14 are the same in the two documents.

Q. The amounts of the various Bills that you have read from the Blue Book are the amounts that were to become due and payable for work—the work originally contemplated to be done when the contract was passed, are they not? A. Yes, sir.

20 Q. Before the substitution of the stone face for the timber, and concrete face? A. Yes, before the change, or the substitution of the masonry face and coarse concrete backing for the timber face and fine concrete.

Q. Having made the comparisons that you have just made, is it not a fact that the original works contract is incorrectly represented in Exhibit 1A to the extent of the differences that you have found between the amounts of the Bills—having compared Exhibit 1A with the Blue Book? A. My answer to that is: that the items which I have referred to in Exhibit 1A differ from the items in the Blue Book for the different Bills owing to changes which were made in the works, and deductions and additions made from the works.

30 Q. Consequently, it was a mistake to suppose that the items contained in 1 A were solely and simply the original works contract? A. I cannot say that it is a mistake, because, under the original works contract, the engineers were empowered, and had full authority to substitute, deduct and add to the works, and change the different bills, which is a part of—

Q. But, independently of that power. I do not enter into that question at all. I say, in the original works contract, the amounts of the bills were different to the extent that you have just answered? A. I have answered that once before.

Q. Consequently, I say, this exhibit No. 1A cannot be solely for the original works contract before the substitution? A. Yes, before any changes were made.

40 Q. If exhibit 1A was intended to apply only to the original works contract, the amounts of the bill in exhibit 1 A would have compared exactly with the Blue Book, would they not, and agree in amount—that is the amount of the totals of the various bills would be the same in exhibit 1 A as they would be in the Blue Book? A. If there had been no changes, substitutions, deductions or additions made to the different bills, exhibit 1 A should be the same in figures as the Blue Book.

Q. And seeing that there is a difference now between exhibit 1 A and the Blue Book, you conclude, do you not, that 1 A cannot have been solely for the

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- RECORD. original works contract? *A.* Exhibit 1 A does not solely cover the items, as stated in the Blue Book.
- In the Superior Court.* At one o'clock the Court adjourns till two P. M. At two P. M., examination of witness continued.
- No. 55 · *Q.* You have shown us that exhibit 1 A differed from the Blue Book by reason of changes in the work? *A.* Yes, sir.
- Plaintiff's Evidence Deposition of Edward Moore, 9th Dec. 1895. *Q.* All the changes in the work are represented in this exhibit 1 A I presume? *A.* They are represented by the sums of money that have been allotted to the different items.
- continued—* *Q.* That exhibit actually shows the work done? *A.* Actually shows the 10 work done.
- Q.* Will you please take communication of the Exhibit 1A, and particularly of the following item, being the second: "Allowed for fine or 4 to 1 concrete rear of timber face on the superstructure of twenty-seven crib blocks tidal harbour \$7,593.75." Was the work mentioned in that item done, or was it not done? *A.* You are referring to the second item \$7,593.75? The amount of work was done.
- Q.* Was there any fine or 4 to 1 concrete placed in rear of the timber face? *A.* There was no timber face under the substitution.
- Q.* And, there was no 4 to 1 concrete, placed behind? *A.* There was no 4 20 to 1 concrete placed behind the timber face, because there was no timber face to the work.
- Q.* Then, why did you say just now that this certificate was a certificate of the work actually done? *A.* I don't think I used the word "actually." I wish to add, the substitution under the terms of the contract for work that this item called for.
- Q.* Then the work mentioned in that item was not done? *A.* The fine concrete?
- Q.* Yes. *A.* There was no fine concrete placed in rear of the timber face, as the timber face was done away with and a stone wall substituted. It is shown 30 under the contract for the difference between the two amounts.
- Q.* Will you take communication of the first item on the second page of the Exhibit 1A, which reads as follows: "Bill No. 4 allowed for fine, or 4 to 1 concrete rear of timber face, superstructure of wet dock, crib block, as per amended plan of June 5th, 1879, \$16,239.30." It is not also a fact that that work mentioned in that item was not done? *A.* No, sir, it is not a fact.
- Q.* Was that work done? *A.* A portion of it was done, or other work substituted in the form of a different quality of concrete for a portion of the work.
- Q.* You say a portion of the work was done? *A.* Yes. 40
- Q.* Now, was there any fine or 4 to 1 concrete, such as mentioned in that item, put into the works? *A.* Mr. Gibsone, that would require an explanatory answer.
- Q.* I want simply to know the fact as to whether that was so, or not. I want to know that fact, if you please? *A.* There was no 4 to 1 concrete placed in any part of the superstructure.
- Q.* Consequently, as far as the wording of that item goes, it does not show what work was done for that money? *A.* It does not show.

*Q.* For the work therein mentioned was not done? There was no timber face, and no fine concrete? *A.* And no fine concrete.

*Q.* Would you look also at the item 20 of the same certificate, which reads as follows: "Allowed for fine or 4 to 1 concrete in rear of timber face of superstructure of the four extra forty feet cribs." Is your answer the same to that?

*A.* That would be the same, as that is part of the superstructure.

*Q.* Would you look at the first item of that certificate, and state how you get these figures \$43,389? *A.* These figures are for the amount of timber work and iron work actually done in twenty-seven crib blocks.

10 *Q.* I want you to give me the details of these figures, if you please? *A.* I will have to go into lots of figuring.

*Q.* Have you got the details of this statement? *A.* No.

*Q.* Cannot you take these items from the Blue Book? *A.* I can give them to you approximately from the Blue Book, within a few dollars. (The witness refers to a notarial certified copy of the Blue Book). *A.* Page 50 of the Blue Book, there were four Rock Elm fenders to each crib of forty feet in length, making . . . .

20 *Q.* You have not got the details of these amounts in certificate 1A? *A.* I have not the details of the changes, deductions or additions with me at the present time. I think I have them in my trunk of papers and books which I have brought up. I will make a thorough examination, and if I have them, will produce them to-morrow morning.

*Q.* Would you look at Exhibit No. 7 of the Plaintiff's, and state whether the same is not the letter received by the contractors Peters, Moore & Wright from the engineers ordering the substitution you have already spoken of, of a stone face with coarse concrete for the timber face with fine concrete. (Witness takes communication of Exhibit 7). *A.* I have no doubt but what these are the correct copy and the correct letter from the resident engineer ordering substitution of the walls.

30 *Q.* It was under the authority of that letter that the substitution was made? *A.* I think so, well, under that and the contract.

*Q.* Look at Exhibit No. 11 of Plaintiff's being a certificate of payments made by the Quebec Harbour Commissioners to the Contractors, and would you state whether it is not a fact that you received all the sums of money mentioned in the first column of figures amounting to the sum of three hundred and fifty thousand three hundred and forty-seven dollars and forty-eight cents (\$350,347.48)?

40 *A.* I should be unable to state, Mr. Gibsone, that we received each and every sum, as stated in this document, without making a comparison with our books, but, I have no doubt but what it is correct, that the sums of money stated in the column, dredging and concreting, and those in lead pencil . . . .

*Q.* Never mind the lead penciling. *A.* There is no question in my mind, but what these sums in ink are correct.

*Q.* Look at the cheques produced and filed in this case, as Plaintiff's Exhibit at Enquête A3, and see whether your endorsement is on every cheque. (Witness takes communication of cheques.) *A.* The endorsement on these cheques, with one exception, are by our firm of Moore & Wright, made by Moore & Wright, and the exception is one of the Union Bank of \$20,000.00, which was for the benefit of Moore & Wright.

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Q. And which money you received? A. And which money we received.

Q. Have you any doubt at all now, having looked at the cheques and endorsements, but that that list of payments is correct? A. My only doubt, Mr. Gibsone, in reference to these—I have an impression in my mind that in a number of instances we added work, the timber work.—

Q. The payments I am asking you. A. To the timber work and timber of our works, and it always went in under the item of dredging and concrete, or, all under the item of timber and iron work.

Q. But the actual sums of money were paid to Moore & Wright, and to Mr. Peters, according to that statement of Mr. Verret? Do you recognize that statement as correct? A. I consider that Peters, Moore & Wright received the amount of money upon this statement; but you do not understand me, Mr. Gibsone. Some of these sums were for both parties, but went in under the name of dredging and concrete, or timber and iron I have one in my mind now—and that would make a difference.

Q. We can see that from the certificates of payment, to which I will refer you, and the progress estimates, and, I wish you to ascertain whether it is not a fact that all these sums of money mentioned in that statement as being paid to Moore and Wright; were paid to Moore & Wright under the progress estimates and certificate of payments, and correspond exactly with the amounts mentioned by Mr. Verret in his statements? I am unable to state that. 20

Q. You must answer my question from the payment certificates. I wish you to ascertain whether it is not a fact that all these sums of money mentioned in that statement as being paid to Moore & Wright were paid to Moore & Wright under the progress estimates and certificates of payment, and correspond exactly with the amounts mentioned by Mr. Verret in his statement? A. I am unable to state, without comparing the accounts that are in the book of accounts, to see what the differences are.

Q. Do the amounts therein specified as having been paid to Moore & Wright in Exhibit No. 11 correspond with the certificates of payment produced in this cause as Plaintiff's Exhibit at Enquête A1? A. Yes. 30

Q. Is it not a fact, now, that all these certificates for payments correspond exactly with the progress estimates, the amount in each certificate being for the amount allowed Peters, Moore & Wright in the estimates of the work done by them, and also being the amounts allowed Peters for the work done by him?

A. The amounts correspond with the certificates of payment.

Q. Defendants' Exhibit No. 2 is of course based upon the Exhibit No. 1A?

A. Yes, sir, it is—all items of work.

Q. I wish now to refer to this question of this stone wall that we have mentioned before. The cost of that stone wall was estimated, was it not, by the Engineers at sixty cents a cubic foot throughout all the estimates? A. What Engineers do you refer to?

Q. Well, both in fact—Mr. Brown? A. Mr. Brown, Boswell and Pilkington?

Q. Yes. Does not that appear by all the estimates made, and statements?

A. And statements?

Q. And statements. Yes. You know that, Col. Moore, do you? A. I don't know what statements you are referring to, whether the statements that went to

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the Treasurer's office, or the statement which was made up by our Engineer, the contractors' Engineer, and the resident Engineer, to arrive at the pay bills. (Witness takes communication of Plaintiff's Exhibit No. 9, being a copy of the progress estimates).

*Q.* The question is whether it does not appear by the progress estimates that the stone wall was estimated at 60c per cubic foot? *A.* This is a copy. Haven't you one of the originals? I would state that the progress estimates for the payment of the works was computed by our engineer at sixty cents per cubic foot, to arrive at the progress estimates or pay-bill for the amount of work done.

10 *Q.* Then, throughout the progress estimates, I need not refer you to every instance, throughout the progress estimates the stone wall was estimated at sixty cents per cubic foot both by Mr. Brown and by the engineers of the works? *A.* They were, as I understand it. I didn't see but very few of the estimates that was made for Mr. Peters during the progress of the work.

*Q.* You are satisfied, however, that it was so, that it was estimated at sixty cents per cubic foot? *A.* I am satisfied that the statements made up by the engineers for the purpose of arriving at our progress estimates, the work was computed at the rate of sixty cents per cubic foot.

20 *Q.* Would you please take communication again of the said progress estimates, Exhibit 9, and please look at the last page, where the work is carried out, and say whether it is not a fact that there was paid, on account of the said stone wall, per said estimates, sixty-two thousand seven hundred and eighty-four dollars and fifty-seven cents (\$62,784.57). *A.* I should be unable to state what amount was paid for that particular work.

*Q.* That amount was allowed, though, if you please, by these progress estimates? *A.* I should be unable to state the amount allowed, because I never computed, during the progress of the work, the masonry or timber work.

30 *Q.* Without your own computation, it would appear, would it not, by the engineers' computation that they had allowed that sum of money \$62,784.57 to the contractors for the said masonry or stone wall? *A.* This statement is not in the handwriting of our engineer, and I am unable to state the facts as to how much was allowed for the stone wall.

*Q.* You are now answering from Plaintiffs' Exhibit 9? *A.* Yes.

*Q.* Would you refer to the statement in handwriting of your own engineer, Vincent Brown, and state whether he does not make the amount the sum of sixty-two thousand seven hundred and eighty-four dollars and fifty-seven cents? *A.* From the statement of our engineer, the late J. Vincent Brown, it shows that the masonry was estimated at \$62,784.57.

40 *Q.* As per estimates? *A.* Certainly, as per statement, Plaintiff's Exhibit at Enquête A 24.

*Q.* The amount is the same in Plaintiffs' Exhibit No. 9, being an alleged copy of the engineer's progress estimates? *A.* The amount is the same in the two.

*Q.* Would you refer to Plaintiff's Exhibit No. 21, and state whether the cost of the stone wall is not therein shown as \$77,378.40? *A.* The cost of the stone wall in exhibit 21 is shown to be \$77,378.40.

*Q.* Is it not a fact that Plaintiffs' Exhibit No. 31 shows the cost of the stone wall at the same amount as mentioned in Exhibit 21, (Witness refers to

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Exhibit 31.) A. The items in Exhibit 31 allowed for stone wall, masonry key wall, and stone delivered computes seventy-seven thousand three hundred seventy-eight dollars forty cents.

Q. That stone delivered is part of the stone wall, I presume? A. It may have gone into the wall, and it may not. It may have been culled.

Q. This exhibit 31, if you please, is in the handwriting of the engineer Brown, is it not? A. Yes, sir.

Q. And it is signed by him? A. Yes sir.

Q. That stone wall was really built by the subcontractors Châteauvert & Beaucage? A. As the subcontractors.

Q. Of Peters? A. Yes.

Q. Would you please look at Plaintiffs' Exhibit No. 20 on the second leaf, and state whether it is not a fact that that total amount of bill No. 1 is therein shown at one hundred and forty-nine thousand seven hundred and seventy-six dollars and fifty cents (\$149,776.50), and deducted therefrom for concrete, is a sum of eighty-nine thousand five hundred and sixty-six dollars and seventy-five cents (\$89,566.75), leaving for value of timber work and fine concrete sixty thousand, two hundred and nine dollars and seventy-five cents (\$60,209.75). Is that not the value of the timber and fine concrete in Bill No. 1? A. It is so stated upon this document.

Q. That document is signed by Mr. Morris, of the firm of Kinipple & Morris, on the 20th April 1882? A. I think that is Morris' signature.

Q. I suppose you do not know what Mr. Peters paid Beaucage & Châteauvert? A. No, I do not.

Q. Would you refer to the Blue Book, please, page 99, of the resumé of the bills there given, and state whether it is not a fact that a number of the works in these bills were to be done exclusively by Mr. Peters, and particularly bills 6, 7, 8, 9, 10, 11, 12 and 13? (Witness refers to certified copy of the Blue Book). A. No, sir. The bills were not to have been done by Mr. Peters—all of them.

Q. Would you say which ones were? A. A portion of bill No. 7. I am not so sure about bill No. 7, without referring to our contract—but bill No. 9.

Q. But, I want to be perfectly certain, as it is a matter of importance. Please make a reference, and be certain. A. The bill No. 9. I am certain of.

Q. What are you certain of that Bill? A. Because, under the terms of the contract, Moore & Wright were to do it.

Q. Look at bill 6 please? A. Bill No. 6, if the work had been done, would have been Mr. Peters' part of the work.

Q. For the whole of that bill? A. For the whole of that bill.

Q. Bill No. 7? A. All the wood and iron work contained in bill 7 would have been in Mr. Peters' part of the work. The clay and ballast filling would have belonged to Moore & Wright.

Q. How much was the clay and ballast filling? A. I notice one item here of \$105.

Q. And Peters would have to do the rest if the work had been done as originally therein intended? A. Yes. That item is on page 83, \$105 for the first three crib work blocks.

Q. Look at that page again, please, and see if it is \$35 or \$105? A. It is \$35 a crib, but there may have been an error as to that.

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Q. Is not \$35 marked in the bill, and added up as \$35? A. Yes, I should say it covered for the three cribs, instead of, as former bills did, for each crib block only.

Q. Then there would be only \$35 for Peters, Moore & Wright? A. Yes.

Q. What about bill No. 8? A. Bill No. 8 was for wood and iron work that came under Mr. Peters' portion of the contract.

Q. For the whole of the value? A. As far as I can see.

Q. Bill No. 9, please? A. Bill No. 9 belonged to Moore & Wright under the terms of the agreement between Mr. Peters and Moore & Wright.

10 Q. Do you mean the contract with the Commissioners? A. No, under the private arrangement.

Q. In reference to this particular Bill, was there not a private understanding between Moore & Wright and Mr. Peters that certain work was to be done by Mr. Peters? A. In reference to this Bill?

Q. In reference to this Bill. A. Nothing more than what is stated in the contract between the parties.

Q. You are referring to the private agreement of the 4th May, 1874, before Strang, Notary? A. I refer to the agreement between Mr. Peters and Moore & Wright as to the division of the works.

20 Q. Did Mr. Peters carry out his part of that agreement? A. No, sir, he did not.

Q. Would you please look at the letter now produced bearing date July 18th, 1878, and state whether it comes from your office? (Letter is handed to witness). A. That came from our office, without a doubt. (The said letter is filed as Plaintiff's Exhibit at Enquête A32.)

Q. And this one also of the 2nd October, 1878, which is now produced and filed as Plaintiff's Exhibit at Enquête A33? (Letter is handed to witness.)

A. That also came from our office.

Q. Did you not receive this timber on your order? A. We did.

30 Q. Was not that a carrying out of Mr. Peters' part of the contract? A. In part. It required other timber, and other deals, which Moore & Wright had to buy to build the screens.

Q. To what extent? To what amount? A. I couldn't say.

Q. That will probably appear in the details you are going to give us tomorrow. A. I have nothing about the details of this.

Q. Will you look at bill No. 10? A. Bill 10 is for low open crib work.

Q. That would be for Mr. Peters' part of the contract? A. If it had been built, it would have been for Mr. Peters' part of the contract.

Q. The whole of the bill? A. Yes.

40 Q. Bill No. 11, bill No. 12, if the work had been carried out, would have belonged to Mr. Peters' part of the work and bill No. 13, also, I think? A. The work of bill No. 13 is regulated under the agreement between Mr. Peters and ourselves, and I could not state, without referring to the deed or contract between us, how much of this work belonged to each of us, or whether it all belongs to one or to the other.

Q. Do you mean that private contract again? A. Yes, sir. Under that bill No. 13, if the work had been carried out, the labour of pitching the outer

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*Q.* There is no mention of stone in that bill, pitching for outer slope?

*A.* The items here are merely for the labour, which was to belong to Mr. Peters.

*Q.* So that the whole of that bill would belong to Mr. Peters? *A.* The whole of that bill would belong to Mr. Peters.

*Q.* Now, No. 14, what portion of this bill belonged to you, and what portion to Mr. Peters? *A.* The first item, forming roadway on keywall, fifty feet broad, if it had been carried out, Mr. Peters would have had to perform the 10 labour on that. The second item labour, depositing stone ballast and clay materials in the dredged trench, belonged to Moore & Wright. The third item would have belonged to Moore & Wright. The balance of the bill would have belonged to Moore & Wright.

*Q.* The whole would belong to Moore & Wright, except the first item?

*A.* Yes,

*Q.* There are four other bills. Would you refer to them? First look at Plaintiffs' Exhibit No. 13, and bill No. 1, and state whether the division made of the work therein is correct, as per Blue Book? *A.* It will take four hours to go into that question, and compute each quantity of the work, as put into the work. 20

*Q.* You have answered for all these other bills quite shortly, and shown what work was for you, and what for Peters, and there are these four left and I want to know from you, whether under bill No. 1 this work here was for Mr. Peters? *A.* I should be unable to answer that question without figuring the details of each of these bills, but I would state that all wood and iron work under the different bills, the four bills belonged to Mr. Peters, and all the concrete connected with the bills belonged to Moore & Wright.

*Q.* As a matter of fact, Col. Moore, that was your work, the dredging and concreting was your principal work in connection with this? *A.* Certainly.

*Q.* And you had certain other miscellaneous amounts, as shown in Bill No. 30 14, and the two instances which you have above cited? *A.* Yes, sir.

*Q.* And with these exceptions, all the rest of your work was concreting and dredging? *A.* Yes, sir.

*Q.* Turn to page 43 of your Blue Book, \$43,144.45 and down to the words "iron work" on page 46. Is that added up in your book? Does not that come to \$810.73? All the items in Bill No. 1, from page 43 to page 46, down to "iron work"? *A.* I make the sum \$810.73 for these items.

*Q.* Does not that compare exactly with the item in the exhibits No. 13?  
*A.* The first item in the exhibit 13 is \$810.73, the same as the amount here.

*Q.* In that part there is none of your work, is there? *A.* That is all wood 40 work.

*Q.* That is all Mr. Peters'. Now the cost of the iron work in that bill and the cost of the iron work beginning at page 46, and going down to "concrete", on page 48, is not that also work for Mr. Peters'? *A.* All the wood and iron work in bill No. 1 came under Mr. Peters' work, in accordance with the agreement between the parties all the wood and iron work that was done.

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Q. Would you turn to bill No. 4, please, page 68 of Blue Book? In Bill No. 4, all the wood and iron work therein mentioned was for Mr. Peters? A. All the wood and iron work that was done under bill No. 4 belonged to Mr. Peters.

Q. After the substitution of the stone wall for the timber face there was a certain portion of the work that was not done, that was mentioned in the original contract, the Blue Book, is that not so? A. Yes, sir, that is so.

Q. You have already spoken of the three items in Exhibit 1 A that were not done, work that was rendered unnecessary by reason of the substitution? A. Yes, sir.

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10 Q. The work in Bill No. 3, was not done, was it? A. No. 3, was abandoned, and other work substituted for it.

Q. Bill No. 6, was that not also abandoned? A. Bill No. 6 was abandoned and other works substituted for it.

Q. And Bill No. 10 the same way, was it not? A. Bill No. 10 was abandoned and other work substituted.

Q. And 11 also, wasn't it? A. I have already stated that Bill No. 11 and Bill No. 12 were abandoned.

Q. Bill No. 13 was also abandoned? A. Bill No. 13 was also abandoned.

20 Q. And also that portion of No. 14, which was Mr. Peters' work was also abandoned, was it not? A. Yes, sir.

The Court adjourns till Tuesday the 10th December instant.

At 10 A. M., on Tuesday the 10th December instant, the examination of the witness, Edward Moore, is continued.

Q. Colonel Moore, have you looked for the details of the items of Exhibit 1A, which you said you thought you had? A. I have, sir. I have made a thorough search among my papers, during last night, and I have been unable to find any of the details of Mr. Brown in relation to Exhibit 1A.

30 Q. Would you produce, if you have it, an account of all the work actually done by you under the contract from first to last? Objected to: Objection reserved by the Court. A. I have not got it.

Q. Will you look at Plaintiffs' Exhibit at Enquête A34, and state if it is not a fact that these are the deductions agreed to, as mentioned in Exhibit No. 1 attached to the Commission? A. These are the deductions that were placed in our bill, upon which we brought the suit against the Quebec Harbour Commissioners.

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40 Q. They are the deductions agreed to, as mentioned in Exhibit No. 1 attached to the Commission? A. Yes, that is the item mentioned in Exhibit No. 1, attached to the Commission, as follows: "Deductions, as agreed with contractors in "Quebec \$116,104.32"; but as far as the agreement is concerned, I don't know anything about it.

Q. It was the engineers who placed that in their certificate? A. It was the engineers who placed that in their certificate.

Q. Well, is it true or not true, that entry? A. The items?

Q. No. That entry concerning the deductions being made by agreement with the contractors, is it true? A. I won't say there was an agreement made with the contractors, because I don't think there was. It was an agreement they placed in the certificate. An agreement made by us at the time of the arbitration, but neither of us ever agreed to their statement, or they to ours.

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Q. Do you say you never agreed to these deductions? A. We did not.

Q. Then, the certificate is false? A. Not at all.

Q. Is the certificate true in that respect? A. As far as that part of the statement is concerned, there was no agreement made.

Q. Then, in that respect, the certificate is untrue? A. As far as I am concerned.

Q. Would you please produce the letter of the 19th April, 1886, asked for in this case? A. I produce a copy. The original was placed in the suit of the Quebec Harbour Commissioners. (The said copy is filed as Plaintiff's Exhibit at Enquête A35.)

10

Q. You answered yesterday concerning the number of feet in the stone wall. Would you look at this paper, and state whether it is not your own figuring, relating to the calculation of the stone wall? (Witness takes communication of document.) A. That appears to be in my handwriting, but it does not give the quantities of the stone wall, a memorandum that I made out some time or other. (The said paper is filed as Plaintiff's Exhibit at Enquête A36.)

Q. You gave the length of the stone wall yesterday, did you not, at 3,550 feet? A. Yes, sir, I think 3,550 feet.

Q. And this calculation of yours, Plaintiff's Exhibit at Enquête A36, would show that one and a third cubic yards go to the foot of stone wall? A. It would, as this document is made out, but I find that there has been added to my figures and writing "cube feet," and numerals "eighty cents," which I know nothing about.

Q. But notwithstanding what you say has been added to your figures, is it not a fact that one and a third cubic yard go to the lineal foot? A. It is supposition that the two bottom lines refer to the lineal feet of the wall. These are computations which were made up at some time. I don't have any recollection of them, and they may be right and they may be wrong, there may have been errors in the figures.

Q. Just repeat what you say has been added to your figures? A. I should say that the numerals "eighty" cents and "cubic feet" on the bottom line has been added to that line in another handwriting.

Q. What was the total amount paid by the Quebec Harbour Commissioners without taking into consideration interest for the total amount of the contract work and the total amount of extras? A. On referring to Exhibit No. 1 annexed to the Commission, I say that the total amount allowed and paid by the Commissioners, exclusive of interest, was as follows: \$697,810.21 was the amount of work allowed by the engineers and the Harbour Commissioners have paid \$645,799.00, and they acknowledged their indebtedness, and subsequently paid \$52,011.21, and to that the Supreme Court added \$35,457.50.

40

Q. Would you look at this document, and state whether on the second page of it this figuring is your own? (Witness takes communication of document.) A. You mean all the figures on the second page, I suppose.

Q. No, I do not mean all the figures on the second page. A. I am unable to state whether they are mine, or not.

Q. To the best of your knowledge and belief? A. I think they are my figures, they resemble my style of figures, but I should not want to swear to them. (The said document is filed as Plaintiff's Exhibit at Enquête A37.)

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Q. The original amount of work that you were to do under the contract was \$383,427.55? A. I am unable to state, without going into the figures on that. That would require my going through the figures of this entire Blue Book. I am unable to state whether these figure show the exact amonnt, or not, without going into the computations through the entire contract, and deducting the wood and iron from the concrete and stone wall.

Q. Would you refer to the Blue Book, page 76, and say if it is not a fact that it appears at the page of the book that the amount of the dredging was \$159,675.00? A. It does.

10 Q. Does that not correspond with your first figures on the second page of this Exhibit of Plaintiffs at Enquête A37, \$159,675.00? A. Yes, it corresponds.

Q. That would correctly represent the dredging, then? A. Yes, sir. That would correctly represent the dredging, as footed up in page 76 of Blue Book.

Q. Just turn to page 48 of the Blue Book. The two last items of concreting. Is it not a fact, Col. Moore, that on that page 48, the amount of concreting is therein shown at \$681.25 and \$1,562.75, making the total of \$2,244.00? A. The amounts allowed on page 48 of the Blue Book, for concretes \$681.25 and \$1,562.75 added together makes \$2,244.00.

20 Q. Is that per crib? A. That is for the substructure per crib of 40 feet in length.

Q. And page 50, would you state whether the amount allowed for concrete is not \$281.25, \$641.25 and \$4? A. These are the sums on page 50, against the items for the concrete four feet below low water to coping level, for superstructure and for coarse concrete, and for concrete round the bollards.

Q. Adding these three figures together, it makes \$926.50? A. The three amounts make \$926.50.

Q. With the amount you have already given, that forms a total of \$3,170.50 per crib? A. These two amounts make \$3,170.50.

Q. And that would be on twenty-seven cribs? A. If the original bills had been carried out, and no alterations made.

30 Q. Page 73, the concrete in that bill forms a total, does it not, of \$2,063.75? A. These four amounts added together make \$2,062.75.

Q. And there is a further amount of \$4.00 for fine concrete—two bollards? A. Not in these items.

Q. In the bill? A. I do not see anything of it in the bill. There is no such item in bill No. 4.

Q. Is not that amount of \$4.00 in the item on page 74 for one bollard complete? A. I should be unable to answer that without going into the details of other bills.

40 Q. Just turn to page 50 of the Blue Book. Do you not see an item of \$4.00 for Portland cement round base of bollards? A. I find an item in bill No. 1, two yards of Portland cement at \$2.00, making \$4.00.

Q. Does not the same thing occur with regard to the bollards in bill No. 4? A. No, sir, it does not.

Q. Will you calculate the bollards at page 50 and 51? (Objected to, as being mere matter of calculation.) A. The only items that I find on page 50, referring to bollards, is one of 12 ft. 6 ins. by 16 ins. rock elm bollard fixed in

RECORD. concrete complete at 50c. per cubic foot making \$11.50. The only item I find on page 51, in the wood work, is thirty cubic feet of timber in eight pieces five feet by twelve, by nine inches. . . .

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Q. What are the amounts, that is all you are asked? A. Secured to base three quarter inch timber, twenty cents a cubic foot, six dollars. I find another item at the head of the page "Rock Elm jog pieces, \$2.70."

Q. The three preceding items, do they not also refer to the same items \$2.70, \$5.75, \$1.60? A. I would not be willing to say, unless I saw the plans. I am unable to state, without going into the plans.

*Cross-Examined.*

10

Q. Col. Moore, were the works contracted for between Peters, Moore & Wright and the Harbour Commissioners carried out according to the contract, or were they altered? A. They were altered.

Q. Will you state in summary detail the main features of the alterations that were made from the contract? A. Masonry face with coarse concrete backing was substituted for the timber face and fine concrete backing, the embankment was increased in width from 200 feet at coping level to 300 feet at coping level: the crib work under the original contract at ballast wharf was carried to 20 coping level; there was additional crib work built upon the northern embankment, the entire length of the embankment, there was an additional crib work built at the Gas House wharf, on the outside, the crib work from the Gas House end of the northern crib work to the Gas House wharf, the cribs were changed in quality and quantity. There was an increase of dredging of some two hundred and fifty thousand cubic yards, and some small quantities of dredging outside of the original specifications, and other works. The entire plans of the works were changed.

Q. Was there any change made in the foundations for the cribs in the substructure? A. There was. A change in the wet dock wall from three feet 30 above low water mark to four feet above low water mark, reducing the height of the superstructure in the wet dock basin from twenty-one feet to twenty feet, and increasing the substructure one foot in height.

Q. The substructure was composed of cribs filled with concrete, was it not, in the wet dock for the whole length of the works? A. The substructure was composed of crib work.

Q. Filled, or partly filled with concrete. A. Filled, or partly filled with concrete.

Q. In the wet dock, the alterations that you have spoken of had the results of increasing the work in the substructure, and of decreasing the work, and the 40 quantities of materials in the superstructure? A. Yes, sir.

Q. Now, was there any alteration made in the foundations of the cribs themselves in the manner in which the foundations of the cribs were placed? A. Under the original contract and plans, the foundations of the cribs were to have been composed of stone and clay filling, but the dredging was dispensed with from twenty-four feet to twenty-nine feet and a foundation of stub piles substituted for the clay and stone filling.

Q. Was that through the whole length of the works, as far as you recollect? RECORD  
A. Through the entire length of the works.

Q. Now, whose work was altered by these changes that you have mentioned? In the  
Both Mr. Peters and yours, or yours alone, or principally yours? A. It was Superior  
principally ours, the dredging of the trench was ours, and the filling and furnishing of the stone was ours, for the trench work. Court.

Q. Before leaving this question of alterations, was there a change made in the northern face of the embankment? A. There was a change made by an increased width of embankment, and by substituting a crib work in lieu of a  
10 pitched slope, as called for in the original contract. Deposition  
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Q. The pitched slope was to have been covered with stone, was it not? Moore,  
Was to have been made of stone? A. It was. 9th Dec.  
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Q. For that a crib work of timber was substituted? A. A crib work of timber, first the low crib work, second a superstructure and the crib work known as the northern crib work. continued

Q. Do you know whether the shape or the dimensions of the cribs were altered from the original plans? A. Which cribs are you referring to?

Q. I mean the cribs in the substructure. Not the added work on the northern face, but the cribs in the substructure? A. They were changed under an order.  
20 There were to have been ten jetties, and these were dispensed with by order of the Commissioners, when the proposition for the building of the northern crib work was accepted by the Commissioners.

Q. Now, Col. Moore, under the terms of your contract with Mr. Peters, Mr. Peters was to do the timber and iron work, and the pitched slope, in addition, and the masonry of the stone wall, if the stone wall were adopted, and you were to do all the other work. Was there other work besides the dredging and concreting or other materials to be furnished by you under the contract? A. Under the contract Mr. Peters was to do the work you mention, and, in addition, build the roadway upon the embankment, and we were to do all the other work.  
30 There was other work besides concreting and dredging: that of furnishing stone and clay, and forming the foundation for the cribs, which under the change of plans was dispensed with, and another form of foundation provided.

Q. Now, in point of fact, Col. Moore, as result of a change in the foundations for the cribs, did you do, or were you called upon to do certain timber work in the way of stub piling? A. We were.

Q. And did you do it? A. We did.

Q. This is one of the claims or one of the accounts that is in question in the present cause, stub piling? A. I think it is.

Q. Now, as a result of these changes, what was the position that was taken  
40 by the joint contractors, as well Mr. Peters as Moore & Wright, towards the Harbour Commissioners, at the termination of the work? A. We took so far as the lump sums in the different items were concerned, and that we had a right to payment for the actual work done.

Q. Were statements prepared by both yourself and Mr. Peters, based upon this assumption, and put before the Commissioners? A. There were a large number of statements prepared by the contractors, through their Engineer from the close of the contract, until our final suit was brought in the Courts of Quebec.

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*Q.* Who was the contractors' Engineer at that time? *A.* J. Vincent Brown.

*Q.* What answer did the Commissioners and their engineer make to the position assumed by the contractors, with respect to the contract? Did they acquiesce in the position which the contractors took, or did they claim that the contract was operative? *A.* They declined to accept the position that the contractors took.

*Q.* And they claimed to apply the whole of the contract to the whole of the work done? *A.* They did.

*Q.* As well the alterations and additions as such parts of the original contract as had really been performed? *A.* They did. 10

*Q.* With respect to the statements prepared by Mr. Peters for his part of the work, statements to be submitted to the chief engineers and the Harbour Commissioners, did you take any part in the preparation of them? *A.* None, whatever. That part of it relating to Mr. Peters' work, it was left entirely between our joint engineer and Mr. Peters.

*Q.* Did you pay any attention, did you consider that you had an interest in the statements that were made up under the circumstances under which the matter presented itself at the time? *A.* No personal interest in any part of his works.

*Q.* Will you look at the statement, Plaintiffs' Exhibit No. 22, and state whether you know when and under what circumstances the statement was prepared? *A.* That statement was prepared when we brought our first suit in the Courts in Quebec, by our engineer and Mr. Peters. 20

*Q.* That suit was subsequently withdrawn? *A.* The suit was withdrawn prior to the second suit.

*Q.* Was that statement prepared in any way under your supervision, or subject to your directions? *A.* It was not.

*Q.* In the contention which the joint contractors maintained at the time to the effect that they were entitled to be paid for the actual work done, independent of the bulk sum, would the position assumed by Mr. Peters, with respect to the stone wall, have in any way affected you? *A.* No, it would not. 30

*Q.* It would not have affected you, because you would have been paid for all the concrete you put into the works? *A.* All the concrete placed into the the works.

*Q.* So that, upon the assumption that each of the joint contractors was entitled to be paid for all the work which he or they had respectively done, neither were interested in the way the accounts were made up, or the work claimed by the other? *A.* No, sir.

*Q.* Now, were there, in fact, a large number of statements prepared by the joint contractors, and by the engineers for the Commissioners? *A.* There was.

*Q.* What was done after the termination of the work, at the close of the season of 1881, with respect to the settlement of accounts between the joint contractors and the Harbour Commissioners? *A.* We commenced making up statements, to see if we would agree with the engineers upon the settlement of our accounts. 40

*Q.* And these statements were made up upon the basis that you have mentioned—that is, of full payment to each contractor for the work done by him? *A.* They were.

*Q.* These statements were submitted to the chief engineers of the Harbour Commissioners, were they not? *A.* They were submitted, in the first instance, to the Quebec Harbour Commissioners, and the Quebec Harbour Commissioners sent them to the resident engineer, if I remember correctly, and, in some instances we furnished statements to the resident engineer.

*Q.* The resident engineer was Mr. Pilkington? *A.* The resident engineer was Mr. Pilkington.

*Q.* Will you look at Plaintiffs' exhibit No. 20, and state what that is? (Exhibit 20 is handed to witness.) *A.* This appears to be a statement, which has been prepared by the Quebec Harbour Commissioners, through their resident engineer, Woodford Pilkington, and sent to Messrs. Kinipple & Morris.

*Q.* It appears to be a statement of the claims of the joint contractors, with observations made by Mr. Pilkington, upon the different items of the contracts, for the information of the chief engineers, does it not? *A.* Yes.

*Q.* And, by this statement, it appears that the claim put forward for the masonry wall is stated by the chief engineer, to be arrived at by some other mode of calculation than that adopted by the office? *A.* It is so stated in the memorandum or remarks in the document opposite each item, or claim for masonry.

20 *Q.* Now, to proceed, Col. Moore, with what followed after the close of the works, you have told us that the joint contractors each prepared a statement, and submitted it to the Harbour Commissioners, and they submitted it to the Chief Engineers. How did the Chief Engineers treat these statements? *A.* At the close of our works, our joint engineer, the late Mr. Brown, prepared statements on behalf of the contractors, referring them to the Quebec Harbour Commissioners. They were referred then to the engineers, Messrs. Kinipple & Morris, and Messrs. Kinipple & Morris after some months delay, returned to us what they term as an award.

*Q.* How did the award deal with the contract? *A.* I am unable to state without referring to the data.

30 *Q.* In general terms, how did they deal with the position put forward by the joint contractors, with respect to the bulk sum having been eliminated from the discussion? *A.* They dealt with the contract as a bulk sum, and allowed extras, if I remember correctly.

*Q.* Did the joint contractors accept or refuse this award? *A.* They refused the award.

*Q.* Both refused the award? *A.* Both Mr. Peters and ourselves.

*Q.* What followed after this award was refused? *A.* We then commenced making new statements, endeavouring to get a settlement with the Harbour Commissioners, and finally got the consent of the Harbour Commissioners to refer the matters in dispute to the Dominion Arbitrators.

40 *Q.* Were questions submitted to the Dominion Arbitrators by the contractors? *A.* They were.

*Q.* How were these statements prepared—that is, did each of the joint contractors prepare a statement for his own work? *A.* Our joint engineer, Mr. Brown, prepared the statements for each of our works, and the two were combined together, and put before the Dominion Board of Arbitrators.

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Q. What became of the award of the Arbitrators? Was it accepted? A. It was not accepted by the Quebec Harbour Commissioners, or they declined to abide by it.

Q. What followed then? A. We then made up other statements, and brought a suit.

Q. Is this the suit that you spoke of, as being the first suit? A. That is the first suit.

Q. Had you then a final certificate from the engineers? A. We had not.

Q. Your first suit was founded upon a *quantum meruit*? A. Yes.

Q. And you each claimed all the work that was done, independently of the 10 bulk sum of this contract? A. Yes, sir.

Q. What became of that suit? A. That suit was dropped, I think, on the result of a decision of the judge.

Q. What was wanting at the time? A. The final certificate.

Q. Did the joint contractors, or either of them, apply for the final certificate? A. We did.

Q. Who made the application to the chief engineers? A. I made it on behalf of the contractors, by the advice of Mr. Peters and our Counsel Mr. Bossé.

Q. Are you aware whether Mr. Peters communicated himself with the chief engineers? A. I am not, but I don't think that he did. 20

Q. Did he correspond with you, with respect to the final certificate? Please look at the nineteen letters signed "Simon Peters," and state whether these were received by you from the late Simon Peters, the original plaintiff in the present cause? (The letters are handed to witness.) A. I have examined the letters, and find that they are signed by the late Simon Peters. (The said letters are filed as Defendant's exhibit at enquête B 1).

Q. In the letter of the 2nd February 1884, Mr. Peters expressed himself in this way—"With reference to my portion of the claim, I must repeat, I do not see my way to take off anything." What was there referred to by Mr. Peters? A. That refers to the settlement of our claims with the Commissioners. 30

Q. An amicable settlement? A. An amicable settlement.

Q. Was that prior—in fact it is by the date—prior to the certificate having been obtained? A. It was just two years, to the day, prior.

Q. At whose suggestion was it that the joint contractors wrote to the chief engineers for the certificate? A. The suggestion of our Counsel, after we had been checkmated by the Courts. The Courts decided that we could not proceed without a certificate.

Q. Through whom was this suggestion communicated to you—the suggestion of Mr. Bossé? A. By Mr. Peters.

Q. Will you look at the letter of the 27th November 1884, being part of 40 Defendants' Exhibit at Enquête B1, and state whether that refers to the question of the certificate? A. That refers to the certificate, and to Mr. Bossé's advice.

Q. Did you act upon that suggestion? A. I did.

Q. In what way? A. For wording a letter asking for a final certificate.

Q. How was that request signed, that letter to Kinipple & Morris signed? A. It was signed Peters, Moore & Wright, by Edward Moore, as I generally signed all letters that I sent to them. There may have been one or two exceptions, where the firm name is used, Moore & Wright.

Q. Will you refer to the letter of the 13th January 1885, and state whether the suggestion therein contained, in these words: "The only chance remaining is to work on Mr. Kinipple, who has the reputation of being a fair man, and is not compromised in the case, to the extent that Morris is by his evidence before the Dominion Arbitrators. Although Mr. Bossé and myself do not approve of sending Pilkington over, as you have the adjustment at stake, I will leave this to your own decision. I would say, if Pilkington went with you, or some one equally competent, should accompany him." Say whether the suggestion therein contained of sending Pilkington over was adopted? A. That suggestion was  
10 adopted, but after several conferences.

Q. State what occurred with respect to that? A. We had a number of conferences, by letter, and in person in reference to that matter, and it finally terminated by having a conference at my house, in Portland, to which Mr. Peters came, and Mr. Pilkington, who was then in Boston, came to Portland at our suggestion, with the view of going to London, to intercede with Mr. Kinipple in reference to the final certificate. At that time we had not received the final certificate.

Q. Can you recollect the dates when this conference took place? A. I cannot remember the date. I remember it was in April 1885, prior to the issue  
20 of the certificate, in February 1886. I don't remember the date. I am speaking from memory now.

Q. Will you look at the telegram of the 17th April, 1885, and state whether you received that from the late Mr. Peters? (Telegram is handed to witness.)  
A. I received that from the late Mr. Peters.

Q. Does that enable you to fix the year and month in which the interview between Mr. Pilkington, Mr. Peters and yourself took place? A. It does. (Said telegram was filed as Defendants' Exhibit at Enquête B2.)

Q. How long after this did Mr. Pilkington go to England? A. I am unable to state the time.

Q. Approximately? A. Sometime in the early part of that summer of  
30 1885.

Q. Can you say whether he was then the bearer of statements submitted by the joint contractors? Had he statements prepared by Mr. Peters for his part of the work? A. He had statements prepared by Mr. Brown, the contractors' engineer.

Q. What did these statements cover? A. Covered all the details of the work under our claims, that we were making at the time.

Q. After the final certificate was issued, did you apply for the details of that final certificate to the chief engineers? We did.

Q. Was Mr. Peters a party to the demand for these details? A. The  
40 details for the final certificate was applied for by advice of our attorneys, and Mr. Peters and myself consented, and urged it for the very purpose of bringing a second suit.

Q. After the certificate of February 1886 was issued, did you bring a second suit? A. As I remember it, our first suit was brought in 1883, and dropped in 1884 or 1885. I am unable to state at what time our suit was. . . . .

Q. The second suit, in any case, was instituted after the final certificate of February 1886 had been issued? A. Yes, sir.

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*P. 135-7 1.40* In the Superior Court.  
 Q. Had you then the details of the final certificate which are produced as Defendants' exhibit 1 annexed to the Commission? A. No. We had not at the time we brought the suit.

Q. Now, your second suit was for the purpose of having the certificates declared fraudulent, and set aside, and claiming the balance which each of you claimed upon the whole of the work? A. Yes, under a *quantum meruit*.

Q. Were statements prepared for the purpose of that suit? A. They were.

*P. 607-8* No. 55 Plaintiff's Evidence of Edward Moore, 9th Dec., 1895. continued—  
 Q. Will you look at the statement now produced, and filed as Defendants' exhibit at enquête B 3 and state from whom you received and by whom it is made? A. It is a joint statement, prepared at the office of the late Mr. Peters, 10 by Mr. Brown, Mr. Peters and myself, and I think it is in the handwriting of Mr. Albert Peters.

Q. Is that the statement upon which the second suit was brought? A. That is the statement upon which the second suit was brought.

*P. 595-606 1.30 (at p. 604)*  
 Q. Now referring to these letters, Defendants' exhibit at enquête B 1 I notice a letter of the 13th May 1887, covering one in the handwriting of Mr. Cook, or, at least coming from Mr. Cook's office, and initialed by Mr. Bossé. Will you state whether you returned that letter, signed as requested, or whether you refused to do so? A. I declined to sign it, and so notified Mr. Peters.

Q. After the final certificate was issued, and before final judgment in the Supreme Court, or after that date even did you receive from the late Mr. Peters any statements of accounts showing the amount that he claimed out of the sums payable by the Harbour Commissioners? A. I received, during the progress of the suit, one or more statements, and one or more statements after the suit had been decided by the Supreme Court.

*P. 609*  
 Q. Will you look at the statement now produced, and marked Defendants' exhibit at enquête B 4, and state from whom it was received, when and by whom it is written? A. That is a statement that I received by mail from Mr. Simon Peters, with a letter accompanying it, of the date of January 8th 1891. The writing, I think, is in the handwriting of Mr. Albert Peters—I am sure as to the handwriting.

*P. 610*  
 Q. Will you look at the letter under date 8th January 1891, and produced and filed as Defendants' Exhibit at Enquête B5, and state whether that is the letter which covered the statement B4? A. That is the letter.

Q. It is signed by Mr. Peters? A. It is signed by Mr. Peters.

Q. And written by him? A. And written by him, in his own handwriting.

*P. 610 1.30*  
 Q. Will you look at the letter of the 12th February 1891, now produced as Defendants' Exhibit at Enquête B6, and state whether that is signed and written by Mr. Peters? A. That is in the handwriting of, and signed by the late Mr. Peeter.

Q. What is referred to in both these letters? What is the subject matter? A. The subject matter is the balance due him under our contract, and an application for the drawing of funds from the Quebec Harbour Commissioners, or an order upon the Quebec Harbour Commissioners for funds not paid by the Quebec Harbour Commissioners.

Q. Had you any other transactions with Mr. Peters, beyond those that are the subject matter of the present litigation, and the contract between the Quebec

Harbour Commissioners? There were no other works in which you were jointly interested? A. Oh, no.

Q. With respect to this application for an advance, was it ultimately settled by your agreeing to it, and taking a bond from Mr. Peters that he would repay any amount that he was overpaid? A. It was.

Q. Have you the bond here? A. I have. (Witness produces the said bond as Defendants' Exhibit at Enquête B7).

Q. Whose is the signature of that bond? A. The signature of the late Simon Peters.

10 Q. Was it signed on the day it bears date, the 10th March 1891? A. That I am unable to state, as it was sent to me from Quebec.

Q. When did you receive it? A. I received it within a few days of its date, from Mr. Peters.

Q. On receipt of that, did you act in any way? A. I did.

Q. What did you do? A. I signed a joint order upon the Harbour Commissioners, to the amount of \$7,000.

Q. In favour of whom? A. I am unable to say, without referring to documents, whether it was in favour of the late Mr. Samson, or the Bank of Montreal.

20 Q. But it was for the advantage of Mr. Peters? A. It was for the advantage of Mr. Peters.

Q. Now, you said, Col. Moore, that you received other statements from Mr. Peters in the course of the year, when this matter was going on. Will you refer to the statement now produced and filed, as Defendants' Exhibit at Enquête B8, and state whether that was received by you from Mr. Peters and when, and under what circumstances? A. I received this statement from the late Simon Peters on March 9th, 1887, at the St. Louis Hotel, in the City of Quebec.

Q. Do you know in whose handwriting the ink part is? A. I do not.

Q. The pencil memoranda are ....? A. The pencil memoranda are in my own.

Q. When were these pencil marks made? A. They were made at the time, the same evening that I received the documents.

30 Q. I see a reference in your handwriting, in pencil: "Peters received, Feb. 2nd., 1880, and not accounted for in the above, \$5,000." What does that memorandum refer to? A. It refers to a sum of \$5,000 which Mr. Peters drew in his own name on the 2nd February, 1880, and which was charged to the contractors Moore & Wright, and after a conference and correspondence of many months, it was readjusted, and paid to us by the Commissioners, and charged to Mr. Peters.

Q. Have you a receipt or an acknowledgement from Mr. Peters with respect to that \$5,000? A. We have.

40 Q. Will you look at the receipt now produced and filed as Defendants' Exhibit B9, and state whether that refers to the \$5,000 you have just mentioned, and is signed by the late Mr. Peters? A. This receipt refers to the \$5,000 noted upon that statement, in pencil, by myself, and is signed by the late Mr. Peters.

Q. Did you take part, in any way, in the application which was made to the Harbour Commissioners for that advance of \$5,000? A. Not when it was asked for, or when it was first received.

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In the Superior Court.

No. 55 Plaintiff's Evidence Deposition of Edward Moore 9th Dec. 1895. continued—

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RECORD.

P 522

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*Q.* Will you state whether at the time that the letter of 31st December, 1879, produced as Plaintiff's Exhibit at Enquête A8, was signed and sent to the Commissioners, you had in any way authorized the late Mr. Peters to sign the firm name of Peters, Moore & Wright. *A.* I had not. Neither member of our firm, at that date, was in the city of Quebec.

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Plaintiff's  
Evidence  
Deposition  
of Edward

*Q.* When did you first know that this application had been made? *A.* When our first estimate came due, in the spring, and the amount was deducted from our estimate.

P 522

A. 20

Moore,  
9th Dec.  
1895.

*Q.* Does the letter of 30th June, 1880, Plaintiff's Exhibit at Enquête A9, refer to that? *A.* It does.

10

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P. 15

continued—

*Q.* Look at the letter of the 29th December, 1890, produced and filed as Defendants' Exhibit at Enquête B 10, and state whether that was received by you, and signed by the late Simon Peters? *A.* Defendants' Exhibit at Enquete B 10 is signed by the late Simon Peters, and was received by me.

P 614

*Q.* Will you look at the letter under date of 20th February, 1884, produced and filed as Defendants' exhibit at Enquête B 11, and state whether the same was written and signed by the late Simon Peters? *A.* Bill 11 is a letter written to me by the late Simon Peters, and signed by him, with a copy of a telegram attached, which I sent to him.

*Q.* In answer to the letter? *A.* In answer to the letter.

20

*Q.* There was some question yesterday, with respect to some of the estimates covering work done by both of the joint contractors, that is adding work done by one to that done by the other, in order to get an estimate. Can you produce any receipt or document bearing upon this point, from Mr. Peters? *A.* I can. Yesterday I was asked a question by Mr. Gibsone to compare and state whether the amounts in the statement furnished by Mr. Verret, the Secretary Treasurer of the Harbour Commission were correct or not. I said I was unable to state it, because, in some of the estimates, they were for the joint parties. The counsel took occasion to reprimand me pretty severely, and here is the receipt from Mr. Peters, in reference to the progress estimate No. 2.

30

(Witness refers to letter-press copy book, and reads: "Quebec, 15th July, 1880.

\$2,565.00. Received from the Quebec Harbour Commissioners, through the hands of Mr. Peters, the sum of two thousand five hundred and sixty-five dollars, being amount of certificate No. 2 for concreting, Quebec Harbour Improvements up to, and including, the 14th July 1880, and, as per progress estimate No. 2, dated 14th July, 1880.

(Signed) MOORE & WRIGHT.

The foregoing receipt is copied from a press copy contained in the Defendants' letter book.

40

*Q.* This sum of money was adjusted subsequently between yourself and Mr. Peters? *A.* It was.

*Q.* And it does not alter the balance now in question between you? *A.* No.

*Q.* Can you recollect, from memory, whether it has occurred more than once? *A.* I think there was another instance, during the progress of the work.

*Q.* What was the cause of your proceeding in this way? *A.* Under the terms of our contract, we were not allowed to draw payments, unless we put in

a certificate to the office for the sum of \$10,000, and when either party, as it occurred once or twice, wished to have funds, we would unite, and join the other in getting an estimate.

One o'clock, the Court adjourns till 2 P.M. At 2 P.M. the cross-examination of witness is continued.

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—  
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No. 55.  
Plaintiff's *not printed*  
Evidence *same as*  
Deposition *part of*  
of Edward *418*  
Moore, *P. 231*  
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*continued—*

10 *Q.* Referring to your previous evidence, with respect to the statements forwarded to the Chief Engineers, through Mr. Peters, will you refer to the letter of the 19th April, 1886, Plaintiff's Exhibit at Enquête A35, and state whether these are the ones that are referred to by the Chief Engineers in that letter? (Letter is handed to witness.) *A.* That is the statement which was referred to.

*Q.* Would you refer to the statements enclosed in Plaintiff's Exhibit at Enquête A7, and state whether in that statement Mr. Peters is allowed the whole of the cost of the northern crib work? *A.* This statement is in excess of the amount allowed by the Engineers for the building of the northern crib work.

*Q.* Will you further explain that answer? *A.* This statement foots up the cost of the northern crib work as \$58,633.48, while the final certificate allows it as \$58,059.53.

20 *Q.* Referring to the letters, Plaintiff's Exhibit at Enquête A11 & A12, were they written at the time that the contractors were claiming payment for the work done, independently of the bulk sum of the contract, and upon that assumption? *A.* They were.

*P. 524*  
*P. 524-5 1.40*

*Q.* Was the statement referred to in the letter of the chief engineer, dated 14th December, 1881, Plaintiff's Exhibit at Enquête A 6, accepted either by the Commissioners or chief engineers? *A.* It was not.

*P. 518-19 1.20*

*Q.* Was the statement or basis of accounts set out in Plaintiff's Exhibit at Enquête A 5 accepted by any of the parties, either the contractors or the chief engineers, or the Harbour Commissioners? *A.* It was not.

*P. 517-18*

30 *Q.* Referring to the letters and telegrams, which form part of Plaintiff's Exhibit No. 33, will you state whether the building of the northern crib work, as contracted for by Mr. Peters at that time, did involve, in fact, a deduction from your work, not at that time consented to by you? *A.* There was a deduction made in our portion of the work, for the building of the northern crib work on labour and stone.

*P. 221-6*

*Q.* What portion of the work was this, that came to be eliminated by the building of the northern crib work? *A.* Pitching the slope and the forming of a toe of stone, at the outer edge of the slope.

40 *Q.* Had any of these changes been agreed to prior to the date of the correspondence, Plaintiff's Exhibit 33, by you? *A.* None of them had been agreed to prior to the correspondence with Mr. Peters for the building of the northern crib work, during our absence.

*Q.* So that, at the time that Mr. Peters contracted in the name of Peters, Moore & Wright, for the northern crib work, you had not consented to his doing so? *A.* Not at the time he made the proposition to the Commissioners. Afterwards, we gave consent by our correspondence and telegrams, as stated in the telegrams and correspondence.

*Q.* Your telegram of the 6th February, 1879, stated that you consented, provided there was no reduction in your work, except that already agreed to? *A.* Yes, sir.

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P. 567 l. 15  
P. 567 l. 30

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Plaintiff's  
Evidence  
of Edward  
Moore,  
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continued—

Q. Now, in fact, there was a reduction involved in the contracts, which you had not at that time agreed to? A. There was.

Q. Referring now to letters, Plaintiff's Exhibit at Enquête A29, A30 and A31, will you state whether you have made an exhaustive search for the copy of the letter sending the details of the final certificate, to which you have already referred, and whether you have been able to find it? A. I have, and have been unable to find it, up to the present time.

Q. Can you recollect about when it was sent? A. I cannot. We were sending so many statements, and preparing so many statements, that without the data I would not like to say when.

Q. By whom was this statement prepared? A. A statement was prepared by J. Vincent Browne.

Q. What position had Mr. Browne occupied with respect to the joint contractors prior to the time that he prepared this statement? A. He was the contractors' agent, or engineer, under the terms of the contract.

Q. Was he the joint servant of both contractors? A. He was.

Q. The person referred to in paragraph 29 of the Blue Book, if my memory serves me aright? A. 28 and 29.

Q. Now, can you state whether these details, as embodied in the final certificate, Defendants' Exhibit 1A, were prepared at the time that the statements were forwarded to the Chief Engineers, which resulted in your obtaining a final certificate of February, 1886, and the details of February, 1887? A. They were prepared prior, a few weeks prior to that time.

Q. Will you look at the copy of letter, dated 9th April, 1879, addressed by Moore & Wright to Simon Peters, and state whether that letter was sent? (The said letter is filed as Defendants' Exhibit at Enquête B12.) A. The original of that was sent to Mr. Peters.

Q. Who was chosen as agent in accordance with that? A. J. Vincent Browne.

Q. I want to refer you to plans which were submitted to you yesterday, Plaintiffs' Exhibits 24 and 25? (Plans are shown to witness).

Q. Will you state whether these plans involved a departure from the original contract? A. Yes, sir, they did.

Q. In what respect? A. The substitution of a masonry face, and a coarse concrete backing, in lieu of a timber face and fine concrete backing.

Q. Did they call for any increase of the quantity of concrete, independently of the quality now, over what was called for by the original contract? Objected to on the ground that the Defendants have refused to produce any statement of the work done by them, and seek now to prove additional work done by them, without producing any account; Objection overruled. A. They did.

Q. Have you a plan showing the increased quantity? A. No, sir.

Q. Will you state, in a general way, how the increased quantity arose? A. The increased quantity arose over and above the original plan, by an increase in the thickness, and a change in the stepping.

Q. An increase in the thickness of the concrete? Was there another change made in the alignment of part of the work? A. That in the wet dock portion was changed.

P. 237-40 l. 30

P. 614-15 l. 40

Plans

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Q. To what extent? A. About six inches. The wall was moved forward.

Q. Did that shoving forward of the wall increase the thickness? A. It increased the thickness just that much.

Q. When that change was made, was there a letter sent to the contractors authorizing the change, and stating how it should be dealt with? A. There was, under date of July 22nd, 1879. (The said letter is produced and filed as Defendants' Exhibit at Enquête B13.)

10 Q. Referring now to the final certificate, Defendants' Exhibit 1A, annexed to the Commission, will you state in what manner the items referred to there differ from the items of the different bills of the Blue Book, and explain these differences in so far as you are able to do so, in a general way, without going into minute calculations? A. I should be unable to go into the details, to explain that, without taking the time to go over the Blue Book, and prepare proper answers.

20 Q. Referring to Defendants' Exhibit at Enquête B4, being Mr. Peters' statement of the 18th January, 1891, will you state in what respects it differs from the statement upon which he has now sued? Without going into every figure, would you just state the salient points of difference? A. There is a difference of some \$12,000 in the bulk, and in the different bills, there is a variation, as under statement Exhibit B4, he makes a claim for his work under the terms of the contract, and under the statement, Plaintiff's Exhibit 6, he sues for the stone wall in a lump sum of \$77,378.50. This would vary the bills very much, as in Exhibit B4, under Bill No. 1, he claims \$51,491.00, while under Bill No. 1 of Exhibit 6, he only claims \$36,955.44. Bill No. 2 is the same. Bill No. 4 of Exhibit B4, it is \$67,567.50, while in Exhibit 6, Bill No. 4, it is \$48,465.73. In Bill No. 7, in Exhibit B4, he makes a claim for \$4,582.24, and in Exhibit 6 he makes a claim for \$6,838.44. Bill No. 8 is the same in both Exhibits. Bill No. 9 is the same. He makes a claim for one half of Bill No. 9. For additional work, he makes his claim for the four additional blocks in item 1, Bill No. 1, while in 30 Exhibit 6 it is a separate charge. In Exhibit B4 he makes a claim of \$21,940.19 for the stone wall, while in Exhibit 6 he makes a claim of \$77,378.50. I notice two other changes in Exhibit B4. He makes a claim for driving length of six inches piles, wet dock \$272.25, which is not in Exhibit 6 so far as I can see. In Exhibit B4 he makes a claim for the superstructure of northern crib work \$58,285.36, while in Exhibit 6 he makes a claim of \$58,059.53. He makes a claim in Plaintiff's Exhibit 6 of \$2,309.29 for proportion of understated bills of quantities allowed by Engineers. He makes no claim on this item, whatever, in Exhibit B 4. He makes a claim for the pile and stub foundation, allowed by Engineers in final certificate, of \$4,378.65, in Exhibit 6 which he does not make 40 in Exhibit B4. The other items are the same, with the exception that in Exhibit B4 he makes a deduction for the fenders not put upon the work.

Q. In Exhibit B 4, how much is claimed in respect of the stone wall? A. In Exhibit B 4 he makes a claim of \$21,940.19 for the stone wall, and deductions on fine concrete, applicable to cost of stone wall, \$27,531.25. These are the only two items that I see in Exhibit B 4 that he makes a claim on, which refer to the stone wall.

Q. Is that true, also, of Defendants's Exhibit at Enquête B 8? A. These two statements, Defendants' at Enquête B 8 and Defendants' Exhibit at Enquête

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P. 101-19 l. 30  
at p. 102 l. 5

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Evidence  
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B 4, are very similar. I see but one change, or one difference between them. In Bill No. 7, crib work at ballast wharf. In Exhibit B 4, he makes a claim of \$4,582.21, while in Exhibit B 8 he makes the claim for the same item \$4,319.27. These are the only differences I see, with the exception of his credits on the back. He makes his credits in Defendants' Exhibit at Enquête B 4, as \$237,452.11, while in Defendants' Exhibit at Enquête B 8, he makes it \$234,952.11.

Q. Was any use made of the statements upon which the progress estimates were made, in the statement of account that was prepared for the final settlement of the case by the resident engineer? A. Not to my knowledge.

Q. I am not aware whether I have previously asked you, but in case I have not, I wish to know whether you had anything to do with the preparation of the statements for the work done by Mr. Peters, upon which he was paid during the progress of the work? A. I have not.

The *re-examination* of the witness is adjourned to the 12th December instant.

On Thursday, the 12th December instant, the witness is *re-examined*, as follows:

Q. Col. Moore, when you sent home that Exhibit ~~A~~<sup>1a</sup>, to be signed by Mr. Kinipple, you were aware, were you not, that he had declared himself unable to give details? A. I was aware, from a letter that I have forgotten the date of, that he said that he could not go into the details. 20

Q. Not only one letter. Were there not several letters? And a good many letters to that effect? A. I do not remember but one. There may have been.

Q. Is it not a fact that in April 1886, Messrs. Moore & Wright received a letter from Kinipple & Morris in answer to one written by them, which is produced in this case, in which it is stated as follows: "We carefully read over the letter and statement forwarded to us, through Mr. Pilkington, and have tried, as far as possible, to divide the items, but we have found, excepting a few items, it impossible at this distance of time, to go into all the details you asked, and had we attempted it, we fear we should have got into hopeless confusion." You received that letter? A. Yes. 30

Q. It appears, does it not, also by your letter of the 28th September 1896, being Plaintiffs' Exhibit No. 39, and being a letter written by you to the late Mr. Peters that you cite a letter received by you from Mr. Kinipple saying: "As Mr. Morris will no longer be visible in and matters connected with the Quebec works, there is really only Mr. Pilkington who knows anything about them."? A. I remember receiving a letter, and I think it is in the case of the Quebec Harbour Commissioners. It is in the printed book. 30 1556

Q. This letter, Plaintiffs' Exhibit No. 39, is in your hand writing, and was sent to Mr. Peters? A. Yes.

Q. There is no false statement in it, I suppose it is true? A. Yes. 40

Q. You therefore were aware of the information therein contained? A. I was aware of what I cited in that letter.

Q. Would you look at the letter, Plaintiff's Exhibit No. 40, produced in this cause, and say whether it is not a fact that you cited a letter received by you under the following words: "That now Mr. Morris is dead, there is no one left but Mr. Pilkington who understands the Quebec matter." In communicating that statement to Mr. Peters, you communicated truly the information which you had

P. 237-40 1.30

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received from Mr. Kinipple? A. I would not say that this is an exact quotation from Mr. Kinipple, as I am expressing my views. I have a letter from Mr. Kinipple, in which he says Mr. Morris is dead, and there was no one left but Mr. Pilkington, who understands the Quebec matter.

Q. In that letter, you are expressing your views? A. No, I am quoting from a letter that was sent to Quebec at the time.

Q. Now, seeing that you received these letters, you were aware, were you not, that Mr. Kinipple was not in a position to give the details of the contracts? A. I can only judge as far as the letters from Mr. Kinipple are concerned.

10 Q. Was it because of your receiving these letters, or knowing the fact that he was unable to give details, that you and Browne prepared the details, to be sent to him for the Exhibit 1A? A. Mr. Browne prepared the details, at my request, and they were sent to Messrs. Kinipple & Jaffrey.

Q. You were asked, was it because you were aware that Mr. Kinipple was not in a position to give the details according to these letters that you prepared or had these details prepared to send to him? A. I was not aware that Mr. Kinipple was unable to prepare the details, for, in all the letters, there is other details in connection with this matter, which we were going into.

20 Q. Who do you mean by we? A. The contractors, Mr. Peters and ourselves. Under our original claims, we were claiming, both on behalf of Mr. Peters and Messrs. Moore & Wright, for additional work, over and beyond that allowed in the first detailed statements, Exhibit 1, annexed to the Commission.

Q. Now, I am confining my question to Exhibit 1A and not any other statement, and I ask you whether or not you did not know from the letters cited that Mr. Kinipple was not in a position to give the details, from the letters received by you? A. No, I was not nothing further. . . than what the letters say.

Q. Seeing the letters of Mr. Kinipple on that point, you had these details prepared by Browne for Exhibit 1A, had you not? A. I had.

30 Q. Then you have produced a letter here asking Mr. Kinipple to send these details, and that letter is signed Peters, Moore & Wright? A. It is.

Q. You were the only persons interested in these details, namely Peters and Moore and Wright. Is that not so? A. When you used the term you, do you mean Moore & Wright?

Q. I mean the late Mr. Peters and Messrs. Moore & Wright. A. We were all interested.

Q. I say you were the only people who were interested in that? A. The joint contractors?

Q. Yes. A. Yes, sir.

40 Q. Before you sent this Exhibit No. 1 A to Mr. Kinipple to be signed, did you communicate it to the late Mr. Peters? A. I do not remember. I would not swear to that.

Q. Now, seeing that Kinipple had written you the letters just cited, showing how far he was unable to make the details, and that you and Brown made these details, do you not think that it was taking Mr. Kinipple by surprise to write him a letter under the name of Peters, Moore & Wright, demanding that this Exhibit 1 A should be signed thereby giving him to understand that Peters was a party to the demand? A. No. All correspondence, or the principal part of

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RECORD. it was signed by Peters, Moore & Wright, by the contractors Moore & Wright, asking for these statements.

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Q. But this certificate 1 A is very adverse to the interests of the late Simon Peters? A. I do not think it is.

Q. Would you look at Defendants' Exhibit B 3, and state who wrote the original of that Exhibit? A. I am unable to state.

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continued—

Q. Will you look at Defendants' Exhibit at Enquête B 11, and the telegram attached, which says: "I will accept the proposition, as stated in your letter. Will write to-night." What proposition was it you referred to? R. It is a proposition to buy his interest out in the suit that was brought before the court at the suggestion of our Counsel, and I asked him to name his price. We had had a verbal conversation, here in Quebec, prior to this, and he agreed to write me, giving me the price that he would accept for his interest in the claim then before the Court, and that is his proposition.

Q. A proposition contained in a letter? A. The proposition contained in a letter. He names the amount he was willing to take.

Q. What was the amount? A. \$23,442.84. I telegraphed him on receipt of this letter, that I would accept the proposition, and, in a day or two after that, I received a letter from him declining.

Q. This is a copy, I suppose, of your telegram accepting the proposition contained in his letter of the 20th February, 1884, to accept \$23,442.84 for his interest in the suit? A. Yes. And he declined to accept it, having discovered errors in his accounts, he claimed.

Q. But this telegram is an answer to that letter? A. That telegram, I think, is an answer to that letter. We were telegraphing and writing so many letters that it is very difficult, at this late date, to state where they are, but my impression is that this is a copy as it refers to the matter.

Q. It does not bear the date? A. No. That is the reason why—

Q. Look at the back of it? What is there on the back of it? A. "Don't copy."

Q. What does that mean? A. I am unable to say what that does mean. I should say that meant to keep the original, and not make a copy of it to put in with the letter in filing it away for the purpose of having the original paper, instead of a copy of it.

Q. You produced, Col. Moore, Defendants' Exhibit at Enquête B8, being an account. There is something written at the foot of this account. Would you say if it is in your handwriting, and what it is? A. That is in my handwriting, the pencil writing at the foot: "Peters received February 2nd, 1880, and not accounted for in the above \$5,000." Then there is a deduction, or subtraction, leaving \$33,647.44. "March 9th, 1887, this statement was handed to me by Mr. Peters, at the St. Louis Hotel, in the presence of Mr. J. V. Brown and E. B. Cummings, on March 9th, 1887."

Q. Is this entry true, or not, that you received this on the 9th March, 1887, in the St. Louis Hotel? Is it a true entry? A. I should say it was a true entry, made at the time. I will look at my diaries, to refresh my memory. I should say that was a true entry, made at the time, as I am in the habit of noting upon these—

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2612

Q. Have you any doubt about it being true? A. No. I have no doubt. RECORD.

Q. In fact, you say it is true? A. I say it is true.

Q. I suppose, Col. Moore, you have not yet been able to obtain those details about Defendants' Exhibit 1A? A. No

Q. You have searched for them, and cannot find them? A. Yes.

Q. Would you refer to your Exhibit No. 1, annexed to the Commission? (Witness refers to Exhibit No. 1, annexed to the Commission.) Refer to the item in that Exhibit, as follows: "Substructure between ballast wharf and gas

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10 A. That is for the low crib work, that was built prior to the northern crib work.

Q. Look at item 21? A. "Dredging, as per contract 241,723 cubic yards in "tidal basin extra dredging \$60,430.81."

Q. That was purely for dredging, over and above the total amount of the contract? A. It was an extra, over and above the bulk sum contract.

Q. Item 23 reads? A. "For stone and clay and fine ballast, as per contract "allowed by engineers \$38,083.05."

*continued—*

Q. Was that work for work done over and above the contract lump price? A. It was work done and provided for under the contracts but I do not think it was included in the lump sum—I would not say, as I should want to examine the Blue Book. (Witness refers to Blue Book.) Having examined the Blue Book, I now say it is not included in the lump sum, but it is provided for on page 100 of the Blue Book, schedule of rates, for this class of material.

Q. So that it was really additional work? A. It was extra work, not additional.

Q. The next item, 24? A. Item 24. "Concrete 16 to 1 in foundation wet "dock cribs \$11,485.80."

Q. Is that also extra work? A. That is extra, in lieu of stone ~~and~~ and clay filling.

Q. Which was done away with? A. Which was done away with and deducted.

Q. Would you look at your Exhibit 1 A, annexed to the Commission, and 30 explain how you arrive at the figures \$79,467.65, being the third item? A. "Allowed for coarse, or 8 to 1 concrete in twenty-seven crib blocks in South "Tidal Harbour, in substructure and superstructure, as per amended plan." Not having the details upon which this item was made up, I am unable to explain it, without going through all of the original plans, showing the different changes made in the work, the increase and deductions made from time to time in the cribs and the substructure.

Q. I suppose Brown's notes would have proved that, if you could had found them? A. Brown's notes would have proved that, if I could have found his measurements of them.

40 Q. You have not got the data? A. I have not data here.

Q. Have you it in Quebec? A. No. I say I have not found it. This is the data I have been looking for at your request.

Q. Have you got it at all in your possession? A. I would not be sure. I have got such an amount of papers—I have a trunk full of details that were made—memoranda—on these statements.

RECORD.

*Q.* So now you are not in a position to say how this sum was arrived at?  
*A.* I am not now.

*Q.* Would you state whether the figures \$386.61 in the fourth item of Exhibit 1A, annexed to the Commission, are a clerical error? *A.* I am unable to state, as in that bill, as in all other bills of the contract, there was changes made in the work.

*Q.* And this Exhibit 1A represents all these changes? *A.* Yes, sir.

*Q.* All of them. Every one of them? *A.* Yes, sir.

*Q.* So this Exhibit 1A represents the work actually done? *A.* Actually done.

*Q.* You stated, Col. Moore, that your Exhibit No. 2 was based upon this certificate 1A. Would you refer to that item in it, and state whether you are now in a position to say whether there was not a clerical error in Defendants' Exhibit 1A? *A.* There may have been, and from this statement, Defendants' Exhibit 2, I should say in copying it by the typewriter.

*Q.* I mean in Exhibit 1A? *A.* No. In this statement, Defendants' Exhibit No. 2.

*Q.* But in the Blue Book, is it not conformable with your Exhibit 2?  
*A.* No. It is not exactly. The Blue Book is \$328.61, and the Exhibit 2 is \$328.60.

*Q.* Of course, Bill No. 2 being founded upon Exhibit 1A would be also conformable to the amended plans mentioned in Exhibit 1A? *A.* Certainly.

*Q.* Then, I presume, Col. Moore, you are not in a position really to give the details of any one of these? *A.* I am not just at present.

*Q.* By reason of your not having Brown's statements? *A.* By reason of my not having Brown's statements.

*Q.* Look at the last item on page 1 of Exhibit 1A, being item No. 6, and see whether you can state how these figures are made up, being the figures which you allow Mr. Peters? *A.* For the same reason as I have already stated, I am unable to give the details, not having the details of our Engineer.

*Q.* How is it you can claim there is only that amount coming to Mr. Peters?  
*A.* From the certificate 1A.

*Q.* The amended plan was made after the Blue Book. It bears a later date, does it not? The amended plan, referred to in Exhibit 1A, was of later date, was it not, than the Blue Book? *A.* The most of the amended plans was made after the signing of the contracts, but there was one amended plan that was made prior to the signing of the contract and forms part of the contract.

*Q.* Why it is called an amended plan? *A.* A change from the original plan.

*Q.* Which plan is it? Is it produced in this case? *A.* No.

*Q.* Is that the amended plan referred to in Exhibit 1A? *A.* There is a number of amended plans, I think, referred to. It does not name any of them specially.

*Q.* What is the date of the amended plan referred to on the second page of Exhibit 1A, at Bill No. 7? *A.* I am unable to state, as that plan of crib work was changed in the season of 1877.

*Q.* Was it previous to, or after the signing of the contract? *A.* It was after the signing of the contract.

*P237-40*  
*L. 30*  
*at 1237 L. 40*

*In the*  
*Superior*  
*Court.*

No. 55  
 Plaintiff's  
 Evidence  
 Deposition  
 of Edward  
 Moore,  
 9th Dec.  
 1895.

*continued*

*P 128-30 L. 35*

Q. The amended plan, therefore, referred to in Exhibit 1 A, was subsequens to the signing of the contract? A. In respect of that item.

At one o'clock the Court adjourned till 2 P. M. At two o'clock re-examination of witness continued.

Q. Have you any of the amended plans that are mentioned in that certificate 1 A? A. I have tracings of some of them.

Q. What I want is the plan of the 5th June, 1879, mentioned in Exhibit 1 A, and which is Exhibit 24, produced by the Plaintiffs' is it not? A. It is not. It is a tracing, with some alterations from the plan of June 5th, Exhibit of 10 Plaintiff's No. 25.

Q. Plaintiff's Exhibit No. 25 is the original plan? A. Plaintiff's Exhibit 25 is the original plan. The other is a copy, with some alterations upon it.

Q. Then Plaintiffs' Exhibit No. 25 is the Exhibit that is alluded to in the certificate 1 A? A. It is the plan that is alluded to, but the work was done differently even from this plan. It was done in accordance with the order of the 22nd July 1879, Defendants' Exhibit at Enquête B 13.

Q. As regards these two plans, on which you have given evidence just now Plaintiff's Exhibits Nos. 24 and 25, would you state by whom these were made?

A. Made by the contractors' engineer. Exhibit No. 24 was the tracing 20 made by the contractors' engineer, Mr. J. Vincent Brown, and Exhibit No. 25 was made by Mr. Pilkington, and bears his signature upon it.

Q. I omitted to ask you a question just now. Look at Defendants' Exhibit No. 2. You stated this morning that the amount mentioned in the second item thereof \$328.60, was a clerical error, did you not? A. I did.

Q; Would you state whether the addition of these amounts \$114,500.08 is also a clerical error? (Witness refers to Defendants' Exhibit No. 2) A. The six, if I have computed them right, are correct as to the figures in the column.

Q. Then the original amount in Exhibit 1A must be a clerical error, if the the \$114,500.08 are right? A. As to these figures.

30 Q. Which of the two additions is the clerical error? Is it the \$328.60 that appears there, or is it the amount appearing in certificate Defendants' Exhibit 1A? A. The \$328.60 is the clerical error. This is a statement prepared by me, and copied by my typewriter from Exhibit 1A, and I have made an error, or the typewriter has made an error in copying the figures.

Q. Then, as the amount \$328.60 is a clerical error, naturally that error goes all through Exhibit No. 2? A. Yes, sir. I should say it goes all through that statement.

Q. Therefore that statement, to that extent, is erroneous? A. Is erroneous.

40 Q. Now, do you consider this certificate given by Mr. Kinipple, Defendants' Exhibit 1A, as reliable? A. It is reliable as to the work done.

Q. As to what it certifies? A. I consider it is reliable as to what it certifies on the face of it.

Q. The Exhibit 1A, however, according to you, does not represent the figures of the original works contract, but it represents, on the contrary, the work actually done? A. I cannot say that, because we have made claims which we had ought to have allowed for additional work for which we are not allowed in any of our certificates.

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No. 55.  
Plaintiff's  
Evidence *Plan*  
Deposition *Plan*  
of Edward  
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P237-40 P. 30  
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Superior  
Court.

No. 55  
Plaintiff's  
Evidence  
of Edward  
Moore,  
9th Dec.,  
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P. 25  
continued—

Q. I want to understand the basis of this certificate, Defendants' Exhibit 1A. The figures therein contained I have understood, during your examination are figures which represent the value of the work done and the prices allowed? A. It represents the prices in the bulk sum, and additional work, as allowed by the engineers.

Q. The certificate 1A, is it a statement taken from the Blue Book, the original works contract, before alterations were made or is it a statement of the work done after alterations were made? A. It is a statement of the sums allowed in the Blue Book, and of additional work done.

Q. Then, where there were changes in the work, from the Blue Book, are these changes represented by the figures in Exhibit 1A? A. They are, in part. 10

Q. In part only? A. In part, as far as I can tell.

Q. Then, Exhibit 1A, the figures therein represent the value of work actually done? A. As allowed for.

Q. Whether done or not done? A. Whether done or not done.

Q. Could you point out in that certificate the works that were not done, and the works that were done? A. I am not able to at present. I am now at work to arrive at that, as near as I can.

Q. You are at work from certain data? A. Yes, sir.

Q. At what data are you at work now, in order to ascertain that? A. The contract specifications and bills of quantities, and my knowledge of the works done and not done. 20

Q. Then you are able to state, of your own knowledge, what works were done and what works were not done? A. I am, to a certain extent. . . .

Q. Would you please point out in this certificate 1A the works that were not done? A. As I have already answered, I am unable to at present, and I am now at work upon it, as requested by Mr. Gibsone on Monday.

Q. Can you say whether the work mentioned in the second item of page 2 of that certificate amounting to \$103,669.90 was done or not done, or what part of it was done and what part was not done? A. It was done. A quantity in excess of that amount was done. 30

Q. Is there any fine concrete in that? A. No sir, there is no fine concrete in there.

Q. But, in the original contract, was there any sum mentioned, in the Blue Book? A. I understood your question to mean 4 to 1 fine concrete.

Q. That is so. A. In the original specifications, there was to have been a 4 to 1 fine concrete, as a facing in rear of timber face of the substructure. It was done away with, and another quality of concrete, called 3 to 1 substituted. By placing every fifth skip of concrete that was placed in the substructure in part of the works, without any of the large stone, it was the matrix that formed the 8 to 1. There is five parts of cement, two parts of sand, and one of fine broken stone. 40

Q. Was there not a great deal of labour saved by that fact? A. No, I cannot say that there was a great deal of labour, as the concrete was deposited by skips, alongside the timber face, while the change which was a mutual arrangement between the engineers and the contractors, was spread all over the works, so as to enrich the 8 to 1.

P238 P. 8

1 A

Q. Will you look at the third page of Exhibit ~~A-1~~, Bill 14, and state whether the amounts therein contained, viz \$8,686.80 for forming roadway ; \$2,550.20 for labour in depositing stone and clay in the dredged trenches, and \$875.00 for labour in depositing bank of stone at the toe of northern embankment, are the amounts deducted in the deductions agreed with the engineers, in Quebec, of \$116,104.32 ? A. I am unable to state whether these items are included in the \$116,104.32, but I think they are, as I have not the deductions.

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Q. 30  
In the <sup>at p. 238</sup>  
Superior <sup>foot of page</sup>  
Court.

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Plaintiff's  
Evidence  
Deposition  
of Edward  
Moore  
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continued—

Q. Can you say, Col. Moore, whether these are the three amounts that are deducted ? A. I am unable to state. They are evidently intended for the 10 items mentioned in the Bill No. 14, page 97. The figures seem to be transposed in the figures "8686" instead of "8,668.80" \$2,550 and \$875.00, they are evidently intended for deductions for work that was not done.

Q. Look at the amount of \$875.00. Are you positive of that item ? A. Yes, sir.

Q. Then this clerical error occurs in exhibit 1 A ? A. It appears in exhibit 1 A.

Q. And there is therefore a clerical error in exhibit 1 A to that extent ?

A. Yes, of \$20.

Q. Now, you have stated that you considered that Mr. Kinipple's certificate exhibit 1 A, is reliable. Would you be surprised to learn that he had signed the certificate contradicting this certificate 1 A ? (A document is handed to 20 witness.) A. I should be surprised.

Q. Would you look at the document now placed in your hands, and which is filed as Plaintiff's exhibit at enquête ~~A-10~~, and say whether you see any contradiction in that to the certificate 1 A ? A. I do not.

A 410 1/2  
P. 577

Q. Would you look at the exhibit now placed in your hands, Plaintiff's exhibit at enquête A 41, and say whether you see anything in that contradictory to the certificate, Defendants' exhibit 1 A ? A. I see nothing in it whatever that is contradictory.

P. 577 l. 15

Q. You know Mr. Kinipple's handwriting ? A. Well, I have seen considerable of it.

Q. You know that these certificates are signed by him ? A. I think there is no doubt but what they are signed by him.

30 Q. And you find no contradiction in them ? A. No.

Q. You find that they are true and correct ? A. I have not compared the computations with the . . .

Q. Look and see whether there is any error or not ? A. They are the same. The bills are the same as in Exhibit 1 A, relating to the three items.

Q. Do you find any untrue statements in the certificates ? A. No, sir. They are the same as far as I know.

*Re-Cross-Examined.*

40 Q. The letters that are shown to you, in which you refer to Mr. Morris being the Engineer who had most to do with the works, and to the difficulty of obtaining particulars after his death, were written before the detailed certificate of January, 1887, Defendants' Exhibit 1, annexed to the Commission, was received, were they not ? A. I think they were.

P 235-7 l. 40

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1.30*  
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Court.

Q. You said that the final certificate, Defendants' Exhibit 1A annexed to the Commission, represented the work allowed for, whether done or not done. Where work allowed for was not done, was it represented by other work that was done? A. It was.

Q. And not otherwise allowed for in the certificate? A. Yes. In the case of the stone wall.

I, the undersigned, do hereby certify that the foregoing is a true and correct transcription of my shorthand notes.

M. J. MORRISON,  
*Stenographer.*

10

No. 55  
Plaintiff's  
Evidence  
Deposition  
of Edward  
Moore,  
9th Dec.  
1895.  
*continued—*

No. 56.  
Plaintiff's  
Evidence  
Deposition  
of Henry  
Joseph  
Peters,  
10th Dec.  
1895.

HENRY JOSEPH PETERS, of Montreal, in the district of Montreal, architect, aged 56 years, being duly sworn upon the Holy Evangelists, doth depose and say :

I do know the parties in this cause.

Q. You were in the employ of the late Simon Peters for some years? A. I was.

Q. Will you state whether you were in the service of the late Simon Peters from the beginning of 1877? I was. 20

Q. Did you continue to be in his employ during the whole of the period that the Quebec Harbour works were being constructed? A. Up to September, 1882, I was with him.

Q. The works were begun in 1877 and finished in 1881? A. Yes.

Q. In your quality as an employee of the late Simon Peters have you had a knowledge of the works that were going on all the time, the Quebec Harbour Works? A. I had complete knowledge of them.

Q. You visited the works, I suppose, frequently, daily? A. I worked on them for some time.

Q. And you had a knowledge of all the work that was done there? A. Yes. 30

Q. A personal knowledge? A. A personal knowledge.

Q. Would you look at the Plaintiff's account in this case and state whether you have already seen and examined it carefully? A. Yes, I have seen it before.

Q. Have you examined the items contained in it and checked them over? A. Yes.

Q. You examined them minutely? A. I did.

Q. And have gone into each item with care? A. Yes.

Q. From your own personal knowledge connected with the works and of this account are you in a position to answer as to the correctness of the items in this account? A. Yes, I am in a position. 40

Q. Would you look at this account again, each and every item thereof, and state whether the same is correct or incorrect? (Account is handed to witness.) A. As far as I understand this account, items from 1 to 26 are correct.

Q. You have examined each and every item and found them correct? A. Each and every item.

Q. Would you look at item 41 of that account and the items connected with it and state whether that item is or is not correct to your knowledge? A. The two amounts agree and are correct, as far as I know.

*P 101-19 l. 35*

Q. You have examined the details of the item 41 and you say, on your oath, they are true and correct? A. Yes. (Defendants' counsel objects to the proving of the account exhibit 6, in this manner.)

Q. You have the details of item 41 before you. Would you look at them, please? The first item is for rent of office, five months. What office was that? A. It was the office of the mill.

Q. Who occupied that? A. Colonel Moore and his staff.

Q. Do you know whether he occupied that for the period of time mentioned in that item? A. I do.

10 Q. For the five months? A. Yes.

Q. And the charge of fifty dollars (\$50.00), is that the value of the occupation of that office for that time? A. It is very cheap rent.

Q. You say, then, on your oath, it was worth that sum of money for the time he occupied it, and that he occupied it, and that he occupied it for five months and that that charge is correct? A. Yes.

Q. Would you take the next item? A. "Rent of portion mill yard," as asked for by Colonel Moore, fifty dollars (\$50.00). That is a very small allowance also for the use of the yard.

Q. Had he the use of the yard? A. He had.

20 Q. You swear to your personal knowledge he had the use of the yard? A. Yes.

Q. And that that rent is a very reasonable rent? A. Yes. "Use of portion of yard not included in above, and pond also to put his timber in, seventy-five (\$75.00)" also a reasonable charge.

Q. And he had the use and occupation mentioned in that account? A. Yes. "Use of middle wharf and approach to same, \$100.00"—also a reasonable charge.

Q. And he had the use and occupation thereof? A. He had. "Use of new wharf, \$75.00"—also a reasonable charge.

30 Q. And he had the use and occupation thereof? A. Yes. "Dockage of mixing scows, saw-mill pond, \$15.00."

Q. You have a personal knowledge of that charge? A. Yes. "Loan of cross cut saws, crow-bars, roller frames.

Q. Do you state the price therein charged is reasonable? A. Yes, the price is reasonable. And he had also the use of timber wheels and wagon and winch, for which the price charged is reasonable.

Q. Then, you know each and every item of that account to be true and correct? A. I do.

40 Q. Would you look at the item now shewn to you, item 43, and state whether the work therein mentioned was done at the cost therein stated, and state the total cost? A. That was done and charged at cost price.

Q. That is the cost price of the work mentioned in that account? A. Yes.

Q. What was that work? A. Straightening cribs that were damaged by the ice. The filling behind had not been put in as it should have been done by Moore & Wright, and the ice pushed the cribs out. Letters were sent to that effect complaining of it.

Q. The cost of the work, is it correctly given in that account, to your knowledge? A. Yes, to my knowledge.

RECORD

—  
In the  
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Court.

—  
No. 56.  
Plaintiff's  
Evidence  
Deposition  
of Henry  
Joseph  
Peters,  
10th Dec.  
1895.

continued—

RECORD.

—  
In the  
Superior  
Court.

—  
No. 56  
Plaintiff's  
Evidence  
of Henry  
Joseph  
Peters,  
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1895.  
continued—

Q. What is the amount of that account? A. Fourteen hundred and twenty-four dollars and twenty-six cents (\$1424.26.)

Q. Now, will you state, Mr. Peters, why that claim was made by the late Mr. Peters against Moore & Wright? A. Because they neglected to fill in sand behind the cribs in the proper season, and the want of that sand allowed an accumulation of ice and snow and water, and the ice pushed out the crib work.

Q. I understand, then, that after the cribs had been put down by Mr. Peters, Moore & Wright neglected to fill them in a solid manner so that they would stand during the winter? A. Yes.

Q. And the crib work then became deranged? A. Out of line, pushed out. 10

Q. Pushed out by the ice? A. The action of the ice and water.

Q. During the ensuing winter? A. Yes.

Q. And these cribs, then, had to be.... A. Straightened and brought back to the line, and a great deal of work done.

Q. At the cost, you say, of this fourteen hundred and twenty-four dollars and twenty-six cents (\$1,424.26)? A. \$1,424.26.

Q. And that is the exact cost? A. That is the exact cost.

Q. There is no profit charged on that at all? A. That is the exact cost of the work.

Q. Is it to your personal knowledge that these cribs were put down correctly 20 at first, in line? A. Yes, I am aware.

Q. You know that? A. Yes.

Q. And is it also to your personal knowledge that owing to the action of the ice during the ensuing winter that they were deranged? A. Yes.

Q. And is it also to your personal knowledge that they were deranged because they were not properly filled by Moore & Wright? A. It is.

Q. Was it that there was not enough filling, or what was the reason of it? A. There was not sufficient sand behind to fill up the space behind.

Q. Then, you say, it was due to the fault of Moore & Wright? A. Yes.

Q. You are sure of that? A. Yes. 30

Q. Therefore you say the cost of that work, the straightening of these cribs, amounting to \$1,424.26 was an amount chargeable to Moore & Wright by the late Mr. Peters? A. It was.

Q. And that it cost him that money to straighten them? A. Yes.

Q. Was this cost more than it should reasonably have been? Was the work done as cheaply as possible? A. The work was done as cheaply as possible.

Q. And that is the reasonable cost of straightening this cribwork? A. That is the reasonable cost of straightening this cribwork.

Q. Would you please look at the details of item 44, and would you first state whether the work therein mentioned was done? A. It was. 40

Q. Would you state whether that Exhibit shews the cost of the work that was done? A. It is the account in question.

Q. Can you state whether the work mentioned in these details was actually done and performed by the late Simon Peters? A. I can state so.

Q. Can you state whether the cost of doing that work is correctly stated in these details? A. I can.

Q. And what was the total amount of the cost of doing it? A. Five hundred and eighty-five dollars and fourteen cents (\$585.14).

Q. Was that the reasonable cost of doing that work? A. It was.

Q. Was it done as cheaply as you could get it done? A. It was.

Q. Now, will you state why that work was done? A. Crib No. 1 was sunk, and after it was sunk the bottom was not properly prepared to receive it, by Moore & Wright.

Q. Then, it was the duty of Moore & Wright to prepare the bottom to receive the crib? A. According to the Blue Book.

Q. And you state the bottom was not properly prepared? A. Yes.

Q. How do you know that Mr. Peters? A. Well, the crib was in place, and the tide went out, and it was out of line, not level.

Q. So you know it from the actual experience of having sunk the crib and after the crib was sunk and the tide went out it was ascertained that the bottom was not level? A. I did not sink the crib, but I saw the crib after it was sunk.

Q. The late Simon Peters sunk the crib, and you saw the crib after it was sunk, and you then perceived, or every one perceived, that it was out of position? A. Yes; and instructions came from the engineer to put it right.

Q. Then, what had to be done to put it right? A. The stone removed out of it and lifted, lightened with bateaux, so as to bring it up in place.

Q. Was that work done by the late Simon Peters? A. It was.

Q. And the cost of doing that work has just now been stated by you? A. Five hundred and eighty-five dollars and fourteen cents.

Q. And this work therefore was occasioned from the fact of the bottom not having been properly prepared to receive the crib? A. Yes.

Q. And therefore by the fault of Moore & Wright? A. Yes.

Q. Would you look at the details of item 45, amounting to the sum of (\$45.68) forty-five dollars and sixty-eight cents, and state whether the timber and goods therein mentioned were delivered to Moore & Wright by the late Simon Peters? A. They were.

Q. Would you look at the values placed upon them? A. \$45.68, the values are reasonable.

Q. And Moore & Wright got that timber upon their demand or their order?

A. Got that timber.

Q. Would you look at the details of item 46 and say whether you have a personal knowledge of the work therein mentioned having been done? A. I have a knowledge, as it was returned to the office, as the work was returned to the office by the man who did the work, Young.

Q. Do you know whether that money was expended by the late Simon Peters for the performing of that work? A. It was.

Q. Do you know the work that it refers to? What is meant thereby? A. Yes.

Q. Would you state what that was? A. Driving piles to help straighten tidal Harbour cribs.

Q. You remember that having been done? A. Yes.

Q. Would you explain why that was done? A. Because the cribs were not in line.

Q. How is it the cribs were not in line? A. At times they might have been injured by a scow passing or dredge, the property of Moore & Wright.

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Plaintiff's  
Evidence  
Deposition  
of Henry  
Joseph  
Peters,  
10th Dec.  
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continued—

Q. How does that charge come to be made against Moore & Wright? A. All I know of this item is that it was returned to the office as chargeable to Moore & Wright.

Q. You do not know yourself? you have no personal knowledge? A. No. —the first item. I wasn't present.

Q. You have no personal knowledge of that item? A. No; except through the return made to the office by Young.

Q. What is the first item? A. Driving piles, help straighten tidal harbour cribs, \$130.00. The second item, I am aware of, \$52.00. That was done by Simon Peters and paid for by him. 10

Q. How is it that comes to be charged to Moore & Wright? A. Because they were to do all the work in connection with the dredging.

Q. What was the work that Moore & Wright had to do in connection with that? A. They had to dredge out to a depth of twenty-nine feet. There was a question of ascertaining if this could be done away with and the pile driver was used to test the bottom, four tides, \$52.00. The pile driver was the property of Simon Peters and his men used it.

Q. And Simon Peters paid for that work? A. Simon Peters paid for that work.

Q. And it should be paid for by Moore & Wright? A. Certainly. 20

The Defendants declare that they have admitted the item of \$14.70, being the third item of this account, forming the total of \$169.70.

Q. There is an item here, 47, Moore & Wright's share of silver trowel, \$26.63. Do you know anything of that item? A. I do not.

Q. Item 48, share of account of moorage.

The Defendants admit that \$21.33 was collected by them for the joint account for the moorage of the "Atalaya."

CARON, PENTLAND & STUART,

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Q. Would you look at Plaintiff's Exhibit No. 11, being a list of payments 30 made by the Harbour Commissioners to the contractors, Peters, Moore & Wright? Have you looked at that before, Mr. Peters? A. I have seen it before.

Q. Are these payments correct, do you know? Have you checked them over? A. I have not checked them over, but I presume that they are, from the fact that they are signed by Mr. Verret.

Q. Would you look at the payment under the head of Certificate No. 26. Would you state whether or not this is the check in connection with the payment? (A cheque forming part of Exhibit at Enquête A 3 is handed to witness.) A. It corresponds with the total amount.

Q. Is it not a fact that that is the only single check that does correspond 40 with the total amount of a certificate of payment which was partly payable to Simon Peters? A. That is the only one I know of. The cheque is dated July 15th, 1880, and forms part of Exhibit A 3, and amounts to \$9,102.00.

Q. Mr. Peters, did you cash that cheque yourself? A. I did.

Q. What did you do with the funds as soon as you received them? A. I distributed them according to the amounts stated in the certificate.

Q. You say you distributed that according to the statement made by Mr. Verret? A. Yes.

Not printed

Q. That is to say..... A. \$2,565 to Moore & Wright and \$6,537 to Peters.

Q. You have a personal knowledge of that yourself? A. I have.

Q. You were somewhat familiar at the time, and are now, with the terms of the contract, were you not, that was made between the Harbour Commissioners and Peters, Moore & Wright? A. Yes.

Q. You know something about the substitution of the stone wall to the timber facing? A. A little, as I made up the cost of it myself for the contractors.

10 Q. What did you make it up for? A. For the contractors, to arrive at the cost of it.

Q. That was before the contract was signed? A. Yes.

Q. Would you look at Plaintiff's Exhibit No. 8, and say whether that is the statement which you made? A. This has no reference to the stone wall.

Q. Would you look at Plaintiff's Exhibit No. 15 and say whether that was the statement which you made up of the cost of the stone wall? A. It is.

Q. According to that statement what was the stone wall to cost? A. Seventy-seven thousand three hundred and seventy-eight dollars and forty cents (\$77,378.40).

20 Q. The contractors, Peters, Moore & Wright, went into the statement, did they? A. Certainly; previous to the signing of the contract.

Q. And it was upon that statement as to the amount of the cost of the stone wall that the contract was based? (Objected to: Question withdrawn for the present.)

Q. You are aware, Mr. Peters—I think you have already stated it—that the timber face originally intended to be constructed under the contract was done away with, and the stone face with coarse concrete was substituted therefor? A. I am aware of it.

30 Q. In consequence of that the timber face was not built, and the fine concrete behind was not put in, isn't that so? A. It was not.

Q. Will you state the cost of these items which were omitted by reason of that change, at contract prices? A. In Bills Nos. 1, 3 & 4 the wood and iron deductions for the timber face amounted to \$27,906.56; in Bills Nos. 1, 3 & 4 the deductions of fine concrete for timber face amounted to \$27,531.25 making a total of \$55,437.81, together with eighteen thousand odd dollars makes the total cost of the stone wall. These are the deductions.

Q. That is the total of the work omitted to be done? A. It is, yes.

40 Q. Would you now give us the total cost of the work that was done in order to construct the said stone wall at the price allowed? A. By adding the eighteen thousand three hundred and ninety-three dollars and fifty-eight cents mentioned in the contract to that amount, the amount allowed.

Q. How many feet of stone wall were constructed? A. One hundred and twenty-eight thousand nine hundred and sixty-four (128,964).

Q. Is that as per contract price? (Objected to on the ground that no contract price per foot for the stone wall is stipulated either in the contract with the Harbour Commissioners or between the parties in this cause).

Q. What was the cost and value of building that stone wall per cubic foot? A. Sixty cents was the price that the contractors were allowed for it.

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Q. Allowed for it how? A. By the estimates.

Q. Which were produced in this case? A. Yes.

Q. And which you have seen? A. Yes.

Q. Was that a reasonable price? A. Yes.

Q. At that price what would that stone wall cost? A. Seventy-seven thousand and three hundred and seventy-eight dollars and forty cents (\$77,378.40.)

Q. You have said there was to be fifty-five thousand four hundred and thirty-seven dollars and eighty-one cents to be deducted? A. Yes.

Q. And what difference is there between the amount to be deducted and the cost of the stone wall? A. Twenty-one thousand nine hundred and forty 10 dollars and sixty cents (\$21,940.60).

Q. Then, that latter amount, is it the amount mentioned in the second item of Defendants' Exhibits No. 1? A. It is the same, (\$21,940.60.)

Q. Will you state, then, how this amount mentioned in the second item of Defendant's Exhibit No. 1 was arrived at? (Objected to on the ground that the amount stated in Defendants' Exhibit No. 1, in question, is the amount specified by the contract.) (Objection maintained).

Q. Do you know whether rough boucharding was done to that wall? A. It was done.

Q. What was the cost of that rough boucharding? A. Two and three 20 quarters cents a foot.

Q. Does that go into this amount of twenty-one thousand nine hundred and forty dollars? A. It does.

Q. Do you know the cost of the rough boucharding by itself separately? A. Three thousand five hundred and forty-six dollars and fifty-one cents (\$3,546.51). I think, is the amount.

The Court adjourns till Wednesday the 11th December instant at 10 A. M.

On the 11th December instant the examination of Mr. Henry J. Peters is continued.

Q. Mr. Peters, would you look at Plaintiff's Exhibit No. 8 and say what it 30 is? A. Exhibit No. 8 is a statement taken from the Blue Book shewing Moore & Wright's work to be done according to the original works contract and also prices for dredging in addition.

Q. When was that statement made, Mr. Peters? A. In 1877.

Q. And what for? A. To show to Col. Moore, and at his request also, his share of the work according to the Blue Book.

Q. And are the figures there according to the Blue Book? A. They are. I have compared them.

Q. You are sure it was made in 1877, at the time? A. Yes, made by myself.

Q. That would be copied in your press-copy-book? A. Yes.

Q. Just verify whether it was or not at that date. (Press-copy-book is handed to witness.)

Q. You have referred to the press-copy-book and you find it was copied at that date? A. Yes.

Q. You say it was made at the request of Colonel Moore? A. Yes.

Q. Did he see it then at the time? Q. Oh, yes.

Q. Would you look at Plaintiff's Exhibit No. 13 and say what it is? (Exhibit thirteen is handed to witness.) A. Exhibit No. 13 is a statement taken from the Blue Book, original works contract, of Moore & Wright's share of the work and Peters' share of the work corresponding with the amounts in the Blue Book and making a total sum of five hundred and twenty-nine thousand two hundred and ninety-six dollars and thirty-one cents (\$529,296.31).

Q. The original contract price? A. The original contract price.

Q. These figures are based on the Blue Book? A. They are.

10 side? Q. Moore & Wright's appears on the second page and Peters' on the other side? A. Yes.

Q. Have you verified that with the Blue Book? A. I have.

Q. And they are correct, according to the Blue Book? A. Yes.

Q. Would you look at Plaintiff's exhibit No. 14 and say what it is? A. Exhibit No. 14 is a statement shewing the details of the original contract and the substitution of the stone wall in lieu of the timber face and fine concrete; also the subdivision of Moore & Wright's dredging contract and so forth, and Simon Peters' wood and iron in the stone wall; and also a statement of the additional work done outside of the Blue Book.

20 Q. On the first page is what? A. On the page to the left is Simon Peters' division of the work, on the right hand page, Moore & Wright's division of the work.

Q. The work actually done? A. The work actually done.

Q. Plaintiffs' Exhibit No. 14 represents the work actually done by each of the contractors? A. By each of the contractors.

Q. You have gone over that statement carefully? A. I have.

Q. Can you say on your oath that it is correct or not? A. I can say it is correct.

Q. Of the work done by each of the contractors? A. Of the work done by each of the contractors.

30 Q. Look at Plaintiff's Exhibit No. 18 and state what it is? A. Plaintiff's Exhibit No. 18 is a statement shewing the understated bills of quantities in the Blue Book.

Q. Who made that statement? A. I made it.

Q. Can you state whether it is true? A. I can, as taken from the Blue Book.

Q. Made by yourself? A. Made by myself.

Q. And you say it is a true statement? A. It is.

Q. Just turn to the next Exhibit, No. 19, and say what it is? A. It is a correct statement of the final estimate of the work actually done, shewing a balance of ~~fifty-two cents~~, that being the amount of the final estimate.

40 Q. Have you verified that yourself? A. I have.

Q. Look at Plaintiff's Exhibit No. 20 and state what it is? A. It is a statement of account prepared by the Commissioners, submitted to Kinipple & Morris and signed by them, in the matter of the arbitration between the Commissioners and Peters, Moore & Wright.

Q. Is that an original document? Is that the signature of Kinipple & Morris? A. It is, as I have seen it before. I know their signature.

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Q. According to that statement, what appears to be claimed in respect of the stone wall by the contractors? A. Seventy-seven thousand three hundred and seventy-eight dollars and forty cents (\$77,378.40)?

Q. That is in the first column? A. That is the amount claimed by the contractors.

Q. As appears by the first column? A. As appears by the first column.

Q. There is a difference between that amount and the amount in the second column, is there not? A. Yes, a considerable difference.

Q. Can you explain the apparent? . . . A. It appears to have been allowed by the Engineers. (Defendants' counsel objects to the explanation of this document, as the witness is not a party to the document, and as the document speaks for itself. Objection overruled.)

Q. Explain the difference between the two. A. There is an item in the fourth column of six thousand three hundred and fifty-three dollars and ninety-five cents (\$6,353.95,) amount allowed in excess of the amount claimed by the contractors, the original amount allowed by the Engineers, as per this statement.

Q. You see an entry upon that exhibit: "Difference due to some other mode of calculation. See note on next page." Would you refer to the note on the next page, and say whether that gives an explanation? A. That note shows the total amount of Bill No. 1 and deductions of concrete in same, leaving the value of the timber work and fine concrete. Should you like to have the figures?

Q. Please. A. Sixty thousand two hundred and nine dollars and seventy-five cents (\$60,209.75.)

Q. Look at Plaintiff's Exhibit No. 21 and say what it is? A. Plaintiff's Exhibit No. 21 is a statement of account for wood and iron work and cut stone wall.

Q. In whose handwriting is it? A. In Mr. Jacobs', and signed by Mr. Brown, the Engineer. It is a copy.

Q. It shows the amount of the stone wall at seventy-seven thousand, three hundred and seventy-eight dollars and forty cents (\$77,378.40), and it shows the amount of two other bills? A. Yes; two thousand eight hundred and ninety-five dollars and fourteen cents (\$2895.14), Bill No. 8, and screens, No. 9, six hundred and fourteen dollars and fifty cents (\$614.50).

Q. Is that in accordance with the Blue Book or not? A. Yes, according to the Blue Book.

Q. Would you look at Plaintiff's exhibit No. 22 and say what it is? A. Estimate of Simon Peters, including extras as claimed in final settlement.

Q. In whose writing is that statement? A. Mr. Jacobs'.

Q. What else does it shew? A. It shews the masonry, quay wall, tidal harbour and wet dock at seventy-seven thousand three hundred and seventy-eight dollars and forty cents (\$77,378.40); balance to wharf cribwork, six hundred and thirty-eight dollars and forty-four cents (\$638.44); extras, three thousand one hundred and thirty-four dollars, and sixty-four cents (\$3134.64); substructure, wet dock, seventeen hundred and eighty-seven dollars and ninety-two cents (\$1787.92); amount of contract twelve thousand and fifty-eight dollars (\$12058); Bill No. 8, gas-house cribwork, two thousand eight hundred and ninety-five dollars and fourteen cents (\$2895.14).

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Q. Would you refer to Plaintiff's Exhibit No. 23 and say what it is? A. Plaintiff's Exhibit No. 23 is contract drawing No. 22, shewing masonry and concrete wall to be substituted for timber and concrete.

Q. Is that the original plan? A. It is made by Mr. Morris, in Quebec here, at the Harbour Commissioners' office. I saw them working at it at the time.

Q. Does it bear his signature? A. It does.

Q. These are the genuine signatures on that? A. Yes.

Q. Look at Plaintiff's Exhibits Nos. 24 and 25 and say what they are?

A. Tracings of the stone facing and concrete backing, wet dock wall and tidal Harbour wall.

Q. Are these the original plans? Q. They are signed by Mr. Pilkington.

Q. Do you know whether these were the plans used in the construction of the work or not? A. Yes, I do.

Q. Look at Plaintiff's Exhibit No. 27 and say what it is. A. Sheets Nos. 1, 2, 3 and 4 are statements shewing deductions in substructure and superstructure.

Q. Deductions for what? A. Of cribwork as set off against cost of stone wall cribwork and iron in Simon Peters' contract.

Q. Part of the contract, you mean? A. Simon Peters' part of the contract.

Q. Who made that statement? A. I did.

Q. Is it true? A. It is.

Q. As per Blue Book? A. As per Blue Book.

Q. Would you look at Plaintiff's Exhibit No. 30 and say what it is?

A. Exhibit 30 is a copy of an account paid by Simon Peters to Beaucage & Châteauevert for the construction of the stone wall.

Q. That is the stone wall in question? A. And tablet stone.

Q. State the amount? A. Sixty-six thousand six hundred and seventy-eight dollars and eighty-two cents (\$66,678.82).

Q. Would you look at Plaintiffs' Exhibit No. 32 and state what it is?

Objected to on the ground that the original documents are not produced and proof of copies cannot be made: Objection reserved by consent of parties.

A. The Quebec Harbour Commissioners' Report for the year 1880.

Q. Look at Plaintiff's Exhibit No. 12 and state what it is. A. Statement of works specified but not carried out by Moore & Wright and not deducted.

Q. Who made that statement? A. I did.

Q. Can you state whether that is correct or not? A. I can.

Q. Was the work mentioned in these items done by Moore & Wright? A. It was not.

Q. Has it been allowed for? A. It was.

Q. Although not done? A. It was allowed and not deducted.

Q. And you say the work therein mentioned was not done? A. Yes.

Q. Look at Plaintiff's Exhibit at Enquête A 37 and state what it is? A. Plaintiff's Exhibit at Enquête A 37 is a memorandum of the division of the work according to the original works contract, made at the time of the passing of the contract.

Objected to on the part of the Defendants on the ground that the evidence is an attempt to vary, contradict and explain the contract between the parties in the present cause. Objection reserved by the Court.

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Q. Do you understand that memorandum? A. Yes, I do.  
 Q. Were you present when it was made? A. I was.  
 Q. Would you explain that memorandum? Objected to: Objection main-  
 tained.  
 Q. Would you look at Plaintiff's Exhibit No. 31 and state what it is?  
 A. Copies of progress estimates signed by Mr. Vincent Brown.  
 Q. Is the document actually signed by Brown himself, the engineer?  
 A. Yes, signed by Brown.  
 Q. Would you state whether the cost of the stone wall is stated in that?  
 A. It is stated in that: in 1879, twenty-three thousand nine hundred and fifty- 10  
 nine dollars and twenty cents (\$23,959.20); in 1880, twenty-eight thousand eight  
 hundred and sixty-five dollars and thirty-seven cents (\$28,865.37); in 1881,  
 twenty-four thousand five hundred and fifty-three dollars and eighty-three cents  
 (\$24,553.83), making a total of seventy-seven thousand three hundred and seventy-  
 eight dollars and forty cents (\$77,378.40).  
 Q. Is the number of cubic feet of the wall given? Can you say at how much  
 per foot the stone is calculated? A. It is subdivided here.  
 Q. At what price? A. Sixty cents a cubic foot.  
 Q. But in each instance the number of feet is given in the memorandum?  
 A. In each instance year by year. 20  
 Q. Would you look at Plaintiff's Exhibit at Enquête A12 and state what it  
 is? A. Plaintiff's Exhibit at Enquête A12 is a letter from the contractors,  
 Simon Peters, Edward Moore and A. R. Wright, dated 9th November, 1881,  
 stating that the works under the contract for the erecting of the stone quay wall  
 are completed and asking for the balance of the money due.  
 Q. How much? A. Thirteen thousand one hundred and thirty-four dollars  
 and forty-four cents (\$13,134.44).  
 Q. Is that an original document, signed? A. It is signed by Simon Peters,  
 Edward Moore and A. R. Wright, and the writing in the body of it is in my 30  
 writing. It is the original paper.  
 Q. You were asked to make a calculation to ascertain whether there was  
 any discrepancy between that amount and the amount charged in Mr. Peters'  
 account. Did you do so? A. I did.  
 Q. Did you find any discrepancy? A. No.  
 Q. Just state in a few words. A. I would require to use my memorandum.  
 (Witness refers to memorandum.) Masonry quay wall 128,964.2 cubic feet at  
 sixty cents, making the total. I produce and file the calculation which I made  
 as Plaintiff's Exhibit at Enquête A38.

Cross-Examined.

Q. Had you been in your father's employ prior to 1877? A. I had con-  
 tinuously.  
 Q. For some years before? A. From 1865.  
 Q. In 1877 what did your father's staff consist of? A. Myself, the book-  
 keeper and the boy in the office.  
 Q. What were your special duties? A. Nothing special, looking after every-  
 thing, confidential man.

Q. Could you not give us a little more in detail what work you did ? RECORD.  
 A. Making up estimates, looking after work, conducting work, looking after the mill, in fact looking after everything as he did himself, looking after finances.

Q. Then, I understand that your duties from 1877 onwards to the close of the contract with the Harbour Commissioners consisted of doing financing, attending at the bank, supervising the correspondence, supervising the mill, and attending generally to the work ; is that so ? A. During that time I did a large amount of work on the Harbour works and had to be present at tide work.

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Q. What do you mean by that ? A. Putting cribs in place at certain times  
 10 of the tide, when there was no water.

Q. Was your work principally on the Harbour works actually in the locality where the works were being carried on, or was it at the office, or where was it ?

A. A portion of it was principally sinking the small cribs of the northern embankment.

Q. What year was that done and what season ? A. 1877, and some in 1878.

Q. The season of 1878, were you mostly in the office or on the works ?  
 A. I was between the two . . . I was the first man that walked out on the ground of the present Harbour works with Mr. Navarre.

Q. Do I understand you to say that the bulk of the crib work, the sinking  
 20 of the cribs, was done in the season of 1877 ? A. Oh, no.

Q. When was it done ? A. It was in 1877 and 1878.

Q. Was it terminated in 1878 ? A. I couldn't exactly say at the moment without refreshing my memory.

Q. Now the contract was taken in May 1877 ? A. Yes.

Q. What was the first thing that had to be done by the joint contractors before any work was actually built ? A. They had to make all the preparations for the work.

Q. What did these preparations consist of ? A. Building scows, dredges, pile drivers, preparing the machinery in connection with the work.

Q. So far as your father's part of the work was concerned, he was obliged to build pile drivers and scows ? A. He built some scows in connection with  
 30 the pile drivers.

Q. He also had to build the cribs ? A. Yes.

Q. Can you say how many cribs were built in the season of 1877 ? A. I couldn't say exactly without referring to data and memoranda.

Q. You cannot say approximately ? A. No, not even that, without referring to memoranda.

Q. Can you say how many cribs were sunk in 1877 ? A. I couldn't state positively.

Q. Can you say that any were sunk ? A. Yes.

Q. You are sure that some were sunk ? A. Yes.

Q. Where ? what part of the works ? A. There were some cribs sunk on  
 40 the northern embankment in 1877.

Q. Where did you begin sinking cribs ? A. On the northern embankment. I took charge of that part of the work. I relieved my father, as it was arduous work for him.

Q. Did you begin at the breakwater end, in the middle, or where did you begin sinking cribs ? A. Somewhere about the middle, if I remember rightly.

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*Q.* Were these the cribs which form the northern face of the embankment as now built? *A.* Yes.

*Q.* Were these cribs filled with concrete? *A.* No.

*Q.* Did they require any dredging underneath them? *A.* No, they lay right on the bottom.

*Q.* As it was, in its natural condition? *A.* Yes.

*Q.* You cannot say what length of cribwork was sunk in 1877? *A.* I cannot say what length of cribwork was sunk in 1877 without referring to *data* and details.

*Q.* The form and the length of the cribs were changed from the original 10 contract? *A.* Yes.

*Q.* When were these changes made? *A.* Shortly after the signing of the contract.

*Q.* How long? *A.* I couldn't say—a few weeks after.

*Q.* What did these changes consist of in general terms? *A.* It consisted of a rational crib, a crib that could be constructed and filled with concrete, whereas the original ones could not be,

*Q.* That does not give much explanation as to what the nature of the change may have been. It may have been very rational: but what we want is the actual change? *A.* It would require a lot of details to go into that. 20

*Q.* Was the shape changed? *A.* The length was reduced to forty feet. Instead of putting them in long strips of one hundred and twenty feet it was reduced to forty feet lengths.

*Q.* Did that apply to the northern? *A.* No, only the wet dock and tidal harbour.

*Q.* That is, the southern face of the embankment? *A.* The southern face of the embankment.

*Q.* It therefore did not apply to these cribs sunk in 1877? *A.* It did not.

*Q.* Were any of the cribs which form the southern face of the embankment sunk in 1877? *A.* I couldn't say without referring to *data*. 30

*Q.* You cannot tell us how many of the northern cribs were sunk? *A.* I could not.

*Q.* There was a change made in the shape of the works on the northern side from a pitched slope to a straight crib work, was there not? *A.* There was.

*Q.* Do you still persist in saying that the northern cribs were sunk in 1877? *A.* I would not state positively; but I know they were sunk, because I was present.

*Q.* The northern crib works are those which were altered from a pitched slope to a straight crib? *A.* Yes.

*Q.* Can you say definitively whether any of the cribs of the northern crib work were sunk in 1877, being now reminded of the alteration which took place in the shape of the embankment? *A.* If you will allow me to refer to memoranda. I think there were some of the cribs sunk in 1877, as near as I can remember.

*Q.* You cannot say where? *A.* No. They were on the northern embankment; I cannot say exactly what portion:

*Q.* Were the bulk of the cribs on the northern embankment sunk in 1878? *A.* No.

Q. When were they sunk? A. They were sunk in 1877-78 and 1878-79 and some were finished in 1880. RECORD

Q. Were most of them finished in 1879? A. 1878-79, most of them were finished.

Q. At the close of the season of 1879 the majority of the cribs of the northern embankment were completed? A. As near as I can remember.

Q. Can you recollect whether anything more than the gas-house wharf crib required to be done in the season of 1880? A. I couldn't state at the moment.

Q. The name of your father's book-keeper was Bohme? A. Yes.

10 Q. He is not now in Quebec? A. I believe not. I have no idea where he is.

Q. When did you actually begin working on the site of the Harbour Works in the season of 1877? A. I might say I commenced when I walked out on the beach before anything was done.

Q. How long was it before you began to do some work that was visible besides leaving your footprints there? A. It was some time after. I couldn't state exactly what time I commenced. It is many years ago.

Q. At the termination of the season of 1877 how far had your father's work progressed? A. I couldn't state.

20 Q. Was the building of the pile-driver and of the scows in connection with the pile-driver a considerable work? A. It was quite a considerable work. They were built in the yard of the mill.

Q. They were built in the season of 1877 after the contract was signed? A. I think they were built during the winter of 1877-78.

Q. You didn't know then that you were going to get the contract? A. The winter of 1877-78, because the contract was signed in May 1877.

Q. So that the pile driver and scows were not in operation in the season of 1877 on the works? A. I would not be sure without looking up data and memoranda.

30 Q. Besides this contract your father was doing at that time a general saw-mill business, was he not? A. He was.

Q. And a general contracting business? A. He was.

Q. Building houses and constructions of all kinds? A. He was.

Q. I suppose that his mill and mill-yard and wharves were used for the purposes of his ordinary work during the season of 1877-78? A. They were.

Q. In the same manner as before? A. They were.

Q. What size is the mill-yard? A. I couldn't state at the moment.

Q. It is a considerable area? A. It is a large place.

Q. The wharves are used for the piling of lumber, I think? A. Receiving lumber. They were used for receiving lumber.

40 Q. Which was piled upon them until it was required? A. No, it was piled in another yard.

Q. How many wharves are there? A. Three.

Q. Are they available at all times of the tide or only at low tide? A. In what way?

Q. For craft to come to them? A. Craft comes at half tide and high tide.

Q. They are bare at low water? A. Yes.

Q. In the season of 1877 what staff did Moore & Wright have in Quebec?

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*A.* I think Mr. Navarre and several others. . . . I would require to refresh my memory by looking up all these data. It is a good many years ago. I have been away from Quebec since 1882, and I cannot recollect things as plainly as I could if I had remained here at the time.

*Q.* Did Colonel Moore have an office in 1877? *A.* He had at the office at the mill.

*Q.* For how long? *A.* I think the accounts will shew.

*Q.* I am not asking you what the accounts will shew? *A.* I couldn't state from memory.

*Q.* Had he any other office? *A.* I couldn't state from memory. 10

*Q.* Where did Mr. Navarre do his work? *A.* I really couldn't even state that from memory at the moment.

*Q.* Mr. Navarre was the engineer for the joint contractors? *A.* He was employed by the joint contractors.

*Q.* He was the only engineer on the works at that time? *A.* He was the only engineer on the works at that time.

*Q.* That is, so far as the joint contractors were concerned? *A.* Yes.

*Q.* And you cannot tell us what Moore & Wright's staff consisted of during that season? *A.* I cannot, without referring to notes and data and a diary of the time. 20

*Q.* If you have a diary, I wish you to refer to it. Witness refers to a diary. *A.* If I recollect aright, Colonel Moore's staff consisted of Navarre and a foreman, in connection with the building of his scows and dredges, and a book-keeper, his own book-keeper.

*Q.* Who was the book-keeper, do you know? *A.* I think it was Mr. Jacobs. I won't be sure at the moment.

*Q.* You are not sure? *A.* I am not sure.

*Q.* You know that, by the terms of the contract, the contractors were bound to have an office on the works? *A.* Oh, certainly.

*Q.* And you recollect that very shortly after the contract was given the 30 engineers required that the contractors should have an office on the works?  
*A.* Yes, I know.

*Q.* That office was occupied throughout by Moore & Wright? *A.* Yes.

*Q.* That is the office which was required under the terms of the contract to be kept on the works and which was occupied by Moore & Wright, Mr. Peters using it when he required it? *A.* Only when he required, but it was principally used by Moore & Wright.

*Q.* And the contractors' engineer was there also? *A.* Yes.

*Q.* And you know also that within a month, or, certainly, within six weeks, of the signing of the contract the engineers required the compliance by the joint 40 contractors with the terms of the contract in this respect? *A.* I couldn't say how soon after, but I know it was built after.

*Q.* Shortly afterwards? *A.* Shortly afterwards.

*Q.* What number of rooms did your father's office consist of in 1877?  
*A.* Three, if I recollect right, all of which were used by him for the purposes of his work. They had been used previous to that time.

*Q.* And in 1877 they continued to be used for the purposes of the work?  
*A.* Yes.

Q. So that when you say that Colonel Moore occupied part of the office you do not mean to say that he had the exclusive occupation of it? A. Oh, no.

Q. He simply went in occasionally to your office for any purpose connected with the work which he was having done at your mill? A. He used the office, in other words.

Q. He used the office, but... A. In connection with his work.

Q. And he used it at the same time as your father and his clerks used it for their work? A. He was only charged *pro rata* for the office. He was not charged full value for the office.

10 Q. Can you state that during 1877 Colonel Moore ever had any employee in your office, either continuously or for any length of time at all, any of his own? A. I cannot remember.

Q. Neither Colonel Moore nor any person employed by him had a special desk at your father's office? A. That I couldn't say either. All I can say is that there was no objection made by Colonel Moore, to my knowledge, at the time of the charge made for the use of the office.

Q. When you say at the time, when was that charge made? A. It was made at the end of the year... He knew of the account, I fancy. If I could refer to these accounts, it would refresh my memory a good deal. (Plaintiff's Exhibit 6 is handed to witness.)

Q. Do I understand you to swear that to your personal knowledge that account was rendered to Colonel Moore or to Moore & Wright at the end of the season of 1877, and that to your personal knowledge Moore & Wright ever expressed themselves in any way with respect to it? A. I never heard them make any objection to it.

Q. Do you swear it was delivered to them to your personal knowledge? A. I cannot swear that, because I did not deliver all the accounts, but I can swear it was made out that date.

Q. That it was charged in your father's books, you mean? A. Yes; I think the press copy book will shew it.

Q. Can you swear it was rendered at the time? A. That I cannot say.

30 Q. Nor can you say of your own personal knowledge that there was any communication with respect to that account between your father and Moore & Wright? A. I am under the impression they were perfectly cognizant of the account, as far as I remember.

Q. Mr. Peters, your impression is absolutely valueless. I want to know whether you have any recollection of the fact. If so, state it? A. I couldn't say without referring to the press copy-book.

Q. Have you any personal knowledge of Colonel Moore having asked for the use of any particular portion of the yard, and if so, what? A. Yes, I was present during a conversation in which he wished place to do certain work.

40 Q. Was there any specific portion of the yard asked for by him or assigned to him? A. Yes, certainly; a place suitable for building certain work he had to build there.

Q. What was the work he built? A. There you got me again some work in connection with his plant.

Q. You cannot say what it was? A. No, it is so many years back.

RECORD.

—  
In the  
Superior  
Court.

—  
No. 56  
Plaintiff's  
Evidence  
Deposition  
of Henry  
Joseph  
Peters,  
10th Dec.  
1895.  
continued—

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—  
*In the  
 Superior  
 Court.*

No. 56  
 Plaintiff's  
 Evidence  
 Deposition  
 of Henry  
 Joseph  
 Peters,  
 10th Dec.  
 1895.  
*con. inued—*

*Q.* You cannot say either the extent of the yard that was used? *A.* It was sufficiently large for the work he was doing.

*Q.* But you cannot say what that work was? *A.* Not at the moment.

*Q.* Now, what portion of the yard and what portion of the pond was used by Moore & Wright? *A.* As near as I can remember, the portion immediately outside the office between the second and third wharves.

*Q.* What would be the area of that? *A.* Considerable. I should say it was one hundred and fifty to one hundred and seventy-five feet wide by the depth from the water.

*Q.* What work was being carried on there? *A.* You asked me a moment ago, and I told you. . . . . 10

*Q.* What use was made of the pond? *A.* To hold the timber that was necessary for this work Colonel Moore was doing. As the tide rose and fell it brought the timber up to this place.

*Q.* That was the timber purchased by Moore & Wright from your father? *A.* It was. The accounts will shew.

*Q.* Practically, all the material that went into the works that were being carried on by Moore & Wright, and which was in your father's line of business, was supplied by him to them? *A.* The press copy will shew that, I think.

*Q.* That is a fact? *A.* No, not all. 20

*Q.* All that fell within his line of business? *A.* No, they bought outside: they bought largely outside.

*Q.* There is a charge in this account for the use of middle wharf and approach to same. What use was made of that wharf? *A.* I couldn't recollect at the moment.

*Q.* So, I understand you to say you do not recollect for what purpose—when I say what purpose I mean what specific purpose—either the ground which is set apart here as having been asked for by Colonel Moore, or the portion of the yard opposite the office of which you have spoken or the middle wharf were used for? *A.* I told you it was used for building their plant. 30

*Q.* But you cannot say what that work was? *A.* No.

*Q.* Can you say how long these places were used? *A.* I should say the best part of the season in 1877.

*Q.* Did Colonel Moore begin the actual work on the site of the present Harbour Works in 1877? *A.* I cannot say: but he commenced his preparations in 1877 to do his work.

*Q.* You are unable to say whether he actually began active operations in 1877? *A.* I couldn't say without referring to data.

*Q.* If you cannot say what was being built during this time, can you say, generally, what plant was built by Moore & Wright in Simon Peters' premises? 40

*A.* You have already asked me, and I cannot say. Three times you have asked me that same question.

*Q.* I make this difference: I want to know if you can, without being able to say what was built in these specific places, say well, there was a scow or such and such a dredge. *A.* I would have to refer to data.

*Q.* When was this dockage of mixing scows? *A.* I should say it was in the fall of 1877.

Q. What do you mean by dockage there? A. Placing the scows in security, in a place of safety, as I understand it.

Q. Is that intended for the winter season? A. I couldn't say without referring to data.

Q. I must ask you to refer to data. I must really know what these things are for? A. I will make out these things and refer to them.

Q. Now, who kept track of the use which was made by Moore & Wright of the jack-screws, pulleys, and cross cut saws and other things that are charged for? A. The foreman had charge of these tools and handed them over.

10 Q. Who was the foreman? A. I couldn't remember his name at the moment.

Q. You have no personal knowledge? A. No, not without referring to particulars at the time.

Q. You have no personal knowledge of the use by Moore & Wright of these different things charged here jack-screws, cross-cut saws.... A. I saw out tools being used by them while the work was going on.

Q. But you kept no track of it? A. No, the foreman attended to that.

Q. What timber wheels and wagons and winches were used and what for? A. In connection with the moving of their timber about the yard to facilitate their doing their work.

20 Q. That would be timber which was in considerable part supplied by your father? A. Bought from Simon Peters.

Q. You did not, of course, keep track either of this? A. No, that did not come under my... that was reported to the office.

Q. Let us turn to the first of these accounts, first page of Plaintiff's Exhibit No. 6, I understood you to say yesterday on examination that this statement of account was in your opinion correct according to the Blue Book. Did you say that? A. Yes, I stated it.

30 Q. And you therefore reaffirm that this is a true statement of account prepared from the Blue Book? A. In connection with the substitution of the stone wall for the timber face.

Q. That is to say, from the Blue Book and the contract which provided for the substitution? A. Exactly.

Q. Now, was there in the Blue Book or in the contract any specific sum of seventy-seven thousand three hundred and seventy-eight dollars and fifty cents (\$77,378.50) appropriated to the stone wall, or other figures arrived at by a calculation made by you of deductions and additions to the work, resulting from the change to the stone wall? A. It was with the consent and knowledge of Simon Peters, Colonel Moore and Mr. Wright.

40 Q. What do you mean by the consent and knowledge of Simon Peters and Colonel Moore and Mr. Wright? A. They were aware of the calculations which I made and how it was arrived at.

Q. Do you mean to tell us that this particular Exhibit, Exhibit No. 6, was submitted at any time to Moore & Wright? A. I did not say it was.

Q. Do you mean to tell us that they consented in any way to that account? A. I state that as far as the sum for which the stone wall is mentioned in this account, that the way that amount was arrived at is.... Colonel Moore and Mr. Wright and Simon Peters were perfectly cognizant of it, and it was done with their consent and knowledge.

RECORD

In the  
Superior  
Court.

No. 56.  
Plaintiff's  
Evidence  
Deposition  
of Henry  
Joseph  
Peters,  
10th Dec.  
1395.

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In the Superior Court.

No. 56 Plaintiff's Evidence of Henry Joseph Peters, 10th Dec., 1895.

Continued—

Q. You have nothing in writing, of course, to shew that consent? A. No, only my word for what it is worth. The figures were made up by me at their request.

Q. You have already testified in your own favor, and it would simplify matters if you would answer my questions. The question which I have put and which is not answered is: Whether that calculation is arrived at from additions and deductions taken from the Blue Book, the contract, according to your interpretation of it, or whether there is any specific figure of that kind to be found there? A. That amount is arrived at by deducting the timber face and iron in Bills 1, 3 and 4 of Simon Peters' account, and the four to one fine concrete behind the timber face in same Bills in Moore & Wright's account, and the addition of the sums stated in the contract at twenty-nine thousand nine hundred and forty dollars and sixty-one cents (\$21,940.61) as an extra, making the total of (\$77,378.50).

Q. The fenders are not deducted in that amount? A. They are taken in as forming part of the cost of the stone wall.

Q. The fenders were not put upon the works, where they? A. I don't think they were. They were not. Some were, and there was something allowed for them.

Q. That is the allowance that you made at the end here—"Engineer's allowance for fenders, \$1,038?" A. Yes.

Q. Mr. Peters, will you refer to Plaintiff's Exhibit No. 23, being one of the original contract drawings, and state whether the fenders included in Bills 1 and 4 are shewn as being part of the work to be built in connection with the stone wall? A. They are shewn.

Q. So that if I understand you rightly, this cost of the stone wall includes the cost of the fenders which were to have been built in connection with the stone wall, but which were, in fact, not built: That is so, isn't it? A. It would appear so from the figures.

Q. And this whole Bill, Plaintiff's Exhibit No. 6, not only includes the cost of the fenders which were to have been put on and which were not, but also includes an allowance of ten hundred and thirty-eight dollars for work partially done in connection with these fenders? A. It would appear so from the bill.

Q. So that the nett result of that bill is that you are claiming to be paid for work which was not done at all, work which was shewn to be done by the contract, and, in addition, you are appropriating to yourself an allowance for a part of the work which was done though not actually put upon the works? A. I couldn't say, from that question of yours.

Q. Now, in addition, there are in these bills 1 and 4 certain bollards which were to have formed part of the work, were there not? A. Yes.

Q. These bollards are included in the price of the wood and iron which you have appropriated to the cost of the stone wall and form part of the sum of seventy-seven thousand three hundred and seventy-eight dollars and fifty cents (\$77,378.50), don't they? A. They do. Witness asks to have the question repeated, and on its being read over to him, he states that he does not understand.

Q. In the sum which you have claimed by Exhibit No. 6 as being payable to the Plaintiff is included the cost of eighty-five bollards? A. The bollards were not deducted, as far as I can see.

?  
fenders  
? law  
? ?  
2101-17  
2.359  
?  
? bollards

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- Q. They are therefore included in Item 1, Bill No. 1, Bill No. 4 and in the four extra crib blocks? A. They are.
- Q. Now, as a matter of fact, only forty-two instead of eighty-five were put into the work? A. I couldn't state at the moment exactly how many were put in.
- Q. In any case, there was a considerable number which were not put in? A. I won't be sure.
- Q. Are you prepared to say they were all put in? A. To the best of my knowledge they were.
- Q. They were all put in? A. Yes.
- 10 Q. Upon reflection, Mr. Peters, are you quite satisfied of that? A. I would require to look at some data to refresh my memory on that.
- Q. In addition to the timber work for the fenders there was also a considerable quantity of iron work which went with the fenders, and which was necessary to secure them to the stone wall? A. Yes, the plan shews it.
- Q. Now, no part of the cost of that iron work is deducted no more than the cost of the wood work in connection with the fenders? A. Not that I am aware of.
- Q. The whole of it is claimed by your bill, exhibit No. 6? A. It appears so in the account. *R 101-19*
- 20 Q. By whom was this account, the first five sheets of Plaintiff's Exhibit No. 6., prepared? A. Prepared by Simon Peters, from data brought into the office.
- Q. They were not prepared by you? A. No; prepared by Simon Peters from data brought into the office and turned over to the book-keeper. I was cognizant of the whole thing.
- Q. I am referring to the first five sheets of this Exhibit? A. That answer is wrong. They were prepared, I think, by data given to the book-keeper at the office, by my father. and, in fact, we all worked upon them more or less: my brother worked on them, and I did.
- Q. You are unable to state that they were prepared by yourself in any case? A. A great many of the calculations were Mr. Simon Peters' from the Blue Book and from data.
- 30 Q. Can you indicate which of them were made by you? A. Yes, specially the substitution of the stone wall.
- Q. That would be what page of the account? A. Page 5.
- Q. And the others were not made by you? A. I had some hand in them. I had some connection with them.
- Q. When was this particular statement, page 5 of Exhibit 6, prepared? A. I think you will find in my testimony that some was prepared at the signing of the contract.
- Q. I am asking you as to that statement in its present form? A. I couldn't say exactly what date. It was all based on the original figures at the signing of
- 40 the contract.
- Q. Can you say how long ago it was prepared in its present shape? A. I couldn't say positively.
- Q. Is it several years ago? A. It must be. It must have been since 1882.
- Q. You did not prepare it since 1882? A. I worked on it since 1882 to prove its correctness. I worked on it in the winter of 1892-93; I was here for two months.

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In the  
Superior  
Court.No. 56  
Plaintiff's  
Evidence  
Deposition  
of Henry  
Joseph  
Peters,  
10th Dec.  
1895.  
*continued—*

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—  
*In the  
 Superior  
 Court.*  
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No. 56  
 Plaintiff's  
 Evidence  
 Deposition  
 of Henry  
 Joseph  
 Peters,  
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 1895.

continued—

*Q.* Was it you who prepared it in 1892-93? *A.* I couldn't say for the same statement. I prepared a statement similar, and the figures correspond.

*Q.* But you are unable to say whether it is that or not? *A.* I am unable to say.

*Q.* I understand that page 5 of Exhibit No. 6 is the only part of Exhibit No. 6 which was prepared by yourself, in so far as you have been able to verify?

*A.* I didn't say that. I told you I worked on all of them.

*Q.* I know you did a lot of work in connection with the whole thing, but what I want to get at is which of the accounts which form the first five pages of Exhibit 6 were done by yourself and are the result of your individual work? 10

*A.* I worked on No. 4 account and did some work on the others, but I cannot say to what extent.

*Q.* Will you refer to the Blue Book at page 69, and state whether the sum allowed for temporary bracings and doors to close the crib work is included by the sums claimed by the Plaintiff in this case? *A.* It is.

*Q.* In point of fact, that work was only done with respect to four cribs, isn't that so? *A.* I couldn't say at the moment without referring to data.

*Q.* You do know, in any case, that it was done only for a very few and for a very short time? *A.* I couldn't say without referring to data.

*Q.* Will you refer to data and tell us? *A.* I will make a note of it. 20

*Q.* Now, will you refer to the Blue Book again, and state whether you have claimed the whole amount of bill No. 8, as stated in the Blue Book? *A.* Yes.

*Q.* Now, as a matter of fact, was all the work mentioned in Bill No. 7 done? *A.* I don't know anything to the contrary.

*Q.* Bill No. 7 is one of the cribs which was changed, isn't it? crib at the ballast wharf? *A.* It was a change made.

*Q.* And I think you claim in connection with that change a sum of five thousand two hundred and nineteen dollars and fifty-six cents (\$5,219.56), in your account, item 14, first page of Plaintiff's Exhibit No. 6? *A.* And which, I believe, has been allowed. 30

*Q.* You are aware also that in connection with that allowance for extras there was a deduction made upon Bill No. 7 of approximately two thousand five hundred dollars (\$2,500)? *A.* I would require to see the data to refer to that.

*Q.* Will you look at Defendants' Exhibit at Enquête B4 and state whether you know the hand-writing? Witness takes communication of Exhibit B4. *A.* Yes.

*Q.* That is the handwriting of whom? *A.* One of the clerks of the office.

*Q.* Your father's office? *A.* Yes.

*Q.* It is a statement emanating from your father's office? *A.* Yes.

*Q.* Will you look at the fourth item of that account and see whether your father then claimed in connection with Bill No. 7 a sum of four thousand five hundred and eighty-two dollars and twenty-one cents (\$4,582.21)? *A.* He claims there \$4582.21. 40

*Q.* In connection with Bill No. 7? *A.* In connection with Bill No. 7.

*Q.* In lieu of the amount which you have put in the bill, six thousand eight hundred and thirty-eight dollars and forty-four cents (\$6838.44)? *A.* Yes.

*Q.* You say it is in the handwriting of one of your father's clerks? *A.* Yes.

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*Q.* It is in the hand-writing of your brother Albert? *A.* No.

*Q.* Of whom? *A.* One of the clerks: I couldn't say which one.

*Q.* Will you look at the statement, Defendants' Exhibit at enquête B 8, and state in whose hand-writing that is? *A.* I do not recognize the writing.

*Q.* You know, as a matter of fact, do you, that that came from your father's office? *A.* I couldn't say, because I don't recognize the writing.

*Q.* In any case there is a claim there in connection with Bill No. 7 of the sum of four thousand three hundred and nineteen dollars and twenty-seven cents (\$4319.27)? *A.* Yes.

10 *Q.* Can you say whose figures these are, this \$4319.27? *A.* I couldn't say, as I do not recognize the writing whatever.

*Q.* You see these figures have been altered. Can you say if they are your father's figures? *A.* No, I could not.

*Q.* As a matter of fact, they resemble closely your father's figures? *A.* I do not think they do; but that whole writing is foreign to me.

*Q.* I think you told us that you left your father's employ in 1882. *A.* In 1882, September.

*Q.* And you went out to Winnipeg? *A.* Yes.

20 *Q.* And were there for a number of years? *A.* I was away till 1892, November.

*Q.* Now, will you look at Defendants' Exhibit annexed to the Commission, No. 1, and state whether you can say that this is the final certificate issued by Kinipple & Morris upon which the joint contractors, Peters, Moore & Wright, sued the Quebec Harbour Commissioners? *A.* I could not state, because this took place after I left, 1887.

The Plaintiffs admit that Defendants' Exhibit No. 1, annexed to the Commission is the original document upon which the joint contractors sued the Quebec Harbour Commissioners in 1887, and that it was filed in that case on July 5th, 1887, as appears by the docketing.

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GIBSONE & AYLWIN,  
Attys. for Plff.

*Q.* Will you state whether the item on the second page of that exhibit marked: "Cube yards in concrete in rear of stone wall tidal dock, understated in bills of quantities or error, \$4,180" is the same allowance which is claimed "on the first page of Plaintiff's exhibit No. 6 "Proportion of understated bills of quantities allowed by engineer, \$2,309.21"? *A.* That is for a totally different work. This is understated bills of quantities in wood and iron, and Defendants' Exhibit No. 1, annexed to the Commission, states it is for concrete.

40 *Q.* Now, Mr. Peters, where, in Defendants' Exhibit No. 1, annexed to the Commission, do you find any item allowed by the engineers for "proportion understated bills of quantities allowed by engineers" in connection with wood and iron? *A.* I don't see any item here for it. It is stated in Exhibit No. 1 all for concrete.

*Q.* Will you tell us where you took this sum which you have claimed on the first page of Plaintiff's Exhibit No. 6 for understated bills of quantities or error? *A.* I took it from the different bills of the Blue Book.

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Court.*

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Plaintiff's  
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of Henry  
Joseph  
Peters,  
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*continued—*

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*In the  
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No. 56  
 Plaintiff's  
 Evidence  
 of Henry  
 Joseph  
 Peters,  
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*continued—*

*Q.* That is to say, you went through the different bills of the Blue Book in connection with the work belonging to your father and where you found or supposed that you found a quantity less than that actually put into the work you claimed that as being understated in the bills, is that so? *A.* Where I found errors in the calculations I corrected them. These corrections amount to that amount of \$2,309.21.

*Q.* Will you indicate to us the errors you found in this way? *A.* There is the Exhibit shewing the exact details— (Witness refers to Plaintiff's Exhibit No. 18). That shews the calculations of the errors.

*Q.* Now, when you say errors, do you mean errors in measurements or simply errors in calculations, like false multiplications and false additions? *A.* I say— Account as per Blue Book, corrected differences.

*Q.* What do you mean when you say corrected? *A.* I mean these amounts in the Blue Book were understated.

*Q.* Understated as compared with the works done on the works? *A.* As compared with the extensions which were the basis of the contract.

*Q.* Turn up the first of these items and shew us exactly how you did it? *A.* On referring to page 45 of Blue Book I find item 3, cubic contents of No. 12 stretchers 32 ft. 6 in. by 13 in. square is understated by seven feet.

*Q.* Who made the extensions in the contract or in the tender upon which the contract was subsequently based in connection with the wood and iron? *A.* I made the extensions from the quantities.

At 1 o'clock the Court adjourns till 2 P.M. At 2 P.M. cross-examination of witness is continued.

*Q.* Mr. Peters, will you tell us when this statement of understated bills of quantities was made, Plaintiff's Exhibit No. 18? *A.* The calculations were made as far back as 1881, during the progress of the work.

*Q.* For what purpose were they made? *A.* They were made and shewn to Mr. Pilkington, and he was aware of them, and they were to be used, other work was to be allowed for them, or, in any case, Mr. Pilkington was aware of these at the time.

*Q.* They were used, as a matter of fact, when you made the statement at the termination of the works, when the joint contractors claimed for all the work done, independent of the specifications or the bills of quantities? *A.* They were used at that time, yes.

*Q.* Now, you said that you had made the original calculations for your father, which were entered in the tender? *A.* Yes.

*Q.* And which were subsequently contained in the contract as signed. You are also aware that clause 10 of the Blue Book states "that the bills of quantities "are not guaranteed, but are furnished for the guidance of the contractor in making up his tender, who has to satisfy himself as to their accuracy?" *A.* That clause is stated there.

*Q.* I think you have told us, Mr. Peters, that there were large changes made in the contract works; that, in fact, they were not carried out in accordance with the specifications at all? *A.* They were not carried out according to the plans.

*Q.* There were alterations in the foundations of the cribs; there were alterations in the thickness of the sills; there were alterations in the shape of the

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cribs, alterations in the size of the cribs, in the breadth of the embankment, and in many of the details, besides? *A.* There were a number of alterations, yes.

*Q.* Among other alterations that were made was the omission of the foundation of stone for the cribs in the substructure—stone and clay—and the substitution of stub piling? *A.* Yes.

*Q.* The foundation which was thus omitted was part of Moore & Wright's work? *A.* It was.

*Q.* You are aware that when the alteration was made your father declined, naturally and properly, to do the stub piling on the ground that it was not part of his work? *A.* I am not aware of that.

*Q.* In any case, you are aware that Moore & Wright asked your father to make a price for the purpose of having him do this stub piling on their account? *A.* I know that.

*Q.* And you know that it was done by your father on account of Moore & Wright? *A.* It was done by my father.

*Q.* On account of Moore & Wright? *A.* I cannot say on their account, but it was done by him.

*Q.* It was done so far by him on account of Moore & Wright that he had declined to do it on his own account? *A.* Because it was not in his contract.

*Q.* Would you look at the letter, Defendants' Exhibit at Enquête B14, and state whether that letter was written by your father to Moore & Wright and whether it refers to the stub piling in question? (Witness takes communication of Exhibit B 14); *A.* It is in his hand writing and it refers to the stub piling.

*Q.* Would you look at the original letter now produced by the Plaintiff at the request of the Defendants and now filed as Defendants' exhibit at Enquête B 15 and state whether that letter was written by Moore & Wright to Simon Peters by one of their employees and whether it refers to the stub piling in question? (Witness takes communication of Exhibit B 15). *A.* It appears to be written by one of their employees and also appears to refer to the stub piling.

*Q.* The letter, Defendants' Exhibit at Enquête B 14, is in answer to the letter Exhibit B 15, is it not? *A.* Yes, it appears to be in answer.

*Q.* Will you also look at the letter of the second September, 1878, produced by the Plaintiff at the request of the Defendants and now filed as Defendants' Exhibit at Enquête B 16, and state whether that was received by the late Simon Peters from Moore & Wright at time it bears date? *A.* I presume it was : it was addressed to him.

*Q.* Now, the levelling of the bottom which is referred to at the end of that letter is the levelling which was accomplished by means of this stub piling? *A.* Yes, to receive the cribs.

*Q.* In lieu of the trench filled with clay and stone, as provided by the contract? *A.* Yes, that is so.

*Q.* Now, will you look at the letter signed Simon Peters, and filed as Defendants' Exhibit at Enquête B 17, and state whether that is signed by your father and whether that letter is a reply sent to Defendants' Exhibit at Enquête B 16? (Witness takes communication of Exhibit B 17). *A.* It appears to be a reply to B 16, and appears to be signed by Simon Peters.

*Q.* Upon that letter, Defendants' Exhibit at Enquête B17, it would appear that your father undertook to put in the stub piling for the account of Moore &

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Deposition  
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RECORD. Wright, as economically as possible, without assuming responsibility? A. It would appear so from the wording of this letter.

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Plaintiff's  
Evidence  
Deposition  
of Henry  
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continued—

Q. Would you look at the account now produced and filed as Defendants' Exhibit at Enquête B18 A and state whether that is the account sent by Simon Peters to Moore & Wright for the stub piling in question? A. There is no date to it.

Q. You cannot say? A. No.

Q. By looking at the details of the account could you answer? For instance, I see—"Driving 128 stub piles, including material, labor, tidal harbour crib, "Nos. 10 and 11,—\$748.80": Then further on, "28 stub piles," and so on. 10  
Does that enable you to say whether that is the account for the stub piling which was put in by Peters for Moore & Wright under the cribs? A. I think if it was an authentic account, we would have a copy of it in our books.

Q. You know that handwriting? A. It looks like one of the clerks in the office, but there is no date to the account, and that is the worst of it, and we would have a copy of it, if it was authentic.

Q. You will also notice that this account includes in the second last item—"Removing and replacing one gauge pile broken by dredge, \$14.70." Will you state whether that is the same item as is charged for in Exhibit 6, sheet 24? A. The wording of the item is the same and the amount is the same. 20

Q. And the date is also the same that is, the year? A. It comes under the head of 1879.

Q. In both accounts? A. In both accounts, yes.

Q. You say that this appears to be in the handwriting of one of your father's clerks. Which clerk do you think it is? A. Well, to tell you the truth, I cannot recognize the writing, because if that account went through the proper course, there should be a copy of it in the books. No account left the office without a press copy being in the office.

Q. Now, the pile and stub foundation referred to in the several letters, Defendants' Exhibits at Enquête B14 to B17, is the pile and stub foundation 30 which is claimed for on one sheet of Plaintiff's Exhibit No. 6, the second last item. "Pile and stub foundation allowed by engineers in final certificate, \$4,378.65." A. Yes, because it was done by Simon Peters.

Q. Notwithstanding that it was done in the interest of Moore & Wright as stated in the letter of the second September, 1878? A. It was done to relieve them of very great difficulty.

Q. So, I suppose, it amounts to this, Mr. Peters: that if the engineers had made no allowance for that stub piling as additional work by the final certificate, you would have claimed payment from Moore & Wright, but as they make what you conceive as a generous allowance you prefer to take the sum that is allowed? 40  
A. We go by the final certificate in this matter.

Q. And you think that where the final certificate allows for work which you did for Moore & Wright in their interest, and on their responsibility, and which you charge against them, that you can take the sum so allowed in lieu of looking to them for payment? A. The engineers were the best judges of that. They decided what was done by Moore & Wright and allowed it, and they decided what was done by Peters, and they allowed the amount in the final estimate.

*P 101-19 l. 35  
at p. 118 l. 20*

Q. You say they allowed Mr. Peters in the final estimate. I presume when you say that you refer to this entry in the final certificate, Defendants' Exhibit No. 1 annexed to the Commission, under the heading "Pile or stub foundations \$4,378.65?" A. Yes.

Q. And it is upon that entry in these words and upon that entry alone that you found yourself now to claim payment of that money? A. Yes; because it was done by Simon Peters and not by Moore & Wright.

Q. Answer my question. It is upon that entry and upon that entry alone, coupled with the fact that the work was done by Simon Peters, that you claim payment for it now? A. It was a decision of the engineers.

Q. Was it upon the entry that I have read to you? A. It was upon the entry made by the engineers in that final certificate.

Q. Under the wording I have read to you? A. Upon the decision of the engineers.

Q. It is upon the wording that I have read to you—"Pile or stub foundations, \$4,378.65"—that you now claim that sum, and that alone? A. Upon the wording of this final report of the engineers we claim that amount.

Q. And upon that alone? A. Upon the fact of the work having been done.

Q. These two facts? A. Yes.

Q. Will you look at the letter produced by the Plaintiff at the request of the Defendants and now filed as Defendants' Exhibit at Enquête B18 and state whether that letter was received by your father from Moore & Wright at the time it bears date? A. It appears to have been written by Moore & Wright, addressed to Simon Peters, and received by him.

Q. What is referred to there is again the stub piling to which we have been referring in the last few questions? A. Yes.

Q. Are you aware that the late Simon Peters made it a condition that Moore & Wright should, in the terms of that letter, should assume the cost of supplying and driving the stub piles to support the cribs and the supplying and fixing of the one and a half inch plank at the back of the cribs? A. I notice it is stated here in Defendants' Exhibit at Enquête B18 that they state they assume it. Moore and Wright state they assume it: that is all I notice there.

Q. I am asking you whether you are aware that Simon Peters exacted that from Moore & Wright at the time the change was made? A. I am not aware of anything beyond what I see there.

Q. I asked you previous to the adjournment how many bollards had been put in. You said you were unable to answer without further details. Are you able to answer now? A. I have not had time to refer to that portion.

Q. Are you able to answer with respect to the doors of the cribs? A. To the best of my knowledge, these bracings went on to the satisfaction of the chief engineer, and they have been allowed for by the engineers and not deducted.

Q. Does that answer apply to all the cribs? A. Yes.

Q. Every one of them? A. Yes.

Q. Do I understand you to swear that in point of fact the doors to close the crib work, referred to at page 69 of the Blue Book, were put in to all the cribs? A. To the best of my knowledge, that item was done and allowed for by the engineers, both resident and chief engineers, and not deducted in settlement of the account.

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Q. I understand you, then, to swear that *de facto* in the work the temporary bracings and the doors both were put into all the cribs to protect the concrete?

A. I state they were allowed by the engineers and not deducted.

Q. That is not an answer to my question. A. To the best of my knowledge they were put in. I stated that before.

Q. I understand you to swear that they were put in? A. Yes, to the best of my knowledge.

Q. Now, did you prepare the statement of the work done by your father, at the close of the works? A. Can I see the statement referred to.

Q. I am not referring to any particular account, but to the statement that was sent to the resident engineer at the close of the works? A. I assisted in the preparation of that statement of account. I cannot say positively that I made it all.

Q. Upon what basis was that made up? A. On the basis of the work done in accordance with the Blue Book, and the extra works done.

Q. Do I understand that the position assumed by your father was that all the work done was to be allowed according to the prices stated in the Blue Book, independently of the bulk sum? A. I don't quite understand that.

Q. When the final accounts were made up at the close of the works, did your father take the bulk sum into consideration in making up his accounts or did he make up his accounts for all the work actually done by him, basing the price upon the Blue Book in so far as the items contained in the Blue Book permitted? A. As far as I recollect, the bulk sum was the basis of it.

Q. If that was so, will you explain how it was you came to claim for the understated bills of quantities, seeing that by the contract you assumed all the risk of the quantities and of the accuracy of the calculations? A. My father did not consider at the time that claiming these understated bills of quantities affected the bulk sum, as they were extra works done in addition to the bulk sum.

Q. So that your father's view and your view of the contract was that if he did the work stipulated by the contract you were entitled to the bulk sum and to any sum in excess for material or labor that you might have put in beyond the details of the Blue Book? A. In that we were guided by the engineers, as they allowed that sum eventually.

Q. Will you refer to Plaintiff's Exhibits Nos. 21 and 22, and state when these were prepared? A. There is no date to either of them. They appear to be in the handwriting of Mr. Jacobs, and one is signed by J. Vincent Brown.

Q. Do you know what they are? A. No. 21 appears to be estimate of Simon Peters including extras as claimed by final settlement.

Q. Had you anything whatever to do with that statement, with the making of it? A. I cannot remember at the moment that I had.

Q. Will you point out where in these two statements the bulk sum of the contract is dealt with? A. They appear to be made out on the basis of the bulk sum.

Q. How did you make that out? A. By taking the different items per cribs and per bills.

Q. In other words, what that shews is that you took the prices shewn in the Blue Book and applied them to the work actually done, is not that so? A. That portion of the work agrees with the Blue Book, these twenty-seven cribs.

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P 206

I 24-99 l. 25

*Q.* It happens there to agree with the Blue Book? *A.* Yes.

*Q.* And where it was work either in excess of what was stipulated in the Blue Book or different, is it not a fact that the prices, in so far as contained in the Blue Book were used, and that is all? *A.* I think you will find the prices applied everywhere as they appear in the Blue Book, as far as I can remember.

*Q.* That is a statement of the whole of the work which the contractors claimed they had done, is it not? *A.* According to the statement at the top, it appears to be that.

*Q.* You cannot say whether or not that statement was sent to the Commissioners by your father at the close of the work as being a final statement of what he claimed to be due to him in respect of the contract? *A.* I cannot state.

*Q.* Is it not a fact that you know nothing about the statements Plaintiff's Exhibit Nos. 21 and 22? *A.* As far as I can see, these statements are correct.

*Q.* Do you know anything personally about these statements, when they were made, or the details upon which they were made up? *A.* Yes, I do.

*Q.* Then, you can tell us where the bulk sum comes in in that statement? *A.* It comes in in the different bills.

*Q.* Shew us how it comes in. Explain it? *A.* Bill 1—if you take the the totals of certain items, you will find them perfectly correct.

*Q.* Where the work done corresponded with the work contracted for as stated in the Blue Book, but where the work did not correspond, where the work had been altered, would you just point out how the parties dealt with that? *A.* Do you mean the extra work?

*Q.* Either the extra work or the change in the work? *A.* From what I can recollect, it was all based on the same prices.

*Q.* Based on the same prices exactly? *A.* Yes.

*Q.* And these prices were applied to the actual quantities which the contractors claimed to have put into the works, is that not so? *A.* These prices were based on the Blue Book quantities and the quantities the contractors put into the works.

*Q.* Now, Mr. Peters, were you here at the time the litigation was going on between Peters, Moore & Wright on the one hand and the Harbour Commissioners on the other? *A.* Which litigation do you refer to?

*Q.* The suits which were instituted and the arbitration which took place before the Dominion Board of Arbitrators before the suits? *A.* I was here during the arbitration as a witness.

*Q.* You know, as a matter of fact, that then the contractors claimed to be paid for all the work actually done independent of the quantities stipulated in the Blue Book, but at Blue Book prices? *A.* It is a long time ago to remember.

*Q.* You say you do not know? *A.* No, that is fourteen years ago.

*Q.* Were you here during the first suit that was taken by Peters, Moore & Wright against the Harbour Commissioners? *A.* What year was it in?

*Q.* Do you recollect anything about it? *A.* If I knew the year, I could answer the question.

*Q.* Do you know anything about the suit? *A.* I left immediately after the arbitration—at least, not immediately after, but that summer of 1882.

*Q.* Now, to come back to some questions put to you and which you were unable to answer. Will you now give us any additional information which you

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have been able to get with respect to any of these questions? I have additional information with regard to the first account against Moore & Wright for the rent of the office for five months. I find that Moore & Wright used the entire three roomed brick office during that time. I find also that they constructed a large dredge and several scows in the pond, and that they used the middle wharf for certain machinery in connection with their dredge.

*Q.* Where did you get this information? *A.* I got it from data taken at the time.

*Q.* Just produce it, please? *A.* A part from data; but referring to the things which took place at the time the whole thing came back freely to my mind, and, further, that office was used principally by Mr. Wright and Mr. Wright's father at the time. They were there constantly. I am referring now to my memory.

*Q.* Now, what other matter have you to refresh your memory about? *A.* With regard to the cribwork at the ballast wharf, and the work done the first year, I think I can give you some particulars about that too. (Witness refers to documents.)

*Q.* What papers are you now referring to? *A.* I am referring to the question.

*Q.* What paper have you now in your hand to enable you to answer the question? *A.* I think they are Mr. Navarre's papers. (Estimates made by Mr. Navarre of work done that summer).

*Q.* Will you state what work was done by Simon Peters in the season of 1877 in connection with the cribwork? *A.* Crib blocks at gas wharf, ballast wharf.

*Q.* Both, or which? *A.* Yes, both ends. That is all I can see here, as far as I can make it out.

*Q.* Now, I understand that your testimony with respect to the cribs sunk by Simon Peters in 1877 amounts to this: that there were some at the gas-house wharf and some at the ballast wharf? *A.* Yes.

*Q.* Now, can you tell us what length at each place? *A.* At the gas wharf nineteen crib blocks and ninety-five parts. At the ballast wharf, fourteen crib blocks.

*Q.* Were these the cribs of the northern embankment or were they the substructure? *A.* They were the cribs at the gas house wharf on the south side of the work.

*Q.* Where on the south side of the work? *A.* That would be the inside, I think I will take that back: it is on the outer slope of the gas wharf.

*Q.* That would be the northern side? *A.* Yes. And the other would be the outer cribs too, the ballast wharf, as I can make out from these papers and from memory.

*Q.* These outer cribs were part of the northern cribwork? *A.* Yes.

*Q.* And did not form part of the substructure, as you have already said? *A.* They were in addition to the Blue Book.

*Q.* On reflection, you now state that they were part of the northern crib work? *A.* That they formed part of Bill 7 of the original works contract.

*Q.* In fact, Mr. Peters, the alteration that was made in that particular work forms part of the deduction in Bill No. 7 shewn on statement, Exhibit No. 21,

which deduction amounts to \$2,256.23, is that not so? *A.* It may be the same item. RECORD

*Q.* As far as you know, it is so? *A.* It may be the same item. I cannot say positively. *In the Superior Court.*

*Q.* Now, can you give us the length of the crib work done? You have given us the number of cribs, nineteen blocks on one side and fourteen on the other. What would be the length in feet? *A.* I cannot say the exact length of the cribs. The Blue Book shews it, 135 feet for the ninth, tenth and eleventh blocks. No. 56. Plaintiff's Evidence Deposition of Henry Joseph Peters, 10th Dec. 1895.

10 *Q.* These were the gas house blocks, were they not? *A.* I cannot say for the moment.

*Q.* Can you say whether any crib work was done in the season of 1877, about the center part of the dock, as I understood you to say in your previous answer? I understood you to say you had begun work in the middle. *A.* I alluded to 1878. *continued—*

*Q.* Now, in 1878, what work did you do? *A.* In 1878 ten large cribs were sunk in the commencement of the work on the ballast wharf, going towards the tidal harbour.

20 *Q.* These were all on the south side of the works, that is, they were the substructure of the dock? *A.* Yes.

*Q.* Were any of the northern cribs put in that year? *A.* I cannot recollect at the moment.

*Q.* Referring to the account for straightening crib work, what particular crib work was up that was not straightened? *A.* That work on the north embankment from 120 foot crib to coping level. I got the *data* of what that cost to straighten that crib work. That was in the spring of 1879, so that the same must have been there in 1878. It was damaged during the winter of 1878-79.

30 *Q.* Can you say from your own recollection what part of the work the damaged cribs were on? *A.* The north embankment from 120 foot crib to coping level. They commenced to work twentieth May to straighten the cribs.

*Q.* But that does not tell me where, on the embankment, that crib work was? Was it the ballast wharf end, the gas-house wharf or the middle? where was it? *A.* I cannot say.

*Q.* Can you say from your personal knowledge what the damage done to the crib was? *A.* Owing to lack of ballast behind, sand ballast, the ice and water during the winter pushed the crib work out of line.

*Q.* Was it out of line on the northern face? *A.* It was pushed outwards towards the north.

40 *Q.* These cribs, I understand, were cribs placed upon the natural river bottom as it existed? *A.* Yes.

*Q.* Had any sand at all been put in behind these cribs? *A.* Some; not very much; not sufficient to keep them.

*Q.* Can you say what quantity of sand had been put in at all? *A.* No; I think there were letters complaining that there was not sand put in. The Engineers also complained, I fancy, if I am not mistaken.

*Q.* Now, you have stated that this was due to the effects of the winter of 1878-79, and that the work to which you have referred was in May, 1879? *A.* Yes.

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*Q.* Did you yourself take part in this work? *A.* I was down there frequently and saw the men at work.

*Q.* Did you keep the time at all? *A.* The time was returned by the foreman to the office.

*Q.* Who was the foreman? *A.* There were several. There was one St. Claire, and I think DeRousseau was there also.

*Q.* Now, if this was one of the northern cribs it was after the change, it was after the joint contractors had agreed to widen the embankment to three hundred feet and to put up the northern crib-work in lieu of the pitched slope?

*A.* It was the substructure that was injured, not the superstructure. 10

*Q.* But I understood you to say that these were cribs put upon the natural river bottom. *A.* They were put down to the bottom and filled with stone to keep them in place.

*Q.* The filling with stone was part of your father's work? *A.* It was. It was done by him.

*Q.* You told us you were there several time, but of course, you didn't keep the time of the men? *A.* No, I didn't keep the time of the men.

*Q.* This account you took from your father's books? *A.* From returns made by the foremen.

*Q.* And entered in your father's book? *A.* Yes. 20

*Q.* Was that account ever sent to Moore & Wright? *A.* That I cannot say.

*Q.* Did you ever see this account after it was entered in the books? *A.* Oh, yes.

*Q.* You saw it in the books? *A.* I saw it in the books.

*Q.* Did you see it made up as an account against Colonel Moore? *A.* Yes, charged against him in the books in the office from the foremen's returns.

*Q.* But you are unable to say whether this account was ever sent? *A.* I cannot say.

*Q.* Have you any copies of letters which were sent to Moore & Wright with respect to this work? *A.* I think there are letters stating that he was half res- 30  
 ponsible for the damage.

*Q.* Would you turn up the copies of these letters and let us have them?

Mr. Stuart, Q. C., counsel for Defendants, requests the Plaintiff to produce all the correspondence or copies thereof respecting the claim for damages in respect of the northern crib work and also all correspondence in connection with bill for \$585.14.

The Court adjourns till the 12th December instant at 10 a. m.

On the twelfth December instant the *cross-examination* of witness is continued.

*Q.* Before the adjournment yesterday I asked you to produce the *data* 40  
 which enabled you to speak with respect to the amount claimed for rent, etc?

*A.* I have not been able to place my hands upon it, but I can swear from memory that the office was occupied during that time by Moore & Wright.

*Q.* Now, Mr. Peters, when you were first cross-examined upon that question your memory did not permit you to give us any details whatever, and after the adjournment you came back and gave us from memory certain details as to what had occurred, and you told us that you had refreshed your memory by means of

data. I have asked to produce this data, and you now tell me that you cannot do so. This data cannot have been mislaid between yesterday at noon and this morning. Where did you get the information? A. I got by referring to other papers connected with the work, and by bringing my memory back to that point. I brought my memory to bear upon that point and I remember distinctly now the whole thing, that it was occupied by Moore & Wright during the occupancy of the yard and pond while they were building their scews and dredges.

Q. Do I understand you to say that Moore & Wright built their dredges in your father's yard? A. They built one dredge and scows in the pond and yard.

10 Q. You are perfectly sure upon that point? A. I remember seeing the work going on at that time.

Q. And you say they built a dredge in your father's yard? A. I say they built a hull.

Q. But you are not able to produce the papers, which, you say, in part refreshed your memory on this subject? A. Not at the moment.

Q. Referring to the contract drawing No. 22, Plaintiff's Exhibit No. 23, will you state whether the cribs in the substructure of the quay wall both in the tidal harbour and wet dock are shewn upon the plan, that part of the plan closest to the edge? A. I can only state what I see here on the plan.

20 Q. Yes, I am asking you whether it is so as a matter of fact? A. This would shew the face of the substructure, according to these lines I see before me. The lines are marked in pencil AB.

Q. The whole of that part of the plan upon which the letters are marked represents the substructure? A. Represents part of the substructure.

Q. Now, Mr. Peters, is it not true that the sheet piling which is indicated on the plan between the letters AB was moved forward to the front of the substructure about in the direction of the letters CD, in pencil? A. I think the evidence already in that Supreme Court book will shew all that. It is fresher there than in my memory.

30 Q. The Supreme Court book is not evidence in this case. Do you know, as a matter of fact, whether it is so or not? A. I would not like to state at the moment.

Q. Do you know that there was a change in that and an elm capping put on top which was not provided for? A. Yes, there was an elm capping.

Q. And that elm capping was put on the south face of the wall? A. It was put on the substructure.

Q. But on alignment with the outer face of the wall? A. Yes, as near as I can remember.

Q. And it must have been placed on top of the sheet piling? A. I suppose so.

Q. Necessarily? A. Yes.

40 Q. Referring to the account for labor and material supplied owing to the bottom not being properly prepared to receive the crib, will you state where this crib in respect of which the bottom was defective was situated on the works? (Witness refers to account, Plaintiff's Exhibit No. 6.) A. It was a crib in the tidal dock, and these statements were given by my father returned at the office.

Q. Can you state where the crib was situated with respect to the ballast wharf? A. It indicates here as being crib no number the first crib.

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continued—

Q. Do you recollect that anything happened to that crib before it was sunk ?  
A. I have no recollection at the moment.

Q. You do not remember that that crib upset before it was sunk ? A. I couldn't state.

Q. While it was moored close to where it ultimately sunk ? A. I couldn't state at the moment.

Q. Do you recollect as matter of fact that any of the cribs upset ? A. I couldn't state.

Q. The fact is completely gone from your memory ? A. It is.

Q. Now, how much do you actually recollect with respect to this incident ?  
Just tell us ? A. I recollect the fact of the crib having to be replaced in position.  
That is all I recollect.

Q. Did you yourself take part in this work ? A. I wasn't present at it.

Q. What you know of it is what was told you by your father ? A. What was returned by the foremen and told by my father.

Q. Look at the receipted account now produced and filed as Defendants' Exhibit at Enquête B19 and state whether that is signed by your father's book-keeper of that date on his behalf ? (Exhibit B19 is handed to witness.) A. This is his writing.

Q. And the signature "Simon Peters, P. H. Bohme" is the signature of his 20 book-keeper ? A. Yes.

Q. He was in the habit of giving receipts in that form ? A. Yes.

Q. The J. B. Navarre, who is referred to in this paper, was the engineer and agent of the joint contractors ? A. He was.

Q. Referring to Plaintiff's Exhibit No. 12 do I understand you to say that no fine concrete was put into the substructure ? A. Do you mean in rear of the stone wall ?

Q. In the substructure. A. This was the return given at the time by my father.

Q. You know personally nothing about it ? A. Except that he made that return. It was eight to one substituted for four to one in the substructure. 30

Q. Personally, Mr. Peters, you know absolutely nothing as to what concrete was put into the substructure ? A. Beyond what was returned at the time.

Q. That is, what was told you by your father ? A. What was returned at the office.

Q. Now, did you yourself prepare this exhibit No. 12 ? A. It is in my hand-writing.

Q. But it is based upon returns made to you by your father ? A. It was.

Q. Did you keep an account in any way or keep a record in any way of the work that was done by Moore & Wright ? A. As it was returned to the office by my father, we kept these accounts. 40

Q. Did your father purport to make a return to the office or to keep a record of the work done by Moore & Wright under the contract ? A. That I couldn't say.

Q. These papers are just simply documents which you found in the office connected with the contract ? A. They were documents prepared under my father's instructions.

Q. And you yourself do not know from what data ? A. No, I couldn't say.

Q. And so with respect to the statement of the work done by Moore & Wright, which you put in—I do not now recollect the number of the Exhibit.

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That also was prepared upon data and instructions given by the late Simon Peters? A. It was. RECORD

Q. And not from your personal knowledge of the work? A. Not altogether: some was from my personal knowledge. In the Superior Court.

Q. Referring to the stone wall, Mr. Peters, what was the actual money paid out by Simon Peters for the building of the stone wall? A. Beaucage & Chateauvert's account was produced. No. 56. Plaintiff's Evidence Deposition of Henry Joseph Peters, 10th Dec. 1895.

Q. It is \$66,678.82 by Beaucage & Chateauvert's accounts. Was the whole of that amount paid to Beaucage & Chateauvert for the stone wall? A. To the best of my knowledge it was. continued—

Q. Upon what basis was the contract with them? So much a foot, or a block sum, or what? I mean between your father and Beaucage & Chateauvert. A. So much per foot cube.

Q. How much? A. Fifty-one cents for each cubic foot of stone.

Q. That is, of course, for the whole wall as built in situ? A. As placed.

Q. Completed and rough boucharded face? A. Yes.

Q. Can you now produce the correspondence respecting the damages for the northern crib and which you were asked yesterday to produce? A. The letter already produced as Defendants' Exhibit at Enquête B17 is the only one which refers to that matter that I can find: the rest was verbal between Simon Peters and Moore & Wright.

Q. Will you look at the letter now produced as Defendants' Exhibit at Enquête B20 and state whether it was written by the late Simon Peters to Moore & Wright at the date it bears? (Letter is handed to witness.) A. It was.

Q. That letter is in answer, as it says on its face, to one of seventh October, 1880, written by Moore & Wright to Simon Peters, copy of which is now filed as Defendants' Exhibit at Enquête B21, the Plaintiffs undertaking to produce the original if they can find it. (Letter is handed to witness.) A. Yes, the dates are the same, seventh October.

Q. Would you be good enough to produce the original letter from the resident engineer of the seventeenth September, 1878, referring to the subject of the guide piles?

Re-examined.

Q. Mr. Peters, you referred during your cross-examination to some data, being papers of Mr. Navarre. Would you produce these? A. I now produce and file them as Plaintiff's Exhibit at Enquête A39.

Q. You made a statement in your cross-examination, Mr. Peters, about stub piling. You said it was to relieve Moore & Wright from great difficulty. A. It was impossible to dredge the bottom sufficiently level to receive the cribs, judging from the experience with the No. 1 crib, and my father suggested using stub piles and it was accepted by the engineers and by Moore & Wright.

Q. His proposition was accepted by the engineers and by Moore & Wright? A. Yes.

Q. Did he drive the stub piles? A. He did.

I, the undersigned, do hereby certify that the foregoing deposition is a true and correct transcription of my shorthand notes.

M. J. MORRISON, Stenographer.

RECORD  
In the Superior Court.  
No. 56. Plaintiff's Evidence Deposition of Henry Joseph Peters, 10th Dec. 1895.  
continued—  
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p. 569-73 l. 40

RECORD.

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*In the  
 Superior  
 Court.*  
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No. 57  
 Plaintiff's  
 Evidence  
 Deposition  
 of  
 Ferdinand  
 Labbé,  
 12th Dec.,  
 1895.

FERDINAND LABBÉ, de la cité de Québec, dans le district de Québec, charpentier, âgé de 66 ans, étant dûment assermenté sur les Saints Evangiles, dépose et dit :

Je connais les parties en cette cause ; je ne suis ni parent, ni allié, ni serviteur, ni domestique d'aucune d'elles ; je ne suis point intéressé dans l'événement de ce procès.

Q. Vous vous rappelez les travaux qui ont été faits dans le Hâvre de Québec à l'embouchure de la Rivière St. Charles ? R. Oui, j'ai été employé par Monsieur Peters en mil huit cent soixante-dix-huit pendant quelques saisons.

Q. Pendant tout le temps que M. Peters a travaillé à cet ouvrage ? R. Pas 10 tout le temps, la première année, je n'ai pas commencé. J'ai commencé en mil huit cent soixante-dix-huit.

Q. Il a commencé en mil huit cent soixante-dix-sept et vous, vous n'avez commencé à travailler qu'en mil huit cent soixante-dix-huit ? R. Je n'ai commencé à travailler qu'en mil huit cent soixante-dix-huit.

Q. Quel était l'espèce d'ouvrage dont vous étiez chargé par monsieur Peters ? R. J'étais chargé par monsieur Peters de tout les travaux des quais en dehors et en dedans.

Q. Vous rappelez-vous, entr'autres travaux, les travaux faits au quai qui se trouve au nord de la Jetée Louise ? R. Oui, monsieur. 20

Q. Du côté de la Rivière St. Charles ? R. Oui, monsieur.

Q. Qu'est-ce que vous faisiez dans ces travaux-là ? R. J'étais foreman.

Q. Vous étiez foreman ? R. Oui, monsieur. J'étais pour diriger les travaux, leur dire de quoi faire. C'est moi qui étais. . . .

Q. C'est vous qui faisiez exécuter les cribs qui servaient à faire le quai ? R. Oui.

Q. Comment l'ouvrage se faisait-il ? R. L'ouvrage se faisait aussi bien qu'il était possible.

Q. En quoi consistait l'ouvrage ? Où faisait-on ces cribs-là ? R. Les cribs, on les faisait dans le boom chez monsieur Peters, ce qu'on appelle le boom de monsieur Paradis. On les assemblait là. Lorsque les places étaient préparées 30 sur la batture, on y allait, on les calait et on ajoutait. . on mettait de la pierre.

Q. Qui est-ce qui préparait la place pour ces cribs-là ? R. C'est moi-même.

Q. Après les avoir préparés dans le chantier chez monsieur Paradis, vous étiez obligé de les transporter sur les lieux où ils devaient être posés ? R. Oui, on allait à toutes les marées basses préparer le terrain et lorsque le terrain était préparé, on avait les cribs prêts et on allait les mettre en place et on les chargeait.

Q. Vous avez mis en place tous les cribs ? R. Oui.

Q. Combien en avez-vous mis en place ? R. Si je ne me trompe pas, c'est dix la première année. 40

Q. C'est dix que vous avez mis en place la première année que vous avez été là, c'est-à-dire en mil huit cent soixante-dix-huit ? R. Oui.

Q. De quelle longueur étaient chacun d'eux ? R. Si je ne me trompe pas, c'est cent cinquante pieds chaque.

Q. Quand ces cribs ont été posés, comment ont-ils été posés ? R. Ils ont été posés aussi bien qu'il était possible à un homme de faire l'ouvrage.

Q. Vous n'avez remarqué aucune défectuosité dans la manière dont ils

étaient faits lorsqu'ils ont été posés ? R. Ils ont été posés à la satisfaction des ingénieurs. RECORD.

Q. Dans quelle partie de l'année ont-ils été posés en mil huit cent soixante dix-huit ? R. On a commencé à les caler en septembre.

Q. Quand avez-vous achevé de les caler ou de les poser ? R. Ces dix-là, on a rachevé avec la saison. Une quinzaine, je suppose, avant que la saison vint à être close.

Q. Les avez-vous vus à la fin de la saison, avant la formation des glaces ? R. On les a vus tant qu'il y a eu moyen de passer dessus.

10 Q. Dans quel état étaient-ils ? R. Ils ont toujours été en parfait ordre jusqu'au printemps.

Q. Maintenant au printemps, étaient-ils dans le même ordre que vous les aviez posés, quand vous les avez vus après les avoir posés à l'automne ? R. Quand la glace a été partie, on a vu là où ils avaient forcé, travaillé.

Q. Est-ce que tous ceux qui avaient été posés ont souffert de la glace comme ça ? R. Non.

Q. Combien ? R. A peu près la moitié, la première partie.

Q. Qu'est-ce que vous appelez la première partie, est-ce la partie au nord-ouest ou au nord-est ? R. Au nord-est, abutté au breakwater.

20 Q. C'est à partir du breakwater ? R. Qui est resté solide . . . c'est l'autre partie, venant à l'ouest.

Q. Avaient ils été beaucoup dérangés ? R. C'était canté par la glace.

Q. Lorsque vous vous en êtes aperçus, est-ce que ça faisait longtemps ? R. Ils étaient assez dérangés, levés, cantés, on a été obligé de travailler pour les remettre en place.

Q. Qu'est-ce que c'est qui a causé ce dérangement ? R. Suivant ma conviction, c'est parce qu'il n'y avait pas suffisamment de sable dedans pour les tenir.

Q. C'est la glace qui les a remués ? R. Oui.

Q. Et s'ils eussent été remplis de sable ? R. S'ils eussent été remplis de sable comme la première partie, ils n'auraient pas mové.

30 Q. Ils n'étaient pas tous également remplis ? R. Non. Ces quais-là, il y a une plateforme en dessous, c'est vide le moins de quinze à seize pouces. Ça n'étant pas plein, la glace se forme, la pierre qu'on met dedans ce n'est pas de la maçonnerie remplie, c'est de la pierre qu'on prend dans les bateaux, tout ça se remplit de glace et lorsqu'est venue, la grande mer du printemps, dans le mois de mars, ça fait remuer.

Q. Qui est-ce qui mettait le sable dans ces cribs la ? R. C'était monsieur Moore. C'est monsieur Peters qui faisait et qui posait les cribs. C'est monsieur Moore qui les remplissait de sable. Monsieur Peters m'a dit : Labbé, fais tes cribs et remplis-les pour les tenir solides au fond et le restant c'est monsieur Moore qui les emplît.

40 Q. De fait avez-vous constaté si monsieur Moore ou ses employés les remplissaient de sable ? R. Pas lui-même, mais ses employés.

Q. Vous avez remarqué qu'on avait mis plus de sable dans ceux du nord-est que dans ceux du sud-ouest ? R. Oui.

Q. Ce sont ceux qui étaient le moins remplis de sable qui ont remué par la glace ? R. Oui, et c'est ça qui me fait dire que l'on n'avait pas mis assez de sable.

In the  
Superior  
Court.

No. 57  
Plaintiff's  
Evidence  
Deposition  
of  
Ferdinand  
Labbé,  
12th Dec.  
1895.  
continued—

RECORD.

—  
*In the  
 Superior  
 Court.*  
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No. 57  
 Plaintiff's  
 Evidence  
 Deposition  
 of  
 Ferdinand  
 Ladbé,  
 12th Dec.  
 1895.  
*continued—*

Pour moi c'est évident. Lorsqu'il y a un vide sur la plateforme, la glace se forme dedans. Avec le jour qu'il y avait entre la plateforme, de trois ou quatre pouces, tout ça se remplit de glace et en venant le printemps, les grosses eaux, ça fait mouver ça. Dans l'autre partie, il y avait du sable jusqu'au-dessus des plates-formes, ça résisté.

*Q.* Quelle longueur de quai est-ce qu'il y a eu de dérangée ? Combien de centaines de pieds ? *R.* C'est quatre ou cinq cribs. Par cent cinquante pieds, si c'est quatre cribs, c'est six cents pieds.

*Q.* Qui est-ce qui les a réparés ? *R.* C'est moi-même qui ai mis des hommes pour les faire reprendre.

*Q.* Pour monsieur Peters ? *R.* Oui.

*Q.* Dans quel temps ? *R.* Dans le mois de mai mil huit cent soixante-dix-neuf.

*Q.* Combien de temps ça a-t-il pris pour faire des réparations ? *R.* Je ne suis pas capable de préciser le temps. Le temps est à l'office. Ils arrangeaient ça. C'est à peu près une couple de mois que ça pris parce que c'est un ouvrage qu'on ne pouvait pas mettre une grosse gang d'hommes.

*Q.* Combien d'hommes employiez-vous en somme habituellement ? *R.* Cet ouvrage-là, on mettait sept ou huit hommes.

*Q.* Et ça duré une couple de mois ? *R.* Ça duré une couple de mois, parce 20 que c'est une affaire qu'on ne travaillait rien qu'aux marées.

*Q.* Si je vous comprends bien, vous ne seriez pas en état de nous dire combien est-ce que cela a coûté ? *R.* Non.

*Q.* Ce que vous faisiez, vous rapportiez au bureau de monsieur Peters tous les jours le nombre d'hommes qui étaient employés ? *R.* Oui.

*Q.* Ce dont vous avez un souvenir exact c'est d'avoir rapporté exactement le nombre d'hommes que vous employiez ? *R.* Oui, monsieur.

*Q.* Combien payiez-vous vos hommes par jour ? *R.* Si je ne me trompe pas, c'est une piastre par jour.

*Q.* Après que vous avez eu fait ces réparations-là, a-t-il été mis du sable 30 dans les cribs en question ? *R.* Oui.

*Q.* Ils ont été remplis ? *R.* Oui, à mesure, dans la saison.

*Q.* Les avez-vous revus plus tard ces cribs-là ? *R.* J'ai passé, je ne suis pas capable de vous dire le nombre de fois.

*Q.* Est-ce que jamais, à votre connaissance, ils ont été dérangés depuis par la glace, depuis qu'ils ont été remplis de sable ? *R.* Non, ils n'ont pas été dérangés après qu'ils ont été remplis de sable.

*Q.* Ils n'ont jamais remué ? *R.* Non.

*Transquestionné.*

40

*Q.* Les cribs en question formaient quelle partie de l'ouvrage ? *R.* Le nord, les cribs en bois, parce que sur la ligne du bassin c'est en pierre. C'est les cribs qui étaient posés sur le sable. . . .

*Q.* Vous preniez le fond de la rivière tel qui était et vous l'arrangiez pour vous même et vous posiez vos cribs n'est-ce pas ? *R.* Oui, monsieur.

*Q.* Tous ces ouvrages étaient faits par monsieur Peters et ses hommes ? *R.* Oui, monsieur. On faisait notre niveau.

*Q.* Est-ce qu'il y avait eu du sable du tout de mis dans les cribs qui ont été dérangés ou s'ils étaient complètement vides de sable? *R.* C'est en plateforme, c'est à peu près vide.

*Q.* A la fin de la saison de mil huit cent soixante-dix-huit, est-ce qu'il y avait une certaine quantité de sable dans tous les cribs? *R.* Non. Il y avait rien que dans l'autre partie, les premiers cribs qui étaient calés.

*Q.* Vous êtes bien certain de ça? *R.* Il peut se trouver quelques petits éboulis....

*Q.* Mais il n'a pas été mis de sable dedans? *R.* Non.

10 *Q.* La matière est parfaitement claire à votre esprit? Vous vous en souvenez parfaitement? *R.* Oui, monsieur. Comme je vous dis, ils ont pris des scows et il peut en avoir drivé....mais ils n'en avaient pas mis suffisamment pour tenir....

*Q.* Est-ce qu'ils avaient commencé à en mettre dans la partie des cribs qui ont remué? *R.* Non, ils n'ont pas dumpé, ils ont dumpé au loin.

*Q.* La partie où ils avaient dumpé n'a pas bronché? *R.* Là où ils ont mis le sable sur les quais ils n'ont pas bronché.

Je, soussigné, sténographe assermenté, certifie que la déposition ci-haut est la traduction fidèle de mes notes sténographiques.

20

ALEXANDRE BÉLINGE.

RECORD

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*In the  
Superior  
Court.*—  
No. 57.Plaintiff's  
Evidence  
Deposition  
ofFerdinand  
Labbé,  
12th Dec.  
1895.

continued—

ISAAC FLAMAND, du village de Limoilou, dans le district de Québec, charpentier, âgé de 63 ans, étant dûment assermenté sur les Saints-Evangiles, dépose et dit :

Je connais les parties en cette cause; je ne suis ni parent, ni allié, ni serviteur, ni domestique d'aucune d'elles; je ne suis point intéressé dans l'événement de ce procès.

30 *Q.* Vous vous rappelez des travaux faits dans l'embouchure de la rivière St-Charles il y a une quinzaine d'années par M. Peters et MM. Moore & Wright?  
*R.* Oui, monsieur.

*Q.* Avez-vous été employé à faire quelques-uns de ces travaux? *R.* Non, j'ai travaillé pour M. Peters.... j'ai charroyé les matériaux avec le steamboat.

*Q.* C'est l'ouvrage que vous faisiez? *R.* Je travaillais à ça.

*Q.* Vous avez eu connaissance, je crois, de la construction du quai qui a été posé au nord de la Jetée Louise? *R.* Oui.

*Q.* C'est monsieur Peters qui faisait ça? *R.* Oui, monsieur.

*Q.* Avez-vous vu comment le quai était fait? D'abord, en quelle année était-ce? *R.* C'est en mil huit cent soixante dix-huit.

40 *Q.* Dans quelle partie de l'année? le printemps? l'été? l'automne? *R.* Ça s'est fait dans l'été.

*Q.* Et vers quel temps ça s'est-il terminé? *R.* Ils ont abandonné dans l'automne de travailler.

*Q.* A la fin de la saison? *R.* A la fin de la saison, le froid commençait à prendre.

*Q.* Avez-vous eu occasion de passer sur ces quais-là, ou dans le voisinage pour voir voir comment ils étaient faits? *R.* Oui, j'y passais souvent, j'y passais tous les jours.

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continued—

*Q.* Le quai était-il bien en ligne ? *R.* Bien en ligne.

*Q.* Parfaitement aligné ? *R.* Oui.

*Q.* Avez-vous vu le même quai le printemps ? le printemps suivant ? *R.* Je l'ai vu le printemps suivant, sans doute.

*Q.* Dans quel état était-il ? *R.* Il avait dérangé, il avait reculé sur un sens et sur l'autre.

*Q.* Avez-vous pu constater qu'est-ce qu'il avait de dérangé ? *R.* Je pense que c'est parce qu'il n'y avait pas assez de backage dedans, ils n'étaient pas assez remplis.

*Q.* Qu'est-ce qui les a fait remuer comme ça ? *R.* C'est la gelée. 10

*Q.* Les glaces ? *R.* Les glaces de l'hiver.

*Q.* Suivant vous c'est parce que, dites-vous . . . pourquoi la glace les a-t-elle dérangés ? *R.* Parce qu'il n'y avait pas assez de backage en arrière.

*Q.* C'est-à-dire, s'ils eussent été mieux remplis est-ce que la glace les aurait remués ? *R.* Je pense bien que s'ils eussent été mieux remplis que ça n'aurait pas dérangé.

*Q.* Tout ce quai là, a-t-il été dérangé d'un bout à l'autre ? *R.* Il y avait cinq ou six cribs.

*Q.* Y en a-t-il eu qui n'ont pas remué ? *R.* Non, il n'y en a pas qui n'ont pas remué. 20

*Q.* Maintenant aviez-vous constaté l'automne précédent s'ils étaient tous faits de la même manière ? *R.* Dans l'automne d'ensuite ?

*Q.* Non, l'automne d'avant ? quand vous les aviez vus en dernier ? *R.* Oui.

*Q.* Il y en avait qui étaient mieux faits que d'autres ? *R.* Non, ils étaient tous pareils, tous bien aplomb.

*Q.* Il y a une partie qui s'est déranfiée ? *R.* Oui.

*Q.* D'après ce que vous avez vu, comment expliquez-vous ça ? quelle est la raison pour laquelle une partie s'est dérangée et l'autre partie ne s'est pas dérangée ? *R.* Parce que, des places, il y avait plus de terre dans les unes que dans les autres. 30

*Q.* Ceux qui avaient assez de terre ne se sont pas dérangés ? *R.* Ceux qui avaient assez de terre ne se sont pas dérangés.

*Q.* Avez-vous vu faire des réparations à ce quai dans le printemps ? *R.* C'est dans l'hiver que ça pris et c'est dans le printemps . . .

*Q.* C'est dans le printemps de mil huit cent soixante-dix-neuf ? *R.* Oui.

*Q.* Qui a suivi le dérangement ? *R.* Oui.

*Q.* Savez-vous par qui ces travaux de réparation ont été faits ? *R.* C'est par monsieur Peters.

*Q.* Connaissez-vous M. Labbé qui vient d'être entendu comme témoin ? *R.* Oui. 40

*Q.* L'avez-vous vu travailler à ça ? *R.* Oui, je l'ai vu travailler.

*Q.* Avez-vous remarqué quelle longueur de quai a été dérangée et qu'on a réparée ? *R.* Je ne suis pas capable de vous dire. Il y avait cinq ou six cribs que je voyais qui étaient dérangés.

*Q.* C'est ça qu'on a réparé ? *R.* Oui.

*Q.* Avez-vous constaté si ces réparations ont pris beaucoup de temps ? *R.* J'ai travaillé une couple de mois.

Q. A combien d'hommes ? R. On pouvait être comme sept ou huit hommes. RECORD.  
 Q. Vous passiez là souvent ? R. Je passais là tous les jours.

*Transquestionné.*

*In the  
 Superior  
 Court.*

Q. Vous ne vous souvenez pas dans quelle saison c'est arrivé ? R. C'est dans l'hiver que c'est arrivé.

Q. Dans l'hiver de quelle année ? R. Dans l'hiver de mil huit cent soixante-dix-huit, comme je l'ai dit betôt.

10 Q. Mil huit cent soixante-dix-huit ? R. Oui, monsieur.

Q. Vous êtes certain de ça ? R. Oui.

Q. Qu'est-ce qui vous fait souvenir que c'était en mil huit cent soixante-dix-huit plutôt qu'en mil huit cent soixante-dix-neuf ? R. Il peut y avoir quelques dérangements des fois... on ne se rappelle pas toujours bien correct...

Q. Comment savez-vous que c'est plutôt en mil huit cent soixante-dix-huit qu'en mil huit cent soixante-dix-neuf ? R. Ça fait comme dix-sept ans.

Q. Vous ne seriez pas sûr, vous ne pourriez pas affirmer que ce n'est pas en mil huit cent soixante-dix-neuf que c'est arrivé ? R. Non, ce n'est pas en mil huit cent soixante-dix-neuf, c'est en mil huit cent soixante-dix-huit.

20 Q. Vous êtes certain que c'est en mil huit cent soixante-dix-huit ? R. Je pense.

Q. Qu'est-ce qui vous fait penser ça ? R. Je pense par mon idée.

Q. Pouvez-vous donner des raisons pourquoi vous avez cette idée-là ? R. Non.

Q. Maintenant, vous dites que votre ouvrage était de transporter les matériaux ? R. Oui. C'est moi qui menait le steamboat de monsieur Peters.

Q. Un steamboat ? R. Oui, monsieur, j'allais qu'ri le bois et tout ce qu'ils avaient besoin.

Q. Ces cribs dont il est question, ont-ils été construits sur les lieux, c'est-à-dire là où ils ont été placés ou bien étaient-ils construits ailleurs ? R. Ils étaient construits ailleurs. Ils les amenaient là et ils les calaient là.

30 Q. Où étaient-ils construits ? R. Ils étaient construits dans le chantier de M. Peters.

Q. Vous n'aviez rien à faire, vous, avec la construction ? R. Non, je n'avais rien à faire avec la construction.

Q. Vous étiez seulement capitaine de steamboat ? R. Oui.

Q. Les cribs dont vous parlez forment-ils la face nord... ? R. La face des cribs, comme on dit, font face à la rivière St. Charles.

Q. Était-ce la face nord de l'ouvrage telle qu'elle est maintenant ? R. Oui, oui, comme de raison.

Q. Ce sont les cribs qu'on voit au nord maintenant, à l'heure qu'il est ? R. Oui, on les voit encore à l'heure qu'il est et ils font face à la rivière, comme je

40 vous dis.

Q. Vous connaissez le nord et le sud ? R. Oui, je connais le nord et le sud. Je connais le nord, le nord-est et le sud-ouest et le sud.

Q. C'est la face nord de l'ouvrage, tel qu'il existe maintenant ? R. Oui.

Q. Êtes-vous bien certain à dire que ces cribs-là ont été construits en longueur ? R. Ils ont été construits par longuenrs, par morceaux, et calés.

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 Plaintiff's  
 Evidence  
 Deposition  
 of  
 I. Flamand  
 12th Dec.  
 1895.  
*continued—*

RECORD.

—  
In the  
Superior  
Court.

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Plaintiff's  
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I. Flamand  
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continued—

Q. Vous êtes certain de ça? R. Oui, monsieur.

Q. Avez-vous remarqué jusqu'où l'emplissage avec le sable avait été fait dans ces cribs, à la fin de la saison de mil huit cent soixante-dix-huit? R. Pour le marquage, je ne suis pas capable de vous dire bien exactement.

Q. Est-ce qu'il y avait un tiers, un quart, ou la moitié ou les trois quarts de remplis? pouvez-vous juger comme ça? R. Il y a des places qu'il y en avait plus que dans d'autres un peu.

Q. Le remplissage avait été commencé à quel bout? R. Le remplissage avait été commencé à un bout et fini par l'autre.

Q. Oui, je sais ça. Mais quel bout, je vous demande... vous nous donnez 10 une vérité de La Palice. R. Le bout en gagnant le Palais, partant du bassin vers le Palais.

Q. Le bout du nord-est? R. Oui, je pense que c'est ça.

Q. Vous n'êtes pas certain? R. Pas certain certain.

Q. Est-ce le bout du sud-ouest alors? R. ....

Q. Vous ne le savez pas? R. Je ne peux pas dire. je n'ai pas remarqué, je ne m'en rappelle pas... il y a si longtemps, voyez-vous....

Q. Est-ce que ces cribs, ou aucun d'eux, étaient remplis au niveau, à leur hauteur, à la fin de la saison de mil huit cent soixante-dix-huit? R. Voulez-vous dire en pierre ou en sable? 20

Q. En sable? R. Je ne puis pas vous dire bien bien exact, vous savez, il y a si longtemps de ça, voyez-vous.

Q. Alors vous ne pouvez pas nous dire jusqu'à quel point ces cribs étaient remplis? jusqu'où le remplissage se rendait? R. Il se rendait... ça faisait la longueur de tous ces cinq ou six cribs-là.

Q. Il y avait une certaine partie de remplissage dans tous les cribs, du sable? R. Il y avait des places qu'il y en avait plus dans une que dans l'autre.

Q. Mais il y avait une certaine quantité de sable de posée dans tous les cribs, dans toute la longueur, à la fin de la saison de mil huit cent soixante-dix-huit? R. Oui. S'il y en avait eu assez ça n'aurait pas levé. 30

Q. Répondez à la question que je vous pose. Dites-vous qu'il y avait une certaine quantité de sable de placée dans toute la longueur des cribs à la fin de la saison de mil huit cent soixante-dix-huit? R. Il y en avait dans tous, oui, mais comme je viens de vous dire betôt, il y en avait plus dans les unes que dans les autres.

Q. Mais vous êtes sûr qu'il y en avait dans toute la longueur? R. Oui.

Q. Une quantité quelconque? R. Oui. Il y avait des places, comme je l'ai dit betôt, qu'il y en avait moins les unes que les autres.

Q. Jusqu'à quel point les cribs étaient-ils dérangés? R. Comme je viens de le dire betôt, la longueur des cinq cribs a été toute dérangée un peu, les unes 40 plus que les autres.

Q. De quelle manière? R. Un dérangement.. les cribs décantaient en dehors et en dedans,

Q. Êtes-vous certain qu'il y en avait cinq de dérangés? R. Je pense que c'est ça.

Q. Qu'est-ce qui vous fait penser que c'est cinq? R. C'est moi qui ai travaillé.. la moitié du temps je travaillais avec eux autres pour les mettre en place.

Q. Vous y travailliez ? R. Je travaillais avec le steamboat et quand ils avaient besoin de moi pour mouver quelque chose . . .

Q. J'ai cru comprendre que vous aviez seulement apporté les matériaux ? R. Je le dis encore. Ce n'est pas d'hier . . . ça fait longtemps de ça. Je n'ai pas d'instruction . . .

Q. Vous remarquiez pas ? R. Non.

Q. Quand il a été question que vous veniez ici comme témoin on vous a dit, n'est-ce pas, qu'il y avait eu cinq cribs de dérangés ? R. Personne ne me l'a dit ; j'ai vu les cribs moi-même.

10 Q. Non, mais tout dernièrement lorsqu'il a été question de votre témoignage, est-ce qu'on vous a dit le nombre de cribs qu'il y avait eu de dérangés ? R. Non, personne n'avait besoin de me le dire, je les avais vus.

Q. Vous vous souveniez exactement qu'il y avait cinq cribs ? R. Oui, cinq ou six.

Q. Peut-être quatre ? R. Je ne vous dis pas quatre, je vous dis cinq ou six, je ne parle pas de quatre.

Q. Vous êtes certain qu'il n'y en avait pas sept ? R. Non, il n'y en a pas sept.

*Ré-examiné.*

20

Q. J'ai oublié de vous poser une question tantôt. Vous avez vu ces cribs-là après qu'ils ont été réparés ? R. Oui.

Q. Ont-ils jamais remué depuis ce temps-là ? R. Non, ça n'a pas remué après. Ça été rempli, vous savez, dans le printemps.

Je, soussigné, sténographe assermenté, certifie que la déposition ci-haut est la traduction fidèle de mes notes sténographiques.

ALEXANDRE BÉLINGE.

30 FRANÇOIS DESRUISSEUX, de la cité de Québec, dans le district de Québec, charpentier, âgé de 70 ans, étant dûment assermenté sur les Saints-Evangiles dépose et dit :

Je connais les parties en cette cause ; je ne suis ni parent, ni allié, ni serviteur, ni domestique d'aucune d'elles ; je ne suis point intéressé dans l'événement de ce procès.

Q. Vous avez eu connaissance des travaux qui ont été faits à l'embouchure de la rivière St-Charles par M. Peters et par MM. Moore & Wright ? R. Oui.

Q. Avez-vous été employé là ? R. Oui, monsieur.

Q. En quelle année ? R. En mil huit cent soixante-dix-sept. C'est moi qui ai commencé à y travailler.

40 Q. Par qui avez-vous été employé ? R. En mil huit cent soixante-dix-sept, j'ai été employé par M. Peters.

Q. A quoi avez-vous été employé ? quelle espèce d'ouvrage avez-vous fait ? R. A faire les cribs.

Q. Vous avez été employé à faire les cribs ? R. Oui.

Q. Ils ont commencé à faire les cribs en mil huit cent soixante-dix-sept ? R. Oui, et j'en ai calé, si la mémoire ne me fait pas défaut, six cent trente-deux pieds chaque bout. Six cent trente-deux pieds partant du brise-lames en gagnant

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RECORD. la rivière St-Charles et six cent trente-deux pieds du quai en descendant la rivière St-Charles.

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*Q.* A chacun des deux bouts ? *R.* Oui.

*Q.* Ces cribs-là étaient destinés à faire un quai qui se trouve au nord de la Jetée Louise ? *R.* Oui, monsieur.

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*Q.* Le long de la rivière St-Charles ? *R.* Oui, monsieur.

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*Q.* Ce sont les mêmes quais qu'il y a là aujourd'hui ? *R.* Oui, monsieur.

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*Q.* Vous avez fait six cent trente-deux pieds à chaque bout ? *R.* A ce que je peux me rappeler, j'ai fait six cent trente-deux pieds à chaque bout dans la première année, en mil huit cent soixante-dix-sept. 10

*Q.* S'est-il présenté quelque difficulté à propos du posage de ces quais ? quelque accident ? *R.* Oui, par un crib.

*continued—*

*Q.* Dans quelle partie était-il ? au nord-est ? *R.* Il était dans le nord-est, joignant le brise-lames.

*Q.* Quelle est l'accident que vous avez eu à ce sujet ? *R.* La difficulté qu'il y a eu, le terrain devait être creusé à une telle hauteur, vous comprenez...

*Q.* Savez vous à quelle profondeur ça devait être creusé ? *R.* Je ne suis pas capable de vous dire la quantité de terrain qui devait être ôtée. Je peux dire ça ; le quai avait vingt pieds à un bout et il n'avait que douze pieds à l'autre. Je suis positif pour vingt pieds, l'autre bout, je ne suis pas absolument positif. 20

*Q.* Il y a eu des travaux de creusage de faits ? *R.* Oui.

*Q.* Qui est-ce qui a fait ces creusages-là ? *R.* Ça été M. Moore.

*Q.* Quand vous êtes venus pour enfoncer ce quai-là, vous dites qu'il s'est présenté une difficulté ? *R.* Oui, monsieur. Il était rond en dos de cheval dans le milieu.

*Q.* Le creusage n'avait pas été fait comme il aurait dû être fait ? *R.* Non.

*Q.* Quelle a été la conséquence ? *R.* La conséquence a été que le quai a cassé et qu'on a obligé de le relever et de le réparer.

*Q.* Qui est-ce qui a fait ces travaux de réparation-là ? *R.* C'est M. Peters.

*Q.* C'est vous qui conduisiez les travaux ? *R.* Oui. 30

*Q.* Le quai était-il aussi bien préparé qu'il pouvait être préparé lorsque vous l'avez apporté là ? *R.* Comme on prépare tous les autres quais.

*Q.* Était-il aussi bien préparé que les autres qui n'ont pas bronché ? *R.* Exactement pareil.

*Q.* Alors suivant vous la seule raison qui la fait casser.... (Objecté à cette question et question retirée).

*Q.* Avez-vous constaté ça vous-même qu'il y avait un dos de cheval ? *R.* Oui, on n'a pas pu le caler, il a fallu creuser de nouveau.

*Q.* Quand la marée était retirée pouviez-vous voir le fond ? *R.* Non, il ne restait que deux pieds hors de l'eau. A cette hauteur-là ça calait dans l'eau. 40

*Q.* Vous avez été obligés de travailler pour le réparer ? *R.* Oui, une couple de jours.

*Q.* A combien d'hommes ? *R.* Douze à quinze hommes.

*Q.* Qui a payé les frais de ces réparations-là ? *R.* Le temps a été donné au nom de M. Peters. L'argent était payé de M. Peters.

*Q.* C'est vous qui employiez les hommes pour M. Peters ? *R.* Oui.

*Q.* Ils étaient payés par M. Peters ? *R.* Oui, monsieur.

Q. Pourriez-vous savoir le nombre de jours d'hommes qui ont été employé pour cela ? R. Une couple de jours à quinze hommes, c'est trente jours. RECORD.

Q. Combien payiez-vous les hommes par jour ? R. On les payait une piastre et vingt-cinq, une piastre et demie. . . . je me remets pas directement. C'est au-delà d'une piastre. In the Superior Court.

Q. Dans quelle partie de la saison de mil huit cent soixante-dix-sept avez-vous été obligés de faire ces travaux-là ? R. C'est en approchant de l'automne qu'on a été obligés de faire ces travaux-là, je pense. No. 59 Plaintiff's Evidence Deposition of

10 Q. C'est immédiatement après, je suppose, que vous avez eu l'accident, que vous l'avez réparé ? R. Il a fallu le réparer, l'ôter de dans la place et l'arranger pour qu'ils viendraient à creuser de nouveau, ôter cette bosse-là. F. Desruisseaux, 12th Dec. 1895.

Q. Après qu'il a été cassé, vous l'avez ôté de la place où il était ? R. Oui, on l'a ôté de la place où il était. continued—

Q. Qui est-ce qui a fait les travaux de creusage ? R. C'est M. Moore.

Q. Vous dites qu'il a ôté la bosse ? C'est ça que vous appelez un dos de cheval ? R. Oui.

Q. Il l'a fait disparaître et vous êtes venus le reposer à la même place ? R. Oui. Cette fois-là il a resté, mais le terrain n'était pas encore aplomb. Il a resté toujours. On a mis de la pierre d'un côté, parce que la terre n'était pas d'aplomb. 20 Il aurait fallu faire de nouveaux travaux à ce quai-là de sorte qu'il a fallu partir avec du bois plus gros dans le bout que du milieu, parce que c'était rond dans le milieu.

Q. Tout ça est dû à quoi suivant vous ? R. Parce que le terrain n'était pas droit.

Q. Il n'était pas creusé comme il devait l'être ? R. Non.

Q. Vous, vous étiez payé plus cher que les hommes ordinaires ? R. Oui.

Q. Combien étiez-vous payé par jour ? R. Deux piastres par jour.

Q. Comme foreman ? R. Oui.

Q. Y avait-il d'autres foremen employés à ces travaux-là ? R. Pas cette année-là, j'étais le seul.

*Transquestionné.*

30

Q. En quelle année avez-vous dit que c'était arrivé ? R. Je pense que c'est en mil huit cent soixante dix-sept.

Q. Lequel des cribs était-ce ? Dans quelle partie de l'ouvrage ? R. C'était joignant le brise-lames.

Q. Face en dedans ou face en dehors du bassin ? R. Face en dehors.

Q. Au nord ? R. Au nord-est.

Q. Était-ce le premier crib qui a été calé ou s'il y en avait eu de calés dans temps ? R. Il y en avait eu de calés au Palais joignant le quai du gaz, mais ceux-là c'est les premiers à ce bout-là.

40

Q. Vous en souvenez-vous ? R. Je ne peux pas dire directement s'ils ont commencé au Palais ou s'ils ont commencé à l'autre bout.

Q. C'est le premier au bout du brise-lames ? R. Joignant le brise-lames.

Q. Vous souvenez-vous que ce crib-là avait été amené quelques jours avant de le caler et qu'il avait versé avant d'être calé ? R. Non, pas ceux-là.

Q. Vous êtes certain de ça ? R. Oui, monsieur, ceux qui ont été brisés c'est les cribs d'en dedans.

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Q. Quelle était la grandeur de ce crib-là, celui dont vous parlez? R. A ce que je peux me remettre, c'est cent vingt pieds de long, entre cent à cent vingt pieds.

Q. Quelle était la largeur? R. Je pense que c'est vingt-cinq à trente pieds. Il y a si longtemps de ça qu'on a mis ça en oubli.

Q. Vous dites que ça vous a pris deux jours... R. A peu près deux jours à ce que je peux me remettre, pour réparer les cribs, parce qu'en pliant comme ça les chevilles avaient sorti, le bois était dérangé.

Q. Vous l'avez reposé après? R. Oui.

Q. Vous êtes bien certain que c'est arrivé en mil huit cent soixante-dix-sept, 10 n'est-ce pas? R. A ce que je peux me remettre.

Q. Vous n'étiez pas foreman pour M. Peters après cette année-là? R. Non, en mil huit cent soixante-dix-huit j'ai été employé par MM. Moore & Wright.

Q. Ceci fixe absolument la date? R. Oui. C'est en mil huit cent soixante-dix-sept ou en mil huit cent soixante-dix-huit que j'ai calé ce quai-là. Je ne suis pas positif, mais je pense que c'est en mil huit cent soixante-dix-sept.

Q. Si vous étiez foreman pour M. Peters, n'est-ce pas que c'était en mil huit cent soixante-dix-sept? R. Très bien, mais en mil huit cent soixante-dix-huit j'ai travaillé toute l'année pour Moore & Wright.

Q. Vous vous souvenez, n'est-ce pas, qu'il y a eu un crib appartenant à MM. 20 Moore & Wright qui a chaviré? R. Oui.

Q. C'est en mil huit cent soixante-dix-huit? R. Je ne peux pas dire en quelle année.

Q. Vous ne vous en souvenez pas? R. Non. C'est les cribs d'en dedans, ça.

*Ré-Examiné.*

Q. Monsieur vous a demandé si vous avez eu connaissance qu'un des cribs a versé. Vous ne vous rappelez pas de l'année, mais vous dites que vous en avez eu connaissance. Est-ce que ça gâté le crib, lorsqu'il a été reposé? (Objecté à 30 cette question et question retirée.)

Q. Vous êtes sûr que ce n'est pas ce crib qui a versé qui est celui qui a cassé? R. Non.

Q. Celui-là n'avait jamais versé? R. Non, celui qui a cassé n'avait jamais versé.

Je, soussigné, sténographe, assermenté, certifie que la déposition ci-haut est la traduction fidèle de mes notes sténographiques.

ALEXANDRE BÉLINGE.

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ALBERT H. PETERS, of Quebec, in the District of Quebec, Mill manager, 40 aged 32 years, being duly sworn upon the Holy Evangelists, doth depose and say: I do know the parties in this cause.

Q. You are a son of the late Simon Peters, the original Plaintiff in this cause? A. I am.

Q. Were you in his employ at the time of his decease? A. I was.

Q. For how many years previously had you been? A. For about seven-teen years.

Q. Do you know the works in question in this cause? A. I do.

Q. Have you a personal knowledge of their construction? A. I have.

Q. Would you look at Plaintiff's Exhibit No. 6 filed in this cause, being the account sued upon, and state whether you understand it? (Witness takes communication of Exhibit No. 6). A. I do. To the best of my knowledge, I swear that this is a true detail of the work under the original contract works and additional work, as allowed in Defendants' Exhibit No. 1. That is Mr. Peters' portion of the work.

Q. Would you look at the first item of that account, being Bill No. 1, as per details annexed, \$36,955.44. Have you a personal knowledge of that work having been done? A. Bill No. 1, as per details annexed, \$36,955.44. That is the account of the wood and iron work of Bill No. 1.

Q. In the Blue Book? A. In the Blue Book. Almost the entire amount of this work was done with the exception of a few items. These items were allowed in the original contract works, as appears, in the final certificate, Defendants' Exhibit No. 1.

Q. Can you state what these items were, Mr. Peters? A. These items that were not done?

Q. Yes. A. Fenders and some of the bollards, but other work was done in place of it. For that reason, the engineers Kinipple & Morris, allowed Mr. Peters the full amount as per original contract works, as shewn in their final certificate, Defendants' Exhibit No. 1. (Witness refers to Defendants' Exhibit No. 1 attached to the Commission.)

Q. And this amount of which you are speaking now? A. Is included in the amount of contract or tender, \$529,296.21.

Q. Would you look at the second item of Plaintiff's Exhibit No. 6? A. That work was done. Item No. 2, which composes Bill No. 2.

Q. That is admitted? A. Item No. 3, Bill No. 4, I may state the same answer as I did in regard to item No. 1, Bill No. 1. That is the amount allowed by the engineers in the final certificate, Defendants' Exhibit No. 1, in the amount of contract or tender.

Q. Item No. 4, Bill No. 7. A. The whole amount of this bill was not done, but the whole amount of the value was allowed by the chief engineers, Kinipple & Morris, in their final certificate, Defendants' Exhibit No. 1, annexed to the Commission, as a set off for other works done by Mr. Peters. I suppose that was the reason for allowing it. Item No. 5, Bill No. 8, the full amount of this work was done and allowed for. Item No. 6, Bill No. 9: This is half portion of an amount allowed for screens, half portion of the amount of three hundred and seven dollars and twenty-five cents (\$307.25), of which Mr. Peters furnished material in excess of the amount; but in their private contract between Moore & Wright and Simon Peters, there was a clause that Mr. Peters was to furnish the material for these screens without charge, with the understanding that this was to be returned.

Defendants object to any evidence tending to contradict, alter or vary the written contract which is of record in the case:—(Objection overruled).

Witness—Which to the best of my knowledge was never done.

Q. The amount charged is for what, then? A. For material which was never returned, and which should have been.

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*Q.* What is that amount that is charged? how much is it? *A.* Three hundred and seven dollars and twenty-five cents (\$307.25).

*Q.* The next item, would you state what it is? *A.* Item No. 6 closes Mr. Peters's items in the Blue Book, finished there.

*Q.* As represented by the contract? *A.* As represented by the original bills of quantities, the Blue Book.

*Q.* Just give us the numbers of the bills that Mr. Peters was to do under the Blue Book? *A.* On reference to Blue Book, Mr. Peters was to do the wood and iron portion of Bills Nos. 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12 and 13, and a portion of Bill No. 14 called "Forming the roadway." 10

*Q.* What became of Bill No. 3 that is not charged for here? *A.* Bill No. 3 was abandoned, and four extra cribs, same as Bill No. 1, were substituted instead.

*Q.* Is that the first item in the additional works? *A.* The first item in the additional works.

*Q.* Five, was that abandoned also? *A.* No.

*Q.* What is Bill No. 5? *A.* That is dredging.

*Q.* That is work that Moore & Wright were to do? *A.* Moore & Wright's portion.

*Q.* Then No. 6? *A.* No. 6 was done. I beg your pardon, No. 6 was abandoned. Bill 10 was abandoned, 11, was abandoned, 12, abandoned, and 13, abandoned, and Mr. Peters' portion of Bill No. 14 was abandoned also. 20

*Q.* Look at the first item of additional works and state whether you know that that was done? *A.* Four extra cribs of forty feet each, as per Bill No. 1, item No. 7. That is for the timber and iron work allowed for in four cribs of additional work, as per Defendants' Exhibit, the final certificate No. 1 annexed to the Commission.

*Q.* Look at the next item of additional work. *A.* Stone wall. Item No. 8, seventy-seven thousand three hundred and seventy-eight dollars and fifty cents (\$77,378.50). 30

*Q.* Do you know whether that stone wall was built? *A.* That stone wall was built.

*Q.* How is that amount mentioned there made up? *A.* That stone wall is composed of wood and iron work of Bill No. 1.

*Q.* I am not asking you what has been deducted. I am asking you how the charge is made up, how the seventy-seven thousand dollars is calculated. *A.* It is calculated per foot cube.

*Q.* Do you know how many feet you have charged for in that item? *A.* 128,964.2 at sixty feet per cubic foot forms the total of item No. 8, \$77,378.50.

*Q.* Was that the quantity of feet in the wall? *A.* No, there was more 40 stone than that actually in the wall. That is all that seems to have been allowed by the chief engineers, Kinipple & Morris, in their final certificate, Defendants' Exhibit No. 1 annexed to the Commission.

*Q.* You know the number of feet that were mentioned in the engineers' calculation of that wall. Look at Plaintiff's Exhibit No. 30, and state how many feet there are there? (Witness takes communication of Exhibit.) *A.* This is the account of cut stone furnished by Beaucage & Châteauvert to Mr. Peters. I see 130,219 feet.

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Q. Is that the amount which you paid Beaucage & Châteauvert for? For which Beaucage & Châteauvert were settled with for? Without referring to it can you state from memory? There is a calculation in the record, the engineers' calculation of the number of feet in that wall, but do you remember what number of feet it was? A. Over one hundred and thirty thousand feet—a few feet over one hundred and thirty thousand feet.

Q. As appears by an Exhibit in this record? A. As appears by an Exhibit in this record.

Q. What were the deductions that went to make up that stone wall items deducted from the original works contract to make up the cost of the stone wall? A. Off of Mr. Peters' portion of the contract, timber and iron work not done, Bill No. 1, \$7,891.56.

Q. Is that the same amount as shewn by that Exhibit No. 27? A. It is.

Q. These are the deductions in detail? A. These are the deductions in detail. Bill No. 3, wood and iron deducted \$1,136.48; Bill No. 4, wood and iron \$18,879.02, forming a total of \$27,907.06. Fine concreting deducted from Messrs. Moore & Wright towards cost of stone wall; Bill No. 1, \$7,593.75; Bill No. 3, \$1,375.00; Bill No. 4, \$18,562.50, forming a total of \$27,531.25—being fine concrete never done, and the price of which was agreed to go towards the payment of the stone wall. I might add that Bill No. 3, being abandoned, would throw out items in wood and iron, \$1,136.48, and in the fine concrete, \$1,375.00. As this bill was abandoned and four extra cribs were substituted or were ordered same as Bill No. 1, of which the wood and iron amounting to \$1,169.12, and fine concrete in the same four cribs amounted to \$1,124.00 replaced Bill No. 3, abandoned. This, with the addition of \$21,940.61, mentioned in Defendants' Exhibit No. 1, attached to the Commission, \$21,940.61, forming a total of \$77,378.50. There is a small difference owing to Bill No. 3 being abandoned and the four extra cribs substituted, and this small....

Q. How much is the small difference? A. In the vicinity of two hundred dollars.

Q. You have stated in an answer that the sum for four to one fine concrete to the extent of \$27,531.25 went towards the stone wall. Does that appear by the Defendants' Exhibit 1A? A. No.

Q. What are the amounts shewn on 1A, then? A. Item No. 2, of Defendants' Exhibit 1A, that is fine or 4 to 1 concrete rear of timber face. The amount is correct.

Q. How much is it? A. \$7,593.75, which was to go towards the stone wall.

Q. Item No. 7 is not correct. How much is the amount in it? A. \$16,239.30. The amount per original works contract of Blue Book for fine concrete in this item amounts to \$18,562.50, which amount was to go towards the cost of the stone wall.

Q. Then, you claim there is an error to the extent of the difference between these two sums. Can you shew that? How does that appear? (Witness refers to Defendants' Exhibit 1A). A. It appears by the Blue Book, the original bills of quantities, Bill No. 4. Item No. 20 being fine or 4 to 1 concrete in four additional cribs, the item of \$1,125.00 is correct. This amount was to go towards cost of stone wall also.

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*Q.* If there is an error you had better shew it per Blue Book. *A.* Bill No. 4, page 73, forty-five cubic yards of 4 to 1. I mean fifty-four yards cube of 4 to 1 Portland cement fine concrete at back of face piling from three feet above low water to coping level at \$6.25, making \$337.50 per crib; and fifty-five cribs at \$337.50 form a total of \$18,562.50 of 4 to 1 concrete which was to go towards cost of stone wall.

*Q.* Would you look at items 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 23, which appear to be admitted by the Defendants in this cause.

*Defendants' Attorney:*—Items 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 23 are admitted by the Defendants in their pleadings, and they now repeat the admission. *Plaintiff's Attorney:* Look at item 24 of Plaintiff's Exhibit 6 and state what that is? *A.* Item 24, being for proportion of understated bills of quantities allowed by engineers.

*Q.* What do you know of that? *A.* Mr. Peters having discovered discrepancies in the timber and iron, in the quantities of timber and iron in the Blue Book, drew the attention of the resident engineer and Mr. Morris, when he was out here, to these discrepancies. Plaintiff's Exhibit No. 18 is a true copy of these understated bills of wood and iron in the original bills of quantities. Item 25 is for pile or stub foundation. This work was done solely by Mr. Peters with his own machinery and his own timber, and by no other.

*Q.* Was that allowed? *A.* That is allowed in Defendants' Exhibit No. 1 attached to the Commission. Item 26 is concrete—that is, it was an allowance made for fenders by the Engineers. Item 27 is an item of cash received from the Quebec Harbour Commissioners on account of wood and iron and stone wall by Simon Peters.

*Q.* Does that agree with Mr. Verret's statement filed in this cause? *A.* It agrees with Mr. Verret's statement, Plaintiff's Exhibit No. 11, in so far as the advances are portioned off to Mr. Peters' column.

*Q.* To what entry in that do you refer? *A.* To the entry of crib and iron work and masonry, \$205,874.94, with proportion of advance in column No. 3 amounting to \$31,577.17 forming a total of \$237,452.11, which is the total amount of cash received from the Quebec Harbour Commission. I may add that the pencilling marks have been put in after, but they do not change the amount; the amount is correct as received by Mr. Peters, \$237,452.11.

*Q.* Now, would you look at the next item, please, of Exhibit No. 6? *A.* Item 28 is "By Cash received"—a proportion of cash received amounting to \$1,200, a proportion of which is charged here to Mr. Peters \$490.48. That is his proportion of the \$1,200. Item 29 is an excess of deductions, owing to Bill 3 being abandoned and the four extra cribs—that is, the concrete and wood and iron in Bill 3 abandoned, and the four extra cribs that were substituted. That accounts for that difference, the excess of deductions—amount \$32.64. Item No. 30 is "Error added, transferring amount of stone wall," 42 cents. Due Simon Peters out of the final certificate, Defendants' Exhibit No. 1 annexed to the Commission on the 4th February, 1886, \$47,277.83. Bill No. 31 was for interest up to March, 1887, from the fourth February, 1886, amounting to \$3,111.84, forming a total of \$50,389.67. On the ninth March, Mr. Peters received \$2,500 with the consent of Moore & Wright, leaving a balance then of \$47,889.67. "To interest

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- on same to the 13th September, 1887, \$1,449.39, forming a total of \$49,339.06. On the 13th December, Mr. Peters received \$12,500 with the consent of Moore & Wright. To interest to 25th July, 1892, I think, \$10,755.98, making a total of \$47,595.04. To interest to the 25th October, 1892, when the money was handed over by the Quebec Harbour Commissioners, \$475.95, forming a total of \$48,070.99. On the 29th October, 1892, Mr. Peters received with the consent of Messrs. Moore & Wright \$15,000.00, leaving a balance of \$33,070.99. "By proportion of cheque given for law expenses to J. G. Bossé, \$764.95," and "By proportion of legal expenses to W. Cook by joint cheque, \$1,634.94, being Mr. Peters' proportion of \$4,000.00." These two amounts form a total of \$2,399.89.
- 10 *Q.* How was that proportion arrived at? *A.* Well, the proportion, according to interest in the contract according to the interest each party had, which was very liberal of Mr. Peters to allow it.
- Q.* That is the amount of the money interest? *A.* Yes. Deduct the last two amounts received from \$33,070.99 leaving a balance of \$30,671.10. Item 41, amount of account rendered annexed, \$433.75.
- Q.* State what you know of that? *A.* This is an account which was made out under the supervision of Mr. Simon Peters, which charges to Moore & Wright the rent of office for five months at five dollars a month, \$25.00.
- 20 *Q.* Now, do you know that they occupied that office? *A.* I do know that they occupied.
- Q.* The office mentioned in that account? *A.* The office mentioned in that account, yes.
- Q.* Do you think that five dollars a month was a reasonable charge? *A.* Very, very reasonable, a bagatelle.
- Q.* Just say what you know of those after. *A.* "Rent of portion of mill-yard as asked for by Colonel Moore, \$50.00."
- Q.* Do you know that he occupied that? *A.* I know that Moore & Wright occupied the greater part of one half of our property, that is, of the beach and
- 30 of the wharves.
- Q.* What about the reasonableness of the charge? *A.* The charge, fifty dollars, is very, very reasonable. No other person ever got it for less than double the amount. "Use of portion of yard and pond not included in above." I know of that being used also by Messrs. Moore & Wright \$75.00, the charge is moderate.
- Q.* "Use of middle wharf and approach to same, \$100.00." *A.* I am aware of Messrs. Moore & Wright having the use of all these properties indicated in this bill.
- Q.* And you say the charges therein mentioned are reasonable? *A.* They
- 40 are. Item 43, "Time and material straightening crib work north embankment, damaged by ice, winter 1878-79, for want of filling behind."
- Q.* Can you state whether that amount appears to have been paid by the accounts at the office? *A.* That amount appears to have been paid, by the accounts at the office and data. The labor was all paid, and the returns for the same were given in by the foreman. The amount of this bill \$1424.26 is correct.
- Q.* That is the amount reported by the foreman? Given in by the reports?  
*A.* Given in by reports, regular written reports.

RECORD

—  
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Q. And they appear to have been part of the work of Mr. Peters? A. They do.

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*continued—*

Q. 44, account for labor incurred and material supplied owing to bottom not being properly prepared to receive crib, tidal dock? A. These returns also were given into the office by the foreman, and the labor charged in same has been paid, and the disbursements have been made, and this bill is made out from the said returns handed in by the men. Item 45 for material supplied Moore & Wright amounting to \$45.68. That is correct from the books in the office. Mr. Peters' office.

Item 46—This account is made out by returns given in by foremen on the 10 works, employed by Mr. Peters, amounting to \$196.70.

Q. These expenses have been paid, as appears by the books of Mr. Peters? A. Yes.

Item 47—Moore & Wright's share of silver trowel. That is their proportion of the cost of the trowel which was paid for by Mr. Peters—paid Mr. G. Seifert, Quebec.

Q. Is there not some correspondence on that? A. Yes.

Q. But it is in the record? A. Yes, if I am not mistaken. The silver trowel was paid for by Mr. Peters, and this is Moore & Wright's share of the 20 cost of that trowel.

Item 48—Share of account for moorage of Atalaya, collected by Moore & Wright. That amount was collected by Moore & Wright.

Item 49—Moore & Wright's share of account Peters, Moore & Wright \$113.85, is Moore & Wright's proportion. That was an account chargeable to both parties.

Q. Would you state how you made that proportion? A. That proportion is made according to the total amount of work each had to do, and the amount, the proportion, of expenses that had been made accordingly.

Q. Has that been calculated, that proportion? A. The total amount executed of the work? 30

Q. Yes. Is it in that account? A. \$192.42 is the total amount of the account. That forms a total amount or balance of \$38,532.55, due the Plaintiff in this suit.

Q. Will you look at Plaintiff's Exhibit 8 and state whether the statements there are true according to the Blue Book? (Witness takes communication of Plaintiff's Exhibit 8.) A. Plaintiff's Exhibit 8 is a true copy of the dredging and concreting and labor depositing stone ballast and clayey material, as appears in the Blue Book.

Q. The Blue Book or tender? A. The Blue Book or tender being Defendants' share of the original contract, as per original contract works, \$529,296.21. 40

Q. You have examined Mr. Verret's statement, Plaintiff's Exhibit No. 11, several times. Is that true and correct? A. That is a true statement of the moneys received and includes the \$5,000.00 advance referred to by Colonel Moore in his evidence, which \$5,000.00 is charged up in Mr. Peters' claim—charged up to himself.

Q. Do the payments in that Exhibit No. 11, Verret's statement, correspond with the certificates of payment and progress estimates? A. They agree, yes,

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with the progress estimates and the certificates. They agree with the certificates of payment and with the progress estimates furnished by the engineer. RECORD.

*Q.* Look at Plaintiff's Exhibit No. 13 and just say what it is. *A.* Plaintiff's Exhibit No. 13 is a true dissection of the Blue Book, shewing what work, original work, was to have been done by Mr. Peters, and what work under the the original contract was to have been done by Moore & Wright.

*Q.* It is an exact epitome of the Blue Book? *A.* It is an exact epitome of of the Blue Book.

*Q.* I see the word "nothing," "nothing" written down after a certain number of bills. What does that mean? *A.* In these bills marked "nothing" in Moore & Wright's claim, they had nothing to do with these bills; and in these bills in Mr. Peters' column marked "nothing," he had nothing to do with these bills. I mean no work to do under these bills.

*Q.* Look at Plaintiff's Exhibit No. 14, please, and state what it is? *A.* Plaintiff's Exhibit No. 14 is a statement of the details of the original contract shewing the substitution of the stone wall in lieu of the timber face and and fine concrete.

*Q.* Does it shew the extra also? *A.* And shews the additional work also. On the left hand side is shewn all the work that was done by Mr. Peters, and on the right hand page, all the work that was, or was to have been done by Moore & Wright.

*Q.* That covers the whole of the account, then, of the works executed or that ought to have been executed by Moore & Wright? *A.* I does.

*Q.* And all the works executed by Mr. Peters? *A.* It does.

*Q.* Then, that is really a statement of the whole account? *A.* That is really a statement of the whole account.

*Q.* Is this in accord with Plaintiff's Exhibit No. 6, the account you have just been examined upon? *A.* It is in accord.

*Q.* Are there not some items in this account, this Plaintiff's Exhibit No. 14, among Mr. Peters' work that was not actually done as explained in your answer to Plaintiff's Exhibit 6? *A.* My answers to Exhibit 6 will cover that.

*Q.* Work that was not done by Mr. Peters, you said that it had been allowed for in Defendants' Exhibit No. 1, attached to the Commission? *A.* Yes.

*Q.* Then, if I also understand you rightly, in this Exhibit No. 14 Messrs. Moore & Wright have been allowed for all the work they undertook to do all the work that they did do and all the work that they should have done, whether they did it or not? *A.* Yes.

*Q.* Does it allow them also the item in Defendants' Exhibit No. 1 attached to the Commission for the clerical error? Is it also included in this? *A.* Yes, that amount for clerical error, in Defendants' Exhibit No. 1, attached to the Commission, is allowed.

*Q.* At what figure? *A.* At \$35,457.71, being for clerical error, and removal of sand, which was allowed in the Supreme Court.

*Q.* So that by Exhibit No. 14 Messrs. Moore & Wright are allowed for that work, which, I understood you to say, was not done? *A.* They are allowed, yes.

*Q.* In this Exhibit No. 14 do you give credit to each of the parties for the amounts allowed by the engineers, whether the said work was done or was not done? *A.* Yes, I have allowed.

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*Q.* You said there was some small portion of the work which was not done by Mr. Peters, but which was allowed for by the engineers under Defendants' Exhibit No. 1 attached to the Commission. Now, have you taken credit for these amounts for Mr. Peters in Exhibit No. 14, and likewise, have you given Moore & Wright credit for work allowed for in Defendants's Exhibit No. 1, attached to the Commission, and which they did not do? *A.* I have given credit in both cases.

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*Q.* What, then, is the total amount allowed to Mr. Peters by Plaintiff's Exhibit No. 14, and the total amount allowed to Messrs. Moore & Wright? *A.* The total amount of Simon Peters' part of the contract and extras, \$285,187.21; 10 and the total amount of Moore & Wright's share of the contract, \$425,915.94.

*Q.* You stated that Moore & Wright were credited for what is known as the clerical error. Also, as this account is made, have you given.... *A.* In that amount just given.

*Q.* When you say you allowed Mr. Peters, what do you mean by allowed? *A.* Allowed by Defendant's Exhibit No. 1, attached to the Commission.

*Q.* And by the Supreme Court, I presume? *A.* And by the Supreme Court.

*Q.* You say that you have credited Moore & Wright in this statement with the clerical error, so that they get the benefit of it in this statement, Plaintiff's 20 Exhibit No. 14? *A.* Yes.

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*Q.* Do they also get the benefit of the amounts contained in Plaintiff's Exhibit No. 12? *A.* Yes, they get the benefit of that also.

*Q.* So then, according to your statement, Plaintiff's Exhibit No. 14, Messrs. Moore & Wright get the benefit of thirty thousand odd dollars for the clerical error, and \$15,272.85 for work not done? They really, therefore, get the benefit of over forty-five thousand dollars? *A.* They do.

*Q.* For work they never did and for which you credit them as if they had done it, in Plaintiff's Exhibit No. 14? *A.* Yes.

*Q.* And you do that because it was allowed in the Defendants' Exhibit No. 30 1 attached to the Commission? *A.* Yes.

*Q.* Now, would you state whether Plaintiff's Exhibit No. 14 or the amounts allowed therein agree with the final certificate of the engineers, Defendants' Exhibit No. 1 attached to the Commission, as altered by the Supreme Court judgment? *A.* It does.

*Q.* It is made up on that basis? *A.* On that basis.

*Q.* Look at Plaintiff's Exhibit at enquête A 40 and state whether the same is the original of Plaintiff's Exhibit No. 17? *A.* It is, and bears the signature of Woodford Pilkington, the resident engineer, and St. George Boswell, assistant engineer.

*Q.* Taking the amounts credited in Plaintiff's Exhibit No. 14 to each of the contractors, that is to say, to Mr. Peters and Messrs. Moore & Wright respectively, as you stated a few minutes ago, and the amounts which each of them has received, would the balance remaining due to Mr. Peters be the same as he is claiming now? *A.* Yes.

*Q.* Do you understand Plaintiff's Exhibit at enquête A 40? *A.* Yes. That is a synopsis of account brought down to the close of the working season of 1881, the close of the contract, and is dated 14th December, 1881.

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*p. 574-6*  
*(Same as A 40)*

Q. At what amount is the clerical error shewn in that? A. The clerical error is shewn as \$31,150.

Q. Who was the engineer for the contractors in the beginning of these works? A. Mr. Navarre.

Q. He made a couple of estimates that are produced in this record, did he not? A. Yes, he made the estimates. He was the contractors' engineer in 1877 and 1878.

Q. These estimates of Navarre are Plaintiff's Exhibit at Enquête A39, are they not? A. Yes, they appear to be, up to No. 7.

10 Q. Do these estimates agree with the estimates made, the progress estimates made by the engineers of the Harbour works? A. They do, almost.

Q. The estimates were carried over by J. Vincent Brown, as they appear now produced in the case? A. Yes.

Q. You have examined, I think, carefully the progress estimates of the engineers of the Quebec Harbour Works and the estimates made by Mr. Brown. Can you state whether they agree perfectly? A. I have compared them.

Q. Do they agree? A. They agree almost in every respect.

20 Q. Do the progress estimates of the engineers and Brown's progress estimates agree with the certificates of payment, Plaintiff's Exhibit at Enquête A1. A. They do, except in one instance where the amount . . . , the difference is not very great.

Q. Plaintiff's Exhibit at Enquête A1 are the original certificates of payment from the engineer's office, are they not? A. From the engineer's office. (Witness refers to the progress estimates.) In estimate of 11th June, 1879, there was fourteen hundred dollars less allowed in the certificate than in the progress estimate, but in the estimate of 9th June, that is added on: so that really the two amounts agree to the cent with the certificates of payment. In the progress estimate of July 14th, 1880, there is a difference of about fifty-seven cents between the progress estimate and the certificate of payment.

30 Q. Plaintiff's Exhibit at Enquête A41 is the certified copy of the progress estimate to which you have just referred in giving your answer? A. Yes.

Q. Look at Plaintiff's Exhibit No. 19 and state what it is? A. That is a true statement of what Defendants' Exhibit No. 1A, should be.

Q. Is that in accord with your Exhibit No. 6, your account? A. Nos. 6 and 14.

Q. And with the progress estimates? A. That is in accordance with Plaintiff's Exhibits Nos. 6 and 14 and with the progress estimates.

Q. Would you look now at Plaintiff's Exhibit No. 20. Is that the Exhibit referred to in Plaintiff's Exhibit A4? A. It does refer.

40 Q. Would you look at Plaintiff's Exhibit No. 21 and just state what it is? (Witness takes communication of Exhibit.) A. It is an estimate of Simon Peters, including extras etc. as claimed in final settlement. The handwriting of this, I believe, is Mr. Jacobs', who was in the employ of Colonel Moore.

Q. Do you know whether he was confidential clerk? A. He was confidential clerk of Colonel Moore and Augustus R. Wright, at that time.

Q. It is in his handwriting? A. It is in his handwriting.

Q. Does it shew the cost of the stone wall? A. At \$77,378.40, the total amount of Mr. J. Vincent Brown's progress estimates.

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Q. Would you look at Plaintiff's Exhibit No. 22, and state what it is and in whose handwriting it is? A. It is a copy of a statement of Peters, Moore & Wright, Quebec Harbour Improvements—statements of account for wood and iron and cut stone and masonry. This is a copy of a statement made out by J. Vincent Brown, the contractors' engineer, and this copy is in the handwriting of Mr. Jacobs.

Q. And does it shew the cost of the stone wall? A. \$77,378.40, the figures of Mr. J. Vincent Brown, the contractors' engineer in his estimates.

Q. Do these figures as to the cost of the wall agree with your Exhibit No. 6? A. They do. I see here—Gas-House Wharf, 15 blocks, there is allowed \$2,895. 10 14, and that is that total amount of Bill 8; and there is allowed also screens \$614.50, but the Plaintiff only claims one-half the amount.

Q. Would you look at Plaintiff's Exhibit No. 31, and state what it is? A. It is an estimate of work done by Peters, Moore and Wright from May 17th, 1879, up to and including the fifteenth day of December, 1879—in fact, the year 1879 shewing the masonry quay wall built at 36,312 cubic feet at 60 cents, \$21,787.20.

Q. How much wall did the plan shew? A. Three thousand five hundred and fifty feet.

Q. That is the length? A. That is the length.

Q. I think you stated this morning the number of cube feet you charged 20 for the stone wall? A. 128,962.

Q. That was as per allowance of engineers? A. It was per length of wall as calculated, 3,550 feet—calculated at that time.

Q. What was the height of the wall? A. I believe twenty feet.

Q. Would you look at Plaintiff's Exhibit at Enquête A36 and state whether these are Colonel Moore's figures concerning the cubic contents of that wall? (Exhibit A36 is handed to witness). A. They are, with the exception of "or 80 cube foot" in the lower right hand corner.

Q. Well, according to the calculations there, these figures there what would the wall contain? A. 127,800 feet cube. I produce my calculation as Plaintiff's Exhibit at Enquête A42. Plaintiff's Exhibit No. 31 is estimates for 1879, 1880 and 1881, shewing the total cost of stone wall as calculated by J. Vincent Brown, the contractors' engineer, as to figuring upon it \$77,378.40.

Q. Is that an original document? Is it signed by Brown, made out by Brown? A. There is some writing on the document which don't at all refer to the stone wall, but the ink portion of the document is signed by J. Vincent Brown, and is a true copy—the three documents.

Q. Look at Plaintiff's Exhibit at Enquête A25 and state what that is. (Exhibit is handed to witness.) A. This document is a press copy document from Moore & Wright's office, in the hand-writing of Mr. Jacobs, giving a descrip- 40 tion of the works and what work was done, and the deductions made towards the stone wall, and additions in the shape of stone wall. The wood face and fine concrete deducted in this off Bill No. 1 is twenty thousand dollars, and off Bill No. 4, forty thousand dollars and the additions on the Bill per stone wall are, in Bill No. 1, twenty-six thousand dollars, and Bill No. 4, fifty-five thousand dollars, making a total of eighty-one thousand dollars for stone wall, and sixty thousand dollars deductions.

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Q. How does that agree with the Exhibit No. 1A? A. It does not agree at all with No. 1A. RECORD.

Q. Would you look at the document, Plaintiff's Exhibit at Enquête A37, and state whether you understand the figuring upon it? A. I do.

Q. And you know which is Colonel Moore's figures upon it? A. I do.

Q. Would you explain these figures? Objected to on the ground that it refers to matters which preceded the execution of the contract: Objection maintained.

Q. Would you look at Plaintiff's Exhibit at Enquête A 38? Have you verified that calculation? A. I have.

Q. Is it correct? A. It is correct with Mr. Brown's progress estimates. And that is the balance claimed on masonry less ten per cent, per letter to Chairman of Quebec Harbour Commissioners, signed by Moore & Wright, November 9th, 1881. The masonry is calculated at 128,964 cubic feet, at 60 cents, making a total of \$77,378.50 and the total amount of the previous estimates \$62,784.57, leaving a balance of \$14,593.93, less 10%, \$1,459.39, leaving a balance of \$13,134.54.

Q. Which is the amount, you say, is referred to in the letter of the ninth November, signed by the contractors? A. By the contractors Peters, Moore & Wright.

Q. The signatures to that letter are the original signatures? A. The original signatures. I have examined the letter.

Q. Would you look at Defendants' Exhibit at Enquête B 19, and state what you know of that? A. That is a settlement of account on the sixth June, 1878, between Moore & Wright and Simon Peters, and Moore & Wright gave Simon Peters a promissory note for \$397.06. In that account there is a contra by Moore & Wright of one third of \$1096.63 being amount paid by Messrs. Moore & Wright for sundry disbursements, including agent \$365.54.

Q. Would you look at Defendants' Exhibit at Enquête B 3, if you please, and state in whose handwriting that is, if you know it? A. In the body of this statement the handwriting is my own. The first column, the figures are not my own.

Q. Whose are they, do you know? A. I couldn't say, but that looks like Colonel Moore's.

Q. This is produced by the Defendants. What did you take that from? A. From the original handed me by Colonel Moore, who asked me to make a copy of same, in Mr. Peters' office.

Q. Have you got the original? A. The original now produced and filed as Plaintiff's Exhibit at Enquête A43 is the original of that, and that copy was made at Colonel Moore's request.

Q. In whose handwriting is this Plaintiff's Exhibit at Enquête A43? A. The handwriting in the body in ink and indelible pencil in Colonel Moore's; the writing and the pencilling at the bottom, in mine, forming the totals of the statement: they are my own.

Q. Would you look at Defendants' Exhibit at Enquête B11. Have you found the original telegram? A. I have.

Q. Produce it, please? A. I have found the original of the telegram an-

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nexed to Defendants' Exhibit at Enquête B11, and now produce the same as Plaintiff's Exhibit at Enquête A44.

Q. Does that telegram refer to this letter, Defendants' Exhibit at Enquête B11? A. It does not.

Q. What does it refer to, then? A. It refers to a letter written by Mr. Peters, written on the 28th February, 1885.

Q. Are you sure it refers to the letter now produced and filed as Plaintiff's Exhibit at Enquête A45? A. Yes. I say it refers to the letter of the 28th February, 1885, and this letter proves it, of the second March, 1885, which letter I now produce and file as Plaintiff's Exhibit at Enquête A46.

10

Q. Will you look at Defendants' Exhibit at Enquête B8, and particularly at the pencil writing at the foot of it, and state whether that is in the handwriting of Colonel Moore? (Exhibit is handed to witness.) A. It is in the pencil writing of Colonel Moore.

Q. That states that Colonel Moore received that account on a particular day? A. Yes, on the ninth March, 1887, and states in pencil that it was received in the presence of J. V. Brown and E. B. Cummings.

Q. Are you in a position to state whether that statement is true or not? A. That statement was never handed to Colonel Moore on March 9th 1887.

Q. Have you any documentary evidence or letters or anything to shew? A. The statement itself and the letter I produce will prove it a letter dated Quebec, 26th March 1887, being a letter written to Colonel Moore by my late father. The letter which I now produce is a copy, and I file it as Plaintiff's Exhibit at enquête A 47.

The Plaintiffs' attorney calls upon the Defendants to produce the original of this letter, which they state they will do, if it can be found.

Q. Indicate the part of the letter, Plaintiff's Exhibit at enquête A 47, to which you particularly refer to shew that statement was not delivered at that date in Quebec? A. "No doubt you will be surprised to learn that I got \$2,500 out of the Commission to enable Samson to meet his first payment on the 9th." This statement mentions March 9, 1887, \$2,500, and Colonel Moore states it was handed to him on March 9th, 1887, the date that money was paid over to Mr. Peters by the Quebec Harbour Commissioners.

Q. Look at Defendants' Exhibit at enquête B 4, being an account, and state what it is? (B4 is handed to witness.) A. That was a statement sent to Colonel Moore in 1891, as Mr. Peters was pressing for a settlement and wanted money, and he sent that statement to shew Colonel Moore that there was some money still due him from the Harbour Works.

Q. Look at your Exhibit No. 6, and at Exhibit B 4, and state whether there is a difference of \$12,000.00. A. B 4 is an account made up in a different way from Plaintiff's Exhibit No. 6. and it is not correct. It was simply to shew Col. Moore that there was a balance due, as he wanted a payment on account : in other words an approximate estimate of the balance due.

Q. You say that is an account made up on a different principle from Exhibit No. 6? A. Yes, a different principle altogether from Exhibit No. 6. It is made up to include the twenty-seven cribs of Bill No. 1, and the four additional cribs, the first item of additional work, and the wood and iron work of stone

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wall. Bill No. 2 is correct. Bill No. 4 applies the same way as Bill No. 1. Bill No. 7 shews a difference, but which difference has been allowed by the chief engineers in Defendants' Exhibit No. 1, as from time to time during the contract there were different works which the contractors were obliged to do, and these were taken into consideration and the final certificate was made out. Defendants' Exhibit at Enquête B4 is not a true account of Mr. Simon Peters' share of Defendants' Exhibit No. 1. It was simply made out and sent to Col. Moore, at the same time making a request that he would like to be able to touch some money on account of his balance due. This is not a true account: it is simply  
 10 a statement.

*Q.* Would you look at Plaintiff's Exhibit at Enquête A13, being an original letter written to Kinipple & Morris by Mr. Verret, secretary of the Harbour Commissioners, stating the total amount coming to the contractors, Peters, Moore & Wright, at \$711,136. (Exhibit is shewn to witness.) *A.* Yes, that is a statement of the total amount of the contract, as per original contract, including extras.

*Q.* And all works done? *A.* And all works done, in the final certificate, \$711,136.00.

*Q.* Now, I want to know whether these figures agree with your account produced in this cause? *A.* They do.

20

*Cross-Examined.*

*Q.* When you say that the total amount referred to in Plaintiff's Exhibit at Enquête A13, \$711,136.00, is the total amount paid in connection with the contract for the Harbour Works, and that agrees with your figures, you mean, I presume, that is the total of the credit amounts which is included in the statements of both the Plaintiff's and the Defendants' accounts as prepared by you? *A.* I state that is the total amount of work done by both parties under the original contract and additional work, as allowed for in Defendants' Exhibit No. 1, and as per accounts annexed to the Commission.

*Q.* In other words, that is the total sum which you have divided between the Plaintiff and the Defendants by your accounts? *A.* That is the total amount as per original bills of quantities and additional work executed.

*Q.* You have told us that. That is the total amount divided by you between the Plaintiff and the Defendants by your accounts? *A.* Yes.

*Q.* Will you refer to Defendants' Exhibit at Enquête B8 and state whether or not that is in your handwriting, or if not, in whose handwriting it is? *A.* It is not in my handwriting, the body. It is in the handwriting of one of the clerks of Mr. Peters.

*Q.* What clerk? *A.* Mr. F. X. Giguere. But the corrections and the figures in the columns were made by me.

*Q.* What date was that prepared, do you recollect? *A.* That was prepared in 1887.

*Q.* I understand you to swear that this statement, Defendants' Exhibit at Enquête B8, was not handed to Colonel Moore at the St. Louis Hotel in the month of March, 1887. *A.* On the 9th March. It is not on the 9th of March—not on the date of the ninth March.

RECORD

—  
*In the  
 Superior  
 Court.*  
 —

No. 60.  
 Plaintiff's  
 Evidence  
 Deposition  
 of

Albert H.  
 Peters,  
 13th Dec.,  
 1895.

*continued—*

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*p. 612*

RECORD.

In the  
Superior  
Court.

No. 60  
Plaintiff's  
Evidence  
Deposition  
of

Albert H.  
Peters,  
13th Dec.,  
1895.

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Same as A47  
p. 581

*Q.* Do you swear it was not handed to him at all in March, 1887? *A.* I couldn't swear to that; but it was not handed on the ninth.

*Q.* And you base yourself, in making this statement, on the paragraph in the letter of the 26th March, 1877, which says: "I got \$2,500 out of the Commission to enable Samson to meet his first payment on the 9th"? *A.* Yes. I have got the return letter written by Colonel Moore.

*Q.* Produce it? (The witness states that he will produce it after the adjournment.)

At 1 o'clock the Court adjourns till 2 P.M. At 2 P.M. the *cross-examination* of witness is continued. 10

*Witness:*—I now produce the letter to corroborate what I have said in my previous evidence.

The said letter is filed as Defendants' Exhibit at Enquête B22.

The Defendants also produce the original letter of the 26th March, 1887, which they were called upon to produce this morning, and the said letter is filed as Defendants' Exhibit at Enquête B23.

*Q.* Will you point out the part of the letter of the 29th March, 1887, which corroborates your previous statement? *A.* "I was pleased to hear that you got the \$2,500 from the Board." That is the part.

*Q.* You have told us that Defendants' Exhibit at Enquête B8 is in the handwriting of one of your father's clerks, and that the figures or certain corrections of them are in your handwriting? *A.* Yes, my figures. 20

*Q.* Have you the original statement of which this is a copy? *A.* This was made up from data given by Mr. Peters to the clerk, Mr. Giguère, who made it, and I checked certain amounts over and altered these figures.

*Q.* That is not an answer to my question. Have you got the original of which that is a copy, or else the memoranda from which that was compiled? *A.* I think I have. (Witness makes a search through his papers for the said memoranda.)

*Q.* Without finding the original, can you state the date it was made? Was this copied in press-book? *A.* It was not. It was made from data given by Mr. Peters to the clerk. It was made up from data given by Mr. Peters, and there is no press-copy of it in the office. 30

*Q.* And you have not got the original, as far as you know? *A.* The original is data given by Mr. Peters.

*Q.* You haven't got that data? *A.* No.

*Q.* Do you profess to say that you know when or how that was given by Mr. Peters to Colonel Moore? *A.* I know that it was not given on the 9th March, 1887.

*Q.* You have told us a dozen times that in your opinion this was not given on the 9th March. I am asking you whether you know when it was given. *A.* To the best of my knowledge it was given in the month of April, 1887.

*Q.* Were you present when it was given? *A.* I was not present when it was given.

*Q.* How do you know it was given in the month of April, 1887? *A.* Because Colonel Moore was to have been in Quebec in April, 1887.

*Q.* That is an inference which you draw from the letter? Defendants' Ex-

hibit at Enquête B22, is it? *A.* From the letter of the 7th April, 1887, to Colonel Moore from Mr. Peters. RECORD.

*Q.* So that if I understand your testimony aright, you state that you believe Defendants' Exhibit at Enquête B 8 was given to Colonel Moore by Mr. Peters in April, 1887, because by a letter, copy of which you have seen, of the 7th April, 1887, it would appear that Colonel Moore was to have been in Quebec in that month? *A.* I say, to the best of my knowledge, that the statement was not delivered on the 9th March, for the reason that the amount mentioned in the last item was paid in to Mr. Peters on the day that Colonel Moore states he received  
10 this document.

*Q.* The question is: So that if I understand your testimony aright you state that you believe that Defendants' Exhibit at Enquête B 8 was given to Colonel Moore by Mr. Peters in April, 1887, because by a letter, copy of which you have seen, of the 7th April, 1887, it would appear that Colonel Moore was to have been in Quebec in that month? *A.* I do.

*Q.* Now, you have no personal knowledge of when, or under what circumstances, or where Exhibit B 8 was handed by Mr. Peters to Colonel Moore? *A.* I cannot state the exact time or the place that that was handed to Col. Moore but I state it is impossible to be the 9th March, 1887, as stated in pencil at the bottom  
20 of that statement.

*Q.* And you say it is impossible for the reasons which you have already given together with the statements contained in the correspondence produced? *A.* And my writing on the document—my connection with the writing on the document.

*Q.* That document appears to have been made on the 9th March, 1887? *A.* It does not.

*Q.* When does it appear to have been made? *A.* It does not appear to have been made on the ninth March; the last entry for cash received was on the ninth March.

*Q.* So that that entry is not incompatible with its having been made on that day? *A.* I state the document was not made out on that date.

*Q.* I understand you now to swear distinctly that the document was not made on the 9th March, 1887? *A.* To the best of my knowledge I say that it was. . . . To the best of my belief and knowledge, I say that that statement was not made on the ninth March.  
30

*Q.* What does your knowledge of the fact consist of, that it was not made on the 9th March? What knowledge have you of the exact date when it was made, which enables you to swear that it was not made on the 9th March? *A.* I cannot swear to the exact date it was made, but I can swear to the best of my belief it was not made on the ninth March.

*Q.* In other words, it is pure supposition on your part when it was made? *A.* I am certain about that date, that it was not made on that date.  
40

*Q.* You will swear it was not made on that date? *A.* I will swear to the best of my knowledge it was not made on that date.

*Q.* You are unable, however, to give us any specific reasons why you swear in that way? *A.* I cannot state the exact date it was made, but to the best of my knowledge.

—  
*In the  
Superior  
Court.*  
—

No. 60  
Plaintiff's  
Evidence  
Deposition  
of

Albert H.  
Peters,  
13th Dec.  
1895.

continued—

RECORD.

In the  
Superior  
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No. 60.  
Plaintiff's  
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of  
Albert H.  
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continued—

*Q.* But you are unable to give us any reason which enables you to swear it was not made on that day? If you have any reason, give it? *A.* Can I answer that question to-morrow? I can refresh my memory and give the exact date.

*Q.* No: you will swear now whether you have a reason for swearing it was not made on the 9th March, if you have one? *A.* I will swear that statement was not made on the 9th March.

*Q.* You have no reason to give in support of that? *A.* I have got the reason of the amounts being paid on that day, and from the best that my memory can serve me, as my figuring there has been changed by me. To the best of my knowledge I can swear it was not made on that day. 10

*Q.* You have no other reason to give beyond that? *A.* Beyond that.

*Q.* Look at Plaintiff's Exhibit at Enquête A25, and state where that comes from and where it was obtained by the Plaintiff? *A.* It was obtained amongst Mr. Peters' papers.

*Q.* It refers to the part of the work claimed by Mr. Peters, and forming the subject matter of his claim in the present suit. *A.* Yes, forms part.

*Q.* Do you know when it was made? *A.* I do not.

*Q.* Do you know anything about it beyond the fact that it is in Mr. Jacobs' handwriting, and that it was found among your father's papers? *A.* It was found amongst my father's papers and explained to me by my father. 20

*Q.* When was it explained to you by your father? *A.* On several occasions.

*Q.* When? *A.* In 1892.

*Q.* When the suit was instituted? *A.* Before the suit was instituted.

*Q.* And your father did not tell you the date it was made, did he? *A.* No, he did not, because there was no date on it.

*Q.* Will you refer to Plaintiff's Exhibit No. 14 and state by whom that was prepared? *A.* That was written . . . that was prepared by me under Mr. Peters' supervision.

*Q.* When? *A.* About the commencement of the suit. Shortly before the commencement of the suit . . . made up in that form. 30

*Q.* Are you sure it was made before the commencement of the suit, or after you received the Defendants' pleas in this case? *A.* I could not state. Probably it might have been made after the suit was taken out, but to the best of my knowledge it was made out at the commencement of the suit.

*Q.* You have got the original from which it was made? *A.* No, I have got copies of it. I have a press copy of it.

*Q.* Do any of them bear date? *A.* No.

*Q.* Perhaps the date on which it was copied in your press copy-book may indicate the date on which it was made? *A.* It was copied on loose sheets, and I have the loose sheets here. 40

*Q.* So you cannot give us any further information as to when it was made? *A.* No.

*Q.* I understood you to swear that Plaintiff's Exhibit No. 14 contained a correct statement of the work done by the Plaintiff on the one hand and the Defendants on the other? *A.* I stated that Plaintiff's Exhibit No. 14 is a true statement of the work done by Simon Peters, and the work done and should

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have been done by Moore & Wright according to the Blue Book, original works contract, and Defendants' Exhibit No. 1 annexed to the Commission, the final certificate.

*Q.* Do you swear to this on your own responsibility—that is, from your personal knowledge, or do you mean to swear that is the statement given to you by your father? *A.* This statement was made out by me under the supervision of my father, and copied in this form by one of the clerks in the office.

*Q.* Do I understand you to swear, as of your own knowledge, to the items in Exhibit No. 14 of work done by your father? *A.* As per explanations and instructions given to me by my father, these are the correct figures to which he has made them come to according to the Blue Book.

*Q.* In other words, this statement is the result of what your father told you, either of work he had done or of deductions for work he had not done? *A.* This statement is the true information given me by Mr. Peters of work done and allowed for under Defendants' Exhibit No. 1, annexed to the Commission.

*Q.* In other words, you do not, as you could not, I believe, purport to swear that of your own knowledge, from your own personal knowledge, these figures are correct, and that the work which purports to have been done there and the quantities charged was done and these quantities put into the work? *A.* These are the quantities that are allowed for in the Blue Book for the wood and iron work.

*Q.* Is there anything but what is allowed for in the Blue Book in Exhibit No. 14? *A.* Oh, yes, the extras.

*Q.* How about the extras? *A.* How about the extras?

*Q.* Yes. *A.* The extra work is the true work of wood and iron in Mr. Peters' portion of the final certificate, Defendants' Exhibit No. 1.

*Q.* As communicated to you by Mr. Peters? *A.* As from my own.—As communicated to me from Mr. Peters and from reading the final certificate, and from my knowledge of the greater portion of the work that was done.

*Q.* At what age did you leave school? *A.* I left school when I was fourteen.

*Q.* What schools were you at? *A.* I was at the High School. I was at night school, at Thom's school for two winters.

*Q.* What winters were these? *A.* I was at night-school, to the best of my knowledge, in 1879 and 1880.

*Q.* After leaving school what did you do? *A.* After leaving school I.. I left school about June, the beginning of June.

*Q.* What year? *A.* 1878. I saw a great deal of the Harbour Works; saw the dredging, saw the piling, saw the wharf building, the whole summer through.

*Q.* The summer of 1878? There was no piling done in 1878: But I am showing that I saw all the work go right on, the stone wall and everything, and in the fall of 1878, at least, in the fall of 1878 I went to the office as office-boy.

*Q.* You did not keep accounts, I suppose? *A.* Yes, I kept the petty-cash from the very day I stepped into the office.

*Q.* How long were you in this occupation? *A.* I came into complete charge of the office in 1883—complete charge of Mr. Peters' business in 1883.

*Q.* Between the fall of 1878 and 1883, when you took charge of your father's office, what positions did you fill? *A.* I filled the different positions right up to cashier.

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No. 60.  
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Albert H.  
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continued—

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Plaintiff's  
Evidence  
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*continued—*

*Q.* Which would be what? *A.* The first year I did the collecting and entering; the second year I had the day book, the ordinary mill work, which would take a few hours each day, and I would be out the rest of the time probably down at the Harbour Works or around, anyway, in Mr. Peters' interest; and in 1883, when Mr. Bohme got notice to leave Mr. Peters' establishment, I stepped into his place and had charge ever since.

*Q.* Referring now to Plaintiff's Exhibit No. 14, sheet 2, items 23 and 24, do you swear that you have a personal knowledge of the whole of that work being done, of the quantities of lumber and other materials that were put in?

*A.* Well, it is a pretty hard question to ask, but the substructure and super-<sup>10</sup> structure of the northern embankment—I know that that work was done, because the wharf is there to speak for itself to-day both the substructure and the super-structure of the northern embankment.

*Q.* That is all you know about it? *A.* That Mr. Peters did the work, the whole work, that is, of the wharf, in wood and iron.

*Q.* What year was the piling at the angle of the ballast wharf done? *A.* That must have been, to the best of my knowledge, in 1879, beginning of 1879. I can give you the dates exactly.

*Q.* When was the pile or stub foundation put in? *A.* That was put in<sup>20</sup> 1878, and part of 1879—June and July, 1879.

*Q.* Will you refer to Defendants' Exhibit No. 1 annexed to the Commission, being the final certificate, dated 5th January, 1887, and state whether in that final certificate you find the item 30, sheet 2, of Plaintiff's Exhibit No. 14, being: "Proportion of understated in bills of quantities, \$2,309.21? *A.* From data made out from the Blue Book and checked over by myself, and from Mr. Peters' own explanations of same, this claim of "Proportion of understated in bills of quantities" having been—The understated in bills of quantities or error that appears in the Blue Book in the different bills was drawn to the attention of the engineers by Mr. Peters, who has told me so time and time again, and it was<sup>30</sup> nothing new for the engineers to know they were understated in bills of quantities by them. There was a clause in the contract saying there should be no claim made for it, but when there was a claim allowed for understated in bills of quantities or errors, Mr. Peters found errors in his bills of quantities to that extent, and his share of that \$4,180.00 mentioned in Defendants' Exhibit No. 1 annexed to the Commission is what is mentioned in Plaintiff's Exhibit No. 14, \$2,309.00.

*Q.* So that I understand your explanation to be that item 30, sheet 2, of Plaintiff's Exhibit No. 14, is your interpretation of this entry in Defendants' Exhibit No. 1 annexed to the Commission: "Cubic yards in concrete in rear of stone wall in wet dock, understated in bills of quantities or error (Item 32)<sup>40</sup> \$4,180.00. *A.* That is what Mr. Peters claims as his proportion of that understated in bills of quantities or error.

*Q.* So that when you say that Plaintiff's Exhibit No. 14 is a true statement of the amount of work done by the contractors and allowed for under the certificate, Defendants' Exhibit No. 1, annexed to the Commission, you mean that it is your interpretation of items allowed in so many words by the engineers to Moore & Wright, which you think ought to be allowed to Peters? *A.* I didn't

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say they were allowed to Moore & Wright: I said that Mr. Peters has claim RECORD.  
in that understated in bills of quantities or error.

*Q.* You have not answered my question, which is: So that when you say that Plaintiff's Exhibit No. 14 is a true statement of the amount of work done by the contractors and allowed for under the certificate, Defendants' Exhibit No. 1 annexed to the Commission, you mean that it is your interpretation of items allowed in so many words by the engineers to Moore & Wright, which you think ought to be allowed to Peters? *A.* I don't quite catch it.

*Q.* When you say that Plaintiff's Exhibit No. 14 is a true statement of the  
10 work done by both the contractors and allowed for under this certificate, Defendants Exhibit No. 1 annexed to the Commission, you mean that if you find in Defendants Exhibit No. 1 allowances, which, in your own or in your late father's opinion, ought to have belonged to him, you appropriate them to him, whether the engineers have given them, in so many words, to Moore & Wright or not, is that so? *A.* The final certificate, Defendants' Exhibit No. 1, allows \$4,180.00, for understated in bills of quantities, and Mr. Peters has filed a list of these understated bills of quantities in wood and iron work to the amount of \$2,309.

*Q.* Let me attract your attention to items 30, 31 and 32, of Defendants' Exhibit No. 1, annexed to the Commission, and state whether the \$4,180.00  
20 allowed there is not allowed in so many words for cubic yards in concreting in rear of stone wall in wet dock understated in bills of quantities or error? (Objected to: Objection overruled). *A.* It appears so.

*Q.* Now, is there in the certificate, Defendants' Exhibit No. 1 annexed to the Commission any other item in any way applicable to item 30, sheet 2, Plaintiffs' Exhibit No. 14, being the understated bills of quantities in question? *A.* The only item is No. 32, which mentions understated in bills of quantities or error.

*Q.* Now, I presume you do not mean to state that you or your father kept an accurate record of the work that was done by Moore & Wright, do you? *A.* Well, as far as what they were entitled to out of the Blue Book and the . . .

*Q.* That is not an answer to my question. I ask you whether you yourself  
30 or your father kept a record of the work actually done by Moore & Wright in connection with the contract? *A.* No, we did not, no—only as regards the bills in the Blue Book. Of course we watched them there; that is, the original contract.

*Q.* Now, will you refer to Plaintiffs' Exhibit No. 14, and tell us whether in Defendants' Exhibit No. 1 annexed to the Commission you find the 1st item of sheet 1 of Exhibit No. 14? *A.* In the amount of contract or tender, which has the original bills of quantities, the Blue Book \$529,296.31 is allowed by the engineers.

*Q.* So that the whole of Plaintiffs' Exhibit No. 14, except the extra work  
40 which is detailed in Defendants' Exhibit No. 1 annexed to the Commission is your interpretation of what should be allowed out of the bulk sum for the work done by the late Simon Peters? *A.* Is what is allowed in the final certificate.

*Q.* Where is that allowed? *A.* Under the original contract Simon Peters had his portion to do and Moore & Wright had their portion to do. Simon Peters did his portion and Moore & Wright did their portion. Simon Peters' portion of that allowed by the engineers is what is claimed.

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*Q.* How do you know that was allowed by the engineers? *A.* The final certificate states so.

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*continued—*

*Q.* So for your reasons for stating that the items which you have claimed in Plaintiff's Exhibit No. 14 were allowed by the engineers is that, as the top of Defendants' Exhibit No. 1, annexed to the Commission, the bulk sum is stated? *A.* The bulk sum is the original contract or tender and these are the items in the original contract or tender, with the first change of the stone wall.

*Q.* So you infer from the fact that the bulk sum is put as the first item of Defendants' Exhibit No. 1, annexed to the Commission that the engineers put all the items which you have claimed in Exhibit No. 14 in that bulk sum? *A.* As 10 work done per progress estimates, which were furnished them by the resident engineer, and certain data that was furnished them by the resident engineer at Quebec.

*Q.* What was that data? *A.* Data that Mr. Peters during the progress of the work. . . . According to the contract there were certain odd kinds of work that the contractors were obliged to do, but could not demand any estimate for them, because there was no mention of them in the contract. This was mentioned, and memoranda given to the resident engineer, so the chief engineers had cognizance; and when the final certificate was given, Mr. Peters, instead of pressing his claim for extra work, found that they had allowed him his full amount in the 20 original bill, and therefore he did not claim for the work.

*Q.* In other words, Mr. Peters assumed to take out of the bulk sum allowed payment for all the items he claimed? *A.* For all that he is entitled to, and that is what he claims.

*Q.* And you, upon the assumption, presume to swear that the engineers allowed it? *A.* The certificate speaks for it too. To corroborate what I say the certificate speaks.

*Q.* To corroborate what you say the certificate puts the bulk sum at the top? *A.* And the extra work following, all the work done by both.

*Q.* Will you tell us, referring to Plaintiff's Exhibit No. 14, whether, in 30 effect, the work claimed for in the first item sheet No. 1, as stated there was done?

*A.* Oh, no.

*Q.* It was not? *A.* No.

*Q.* Was the second item done? *A.* Yes.

*Q.* Was the third done? I am not speaking of the bills: I am speaking of the items. *A.* The third was done. There was a little change, but that is accounted for in the extra work.

*Q.* So that the third item is not in accordance with the original bills as stated in the Blue Book? *A.* It is, but there is a little change made.

*Q.* Then, the original quantities stated in the Blue Book are claimed under 40 item 3, but the work was not done according to the original? *A.* Well, work was done, of course.

*Q.* It was done differently? *A.* No, on the same principle, but more work done. They were made wider.

*Q.* Were there any deductions from Bill No. 1 at all? *A.* For what?

*Q.* Bill No. 1 in the Blue Book, for any cause. *A.* Deductions made by whom? Made by chief engineers?

- Q. Yes, made by the chief engineers? A. Not by the chief engineers.
- Q. But you have made some deductions in Plaintiffs' Exhibit No. 14? A. To go towards the cost of stone wall. The substructure was of course all the same.
- Q. You have made the deductions which appear where in Exhibit No. 14? on the second sheet, items 9, 10 and 11? A. And 12, 13 and 14 of Moore & Wright's portion.
- Q. Now, you have said that the substructure was built as intended. Is that so. A. No.
- Q. What were the changes made in the substructure? A. Of what?
- 10 Q. Any changes at all? A. There were several substructures. The substructure on the works generally? Mention each bill, and I will tell you. There were different kinds of changes.
- Q. Give us all the changes. A. Bill No. 1, the cribs instead of being forty feet were built one hundred and twenty feet long, but they did not change the price in the Blue Book.
- Q. Did that involve a change? A. What change?
- Q. A change from the original contract? A. No, it did not. I have just told you it did not make any change in the price allowed as per original contract.
- Q. So that the works were built differently but you claim the original price?
- 20 A. The works were built differently with the understanding with the engineers that they were to be done for the same prices as allotted in the Blue Book.
- Q. Was there any change in the wet dock, in the height of the substructure? A. Yes.
- Q. What was the change? A. It was increased in height.
- Q. Was there any change in the wet dock, in the height of the superstructure? A. That I cannot say for the moment.
- Q. I will remind you that you have sworn that the wall was built in the wet dock twenty feet high? A. To the best of my knowledge it was built twenty feet high.
- Q. That would involve a reduction in the height of the wall of one foot?
- A. That I couldn't swear to.
- 30 Q. Have you made any allowance in Plaintiff's Exhibit No. 14 for the change made in the substructure of which you have spoken? Is that taken into account anywhere in Plaintiff's Exhibit No. 14, and if so, point out where?
- A. What?
- Q. The change in the height of the substructure in the wet dock? A. There were little extras allowed on the substructure of Bill No. 1 and also of Bill No. 4.
- Q. Where are they referred to? A. In the extra work.
- Q. What items? A. "Excess in timber and iron in 31 tidal harbour cribs." Item 17, sheet 2. "Forming counterforts in 55 cribs wet dock, widening shoal cribs and building same to piles"; and then there is piling too.
- 40 Q. Now, is there any entry in Plaintiff's Exhibit No. 14 for additional work caused to Moore & Wright by the increasing of the height of the substructure in the wet dock? A. That I couldn't say.
- Q. Now, referring to item in Exhibit No. 14, sheet 2, on Moore & Wright's side, "understated in bills of quantities, \$1,870.70." I presume that that is the balance of the \$4,180.00, Item 32 of Defendants' Exhibit No. 1 annexed to the

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*In the  
 Superior  
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No. 60.  
 Plaintiff's  
 Evidence  
 Deposition  
 of  
 Albert H.  
 Peters,  
 13th Dec.  
 1895.  
*continued—*

Commission, which you do not appropriate to your father? *A.* Well, it is understated in bills of quantities, but the exact quantities I don't know, of Moore & Wright's portion.

*Q.* That is the balance after you have satisfied your father's claim for understated bills of quantities in the timber? *A.* I don't know.

*Q.* You don't know? *A.* I know that father.... I suppose that is the amount coming to them.

*Q.* So you don't know.... *A.* I say I suppose that is for the understated bills of quantities. I couldn't go and place my hand on the place where the understated bills of quantities are in Colonel Moore's portion. 10

*Q.* You cannot say how that figure was arrived at? *A.* If they increased the height of the superstructure and put in more concrete, that couldn't be understated in bills of quantities, because it was never intended, in the first place.

*Q.* I simply ask you whether you know where that particular item of Plaintiff's Exhibit No. 14 was got, how it was arrived at, and how it comes to be in Exhibit No. 14. *A.* There was no understated in bills of quantities.

*Q.* It is your knowledge that is in question now. Do you know nothing about it? *A.* I know it belongs to Moore & Wright, that \$1,870.70, because it does not belong to Simon Peters.

*Q.* That was the balance remaining after you had satisfied yourself? *A.* It 20 is the balance remaining after we get what was due us for the understated quantities or error

*Q.* I think you told us that in Exhibit No. 14 there was some work not done by Mr. Peters but which was allowed in the final certificate. Will you indicate what that work was? *A.* It is allowed in the shape of bills and in deductions appearing in the final certificate off of these bills, off of the wood and iron portion....

*Q.* I think I will have to ask you to explain that a little more at length. I do not understand what you mean. *A.* There were certain works done by Mr. Peters from time to time. This work was done, and Mr. Peters could not at 30 the time make any claim for it; he could not ask them for any estimate; but under the contract he was obliged to do these. When the contract was finished the engineers took this into their...took this into consideration, and allowed Mr. Peters instead of making deductions off his bills, they allowed him his bills intact, and Mr. Peters did not press his claims for the different works.

*Q.* Just tell us what work is allowed for in the certificate, which was not done by Mr. Peters? *A.* There was some of the fenders and the bollards, some of the bollards. There was part of Bill No. 7 too. The claims which Mr. Peters had for work done during the progress of the work on the contract memos, which he would hand to Mr. Pilkington, they were taken into consideration when the 40 final certificate....He gave Mr. Peters the full amount of what was coming to him.

*Q.* I understand the fenders were not done? *A.* The fenders were not done, but there was work done in lieu. If the fenders were not done, they would have mentioned it in the final certificate. It was in their power to deduct it then, when they were giving the final certificate to the contractors, Peters, Moore & Wright.

Q. You say the bollards were not entirely done. How many were done?  
A. I couldn't exactly state, but there was a good number of them done, a great number.

Q. Just refer to Plaintiff's Exhibit No. 6 and state whether on the first sheet of that you have not claimed for item 26 "Engineer's allowance for fenders \$1,038.00."  
A. Yes, partly constructed—for fenders partly constructed allowed by engineers.

Q. That is item 39 of the final certificate?  
A. Yes—"allowed for fenders partly constructed."

10 Q. So that your interpretation again of Defendants' Exhibit No. 1 annexed to the Commission is that you are entitled to the whole of the cost of the fenders, whether done or not; to the whole of the cost of the bollards, whether done or not; and, in addition, to an amount specifically allowed for fenders partly constructed?  
A. Yes, and for work that was done besides.

Q. The work which was done, besides, does not appear in any way in the certificate?  
A. No; for the simple reason that they have not allowed any deduction off wood and iron work; they have allowed that intact. There is no deduction to be found anywhere on the final certificate for work not done by Simon Peters.

20 Q. The fenders were to have been put on the stone wall as well as on the timber face?  
A. Yes; but they were ordered to take them off.

Q. They were afterwards omitted?  
A. They put on, I think, one or two, and the contractors were ordered to remove them.

Q. The full cost and allowance for these fenders, as per the Blue Book, is included in the amount that you have claimed in Plaintiff's Exhibit No. 14?  
A. The full amount of the fenders mentioned in the Blue Book are in Bill, Exhibit No. 14, which we claim?

Q. Yes.  
A. They are, yes, for other work done.

30 Q. What were the other works that were done?  
A. Works from time to time that were done, ordered by the Engineer, Mr. Pilkington, and which Mr. Peters did.

Q. Can you specify any of them?  
A. The memoranda were handed to Mr. Pilkington. The memoranda were handed to Mr. Pilkington, and—at least, I know it, that Mr. Kinipple was cognizant of this work done.

Q. How do you know it?  
A. I know it from what my father said, that that was the case; and that is a true bill as made out by him.

Q. What is the total cost of the fenders according to the Blue Book—approximately?  
A. Of what bill?

40 Q. Of the whole of the fenders of the wall?  
A. Well, you take the fenders from the Blue Book.

Q. The cost would exceed \$5,000.00, wouldn't it?  
A. I have got some memoranda, and I can give you the information a little better I think. (Witness refers to memoranda.) Five thousand dollars for the fenders?

Q. Yes.  
A. Well, as near as I can make it out, about eighteen hundred dollars would be the whole amount of the fenders.

Q. The fenders on all the work?  
A. On the stone wall.

Q. The whole of them?  
A. At least the stone wall—all you asked me about—in the vicinity of about eighteen hundred dollars.

RECORD

In the  
Superior  
Court, 6101-19No. 60.  
Plaintiff's  
Evidence  
Deposition  
ofAlbert H. 6235-7  
Peters,  
13th Dec.,  
1895.

continued—

RECORD.

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In the  
Superior  
Court.  
—

No. 60  
Plaintiff's  
Evidence  
Deposition  
of  
Albert H.  
Peters,  
13th Dec.,  
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continued—

Q. How many fenders were put on and afterwards taken off? A. I couldn't exactly state the exact number, but I know that there were some put on and ordered to be removed.

Q. Were most of them put on, or was a small number put on? A. I couldn't say exactly the number.

Q. You can say whether half were put on? A. I couldn't say. I know of some being put on, but the number I couldn't say.

Q. Now, you have told us, with respect to Plaintiff's Exhibit No. 14, that it was a true statement of the work done, and work allowed for, though not done by your father, and of the work which should have been done by Moore & Wright. A. Which should have been done and allowed for. . . . work done, and work which should have been done and allowed for on Moore & Wright's share. 10

Q. Will you tell us how you arrived at the work done by Moore & Wright or the work allowed for? A. According to the progress estimates, the Blue Book in fact, all the data in connection with the contract.

Q. You are aware that there were large changes made in Moore & Wright's portion of the work? A. Yes, there were changes made, and there were extra works allowed.

Q. You are aware that there were a considerable number of changes in the quality of the concrete, in the quantities of concrete, in the foundations, in the dredging? A. There were some special contracts. They are mentioned in the extra works. 20

Q. Are all the changes made in Moore & Wright's work mentioned in the extra work? A. No, not all.

Q. How about the foundations? How have you dealt with them? A. The foundations in the wet dock, there was an arrangement made for 16 to 1 concrete in the foundations. Moore & Wright put in 16 to 1 concrete.

Q. What do you know of that arrangement? A. There are letters from the engineers ordering Peters, Moore & Wright to put in that 16 to 1 concrete in the foundation of wet dock, and that being Moore & Wright's portion of the work, they put in. 30

Q. Do you know what quantity they put in? A. A quantity to the extent that the engineers allowed.

Q. Is that extra work? A. That is extra work, yes. It is in the extra work.

Q. How have you dealt with the foundations under the cribs? A. Dealt with them.

Q. Yes in the tidal basin? A. In Plaintiff's Exhibit No. 14.

Q. Yes. A. They are apportioned to Mr. Peters, who did the work.

Q. It was a portion of Moore & Wright's work? A. To do the pile driving? No, they hadn't the machinery to do it. It was not a part of their work to do the pile driving, because they hadn't a pile-driver or anything. 40

Q. So the foundations under the cribs in the tidal basin, you state, were no part of Moore & Wright's work? A. Yes, the foundation, but not the piles. All the pile driving was done by Mr. Peters.

Q. Do you know how these were done by Mr. Peters? A. They were driven in.

Q. Under what arrangement they were done? A. Well, Moore & Wright were obliged to dredge underneath the tidal harbour cribs, then they were obliged

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p/24-99

to put clay so many feet thick and then the cribs were to rest on that. Moore & Wright found that the ground was hard enough, and they wrote to have this thing dispensed with, this dredging in the trench, because they found the bottom would be solid enough, but when they came to lay the cribs they could not get a level bottom. Mr. Peters suffered damages through not being given the bottom level, and Moore & Wright were to give that level bottom for the cribs, and they could not do it. Mr. Peters from what Mr. Peters told me that it was his suggestion about the pile driving and that as Moore & Wright were obliged to give them the foundation, he would not assume the cost of putting in the stub piles.

10 He said he would do the work.

*Q.* It is quite immaterial, what your father said. *A.* I want to explain how it has come about that this thing has arrived that way, and to explain the reason of these letters.

*Q.* Look at the letter, Defendants' Exhibit at Enquête B 17 and state whether it is not true that the stub piling was put in there under the agreement contained in that letter? (Letter is handed to witness). *A.* These stub piles were put in with the agreement.

*Q.* Answer my question: Were they put in under the agreement contained in that letter or not? *A.* Under the agreement?

20 *Q.* Under the agreement contained in that letter or not? *A.* (Witness reads from letter). "But at the same time will do it as economically as possible in your interest, without assuming responsibility." And that was perfectly right.

*Q.* Is your answer "yes" or "no" to that question? *A.* That Mr. Peters put in these piles without assuming any responsibility?

*Q.* Did he put in the piles under the agreement stated in that letter, Defendants' Exhibit at Enquête B 17, or not? I want an answer, yes or no, to that question. *A.* The piles were put in under the agreement that if there was nothing allowed he would be recouped by Moore & Wright.

30 *Q.* I want an answer, yes or no, to my question. I have put it four times, and I shall not put it again without making an application to the Court to have you answer when a question is put to you. *A.* It was put in under the last sentence of that letter.

*Q.* Look at the account, Defendants' Exhibit at Enquête B 18 A, and state whether that is not an account furnished by your father to Moore & Wright for the stub piling in question? *A.* That account is furnished from the office.

*Q.* And it is for the stub piling in question in that letter? *A.* It was an account on that letter that he would not assume the responsibility to do this stub piling without he had some guarantee.

*Q.* Is that the account furnished by your father to Moore & Wright for the stub piling in question now? *A.* That is the account for the stub piling.

40 *Q.* Furnished by your father to Moore & Wright? *A.* That was done at cost price as mentioned in the letter.

*Q.* So the item you have claimed for in Plaintiff's Exhibit No. 14 sheet 2, "Pile or stub foundation allowed by engineers (Item 31) \$4378.65," is the work done by Simon Peters under the contract, Defendants' Exhibit at Enquête B 17, for which he sent an account to Moore & Wright for \$1692.70, is that so? *A.* Mr. Peters does not claim that from Moore & Wright.

RECORD.

In the  
Superior  
Court.

No. 60  
Plaintiff's  
Evidence  
Deposition  
of

Albert H.  
Peters,  
13th Dec.  
1895.

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—  
In the  
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Court.

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No. 60.  
Plaintiff's  
Evidence  
Deposition  
of

Albert H.  
Peters,  
13th Dec.  
1895.

continued—

Q. He does not, eh? A. No. Mr. Peters in Plaintiff's Exhibit No. 14 does not claim it, and he does not claim it in Plaintiff's Exhibit No. 6 either. He claims what is allowed for stub pile foundation of work which he solely did.

Q. He claims \$4378.65 for work which he did in the interest and at the expense of Moore & Wright, and for which he billed them \$1,692.70? A. Not at the expense, because he doesn't charge them. It is no expense at all to them.

Q. What would be the length of the piles that were driven? A. I can give you that data to-morrow morning. I cannot give it at the moment, because that work was done a good many years ago.

Q. Was that work done while you were there? A. A part, yes. The 10 balance of that work was done in 1879, June and July.

Q. Bill No. 1, Plaintiffs' Exhibit 6, do I understand you to say that work was done? the first item of the account? A. Bill No. 1, was done with the exception of the fenders, and the bollards of which I have already spoken, but which were allowed in the final certificate, because there was other work done to replace it in different parts of the works.

Q. When you say that work was allowed in the final certificate you always mean, of course, that you appropriate a portion of the bulk sum to this work, unless it be extra work, don't you? A. The portions which were not done, there was other work done instead of it. 20

Q. Answer my question. When you say that work was allowed in the final certificate, you always mean, of course, that you appropriate portion of the bulk sum to this work, unless it be extra work, don't you? A. I do not appropriate it. It was what the engineers allow.

Q. Will you indicate to us in the final certificate, Defendants' Exhibit No. 1 annexed to the Commission, where item 1 of Plaintiff's Exhibit No. 6 is allowed? A. Item No. 1 is allowed in the \$529,296.31, as I do not see it mentioned in the extra work.

Q. Whenever you say that an item is allowed in the final certificate, unless it be for extra work, you mean that you appropriate a portion of the bulk sum 30 towards that work or towards that item, is not that so? A. The final certificate allows the amount of contract or tender, which is the Blue Book. Mr. Peters has certain works in that Blue Book, and they allow him payment for these works. If there were any deductions, they would be mentioned on the final certificate of his work: so if he did not do whole of the work, there was work allowed....

Q. You have not answered my question. You have got to answer it. The question is: Whenever you say that an item is allowed in the final certificate, unless it be for extra work, you mean that you appropriate a portion of the bulk sum towards that work or towards that item, is not that so? A. I appropriate 40 to the bill that which specifically belongs to it.

Q. Would you point out to us in elucidation of this answer where you find Bill No. 1 in the final certificate? A. That \$529,296.31, bulk sum, Blue Book.

Q. I am not asking you whether it is in the Blue Book. I am asking you whether it is in the final certificate. A. That is the contract or tender, and if I cannot point it out in the Blue Book, it is in the bulk sum of the final certificate.

Q. Now, item No. 3 of Plaintiff's Exhibit No. 6 is also arrived at in the same

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way by you, that is, it is a portion of the bulk sum which you allot to that bill? RECORD.  
*A.* It is a portion of the original amount of contract or tender.

*Q.* In that bill also there is not deducted any sum for fenders or bollards?  
*A.* There is certain work in Bill No. 4 for which other work was done and allowed for in the original contract or tender, being the first item of Defendants' Exhibit No. 1.

*Q.* In order not to come back on what I have examined you upon—when you say there was other work done you refer to work as to which you were unable to give us details, and of which I asked the details? *A.* You haven't  
 10 asked details of . . .

*Q.* I asked you specifically for details of the work done by Simon Peters, which were in your opinion off-set by work not done and you said you were unable to give them. *A.* I state now that these details were handed at the time this work was done to the resident Engineer, and they were disposed of in the final certificate, or else there would have been deductions knocked off Mr. Peters for all these amounts not done.

*Q.* Whatever may have been done with these claims or memoranda at the time you are not now able to produce them or tell us what they were? *A.* Not for the moment, I don't suppose I could.

20 *Q.* You have told us that Item 4, being Bill No. 7, is also part for work not done. Will you tell us what work was not done in Bill No. 7, which you have claimed for in item 4 of Plaintiff's Exhibit No. 6? *A.* I state the same answer to No. 4 as I did to the previous question.

*Q.* That is to say, you are not able to state what work was not done? *A.* My previous answer is there. It is the same answer.

*Q.* Perhaps you do not understand me. I will put the question again. What work in Bill No. 7, Item 4 of Exhibit No. 6, was not done by Simon Peters, though the whole amount is claimed for? *A.* I couldn't detail out the exact work that was done, because that was work that was done in the year 1877, the  
 30 year before. I had no knowledge of what was done that year. But that is all allowed for in the Blue Book as work done, or if it was not done it was allowed as an off-set for other work done, because there is no deduction in the final certificate for any part of Bill No. 7 not done, and that bill went entirely to Mr. Peters, with the exception of an item for \$35.00 for labor.

*Q.* Would the same answer apply to Item 5, bill 8? *A.* Bill 8 was all done.

*Q.* Every part of it? *A.* Every part of it.

*Q.* Are you quite sure? *A.* According to the progress estimates every part of it was done.

40 *Q.* I am not asking you, by the progress estimates: I am asking you whether you are able to swear of your own personal knowledge whether all the work detailed in Bill No. 8 of Blue Book was actually done by Simon Peters?

*A.* I have estimates of Mr. Navarre to prove that it was done.

*Q.* In other words, to answer that question, you rely upon the estimates of the engineer made at the time, but you know nothing of it personally? *A.* The estimates of the joint engineer states that work was done.

*Q.* You know nothing of it personally? *A.* No, it was the year before.

*Q.* How did you arrive at item 6 of Plaintiff's Exhibit No. 6? *A.* I answered that question before, to-day.

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*In the  
 Superior  
 Court.*

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 No. 60  
 Plaintiff's  
 Evidence  
 Deposition  
 of  
 Albert H.  
 Peters,  
 13th Dec.  
 1895.  
*continued—*

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In the  
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Court.

No. 60.  
Plaintiff's  
Evidence  
Deposition  
of  
Albert H.  
Peters,  
13th Dec.  
1895.  
continued—

Q. Not to me. A. That was for materials furnished on account of Moore & Wright, which was to have been returned by them but which never was.

Q. How do you know what material was furnished? A. Furnished by the orders, an exhibit in the case here, on which material was delivered in excess of that amount.

Q. In excess of what amount? A. In excess of the amount claimed.

Q. Did you make it up? A. Mr. Peters gave me that... tabulated that and made it up.

Q. Have you got the tabular statement prepared by Mr. Peters? A. No, I have not got it.

Q. By a singular coincidence, I think, it is exactly half the bill allowed by the engineers? A. Half the bill. He might have claimed more.

Q. But he was generous? A. Yes.

Q. Now, there is a small item in Exhibit 6, on the second page—Item 29. "Add excessive deductions, \$32.64." What does that mean? A. That is owing to the difference between Bill 3. The concrete and timber work in Bill 3 towards stone wall, the fine concreting and the fine concrete and timber and iron that was to go towards stone wall in the four extra cribs, Bill 3 being abandoned, that made that difference, and...

Q. Who made that calculation? A. That was the portion that came off 20 the wood and iron, \$32.64.

Q. Who made that calculation, I asked you? A. Which calculation?

Q. The error? A. It was I made that calculation.

Q. Now, I see that you have charged in items 38 and 39, second page of Plaintiff's Exhibit No. 6, a certain portion of the legal expenses of Judge Bossé and Mr. Cook. Will you be good enough to tell us why you did not charge any portion of the \$1,799.56 which was deducted by the Harbour Commissioners for amount due by the joint contractors for rent, taxes, and share of legal and notarial expenses, as shewn in Plaintiff's Exhibit No. 11? A. Well, Moore & Wright occupied that office. It was their office for a number of years, up to the close of 30 the works. Mr. Peters did not do any of his business there. He had none of his clerks there.

Q. There was part of that office used in common for the resident engineer? A. Not of that office, but adjoining that office. The contractors' engineer that had to give him a place, of course, but there was no part used by Mr. Peters for his business, because he had his own office, and Messrs. Moore & Wright, they and their staff, occupied the whole of the room that was there, paid all their men there, and did every part of their business there. Mr. Peters had at times several hundreds of men working for him, and they were never paid there, they were paid up at his own office. So Mr. Peters did not feel justified in assuming for 40 keeping an office for Moore & Wright, as he had to keep up one of his own already.

Q. You are aware that under the terms of the contract the contractors were to have an office on the works, that they were to supply an office for the engineers, and that they had to have an engineer and agent permanently on the works, are you not? A. Yes.

Q. You are also aware that the office it is charged for in Plaintiff's Exhibit No. 11 was the only office that the contractors had on the works, that it was the

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office occupied by the chief engineer and by the contractors' engineer? *A.* Yes; mostly by the contractors and their staff. They had quite a considerable staff too.

*Q.* And I suppose that reason is also quite a sufficient reason—that is, the reason you have given—why no part of the legal and notarial expenses that are charged here against the joint contractors should have been borne by Mr. Peters?

*A.* Mr. Peters assumes part of the legal.

*Q.* Where does he assume part of the legal? *A.* In the \$1,200 of Mr. Bossé, and \$1,800 to Mr. Bossé, and in the \$4,000 to Mr. Cook; he assumes his proportion of each.

10 *Q.* Do I understand you to state that any part of the three sums paid to Mr. Bossé and to Mr. Cook forms any part of the sum of \$1,799.56, mentioned in Exhibit No. 11? *A.* I don't know what proportion of the legal and notarial charges would be put in that \$1,799.56.

*Q.* You have not answered my question? *A.* It is not in that.

*Q.* So you have no reason to give why you should not assume and pay your share of the sum of \$1,799.56, in so far as that sum refers to legal and notarial charges, to the rent of the office occupied by the chief engineer and his staff, and to the rent of the office occupied by the contractors' engineer? *A.* The main office was occupied by the contractors at least, Moore & Wright. Why should  
20 Mr. Peters pay for the rent of their office? If there is part of the office that was occupied by the engineers, Mr. Peters would no doubt be willing to pay that part.

*Q.* As a matter of fact, you know that the chief engineer and his staff, that that is, the resident engineer, occupied three rooms out of the building in question, and that Moore & Wright occupied one? *A.* That would be only for about a week or two: but the rest of the year Moore & Wright would have the whole place. When Mr. Kinipple would be here, certainly he occupied . . .

*Q.* And where was Mr. Pilkington? *A.* Mr. Pilkington, when he was here, he had his room.

30 *Q.* And Mr. Boswell? *A.* If I am not mistaken, Mr. Boswell and Mr. Pilkington, they had one big room, if I am not mistaken.

*Q.* Do I understand you to swear that you have a personal knowledge of any of the items referred to in the account of 30th November 1877? *A.* Well, I have a knowledge of Moore & Wright occupying a red brick building. I have a knowledge. That building is just inside the mill gate at the head of the beach lot, the pond.

*Q.* What did it usually serve for before Moore & Wright occupied it? *A.* It was originally built for an office for Mr. Peters, but when Mr. Peters bought the Oliver property he moved his office into the large building.

40 *Q.* Who occupied that office for Moore & Wright? Who were the persons that were there? *A.* I remember Mr. Wright and Mr. Wright's father. Mr. Wright's father used to be around there a great deal, and Mr. Curtis used to conduct the works there, the building operations which they had going on.

*Q.* Are you prepared to swear how long that office was occupied? *A.* Well, no, not the length of time, but Mr. Peters gave me that data, that they had that office for that time.

*Q.* Are you prepared to tell us how much of the mill yard was to your personal knowledge occupied by Moore & Wright in the year 1877? *A.* Well

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No. 60.  
Plaintiff's  
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RECORD.

In the  
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No. 60  
Plaintiff's  
Evidence  
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continued—

they had the lower pond : that is the one further away from the saw mill. They worked up their timber on the wharf—in fact, on the two wharves for the building of their plant.

Q. When plant did they build there? A. To the best of my knowledge they built a dredge and they built some dumping scows.

Q. How many? A. I couldn't say; but they built quite a little fleet.

Q. Are you aware that they had a yard on the other side of the river?

A. Oh, yes, later on. They had Cantin's place.

Q. When was that? A. That was in the winter of 1878, to the best of my knowledge, speaking that far back. 10

Q. What time did Moore & Wright get to work actually on the grounds in 1877? A. Pretty late in the fall, they started to try their dredge.

Q. That is all that occurred? A. Well, they did a little dredging, yes.

Q. Have you any idea how much? A. Not a great deal. They did some dredging in 1877.

Q. When did they actually get out of your father's premises entirely with their plant? A. That part occupied by them, to the best of my knowledge, they got out of there in the fall of 1877.

Q. What month? A. In the fall of 1877.

Q. You cannot be any more specific than that? A. No. 20

Q. By the by, where did you spend the summer 1877? A. That is a thing I cannot just say for the moment. You have taken me by surprise, where I spent the summer of 1877, but I was away at the country for a time.

Q. Probably for a couple of months, I suppose? A. Not for two months. They could never afford me to send me away for two months.

Q. With respect to the account, being item 43 of the Exhibit No. 6 of Plaintiff, I understood you to say that all that you knew about it was that the account was correct according to your father's book? A. The amount you are alluding to, \$1,424.00 that is correct as per returns given in by the foreman who conducted the work, and the labor that is charged in it, that labor was paid out, 30 and the material that was charged in it was material that was used.

Q. The same thing applies to the next item, 44? A. 44, Yes.

Q. And 45? A. That is for material furnished Moore & Wright.

Q. Have you any personal knowledge of that? A. From the books.

Q. That is all? A. And I can have the orders hunted up that were received. Probably they may have been delivered on orders received from Moore & Wright. It is usually the case in the business to deliver things on orders.

Q. If you have any orders, please produce them, covering this particular account? A. If they are in the office, and have not been mislaid, they will be produced. 40

Q. Now, I understood you to say that with respect to item 46, that there again you speak from the books only, except as to the last item of that account, which has been admitted? A. That is per returns given in. All the returns have been give in by the foreman in charge. The accounts are detailed out, how many tides and what was done.

Q. Will you refer to Plaintiff's Exhibit No. 12 and state by whom it was made? A. That was gone over carefully and made out by Mr. Simon Peters

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and Mr. H. J. Peters, and it is in the handwriting of Mr. H. J. Peters. I have checked off the different quantities, and I find the totals to carry out correct. RECORD.

Q. Have you a personal knowledge of any of the statements contained in that? A. To my personal knowledge, I believe these items to be correct, because they were made out by Mr. Peters, who had a full knowledge of what was done. In the Superior Court.

Q. So all you know of them is what was told to you by your father? A. And I calculated up for myself to prove.. No. 60 Plaintiff's Evidence Deposition of

Q. The figures? These you can state to be correct? A. Yes. 10 & Wright's work you know nothing about, except what your father told you? A. Except what my father told me, because he knew it. Albert H. Peters, 13th Dec. 1895.

Enquête is adjourned till 15th December instant, at ten o'clock of the forenoon. On the 15th December instant, at 10 A.M., enquête is continued, and the witness, Mr. Albert Peters, is *re-examined* as follows:— continued—

Q. Referring to the amount, being the figures of the Chief Engineers, and mentioned in the letter, Plaintiff's Exhibit at Enquête A13, did you make a statement to ascertain these figures? A. I did. p. 525-6

Q. Just place it before the Court? A. I now produce the statement. (Witness produces a document.) A 48 p. 582-5

20 Q. You were also asked in your cross-examination to state the amount of work that was not done by the late Simon Peters in connection with the charges made in your Exhibit No. 6, and of the work that replaced the same. Are you in a position to give that information this morning? (Objected to; objection overruled.) A. Yes, I now produce the statement of work not done in Bills 1, 4 and 7, but allowed for by Kinipple & Morris, in Exhibit 1 of Defendant, annexed to the Commission, but allowed for as a set-off for other work done by Simon Peters, \$7,779.61. Wood and iron work done by Simon Peters as set-off for deductions in Bills 1, 4 and 7, and for four extra cribs allowed for by Kinipple & Morris in their final certificate, Defendants' Exhibit No. 1, \$5,016.21; and 30 accounts attached for material furnished for screens amounting to \$987.00, as set-off against the half claim in Bill No. 9, \$307.25? (The said statement is filed as Plaintiff's Exhibit at Enquête A49. p. 585-6

Q. Now, in any one of these charges made in Plaintiff's Exhibit No. 6 have you taken credit for any part of the work that Colonel Moore had to do—in dredging or in concreting or in anything in the miscellaneous bill, No. 14? A. No.

Q. Only in Mr. Peters' portion of the work? A. Only in Mr. Peters' portion of the work, as per Blue Book.

*Re-Cross-Examined.*

40 Q. I understand from your statement, Plaintiff's Exhibit at Enquête A49, that the first sheet of it shews work in value \$7,779.61 which was not done by Simon Peters, but which is claimed by your Exhibit No. 6 and Exhibit No. 14. A. I said that.

Q. Just answer my question. Is that so or not? A. It is allowed.

Q. I am asking you whether it was work done or not. A. The work was not done, but it was claimed in the account, because it was allowed in the final certificate of the chief engineers.

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—  
*In the  
 Superior  
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 Plaintiff's  
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 Peters,  
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*continued—*

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*Q.* Now, refer to the second page of this statement, Plaintiff's Exhibit at Enquête A49, and state where you got the details from which you made it.  
*A.* That was given to me by Mr. Peters, my late father.

*Q.* When was it given to you? *A.* Quite a few years ago. I couldn't state exactly.

*Q.* Produce the original, will you? *A.* I say it was given to me by Mr. Peters.

*Q.* What do you mean by given to you? *A.* Given to me this way, that there was so much work, and the result, I have calculated it up.

*Q.* Shew me the original of your calculations? *A.* Most of the data you will find in these papers, and I can produce at one o'clock the balance. (Witness produces some papers.)

*Q.* Are not these the memoranda of understated bills of quantities?  
*A.* No, sir. (The said papers are filed as Defendants' Exhibit at Enquête B24.

*Q.* Exhibit B24 is the original memoranda from which you prepared the second sheet of Plaintiff's Exhibit at Enquête A49? *A.* That is the original memoranda of data of most of the amounts there. I said the balance I could bring you at one o'clock. I don't know that I would be required to...

*Q.* Are these, Defendants' Exhibit at Enquête B24, the memoranda used by you last night in preparing the second sheet of Plaintiff's Exhibit at Enquête A49? *A.* Yes, and other data at home.

*Q.* Now, these relate to works in large part built before you entered your father's office? *A.* No, not in large part. There is some before I went into the office. There is some of it in 1877.

*Q.* There is some of it in 1878? *A.* There is some of it in 1878, and some of it in 1880.

*Q.* Did you keep yourself any memorandum or any account at the time of any matters that are referred to in that statement? *A.* The clerks in the office.

*Q.* I am asking you whether you did, and answer my question. Did you personally? *A.* Mr. Peters kept that data, and it was handed to the clerks and it was kept on file... I got my data from Mr. Peters, and from that data in the office.

*Q.* Now, I want an answer to that question direct: Did you keep yourself any memorandum or any account at the time of the matters that are referred to in that statement? *A.* No.

*Q.* Does the third sheet of Plaintiff's Exhibit at Enquête A49 refer in any way to the claim made by you for work not done but allowed for, as you contend, by the engineers' final certificate? *A.* The third sheet represents the material furnished, as per orders received from Moore & Wright for screens, bill No. 9 of Blue Book, to the extent of \$987.00.

*Q.* Now, again, I want a direct answer to my question. Does the third sheet of Plaintiff's Exhibit at Enquête A49 refer in any way to the claim made by you for work not done but allowed for, as you contend, by the engineers' final certificate? *A.* No.

*Q.* It refers to the other item in your claim for one half the screens? *A.* One half of the screens.

*Q.* Have you any personal knowledge whatever that the material referred

to in the third sheet of Plaintiff's Exhibit at Enquête A49 was ever delivered to Moore & Wright? *A.* Not personally.

*Q.* The only thing you have and that you base that upon are the three orders referred to, Plaintiff's Exhibit at Enquête A37, A32 and A33? *A.* Partly.

*Q.* What else have you got? *A.* From information given me by Mr. Peters that material was delivered and orders were held by Moore & Wright to that extent. The material would represent \$987.00, the cost price.

*Q.* What quality of timber is charged for there? *A.* Ordinary quality of spruce.

10 *Q.* What do you call ordinary quality? *A.* Ordinary quality from the log, 18 feet: anything over twelve feet has to be sawn.

*Q.* Does that distinguish, according to your experience as a mill manager, the quality of timber? *A.* What would be used for that kind of work.

*Q.* Do you know what quality of timber means in the trade? *A.* I do.

*Q.* Then, what quality was used? *A.* The ordinary quality of timber, the general average.

*Q.* You are aware, I suppose, that timber is divided, in the trade, into different qualities? *A.* Yes.

*Q.* What are the qualities? *A.* 1st, 2nd, 3rd, 4th and 5th culls.

20 *Q.* What quality was used there? *A.* That was ordinary timber.

*Q.* That is as much as you can say? *A.* Sawn up eighteen feet. It could not be got out of deals, because deals very seldom run to eighteen feet.

*Q.* Have you a memorandum of account at the time? *A.* No, I have not.

*Q.* So that this account is made up by you and the price put in on the assumption that certain qualities, of which you know nothing, were used? *A.* To the best of my knowledge that account is made out to correspond with the orders held and signed by Moore & Wright.

*Q.* I don't suppose you mean to have it inferred here that the orders specified any quality of timber? *A.* Timber suitable for the work.

30 *Q.* Do the orders mention that timber was to be given suitable for the work intended? Do you know what the work was? *A.* The work was for the screens at the upper and lower end.

*Q.* Temporary screens? *A.* Temporary screens.

*Q.* You know that any quality of timber that would hold together would be suitable for that work? *A.* Well, there is timber that will hold together, and there is timber that wont.

*Q.* You are asked with respect to timber that will, not with respect to timber that wont? *A.* You require a little better than the commonest timber that will hold together.

40 *Q.* Let us understand each other. You have told us that that account was made up by you without your having seen the timber, without there being any entry in your father's books of the quantity, quality or value of the timber supplied, but simply from the orders which have been produced in the case, and from what your father verbally told you, is that so? *A.* To the best of my knowledge, I cannot say that they are not in the books. I cannot say they are not in the books.

*Q.* You haven't found them, in any case? *A.* I haven't looked back seventeen years in the books.

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Plaintiff's  
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continued—

*Q.* Just answer my question, and state whether I have described in my last question the way you made up that account. You have told us that that account was made up by you without your having seen the timber, without there being any entry in your father's books of the quantity, quality or value of the timber supplied, but simply from the orders which have been produced in the case and from what your father verbally told you, is that so? *A.* Yes, it was without my having seen the timber; but as to not being entered in my father's books I cannot say that it was not.

*Q.* Was it you who prepared this statement, Plaintiff's Exhibit at Enquête A 49? *A.* Yes.

*Q.* Will you state upon what principle you proceed in making up the amount due according to that statement and according to your contention to Moore & Wright? *A.* I made that up from his progress estimates, from the synopsis of accounts to the close of the season of 1881 and the close of the works, made by Woodford Pilkington—from the final certificate, Defendants' Exhibit No. 1.

*Q.* You have not told us the principle upon which you proceeded to apportion the bulk sum in the final certificate in that statement? *A.* As principle, the progress estimates as were paid to Simon Peters and paid to Moore & Wright.

*Q.* Will you tell us how you arrived at the proportion of understated bills of quantities, being item 31 of page 5 of your exhibit? *A.* My answer of yesterday would cover that—my answer to No. 14.

*Q.* That is to say, you proceeded on the same principle as you proceeded with respect to 14? *A.* In regard to that item alone.

*Q.* That is to say, you appropriated out of the sum allowed for understated bills of quantities in concrete a certain amount, which your father told you he found was understated in the wood and timber, and the balance you gave to Moore & Wright? *A.* It was classified in that way.

*Re-examined de novo.*

*Q.* You have referred to certain information and statements given to you by the late Simon Peters and a record of which was kept in the office by the clerks in the office. Would you state whether these statements were made in the usual course of business by the late Simon Peters or not? (Objected to on the ground that it is a leading question put to one of the parties in the suit, and that without the production of the statements in question and the exhibition of them before the Court, the question cannot be put. Objection maintained.)

*Q.* Were these statements of the late Simon Peters in connection with the document, Defendants' Exhibit at Enquête B24, and of which you spoke in your re-cross-examination made by him in the regular course of business? (Objected to.)

*Q.* Were these statements produced by you and filed as Defendants' Exhibit at Enquête B24 made by the late Simon Peters in the ordinary course of business? *A.* These statements were made at the close of the contract in the year 1882, in the ordinary course of business.

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Re-Cross-Examined de novo.

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Q. The four last sheets bear date 1877, do they not? A. Yes, I made a mistake; the four last sheets were 1877, the three first in 1882, and the four last in 1877.

I, the undersigned, do hereby certify that the foregoing deposition is a true and correct transcription of my shorthand notes.

M. J. MORRISON,  
Stenographer.

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In the Superior Court.  
No. 60.  
Plaintiff's Evidence Deposition of Albert H. Peters, 13th Dec., 1895.  
continued—

Canada,  
Province of Quebec, }  
District of Quebec. }

In the Superior Court.

The fourteenth day of December, 1895.

PRESENT: The Honorable Mr. Justice ROUTHIER.

20 No. 2453.

Peters, . . . . . Plaintiff.

vs.

Moore et al., . . . . . Defendants.

No. 61  
Defendants' Evidence Deposition of Alvin H. Jacobs, 14th Dec. 1895.

EVIDENCE ON THE PART OF DEFENDANTS IN THIS CAUSE.

ALVIN H. JACOBS, of Deering, Maine, U. S., Insurance Clerk, aged 51 years, being duly sworn upon the Holy Evangelists, doth depose and say: I do know the parties in this cause; I am not related, allied or of kin to, nor in the service or domestic of either of them, or interested in the event of this suit.

Q. You were in the employ of Moore & Wright at one time in Quebec?  
A. Yes.

Q. When did you enter their employ? A. April, 1879.

Q. When did you leave it? A. In the latter part of November, 1883.

Q. During the time that you were in their employ were you a portion of the time in Quebec? A. All the time. I never left Quebec until the time I went home for good.

40 Q. What were your duties? A. I had charge of the books in the office during that time.

Q. Did you keep the accounts? A. Money matters.

Q. You did the banking, I think, too? A. Yes, sir.

Q. Had you anything whatever to do with the works, that is, the construction of the works themselves, or ordering in any way what was to be done?

A. Not at all.

Q. You were purely an office clerk? A. That is all sir.

RECORD.

*In the  
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*continued—*

*Q.* During the time that you were in the employ of Moore & Wright where was their office? *A.* The last building, if I remember right, on the Commissioners' wharf.

*Q.* During the whole of the time that you were there? *A.* Yes, Sir.

*Q.* By whom was this office occupied? *A.* By the contractors Moore & Wright, and the resident engineer.

*Q.* Was this building occupied by any person else besides Moore & Wright and the contractors' engineer? *A.* By the resident engineer and his assistant, and messenger in their employ.

*Q.* How many rooms did this building consist of? *A.* Four. 10

*Q.* How many of these rooms were occupied by the resident engineer and his staff? *A.* Three.

*Q.* And the other one was occupied by— *A.* Moore & Wright.

*Q.* Was there any other office occupied by the general contractors Peters, Moore & Wright, on the works besides this room that was occupied by Moore & Wright? *A.* Not that I know of.

*Q.* Was this room occupied by the engineer for the general contractors as well as by Moore & Wright? *A.* It was.

*Q.* As far you can recollect, what did the staff of the resident engineer consist of? *A.* I don't know just how—The working staff there was Mr. Pilking- 20  
ton and Mr. Boswell.

*Q.* Any person else? *A.* No, unless you would include the messenger.

*Q.* Were there contractors on the work who had occasion to use the office or make their returns there? *A.* Yes, sir.

*Q.* Now, was the room occupied by Moore & Wright ever used by the late Mr. Peters? *A.* He came in there frequently on matters of business connected with the work.

*Q.* What use did Mr. Peters make of the office? *A.* He came in there frequently in consultation with the contractors' engineers with regard to making 30  
out his estimates.

*Q.* Did he make any other use of it, do you recollect besides the consultations with the contractor's engineer for the estimate? *A.* And conversation with Moore & Wright on business matters.

*Q.* After the termination of the works in 1881 was this office used by the joint contractors for any purpose? *A.* Yes, sir, Mr. Peters came over with regard to making up statements, even after the close of the works.

*Q.* After the close of the works was he there frequently in connection with this business? *A.* Oh, he was there quite often.

*Q.* During the time that you were employed who was the contractors' engineer? *A.* Mr. J. Vincent Brown. 40

*Q.* Do you recollect the arbitration which took place before the Dominion Arbitrators with respect to the claim? *A.* Yes, sir, I do.

*Q.* What season of the year was it, and how long a time did it cover about? *A.* It was during—Just the time I cannot say, but I know it covered a considerable amount of time.

*Q.* Would you mean by that weeks or months? *A.* From the time the matter started until it was finished it was, I might say, months.

*Q.* During that time what use was made of the office you have spoken of by the joint contractors? *A.* It was virtually the head quarters for consultations with regard to the matter.

*Q.* During the time that the preparations were going on for the arbitration how often about would Mr. Peters make use of this office? *A.* That I cannot say. He was in there more or less right along.

*Q.* Would it be matter of weekly or daily occurrence, or how would you describe it? *A.* I should rather say of daily occurrence.

*Q.* You are familiar with the contract more or less, the Blue Book?

10 *A.* Not with regard to the matter of works.

*Q.* But you know that under the contract the joint contractors were obliged to keep an office for the engineers? *A.* That clause is in contract,

*Q.* Now, in connection with this part of the contract were any expenses incurred by Moore & Wright? *A.* Yes.

*Q.* Did you keep a detailed statement of these expenses as they were incurred? *A.* There was at least two different kinds of accounts kept, that of the engineers, that is, together, and the firm of Moore & Wright.

*Q.* Have you got here the original books in which these entries were made? *A.* Yes, sir.

20 *Q.* Will you look at the account, Defendants' Exhibit No. 4, and state what it is? *A.* Speaking with regard to this I answer that from the time I took charge of the books, April 19th, 1879, the attached statement is correct.

*Q.* Referring to Defendants' Exhibit No. 4, you state that after April 19th, but not including that item, all the items contained in this account are correct? *A.* All the items are correct.

*Q.* Have you checked them over with the original entries made in the account by yourself? *A.* Yes, sir.

*Q.* And they correspond with these entries as made at the time? *A.* They do.

30 *Q.* Will you state whether in fact these different sums were paid for the purposes that are stated in the account? *A.* They were.

*Q.* At the time? *A.* At the time.

*Q.* By Moore & Wright? *A.* By Moore & Wright.

*Q.* Can you state whether the services that are charged were rendered at that time? *A.* They were.

*Q.* With respect to the items prior to the time that you went into the employ of Moore & Wright will you state whether you have checked them over with the entries in the books? *A.* I have not, because I hadn't the books.

40 *Q.* Will you refer to the last item of the account, being total of Peters, Moore & Wright's engineering account, \$285.05, and state whether the details of that item are contained in Defendants' Exhibit No. 5? *A.* Yes, sir.

*Q.* Have you checked that over with the books? *A.* I have.

*Q.* Is that account correct? *A.* It is not.

*Q.* In what respect is it incorrect? *A.* There is an error, &c., in the footing of this.

*Q.* Of how much? *A.* A matter of twenty-four dollars and some odd cents too little.

*Q.* Are the items correct? *A.* They are.

RECORD.

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*Q.* So that the error which you have discovered is simply an error of addition? *A.* The addition is less than it should be by some twenty-four dollars.

*Q.* Can you state whether these services that are detailed there were rendered? *A.* To the best of my knowledge and belief these items were given to me by the contractors' engineer, Mr. Brown.

*Q.* When were they given to you? *A.* If I remember right, the statement was made up at or near the time we finished the works.

*Q.* Were the entries themselves made in the books as you went along? *A.* Of each individual service?

*Q.* Yes. *A.* No, sir.

*Q.* You say at or about the time the works were terminated. Can you specify more definitely? *A.* The account was made up after the works were finished.

*Q.* The works were terminated in 1881? *A.* Yes, sir.

*Q.* How long after that about would this account have been made? *A.* I think that account was made in October, I cannot actually say.

*Q.* After the termination of the works were all the accounts in connection with the works made? *A.* They were made up with regard to obtaining a settlement.

*Q.* What did these accounts include that you refer to? *A.* The disbursements made by Moore & Wright and the engineering account, or as we termed it, engineering account and labor account.

*Q.* Can you state whether this account Defendants' Exhibit No. 5, was at any time furnished to the Plaintiff Mr. Peters? *A.* I am certain that a copy of it was furnished to Mr. Peters—in fact, I say it was.

*Q.* Can you say approximately when? *A.* No, sir, I cannot. We had so many statements to make up that it is impossible for me to fix a date.

*Q.* Can you state whether the Defendants' Exhibit No. 4, was furnished to Mr. Peters? *A.* Yes, sir, it was.

*Q.* Can you state whether this account Defendants' Exhibit No. 5, which is the details of the last item of Defendants' Exhibit No. 4, was furnished at the same time or in connection with that? *A.* It was furnished in connection with that, and if you will allow me to refer to my letter-book I think I can give you quite near the date. Witness refers to letter-book and says:—It was furnished during the month of August 1883.

*Plaintiff's Attorney:* Is that information from your letter-book? *A.* Yes, sir, it is.

*Q.* You have not mentioned the date? *A.* I cannot, because the copy of the statement there bears no date, and it is inserted between two other dates.

*Defendants' Attorney:* Will you refer to Defendants' Exhibit No. 6, to the entries subsequent to 1879, and state whether you can say anything about them? *A.* I can with regard to quite a number in 1879.

*Q.* State what you know with respect to all the items contained in the account? *A.* The item of one hundred and forty dollars in 1879, for boatmen used by our agent, J. Vincent Brown, and Peters, Moore & Wright, I have not been able to verify from the fact that the daily time books are not here. Likewise of 1880, but these is such an account in existence. That same remark applies

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to 1881. The bill of June 7th 1879, paid William Cook, on account of Peters, Moore & Wright \$50.00, that I do know. Also June 10th, Strang for notarial deeds, \$37.00, that I know of. Paid G. G. Stuart, for written opinion as to meaning of clause in contract, \$46.68. That of September 16, paid judgment of A. Paquet vs. Peters and others \$529.55, that I know. That of December 23rd. Paid William Cook for legal expenses on matters connected with our contract, \$450.00, that I know. And that part of the statement on account of disbursements and interest on account of engineering expenses and connected with our contract, as I testified in Exhibit 4.

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continued—

10 Q. Are there any other items that you know of? A. Yes, there are a great many.

Q. With respect to this boatman, will you state whether it is to your knowledge that a boatman was used and was necessary for the contractors' engineer? A. It is.

Q. Was there a boatman kept there all the time for his use? A. There was.

Q. How many boatmen were there, in fact, kept? A. Two.

Q. For whom? A. One for the use of the resident engineer and his assistant and the other for the use of the contractors' engineer and for the resident engineer and his assistant when the other one was not at hand.

20 Q. Do you know approximately how much was paid to these boatmen? Can you say whether the figure of \$140.00 is right in that respect. A. I think it was. I cannot, of course, swear to it, as I have not the means of verifying it.

Q. As far as your memory serves you, can you say whether that is approximately the amount? A. Yes, sir.

Q. Will you look at statement and two cheques now produced and filed as Defendants' Exhibit at Enquête B25, and state whether they relate to the item of 15th September, 1879, in account Defendants' Exhibit No. 6? A. They do.

Q. Was that item paid by means of the two cheques which are now produced? A. It was.

30 Q. Will you look at Defendants' Exhibit No. 7, and state whether that account was rendered to Mr. Peters at any time? A. That, sir, I cannot say.

Q. Did you at any time make up statements or do any work for the late Mr. Peters? A. I did.

Q. Under what circumstances? How did you come to do that? A. He came at the office of Moore & Wright and got Mr. Brown to figure out parts of his work, and as a result of these figures I made a statement for him. I also have remembrance of going over to Mr. Peters' own office and making a statement out at his own request, the figures for which he furnished himself.

40 Q. Had these statements referred to anything to do with Moore & Wright? A. To which do you refer?

Q. The statement you made for Mr. Peters in this way? A. Well, yes, to a certain extent. The figures were made up of the work of both.

Q. This other statement that you referred to, did it relate to Moore & Wright's work? A. As near as I can remember—in fact, I can certify it did not.

Q. Will you look at Plaintiffs' Exhibit at Enquête A 25, and state whether you can remember under what circumstances it was made? A. I am under the

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impression that that statement was not made at the office of Moore & Wright. It is a slip copy, and my press was not big enough to take that in.

Q. Have you any distinct recollection of the circumstances under which it was made? A. No, sir, I have not.

Q. I understand you have a distinct recollection of having been to Mr. Peters' office? A. Yes, sir.

Q. Do you recollect who was present on the occasion? A. Yes, Albert Peters was present at the office at the time I made one statement, surely.

Q. About what time would this be? A. That was also in the latter part of 1888, I think. 10

Q. Had Moore & Wright anything to do with that statement—I mean did they supervise it with the statement you made in this way for Mr. Peters? A. No, sir.

Q. You recollect the Exhibits which have been produced in the case as Plaintiffs' Exhibits 21 and 22, and which are now shewn to you. Will you state what you know about them? A. I know that they were made by me, but as to the time, place, and under whose instructions I cannot say.

Q. You simply see that they are in your hand-writing? A. Yes, sir.

Q. You have no recollection of the circumstances under which they were made? A. No, sir.

Q. Can you state whether you made several statements at the time—that is, 20 after the closing of the works? A. I made quite a number.

Q. Can you recollect whether at any time the divers in the employ of Moore & Wright did work for Mr. Peters? A. Not to my own personal knowledge, as most of my time was taken up at the office, and I couldn't say what was going on.

Q. Do you recollect whether it was so reported to the office at the time? A. There was a memorandum made by Mr. Glackmeyer, who was a former clerk, since deceased, that such work was going on.

Q. Was that during the time that you were there? A. Yes.

Q. And were these memoranda made at the time the work was supposed to 30 be going on? Were they the returns made to the office at the time? A. Well not in the shape of a book account. He kept what you might call a running memoranda of what was going on at the works.

Q. Were these entries made from day to day? A. Yes, sir.

Q. Would you look at the diary of 1878 now exhibited to you, and state whether these are the entries that you referred to as having been made by Glackmeyer? (Book is shewn to witness.) A. Yes, sir.

Q. Can you state whether the account, Exhibit No. 7, is in respect of these charges? A. That is to say, these memoranda refer to the account?

Q. To the account? A. Yes sir. 40

Q. Does this account, Defendants' Exhibit No. 7, cover all the charges that were entered as you stated? A. That I cannot say.

Q. You have not verified it? A. No, sir.

*Cross-Examined.*

Q. Mr. Jacobs, can you tell us exactly the time you began work? A. April 19th, 1879.

Not printed B.33

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Q. Would you look at Defendants' Exhibit No. 4 and state whether you have any personal knowledge of these items—the work done and the value of the work done? A. As before stated, commencing with this item, which I designated before, through the account I know that these items are correct, and that the figures are made up according to the books.

Q. That is to say, you know that the various sums of money mentioned in these items were entered in the books as having been expended and paid? A. Yes.

Q. But do you know anything more than that concerning these items? 10 A. Well, I am at a loss to understand your question, I can say that these items were entered upon the books, and I can say they were paid for.

Q. And that is all you can say about these items and nothing more than that? A. That the services charged there for were performed, as well as the items of purchase; I guess that will cover it.

Q. That is, I understand you to say, that you have a personal knowledge that the services mentioned in this account, Defendants' Exhibit No. 4, were performed, that is, for the washing of towels, the purchases of goods, and various other items—the work was performed to your personal knowledge, and the goods were got to your personal knowledge, did you say that? A. Yes, sir, and paid 20 for.

Q. What do you know about the item of the third May, 1879: Tax bill, \$32.85? A. I know that such a bill was rendered and such a bill was paid.

Q. That is all you know about that bill? A. There are charges in this account for boat and boatman. Are you not aware that the boat herein mentioned was used for the purpose of making soundings for Moore & Wright. The boats were used in common. There were two distinct boats. One was for the engineers, the resident engineer, exclusively. The other one was for the use of the contractors and the contractors' agent.

Q. Was one of these boats used for the purpose of making soundings? 30 A. The one use by the contractors' engineer was.

Q. Not the other one? A. That I couldn't say, for I wasn't in it.

Q. You don't know what the other one was used for then? A. No, sir.

Q. Then if you don't know what it was used for, why do you swear that this is a correct account of the charges against Mr. Peters? A. Otherwise it would not have been paid.

Q. That is why you say it is a correct charge against Mr. Peters? A. I do, sir.

Q. Well, you don't know what the boat was used for? A. How could I say, except this.

Q. The same remark, I suppose, applies to the boatman's wages. That is to say, you don't know for what kind of services these wages were paid to the boatmen in question, in which particular case, and in which particular boat? A. I know that he was paid for services as a boatman: what his services were I cannot say.

Q. Look at this item under date of 15th August, 1883: "Interest to date at 6% on disbursements \$1,402.42," and also at the item: 1st December, 1893, for interest \$5,230.73, and state by whom that interest was paid. A. The \$5,230,73 is not my entry.

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Q. Is not your entry? A. No, sir.

Q. You don't know anything about it, then? A. No.

Q. And the other entry? A. \$1,402.42 was the interest computed at time of statement.

Q. That interest was not paid by anybody to anybody, was it? A. No, sir.

Q. Then, do you undertake to swear, from your personal knowledge of the facts connected with this account, that this sum of \$1,402.42 was legally and justly due by Mr. Peters to Moore & Wright, under the contract? A. It is customary in all business transactions, as far as I know, to charge interest for unpaid accounts, and I should say as far as I know anything with regard to mercantile business, that that is correct. 10

Q. You base your answer therefore simply upon the fact that it is customary to charge interest? A. Yes.

Q. Now, look at Defendants' Exhibit No. 5, and state whether you have any personal knowledge of the items therein contained, and whether you can explain and state what these items were for? A. That is a statement which was made up.

Q. Say if you have any personal knowledge first, please? A. As far as personal knowledge of the labor being performed, I have not.

Q. Just please cast your eye over the first page of Defendants' Exhibit No. 6, and say whether you have a knowledge of that having been paid by the late Simon Peters? A. That account bears date 1877. I did not go to work until 1879; therefore I don't know.

Q. Is there an entry in your books to shew that that amount was paid by the late Simon Peters? A. Not in my books.

Q. Is there an entry in the books of Moore & Wright? A. That I cannot say.

Q. Could you refer to them and see whether it is so or not? A. I cannot.

Q. You have no means of ascertaining whether it was paid or not? A. No.

Q. The books, are they not in court here? A. No, sir. The books I took charge of are here, when I commenced, are here. 30

Q. Would you look at Defendants' Exhibit at Enquête B19, and state whether you recognize that document? A. I have seen that document before among Moore & Wright's papers.

Q. Doesn't that document satisfy you and prove the fact that the first page of this Exhibit No. 6, is contained in that settlement, Defendants' Exhibit at Enquête B19? A. Yes.

Q. You therefore are satisfied now that the first page of that has been paid by this settlement? A. Yes.

Q. Will you point out the items in Defendants' Exhibit No. 6, of which you have a personal knowledge? A. I mentioned these before. 40

Q. During the time that you were in the employ of Moore & Wright did you see that statement at any time? A. This present statement, Defendants' Exhibit No. 6?

Q. Yes? A. No.

Q. Did you see the original of it or one exactly like it? A. No, sir.

Q. You don't know, then, when this was made up or by whom, do you?

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A. Defendants' Exhibit No. 6, the statement I hold in my hand?

Q. Yes. A. No, sir.

Q. Have you a personal knowledge of any of the items in Defendants' Exhibit No. 7? A. No, sir.

Q. Do you know whether a copy of that, Defendants' Exhibit No. 7, was ever furnished to the late Simon Peters at any time? A. No, sir.

Q. Now, as regards Defendants' Exhibit No. 4 and 6 I understood you to say that copies of them were sent to the late Simon Peters in August 1883?

A. Not copies of this, Defendants' Exhibit No. 4, which I hold in my hand but 10 copies of one from which these items are taken from.

Q. A similar account? A. A similar account.

Q. Now, I understood you also to say that these accounts were made up after the close of the contract? and they were made up in 1883, when a copy was sent to Mr. Peters? A. Yes.

Q. The messenger of whom you have spoken, was he used by Moore & Wright? A. He was the messenger for the resident engineer.

Q. Not for Moore & Wright? A. The one for whose time is charged there?

Q. Yes? A. That is the resident engineer's messenger.

20 Q. Is there any time charged for the messenger of Moore & Wright in this account? A. Moore & Wright had no messenger that I know of.

Q. There was only one messenger? A. That is all.

Q. Wasn't he the messenger who acted for Moore & Wright as well as for the resident engineer? A. No, sir.

Q. Never acted for Moore & Wright? A. I wont say that if Mr. Glackmeyer wasn't there but I might have asked him. What I mean to say is this: the messenger for the resident engineer was looked upon as the messenger for him exclusively. I had an assistant in the office, and if my assistant wasn't there I didn't hesitate to call upon Mr. Hupé.

30 Q. Is it not a fact that he was very frequently called upon in that way, and that he did the messages, as a rule? A. No, Sir, he was not.

Q. He wasn't frequently called upon? A. No, Sir.

Q. Now, in the winter season—would you try to recollect was he not used in the winter season as a messenger by yourself, as representing Moore & Wright? A. No, sir, I had an assistant there that was with me all the time.

Q. You have stated, Mr. Jacobs, that you made up a good many statements in connection with this contract? A. I did.

40 Q. With regard to some of these statements, I suppose a good many of them were made under the supervision of Colonel Moore, were they not? A. Under his supervision, yes, sir.

Q. And can you state whether Plaintiffs' Exhibit Nos. 21 and 22 were made under Colonel Moore's supervision? A. The figures—in fact, the entire items of all these statements were given to me by Mr. Brown—that is to say, his figuring was passed over to me to put into the bill.

Q. So these statements are really made more on the figures of Mr. Brown than anybody else, I suppose? A. Yes, sir.

Q. They are really Brown's figures copied by you? A. Yes, sir, that is it.

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Q. You are speaking now as regards Exhibit 21? A. Yes.

Q. And as regards the statement, Exhibit No. 22, is it the same thing?  
A. Yes, sir.

Q. So that you do not vouch for the correctness of these statements?  
A. No, Sir.

Q. They were simply vouched for by Brown at the time? they were his figures and you copied them? A. Yes, sir.

Q. If you pretend to know anything more about it than that, you may state it? A. I do not.

Q. Will you just look again at Plaintiffs' Exhibit at Enquête A 25. You 10 stated you were under the impression that that could hardly have been made at your office, because the letter press was not large enough to copy that, did you not? A. I do.

Q. Would you please recollect that just in the adjoining office is it not a fact that the letter press of Mr. Pilkington was there quite large enough to copy it? A. That may have been. I cannot recollect the circumstance now.

Q. So it may have been copied in Mr. Pilkington's press? A. I don't recollect at present ever using Mr. Pilkington's press for that purpose.

Q. For any purpose did you ever use Mr. Pilkington's press? A. Well, for any purpose I don't know that I ever used Mr. Pilkington's press, but I cannot 20 recollect it at this moment.

Q. You don't know whether you did or not? A. No, Sir.

Q. Can you state whether or not you made that exhibit at the request of Colonel Moore? A. I cannot.

Q. You do not know? A. I do not.

Q. You cannot recall the circumstances at all? A. I cannot.

I, the undersigned, do hereby certify that the foregoing deposition is a true and correct transcription of my shorthand notes.

M. J. MORRISON,  
Stenographer.

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EDWARD B. CUMMINGS, of Portland, Maine, Civil Engineer, aged 47 years, being duly sworn upon the Holy Evangelists, doth depose and say:—

I do know the parties in this cause; I am not related, allied or of kin to, nor in the service or domestic of either of them, or interested in the event of this suit.

Q. How long have you worked at your profession? A. Since 1867.

Q. Were you employed on the Harbour Works here? A. I was.

Q. From what time till what time? A. Well, I was employed in the spring 40 of 1877 at Cantin's shipyard, and from that until 1881 I was on the works.

Q. When did you begin work in 1877? A. I think it was in April.

Q. You were then working for Moore & Wright? A. Yes, sir.

Q. What work were you doing there? A. I used to make detailed plans of the plant, for the construction of the plant.

Q. Did you continue there while the plant was being built? A. Yes, sir.

Q. Can you say whether a portion of the plant used by Moore & Wright at the Quebec Harbour Works was built at Cantin's ship yard, and if so, what?

A. The big derrick was built there, and the clam-shell dredge, and a number of RECORD  
scows. I don't remember exactly the number.

Q. Had Moore & Wright an office at Cantin's? A. Their office was in  
Cantin's house, where we done the figuring.

Q. Adjoining the shipyard? A. Yes, that is, the general clerical work  
was done there.

Q. That is where you were employed from 1877 until you went on to the  
works? A. Yes, sir.

Q. What other staff was employed there, do you recollect? A. Mr. Curtis  
10 was employed there. I don't recollect any others.

Q. Do you remember whether Mr. Wright of the firm of Moore & Wright  
was there? A. Yes, sir.

Q. Mr. Wright's father, was he there? A. He was occasionally, I saw  
him early in the works.

Q. Had Mr. Wright, the father of Augustus R. Wright, the partner, any-  
thing whatever to do with the contract or with the works here? A. Not to my  
knowledge.

Q. Do you know what position he filled at that time? what public position  
he filled in the States? A. He was Canal Commissioner for his state of New York.

Q. Can you say whether he, at any time, was on here as being in the employ  
20 of Moore & Wright or being connected with the contract? A. I cannot say,  
no, sir.

Q. When he was here, was he here as a visitor? A. Yes, sir.

Q. Now, what time did you go on to the works, Mr. Cummings, about?

A. I think it was along in June, 1877.

Q. What was your special department? A. The concrete department.

Q. What were your duties in connection with the concreting? A. To look  
after the supplies and keep up the crews.

Q. Did you supervise the placing of the concrete and that kind of thing?

30 A. That was done by foremen.

Q. Under your direction more or less? A. Yes, sir.

Q. Under whose orders were you? who was chief of the works? who was  
the chief engineer? A. Mr. Pilkington.

Q. And who was the chief engineer for the contractors? A. Mr. Navarre,  
in 1877 and I think in part of 1878, and then Mr. Brown during the remainder  
of the work.

Q. Can you tell us whether any changes were made in the construction of  
the works from the original contract? A. The masonry face in the wet dock  
was substituted for a timber face and fine concreting.

Q. Can you state whether there was any change in the substructure of the  
40 wet dock, in the height of the substructure of the wet dock? A. We brought  
the substructure of the wet dock up to four feet above low water, the same  
height as the substructure in the tidal basin.

Q. Was there any change in the alignment of the superstructure in the wet  
dock? A. The alignment of the superstructure in the wet dock was brought  
out to the elm capping.

Q. What effect had that upon the wall of the superstructure? (Witness  
refers to plans etc.)

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The examination of the witness is adjourned pending the completion of the testimony of the witness, Mr. St. George Boswell. After the hearing of the witness, Mr. St. George Boswell, the *examination* of Mr. E. B. Cummings is continued as follows :

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In answer to the last preceding question the witness says : *A.* I cannot answer that. I don't know.

*Q.* Are you aware whether there was any change made in the face of the crib in the tidal basin in the substructure ? *A.* There was a square sill put on—that is, rounded.

*Q.* Is that what has been called an elm capping here ? *A.* Yes, sir. 10

*Q.* In the substructure of the tidal basin can you say whether the face of the crib as shewn in plan, Plaintiff's Exhibit No. 23, between the letters B A in pencil was actually built in the line indicated by the letters C D in pencil ?

*A.* Is the plan that of the wet dock or the tidal basin.

*Q.* That is supposed to be that of the tidal basin ? *A.* The line indicated by the letters C D was the face of the crib. The elm capping was built out of this face, and the wall.

*Q.* I am now speaking of the substructure. Instead of the crib being built with the face as shewn on that plan, was it built with the face C D ? (Objected to as leading : Objection maintained.) 20

*Q.* Can you indicate upon the plan where the face of the crib in the tidal basin was built ? *A.* As I remember the crib work there was a timber face, one timber upon another, and the end of the timbers projected through some three or four inches. The outside of that timber face was the face of the elm capping, an elm capping on top of the crib. That is as I remember it.

*Q.* Now, would you indicate upon the plan already shewn to you where, with that description that you have given, the front of the crib would be ? *A.* I should say it would be the face of these timbers, and these timbers projected through. There was one timber on top of another, and then the timbers went through to lock, and these timbers are the timbers that passed through and 30 locked the framing.

*Q.* How did the face of the masonry wall correspond with the front of the cribs ? *A.* It was flush with the front of the crib.

*Q.* You have already told us that you had to do with the concreting. That was your special department ? *A.* Yes, sir.

*Q.* Will you state whether there were any temporary doors put into the ends of the cribs, as provided for in the Blue Book ? *A.* As I remember, there were three or four put in on the first cribs that were sunk.

*Q.* After that were any put in ? *A.* No, we had to keep our concrete back to prevent it from running out at the end of the cribs. There was none put in 40 after that.

*Q.* So that the work provided in the Blue Book for temporary doors was, except with respect to the first three or four cribs, not done ? *A.* Not done.

*Q.* Did you, at any time, calculate the quantity of stone in the stone face of the tidal basin and wet dock walls as substituted for the original contract ?

*A.* I made calculations of the quantity of masonry in the walls in the suit of the Contractors vs. The Quebec Harbour Commissioners.

Q. What quantity of stone did you calculate there was? A. I made 4177 cubic yards to the coping level, to the underside of the coping. RECORD.

Q. With the coping what would it be? A. I have not made these computations. In the Superior Court.

Q. You did not include the coping? A. No, I did not.

Q. Did you calculate the quantity of concrete actually put into the works as built in the superstructure of the wet dock and tidal harbour? (Objected to: Objection overruled. No. 62 Defendants' Evidence Deposition of

10 Q. I made calculations of the amount of cubic yards of concrete put into the works in the superstructure and found it to be 16079 cubic yards. These calculations were made in the case of Peters, Moore & Wright vs. The Harbour Commissioners. E. B. Cummings, 14th Dec. 1895.

Q. These are calculations of the quantity of concrete actually put into the works, I understand? A. Actually put into the works. continued—

Q. Into the superstructure, as you have said? Now, from where do you start with the superstructure? What height have you calculated for in that calculation that you have made? A. I have calculated that quantity from the elm capping in the superstructure.

Q. The top or the bottom of the elm capping? A. The top.

20 Q. That is the twenty feet of stone wall? A. Yes, sir.

Q. Will you look at the plan, Exhibit 34, and state whether that plan had anything to do with the calculations which you made? A. That appears to be the plan, for the reason that it has the figures on it. ? 24 Plan

Q. Well, when you say it appears to be the plan, what do you mean? A. The plan that was used in the computation of the quantities.

Q. Do you know by whom it is signed? A. Woodford Pilkington, resident Engineer, Quebec, June 5th, 1879.

30 Q. Did you make a calculation of the quantity of wood and iron in Bills 1 and 4 of the Blue Book and the four extra crib blocks? A. I cannot understand your question.

Q. Did you make a calculation of the total quantity of wood and iron in the whole of the superstructure, according to the bills of quantities? A. Do you mean money quantity.

Q. No, the cubical contents? A. I made calculations of the cubic quantities of wood in Bill No. 1 and Bill No. 4.

Q. And the four extra cribs? A. And the four extra cribs, yes, sir.

Q. In other words, that would be the entire length of the works? A. Yes, sir.

40 Q. What were the cubical contents of the wood in the entire length of the superstructure, as per bills of quantities? A. Two thousand five hundred and twenty-nine and nine-tenths cubic yards.

Q. Did you calculate the number of cubic yards of space that the fine concrete would have occupied had the contract been carried out as originally contracted for, and its average thickness also? A. Fine concrete.

Q. Yes. A. From the total allowance of fine concrete allowed to the contractors in the detail final certificate.

Q. Did you calculate it from the bills of quantities, Mr. Cummings? A. The cubical contents of the fine concrete I did not calculate from the bills of quantities.

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Q. Did you calculate that from the final certificate, Defendants' Exhibit IA, annexed to the Commission? A. I did.

Q. What did you arrive at by that? A. Three thousand nine hundred and ninety-three cubic yards.

Q. What would be the average thickness of this quantity of fine concrete over the whole of the works? A. 1.52 feet.

Enquête is adjourned till the 16th December instant. On the sixteenth day of December instant *examination* of witness is continued as follows:—

Q. Referring to Defendants' Exhibit No. 1 annexed to the Commission, will you state how many yards of concrete are allowed in rear of the stone wall in 10 the tidal basin and wet dock, being items 30 and 31 of this Exhibit? A. I make the number of yards in items 30 and 31 twelve thousand one hundred and four (12104.)

Q. And how much would there be in item 32, \$4,180.00? A. Nine hundred and twenty-two (922).

Q. That would make a total of cubic yards allowed for in these three items? A. Thirteen thousand and twenty-six (13026).

Q. At how much have you calculated it? A. I calculated it at \$4.75. That is what I remember of the price.

Q. Would you check over your calculations again, Mr. Cummings? A. I 20 make it this time 13005. I see where my error in the first calculation was.

Q. What was your error? A. Just an error of subtraction.

Q. Did I understand you to say that you had been on the works the whole of the time from 1877 to the close of the works? A. I was on the works from I think about June, 1877, and the rest of the time up at the shipyard.

Q. During the time the works were in progress were there any boatmen employed by Moore & Wright? A. There were boatmen employed—there were boatmen: The engineer had a boatman and Moore and Wright had a boatman.

Q. There were two boatmen employed? A. Yes. 30

Q. Do you know who paid the boatman who was used by the engineers? A. I do not.

Q. When you say the engineers, whom do you mean? A. The Quebec Harbour Engineers.

Q. By whom was the boatman employed by Moore & Wright used particularly? A. Used particularly by Mr. Brown.

Q. Was a boatman necessary for the engineer of the joint contractors? Did he require to use a boat in the course of the work? A. He couldn't get out to the works without a boat.

Q. Did you, at any time, while you were in the employ of Moore & Wright 40 on the Quebec Harbour Works contract have occasion to assist the engineer for the joint contractors in the execution of his duties? A. Yes, sir, I frequently assisted him.

Q. What would be the kind of work that you would be called upon to assist him in doing? A. I assisted him in the measurements, and oftentimes in sounding, and some times in instrumental work.

Q. Would that be work on the works? A. Yes, sir.

Q. Was this matter of frequent occurrence? A. Quite often.

Q. Did it cover the whole of the time the works were being carried on or was it more particularly during the beginning or middle or end of the works?

A. Well, it was generally through the works.

*Cross-Examined.*

Q. Mr. Cummings, I understood you to say in the beginning of your examination that you began to work for Moore & Wright in the month of April, 1877?

10 A. Yes, sir.

Q. Would you state what work you began doing in 1877? A. I worked on detail plans for the plant, and mostly at the shipyard, the very first of the work.

Q. What shipyard? A. It is on the left hand side of the bridge, Cantin's shipyard.

Q. You say there were certain vessels constructed there? A. Yes, sir.

Q. What were they? A. They were a clam-shell dredge, a big derrick, and other small scows.

Q. Was that in 1877? A. It was in the season, yes, sir—the first part of the work.

20 Q. Which dredge was built first—the clam-shell dredge or the dipper dredge? A. I think the dipper dredge was built first.

Q. Where was the dipper dredge built? A. That I don't know, I am not informed of.

Q. If the dipper dredge was the first built, as you said, and no doubt it was, the clam-shell dredge could not have been built in 1877? A. I think the clam-shell dredge was built in 1877 in Cantin's shipyard, as I stated.

Q. Well, then, when was the dipper dredge built? A. The dipper dredge—The first time I ever saw the dipper dredge was down in the harbour digging. That is the first time I ever saw it.

30 Q. When was that, Mr. Cummings? A. That was in 1877. I don't remember exactly the time, but about in June I went down, I think.

Q. Was that dipper dredge built before the contract? A. Well, I don't know, sir. I tell you the first time I saw it was down in the harbour digging.

Q. You have no knowledge of the fact that that dipper dredge was built here by Moore & Wright? A. I believe it was built in Quebec.

Q. Well, it wasn't built before 1877, was it? A. No, sir.

Q. It must have been built in 1877, and you began in April 1877, and you continued right through the works? A. Yes, sir.

40 Q. Well, Mr. Cummings, you must have a knowledge of the building of that? A. As I tell you, the first time I ever saw that dredge was down in the harbour dredging.

Q. You were engaged at Cantin's yard? A. Yes, I was there continually.

Q. And the dipper dredge was built in Peters' yard? A. Well, I don't know. I have heard it said so, but I never saw it at Peters' yard I saw it in the water.

Q. Mr. Peters' yard is not far from Cantin's? A. No.

Q. You must have seen some construction going on there? A. I never was over there but once.

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Q. But in passing to and fro from work you must have seen that there was a construction of some kind going on there? A. I don't remember of it.

Q. Mr. Cummings, now, from what you have said, your memory being refreshed, are you now prepared to state, under your oath, that the clam-shell dredge was built in 1877? A. That is the best of my recollection. Yes, sir.

Q. You are not quite positive? A. It seems so I can see it in Cantin's yard, the best I can bear my recollection back seventeen years.

Q. Was Cantin's yard in use later than 1877? A. Well, I have never given that a thought, but I believe that everything was cleaned out of that yard along in the latter part of 1877, but I am not sure of that.

Q. Well, then, Mr. Cummings, to the best of your recollection the clam-shell dredge was built in 1877? A. Yes, sir.

Q. But of that you are not quite positive? A. No. I want to see it right before my eyes, if I was going to swear positively?

Q. You wont swear positively to that fact? A. No, that is my recollection.

Q. And you also state that you cannot remember the building of the dipper dredge, where it was built? A. No, sir, I don't know.

Q. You did not see any construction going on towards the building of that? A. No, sir.

Q. To your knowledge? A. Yes, sir.

Q. Would you look at the plan, Plaintiff's Exhibit No. 24, and state whether you ever saw that plan during the progress of the works? A. I have.

Q. Who made the plan? A. Mr. Woodford Pilkington's name is on the plan. I don't know who made it.

Q. When did you see that plan? When did you first see that plan? A. I have seen it several times during the progress of the work in Mr. Brown's possession.

Q. You saw Mr. Brown examining that plan? A. Yes, I seen it in the office several times.

Q. Was that the working plan on which he was going? A. Well. I believe it to be.

Q. Was it from that plan that you got your figures as regards the number of yards of concrete you mentioned yesterday—16079 yards? A. From this, to the best of my recollection, in the St. Louis Hotel, along in—I think it was about 1887 during the main case with the Commissioners, and with notes that Mr. Brown had. He was there at the time I made the calculations.

Q. You made the calculations, then, a long while ago, did you? A. Yes, sir.

Q. Can you mention the year and the date? A. Well, my recollection is it was in 1887. It was when the trial of Peters, Moore & Wright vs. The Harbour Commissioners—at that time.

Q. Can you just shew us how you proceeded to make that calculation, please? A. I would get the cross sectional area of the main wall and of the counterforts and multiply it by the length of the main wall and counterforts, and then deduct the masonry.

Q. Was that Brown's calculation upon which you proceed to calculate? Did you found yourself upon Brown's figures? A. No.

Q. You did not? A. No, there was data. Mr. Brown had data at the

Plan

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time. The question asked, as I understood it, was the amount of concrete put into the works. RECORD.

*Q.* I asked you how you got that figure? *A.* I said I got it from this plan and from data at the time that Mr. Brown had in his possession. *In the Superior Court.*

*Q.* Not only from that plan, but from data which Mr. Brown had in his possession? *A.* That is the best of my recollection. *No. 62*

*Q.* Have you got that calculation with you now? *A.* No. That was made a good many years ago. *Defendants' Evidence*

*Q.* Could you make that calculation again now from this plan? *A.* I could make the calculation of the amount of cubic yards on this plan. *Deposition of E. B. Cummings,*

*Q.* Would you require the other data to make the same calculation that you made some years ago? *A.* I couldn't say. Of course it has been seven or eight years. I couldn't say whether the calculations of this plan would give 16079 cubic yards, or whether the data that Mr. Brown had would make that. That is the amount of concrete that was put into the works. The hoarding, the principal data— *14th Dec. 1895.*

*Q.* Mr. Brown had this data? *A.* Mr. Brown had this data. Mr. Brown was the resident engineer, and he had all the data, and we were together at the St. Louis Hotel making his computations. *continued—*

*Q.* You said just now that Mr. Brown was resident engineer. I presume you mean contractors' engineer? *A.* Yes, sir, that is what I meant. *20*

*Q.* Then, from the description which you have given us, you took your data from Brown in making his calculations? *A.* Yes. I simply took his measurements that he gave me. I done my own computing.

*Q.* You took his measurements and made a calculation upon his measurements? *A.* Yes, sir.

*Q.* So your computation was mostly a calculation made in the St. Louis Hotel? You did not go down to measure the works? *A.* No, sir, they were all filled in at that time, and could not be measured.

*Q.* Therefore from your own personal knowledge you cannot swear to the correctness of Brown's figures or data, not having measured the works? *A.* Only so far as I assisted him in the measurement and at that time everything was fresh in my mind, and I recalled a great many things. *30*

*Q.* Now, Mr. Cummings, what I want to know in this: Can you state now under oath that Brown's measurements and data were correct from your own personal knowledge, the data that he gave you in the St. Louis Hotel? *A.* No, I couldn't swear to it, no, sir.

*Q.* Then, what you have sworn to is the correctness of your calculation, to the best of your knowledge and belief? *A.* Yes, sir.

*Q.* But you do not swear that you personally know that that number of yards went into these works? *A.* Only so far as my computations shew. *40*

*Q.* So, then you cannot swear that 16,079 cubic yards of concrete went into the works? *A.* I cannot swear only so far as my computations were made at that time.

*Q.* Based upon the data given by Brown? *A.* Yes.

*Q.* Consequently any one who is as good at figures as you are might make the same computation? *A.* Certainly.

RECORD.

In the  
Superior  
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Evidence  
Deposition  
of

E. B. Cum-  
mings,  
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1895.

continued—

Q. Will you please state what are these data taken from, Mr. Brown, upon which you base your calculation? A. I don't know, sir. I haven't the data.

Q. Can you produce the data? A. I don't think I can. No, I know I cannot. Mr. Brown had that data in his possession.

Q. Have you seen it lately in the possession of Colonel Moore? A. I have not.

Q. Then, you have not seen it since the time you made the calculation? A. No, I have not.

Q. So then you are speaking from memory as to that data? A. Well, I remember the data. I remember I had data at that time. 10

Q. But you don't remember what that data is? A. They were figures—I couldn't remember, no, sir.

Q. Mr. Cummings, do you hold any diploma as a civil engineer, or are you a civil engineer? A. I am a civil engineer, yes, sir.

Q. Do you hold any diploma? A. No, sir, I never joined any society.

Q. Did you enter any college? A. No, sir.

Q. You acquired your knowledge on the field? A. In the field, yes, sir.

Q. The position which you occupied when employed by Moore & Wright was that of overseeing in the mixing of the concrete, was it not? A. Well, it was the general business of the concrete, in looking after the supplies and keep- 20  
ing the crews up.

Q. And the foremen? A. The foremen looked after that.

Q. Your duties did not extend to book-keeping or office work or accounts? A. No, sir.

Q. You stated just now that you had assisted Mr. Brown on several occasions. Have you any diary or memoranda or book to shew on what occasions you assisted him and what you did? A. No, sir, I didn't keep any diary.

Q. You have not got any memoranda or data in your pocket or elsewhere in writing to say in what manner you assisted him, when or how? A. I have not. 30

Q. Nor have you any measurements retained by yourself during the time concerning anything you did? A. No.

Q. You did not keep anything of this data or calculations that you made at the time? A. No, sir. I didn't keep anything of that kind.

Q. You simply remember then the result of the calculation that you made it with Brown in the St. Louis Hotel, and you remember the amount of cubic yards that you then calculated to be in the works? A. Yes, sir.

Q. That is from memory? A. Yes, sir.

Q. You simply remember the figures? A. Yes, sir.

Q. And so say that these figures are what? Will you repeat them? A. 40  
Sixteen thousand and seventy-nine, in the total amount of concrete.

Q. Referring to Defendants' Exhibit No. 1, annexed to the Commission, Item 30, giving \$22,041.00, would you say where that concrete went to in the works? A. That concrete went into the works in rear of the stone wall in the tidal basin.

Q. And item 31, would you say where that concrete went? A. That went into the back of the stone wall in the wet dock.

p. 235-7

Q. And item 32, where did that go? A. I don't know, sir.

Q. Did you, or did you intend to, swear just now that that particular item went into the works? A. What I did say was that this number of dollars represents so many cubic yards.

Q. And you do not know whether they went into the works or not? A. I couldn't place that \$4,180.00 at the present time.

Q. Well, how many yards do that \$4180.00 represent? A. It represents 922 yards.

Q. Would you kindly make a calculation again and see whether you have not made an error in that calculation? (Witness again makes calculation.) A. I did make an error: it is 880 yards.

Q. And of course you don't know where that 880 yards went? A. I cannot recollect at the present time.

Q. Well, you do not swear that it went into the works or that it did not go into the works? A. I do not know.

RECORD

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mings,  
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continued—

*Re-examined.*

Q. Mr. Cummings, where, according to the final certificate, Defendants' Exhibit No. 1, annexed to the Commission is it stated that, that quantity of concrete went? (Witness refers to Exhibit No. 1, annexed to the Commission, and reads: A. "Cubic yards of concreting in rear of stone wall, tidal basin, under stated in bills of quantities in wet dock.")

Q. Do you know whether, as a matter of fact, more than 13005 cubic yards of 8 to 1 concrete went into the stone works back of the stone wall? (Objected to: Objection reserved by the Court.) A. From the three items in the certificate giving 13005 cubic yards, and the other four blocks giving 540 cubic yards, making 13545, according to the final certificate.

Q. The question I put to you is whether you know that, beyond the amount allowed by the final certificate, there did go a quantity of concrete at the back of the wall? A. Oh, yes.

Q. You have been asked under what circumstances you made the calculations with respect to the quantity of concrete that did go back of the wall. Will you state whether you made them for a definite purpose at that time? A. I made them for the case of Peters, Moore & Wright against the Harbour Commissioners.

Q. And did you testify in that case with respect to them? A. I did, sir.

Q. At the time? A. Yes, sir.

Q. Now, will you tell us what engineering positions you have filled during your professional career, in a general way? A. I have been employed by the Maine Central and by the Portland & Ogdensburg Railway, the Know & Lincoln, and several water companies throughout the State of New York.

Q. Would you name some of these water companies? A. The Augusta Water Copany, the Biddeford Water Company, Westport Water Company of New York, and the Water Company of Ticonderoga. I cannot think of them all.

Q. In these employs which you have mentioned were they all engineering works which you were called upon to do? A. Yes, sir.

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continued—

Q. With respect to some of them were you chief engineer? A. Yes, sir.

Q. More particularly these water companies, I think? A. Yes, sir.

Q. In the railway employs what position did you occupy? A. Resident engineer.

The *Defendants' Attorney* asks permission to put the following question, which permission is granted by the Court.

Q. Did you calculate the space occupied by the stone in the masonry wall out of the fine concrete as provided for in the original bills, when the fine concrete and masonry were intended to be built? A. I don't exactly understand that. 10

Q. Can you say whether the masonry face occupied more cubical space than the timber face, and if so, how much? A. Yes, the masonry face occupied a space to the inside of coping of 4177 yards, and the timber face occupied a space of 2529 yards under the original bills of quantities.

Q. That would leave how much masonry face occupying space which was to have been filled by fine concrete? A. I do not understand it, no, sir.

Q. You have said that the stone face occupied a certain cubical space? A. Yes, sir.

Q. The timber face occupied a certain amount less than the stone face? A. Yes, sir. 20

Q. What was the difference? A. The difference is 1,648 cubic yards.

*Re-Cross-Examined.*

Q. I perceive, Mr. Cummings, that you hold these calculations in your hand, giving the result which you have just given? A. Yes, sir.

Q. Would you permit me to see them? (Witness hands papers to attorney.) There are several calculations on there besides that.

*Defendants' Attorney*: Can you tear off those to which you have referred? A. I cannot very well, unless I cut them out. *Plaintiff's Attorney*: Do that please. (Witness hands strip of paper to attorney, which strip of paper is filed as Plaintiff's Exhibit at Enquête A50. 30

Q. Is this the whole calculation? A. No, sir, that is the result.

Q. The calculations which you hold in your hand are made on paper of the Chateau Frontenac? A. Yes, sir.

Q. Are the figures of Colonel Moore on that paper? A. No, sir.

Q. When were they made? A. They were made out last week.

Q. At the Chateau Frontenac in company with Colonel Moore? A. Yes, sir.

Q. He supervised and examined your calculations? A. He told me what he wanted, and I figured it out. 40

Q. Will you state how you calculated these 4,177 yards of masonry face? A. I calculated that at the St. Louis Hotel, the same time as I calculated the number of cubic yards of concrete.

Q. And this is the result of that calculation? A. And this is the result of that calculation.

Q. Plaintiff's Exhibit at Enquête A 50, was written at the Chateau Frontenac? A. That is a copy of the calculation.

p. 586 l. 40

Q. Will you produce the calculation from which you copied it? A. It is in the evidence that I gave at the trial in the main case. RECORD.

Q. I want to know how you arrived at the calculation of 4177 yards? A. I arrived at that calculation by calculating these stretchers on the lower course and the headers on the lower course, and taking one-seventh of the remaining area for headers and multiply that by the length of the headers, and also the remaining area of the stretchers and multiplying that by the thickness of the stretchers, and that would give the number of cubic yards of masonry up to the coping.

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of  
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mings,  
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1895.  
*continued*

10 Q. Is that all the data you would require to make that calculation? A. Yes that is all the data, from the measurements.

Q. What about the length? Would you require to know the length and height? A. Yes.

Q. What length did you take the wall at to make that calculation? A. I take the length as 3550.

Q. And the height of the wall you took to be? A. I took to the underside of the coping, 18 feet 9 inches.

Q. Does your calculation only apply to the height of the wall up to the underside of the coping? A. That is all.

20 Q. What about the balance of the wall above the coping? A. I didn't figure that.

Q. This 4177 yards is not the total of the wall? A. No, no sir.

Q. That is a short calculation to make, isn't it? A. Well, it isn't: it takes some time to make it and make it correctly.

Q. You stated how you made that calculation just now, but you omitted to state that you had taken the length and height of the wall, when making the calculation. Couldn't you give us the principle upon which you calculated it?

30 A. I can shew how I did it. I would multiply the length of the stretchers in the lower course by their sectional area, and then I would take the remainder from the lower course at the underside of the coping, and one-seventh of that area for headers and six-sevenths for stretchers.

Q. And would that give a true and faithful calculation? A. That is my idea, yes, sir. Yes, sir, that is the way we compute it.

Q. The measurements upon which you based that calculation were taken from some particular document? A. Yes, sir. I don't remember the plans.

Q. They were taken from the plans? A. Yes.

40 Q. In your previous examination I understood you to say that Brown gave the data. What figures did he give beyond the plans? A. I don't know, sir. I know this, that he had data there of the depths of the concrete. He had made measurements of the depths of the concrete from the face of the masonry. He had all these figures that were used to get the amount of the actual concrete back of the wall.

Q. And it was upon these figures you relied? A. Yes, sir.

Q. They were not your figures upon which you relied? A. Yes, sir. I assisted him in making these figures.

I, the undersigned, do hereby certify that the foregoing deposition is a true and correct transcription of my shorthand notes.

M. J. MORRISON, Stenographer.

RECORD.

In the  
Superior  
Court.

No. 63.  
Defendants'  
Evidence  
Deposition  
of  
Edward  
Moore,  
16th Dec.,  
1895.

EDWARD MOORE, of Deering, Maine, U.S., Engineer and Contractor, aged 57 years, being duly sworn upon the Holy Evangelists, doth depose and say:—

I do know the parties in this cause.

Q. You are one of the Defendants? A. Yes, sir.

Q. What did you have to do with the execution of the contract, and what time were you in Quebec with respect to it? A. I came to Quebec first during the winter of 1876 and 1877, and I think, remained until sometime in January, 1877, preparing figures for the purpose of making up a bid for the construction of the Quebec Harbour Works. I also came again in the spring of 1877, and we made a second set of bids—the first set of bids having been rejected—for the 10 purpose of bidding on the contract a second time.

Q. From 1877 onwards, what had you to do with the works? A. I was upon the works most of the time from 1877 until the close of the work, looking after the construction of the works, that portion of it specially which belonged to Moore & Wright.

Q. Were you here during each working season from 1877 up to the close of the work? A. I was here each season during the progress of the works.

Q. Did you take an active part in the execution of your part of the contract? A. I did, sir.

Q. Have you a knowledge of the whole of the construction of the works? 20 A. I have.

Q. From the beginning to the end? A. From the beginning to the end.

Q. Now, have you seen Plaintiff's Exhibit No. 6, and examined it? A. I have.

Q. You also prepared, I believe, or had prepared, the Defendants' Exhibit No. 2, which is a statement of all work done and allowances made in the final certificate, as you understand it, I think? A. Yes, sir.

Q. Well now, will you take the first item of the first page of Plaintiff's Exhibit No. 6, and state whether that item is correct? A. That item is not correct in accordance with the details of wood and iron work of bill No. 1.

Q. What amount is allowed for that item in Defendants' Exhibit No. 2, 30 and how is that amount arrived at? A. That amount is arrived at by taking the wood and iron work in the bills of quantities of bill No. 1. The total amount allowed in bill No. 1 for wood and iron work \$16,061.00, there would be in twenty-seven cribs, makes a total of \$44,847.00.

Q. What amount have you deducted, in order to reach the figures stated in the first item of Defendants' Exhibit No. 2? A. \$1,458.00.

Q. For what is that amount deducted? A. That is deducted for wood and iron work not done, as per Mr. Peters' figures represented in Plaintiff's Exhibit at Enquête A49, leaving a balance of \$43,389.00, being the same amount as in statement, Defendants' Exhibit 2. 40

Q. Can you state from your personal knowledge, whether the wood and iron represented by the deduction of \$1,458.00 was done by Peters? A. The work was not done.

Q. I understand, then, that item 1 of Defendants' Exhibit No. 2, represents the total amount of wood and iron in bill No. 1 in the Blue Book, and calculated from the Blue Book, less a deduction for work not done of \$1,458.00? A. It does.

Q. And that deduction corresponds with the first sheet of Plaintiff's Exhibit A49? A. It does.

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p. 128-30

p. 585-6 }  
6.40 }p. 24-99  
at p 64-72

Q. Now, taking the second item of Plaintiff's Exhibit 6, that corresponds with Defendants' Exhibit No. 2? A. Yes.

Q. Will you now look at the third item of Plaintiff's Exhibit 6, and state whether the amount charged in that item is correct? A. The third item in Plaintiff's Exhibit 6 is not the same as allowed in the bills of quantities in Bill No. 4, for the timber and iron work for fifty-five cribs.

Q. Have you calculated the amount allowed? A. I have calculated the amount, making \$67,344.75, being the allowance in the contract bills of quantities for Bill No. 4.

10 Q. Is that calculated from the bills of quantities and does it represent the full amount of the wood and iron in Bill No. 4, of Blue Book? A. It does.

Q. Now what deduction have you made in Defendants' Exhibit 2 from that sum? A. I have taken the deduction, as made by Mr. Peters, and shown in Plaintiffs' Exhibit A 49, of \$3,451.50. This would leave a balance of \$63,893.25, being the same amount as in Defendants' Exhibit No. 2.

Q. Now, when you say you have taken the amount deducted by Mr. Peters, will you state whether the account Defendants' Exhibit No. 2, was made before these calculations of the witness, Albert Peters were produced? A. It was.

Q. So that they simply correspond? A. They simply correspond.

20 Q. What did you base yourself upon at the time the account Exhibit No. 2 was made for making the deduction of \$3451.50? A. The figures in Exhibit No. 2, are taken from Exhibit 1 A. The deductions, as I have already stated, were made when Mr. Brown prepared this statement, some years ago, and I have been unable to find the details from which he made the deductions.

Q. You therefore find on calculating that the deductions made by Brown, and which you took from Exhibit 1A, correspond with those which the witness Albert Peters has produced in the case as Plaintiff's Exhibit at Enquête A49? A. They do.

30 Q. Now, referring to Exhibit 1A, annexed to the Commission, will you state whether the items 1 and 3 of Defendants' Exhibit No. 2 correspond with the first and sixth items of Exhibit 1A? A. Items 1 & 3 in Defendants' Exhibit No. 2 correspond with the items 1 & 6 of Defendants' Exhibit 1 A annexed to the Commission.

Q. Will you state whether item 4 of Plaintiff's Exhibit 6 is correct? A. Item 4 of Plaintiff's Exhibit 6 is the amount stated in the bills of quantities for that bill.

Q. Was all the work stated in the Blue Book, in bill No. 7 dealt with in item 4, done by the late Simon Peters? A. It was not done. There was a change in the construction and a deduction.

40 Q. How much was deducted for work not done? A. From the figures in Exhibit at Enquête A49 of Plaintiff, Mr. Peters makes a deduction on bill No. 7 for wood and iron work of \$2,654.23, leaving a balance on bill, item No. 4, Exhibit No. 6, of \$4,184.21, which is the same amount as contained in item 4 of Defendants' Exhibit 2.

Q. To what item of the final certificate, Defendants' Exhibit 1A, annexed to the Commission does this item correspond? A. The eleventh item on the second page, being bill No. 7.

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*p.* 128-30

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 Superior  
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No. 63  
 Defendants'  
 Evidence  
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 of  
 Edward  
 Moore,  
 16th Dec.  
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*continued—*

*b.* 237-40

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*In the  
 Superior  
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No. 63.  
 Defendants'  
 Evidence  
 Deposition  
 of  
 Edward  
 Moore,  
 16th Dec.  
 1895.  
*continued—*

*Q.* Is the item 5 of Plaintiff's Exhibit No. 6 correct? *A.* Defendants' Exhibit No. 2 allows \$190.12 less than is claimed in Plaintiff's Exhibit No. 6. This deduction I am unable to state how it was made, as it was prepared by Mr. Brown, as I stated before, except in so far that there were certain fenders and iron work not placed upon the crib work blocks.

*Q.* Now, taking item 6, in Exhibit 6, being bill No. 9, will you state whether that item is correct? *A.* That item it not correct for bill No. 9, as per Blue Book and bills of quantities in the Blue Book.

*Q.* What was the total allowance in the final certificate for screens? *A.* \$614.50. 10

*Q.* Where were these screens to be placed in the work? *A.* They were to have been placed—the portion of them that was built alongside of the dredged trenches, that portion so built was on the lower end of the deep trench from the ballast wharf, continuing up towards the Gas House wharf.

*Q.* Were screens put upon the whole of the work? *A.* They were not.

*Q.* Will you state whether this item refers to any matter dealt with specially in the contract between Mr. Peters and yourself? *A.* It does.

*Q.* Just refer to the contract, and state what part of it that item refers to? *A.* It refers to the item in the contract beginning at page 12, which reads: "And whereas the said Moore & Wright will in execution of their proportion of 20 "the said proposed works require certain temporary screens—" and continuing on to the thirteenth page of the contract.

*Q.* This item then refers to temporary screens, which under the terms of the contract, were to be furnished by Mr. Peters? *A.* The timber for the building of which was to be furnished by Mr. Peters.

*Q.* Did Mr. Peters furnish you with all the screens which you required and which you actually used in the work? *A.* He did not. Not all of the timber that was used in the screens.

*Q.* What was the quality of the timber which was furnished by Mr. Peters? *A.* It was of a poor quality. 30

*Q.* Can you describe it any further than that, of its being a poor quality? *A.* I hardly know how you class timber at Quebec, but it was not of a first quality. It was decayed, waney and shakey—what we term a poor quality of timber. I am unable to state whether it was 4th or 3rd or 2nd or Culls.

*Q.* Will you look at the last sheet of Plaintiff's Exhibit at Enquête A 49, and state whether Moore & Wright received from Simon Peters, for the purpose of the screens, timber of the value of \$987.00? *A.* To the best of my recollection, I should say we did not, because, in April 1878, July and September 1878, and September especially, we had got out of our difficulty as far as protecting the trenches. Mr. Peters had built the Gas House crib, and the dredged embankment being carried in advance, or ahead of our dredged trenches 100 feet. It done away with the necessity of continuing with screens further up the channel. 40

*Q.* What became of the timber which was supplied for screens? *A.* At the beginning of the works the screens were placed near the ballast wharf, which was a very exposed position, and every north-east storm that we had in the fall of 1877, destroyed more or less of the screens. I have a faint recollection that after we dispensed with the screens, that Mr. Peters secured a small portion of

p. 585-6 L.40

the timber, but that there was not much of it left. It was most all expended or destroyed by the wind and waves of the water. RECORD.

*Q.* Was any part of timber, after it had served the purpose of the screens appropriated by Moore & Wright to their own use, or did they obtain any profit out of it? *A.* They did not. *In the Superior Court.*

*Q.* Now, referring to item 7 of Plaintiff's Exhibit No. 6, will you state whether that item is correct? *A.* It is not correct. In accordance with the quantities stated in the bills of quantities in bill No. 1, for 40 ft. length block, which was \$1,661.00, for wood and iron work to block multiplying it by four, would give for the four blocks. *No. 63 Defendants' Evidence Deposition of Edward Moore, 16th Dec. 1895.*

*Q.* How much has been allowed in Defendants' Exhibit No. 2, and how much in the final certificate, Defendants' 1A? *A.* The certificate No. 2, allows \$6,428.00. (Witness refers to Exhibit 1A). Defendants' Exhibit 1A, first item on the fourth page, allows for this item \$6,428.00. *continued - p. 237-46*

*Q.* How have you dealt with the deduction. On what basis? *A.* Taking the deduction in Plaintiff's Exhibit at Enquête A49, of \$215.88, leaves \$6,428.12 for that item, being a discrepancy of 12 cents between the amount allowed in Exhibit No. 2, and the amount allowed in Exhibit 1A.

*Q.* Will you state how these several items that we have discussed up to the present time, that is one to seven of Plaintiff's Exhibit No. 6, correspond with the two statements furnished you by the late Simon Peters and which have been filed as Defendants' Exhibit at Enquête B4 and B8, respectively? *A.* The amount claimed in Defendants' Exhibit at Enquête B4, is dealt with by thirty-one forty foot cribs at \$1,661.00, amounting to \$51,491.00. That amount is the same in Defendants' Exhibit at Enquête B8. The amount claimed in item 1, of Plaintiff's Exhibit No. 6, is \$36,955.44. Item 7 of Exhibit 6, is for the four extra crib blocks, for which he makes a claim of \$5,474.88. These two items added together make \$42,430.32 for the same work as is referred to in Defendants' Exhibit at Enquête B4, in the first item and Defendants' Exhibit at Enquête B8, in the first item. *{ p. 609 } { p. 612 }*

*Q.* How do these two items correspond with Defendants' Exhibit No. 2 and with the final certificate, Defendants' Exhibit 1A? *A.* Defendants' Exhibit No. 2 allows \$49,817.00 for the two items. In Exhibit 1A the amount is the same upon the two items as in Defendants' Exhibit at Enquête B4.

*Q.* Now in Defendants' Exhibit at Enquête B4 and B8, does any deduction appear to have been made for the Fenders and Bollards not done? *A.* In Defendants' Exhibit B4 at Enquête, Mr. Peters makes a deduction of \$2,096.10, the same deduction is made by Mr. Peters in the statement, Defendants' Exhibit at Enquête B8 on account of fenders not done.

*Q.* How does item No. 3 in Plaintiff's Exhibit 6 correspond with Exhibits B4 and B8? *A.* Item No. 3 in Plaintiff's Exhibit 6 is for \$48,465.73. Item No. 3 in Exhibit B8 is for \$67,567.50. Item No. 3 in Exhibit B4 is the same amount \$67,567.50.

*Q.* How do they correspond with the account Defendants' Exhibit No. 2? *A.* Defendants' Exhibit No. 2 allows for the third item \$63,893.25.

*Q.* Can you explain or account for the difference? *A.* The difference is deductions made, as I have already stated, of \$3,451.50. That is the difference

RECORD. between the amount claimed in Exhibit B8 and in Exhibit B4—the amount allowed in Exhibit B2.

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*Q.* How is item 4 dealt with in Exhibits B4 and B8, as compared with the claim made in Plaintiff's Exhibit No. 6? *A.* Exhibit No. 6 claims \$6,838.44. Exhibit B4... Exhibit B4 claims \$4,319.27. Exhibit B4 claims \$4,582.21, being a difference of \$262.95.

*Q.* Between the amount allowed in Exhibit 2 and that claimed in Exhibit B8? *A.* Yes. Defendants' Exhibit No. 2 allows \$4,184.21. The difference between Plaintiff's Exhibits No. 6 and Exhibit 1A is \$2,654.23, which added to the \$4,184.21 makes \$6,838.44. The same amount as stated in Defendants' Exhibit No. 6.

*Q.* That is the full amount of the bill in the Blue Book? *A.* That is the full amount of the bill, without any deductions.

*Q.* Item 6 is I think the same in Plaintiff's Exhibit 6 and in Defendants' Exhibit at Enquête B 4 and B A? *A.* Item 6 is the same in all three of the Exhibits.

*Q.* Now, will you state how much is claimed as being the cost of the stone wall in Plaintiffs' Exhibit No. 6? *A.* In item 8 of Plaintiffs' Exhibit 6 the claim for the wall is \$77,378.50.

*Q.* What is the total amount claimed for the wall in Defendants' Exhibit at Enquête B 4? *A.* In Defendants' Exhibit at Enquête B 4, there is a claim for stone wall of \$21,940.19 and in item 8 of Defendants Exhibit at Enquête B 4 there is a further claim for the fine concrete amounting to \$27,531.25. The two amounts being \$49,471.44.

*Q.* Is that the same amount as claimed as Defendants' Exhibit at Enquête B 8? *A.* The same amount is claimed in Exhibit B 8.

*Q.* Now, will you go through both Exhibits, and state whether there is any other item claimed in either B 4 or B 8 as being the cost of the stone wall? *A.* There is another item, being the ninth item in Exhibit B 4 and the ninth item in Exhibit B 8, of \$300.00 for two tablet stones which is specially designated as applicable to the cost of the stone wall in the two Exhibits.

*Q.* I understand, then, that with the exception of this item of \$300 for the two tablet stones, the only claim made in Exhibits B4 and B8 in respect of the cost of the stone wall is the sum of \$49,471.44? *A.* The only claim made in Exhibits B8 and B4 that specially designates the cost of the stone wall are these two items, and the one for the two tablet stones.

*Q.* Now, the one for the two tablet stones is separately claimed in Plaintiffs' Exhibit 6 and allowed in the certificate? *A.* It is allowed in Defendants' Exhibit 1A, and it is allowed in item 5 of Defendants Exhibit 1, annexed to the Commission.

*Q.* It is also claimed separately in Plaintiffs' Exhibit 6, in the tenth item? *A.* Plaintiff's Exhibit 6 claims \$300.00 for two tablet stones.

*Q.* Do I understand, then rightly, that in Defendants' Exhibits at Enquête B4 and B8, the amount claimed by Mr. Peters, as being payable in respect to the stone wall, are the two sums of \$21,940.19 and \$27,531.25, making together \$49,471.44? *A.* Are the only items that specially designate sums that are applicable to the cost of the stone wall.

Q. Am I right, then, in inferring that he is now claiming in Exhibit 6 \$77,378.50, where in Exhibits of Defendants' at Enquête B4 and B8, he claimed \$49,471.44? A. In Plaintiff's Exhibit 6, Mr. Peters makes a claim of \$77,378.50, being the eighth item of claim, and \$89.50 being the ninth item, as applicable to the cost of a stone wall.

Q. Whereas in Exhibits of Defendants at Enquête B4 and B8, he claims? A. \$49,471.44.

Q. Will you refer to Plaintiff's Exhibit 6 and state whether in Defendants' Exhibit No. 1, annexed to the Commission, or in Defendants' Exhibit 1A, annexed to the Commission, there is any sum allowed for understated bills of quantities in respect of the timber and iron work? (Witness refers to Exhibits.) A. There is not.

Q. Is there any sum allowed for understated bills of quantities with respect to any part of the work in either of these Exhibits? A. In item 32, Defendants' Exhibit 1, there is allowed for cubic yards of concrete, in rear of stone wall wet dock, understated in bills of quantities, or error, \$4,180.00. In Exhibit 1A, on the fifth page, there is an item allowed for coarse concrete understated in original bills of quantities, as per contract plan \$4,180.00.

Q. Will you now refer to item 25 of Plaintiff's Exhibit 6 and state whose work the pile or stub foundation was? A. The work claimed in item 25 for pile or stub foundation allowed by the engineers in the final certificate \$4,378.65, was the work of Moore & Wright, under a written agreement and a verbal contract between the late Mr. Peters and myself.

Q. Was this pile or stub foundation provided for in the original contract at all? A. It was not.

Q. What was it substituted to? A. It was substituted in lieu of the stone and clay filling, which was to have been placed in the trenches to be occupied by the crib work blocks.

Q. This stone and clay was foundation for crib blocks? A. It was not intended so originally.

Q. And, for this stone and clay foundation were substituted the stub piles by arrangement with the engineers, I understand? A. By arrangement with the engineers, the engineers having dispensed with the dredging of the lower part of the trench from the twenty-nine foot plane to the twenty-four foot plane.

Q. Will you look at the letters produced as Defendants' Exhibits at Enquête B14, B15, B16, B17 and B18, and state whether these letters refer to the question of the pile or stub foundation? (The letters are handed to witness.) A. They do Sir.

Q. Under what circumstances was the letter of the 2nd September, 1878, Defendants' Exhibit at Enquête B16, written to Mr. Peters? A. It was written to Mr. Peters, requesting him to give us a price for doing the work, as stated in the letter.

Q. At what time was the letter written, with respect to the change that took place in the contract works? A. September 2nd 1878.

Q. Was this at the time of the change in the contract? A. No Sir. it was not. It was after this. I had requested him previous to this to give us a price for the work.

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Q. So that the letter was written after the change was agreed upon with the Engineers? A. It was.

Q. Will you refer to the letter of the 23rd August 1879, Defendants' Exhibit at Enquête B18, and state whether the driving of the piles was done under the guarantee contained in that letter, or the assumption of responsibility contained in that letter? A. It was.

Q. Will you state whether the letter, Defendants' Exhibit at Enquête B14, of the 26th August 1879, was the final reply to Mr. Peters with respect to this work? A. It was, with the exception of the bill which was rendered for the work.

10

Q. I understand then that the work was done by Mr. Peters for your account, as stated in these letters? A. It was.

Q. Will you look at Defendants' Exhibit at Enquête B18A, and state what that is? A. That is the bill rendered to Moore & Wright by Mr. Peters, during October 1883, for the driving of the stub piles during 1878, 1879 and 1880.

Q. Did you acknowledge the accuracy of that account? A. I did not.

Q. What would be a fair price and value of the work actually done by Mr. Peters for you under the letters referred to? A. One half of the amount would be a very liberal price.

Q. Is any claim made in respect of this stub foundation made in either 20 Defendants' Exhibit at Enquête B4 or B8? A. No, sir, there is not.

At one o'clock the Court adjourns till 2 P. M.

At 2 P. M. examination of witness, Mr. Edward Moore, is continued.

Q. Before passing to another subject, would you again refer to the Plaintiff's Exhibit at Enquête A49, second page, and state whether any or all of the claims made for work done and as set off for deductions in bills No. 1, 4 and 7 were passed upon by the engineers in the final certificate, Defendants' Exhibit No. 1 annexed to the Commission, or Defendants' Exhibit 1A annexed to the Commission? A. I can only say that at the close of our contract we sent an itemized account to the engineers Messrs. Kinipple & Morris, making a claim on 30 all parts of our work, and that in Defendants' Exhibit No. 1 in bill No. 1, we have been allowed \$8,186.17 for excess of timber and bolting—planking scantling and bolts forming the counter forts in wet dock \$3,822.50 and for widening the same cribs \$1,846.35, and allowances in other items entremise filling under face of embankment between the fenders \$194.03. The same allowances are made in Defendants' Exhibit 1A.

Q. I understand, then that the second sheet of Plaintiff's Exhibit at Enquête A49 is for additional claims for work in respect of which the engineers have already allowed by the items that you have referred to in your last answer? (Objected to: Objection reserved by the Court.) A. Plaintiff's Exhibit at 40 Enquête A49 is a statement of work done on bills Nos. 1, 2 and 4 and No. 8, all of which bills have been passed upon by the Chief Engineers, and allowed for in the extra work.

Q. As per Exhibit? A. As per Exhibits No. 1 of Defendant.

Q. Now Colonel, will you refer to Plaintiff's Exhibit No. 6 again, and state whether page 4, being the details of bills 1 and 4 for the stone wall, are correct? (Witness refers to Exhibit 6.) A. The details of Exhibit 6, showing the wood

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and iron work of Bills No. 1 and No. 4 are not the same as in the Blue Book, and are not correct as to the Bills of Quantities. RECORD. p. 24-79

*Q.* Do they correspond in the manner of calculation, with the principle upon which Defendants Exhibits at Enquête B4 and B8 have been prepared? *A.* They do not. Defendants' Exhibit at Enquête B8 the claim there is \$67,567.50 for bill No. 4 and \$51,491.00 for bill No. 1, while the statement, Plaintiffs' Exhibit No. 6 for bill No. 1, is \$36,955.44, and bill No. 4 is \$48,465.73. The same answer applies to Defendants' Exhibit at Enquête B4.

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*Q.* Turn to the next sheet of Plaintiffs' Exhibit No. 6, and state whether the amount of fine concrete in the twenty-seven crib blocks, and in the four extra crib blocks, claimed as being applicable to the stone wall, corresponds with the final certificate, Defendants' Exhibit 1A, annexed to the Commission? *A.* The statement in Plaintiffs' Exhibit 6, is a claim for fine concrete in the twenty-seven cribs of \$7593.75 and in the the four extra cribs of \$1,124.00, making a total of \$8,717.75. The detailed certificate, Defendants' Exhibit 1A, allows for the two items \$8,718.75, or \$1 in excess of the statement made.

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*Q.* Now, with respect to the fine concrete in fifty-five crib blocks, do they agree? *A.* The statement in Exhibit 6, claims \$18,562.50, for the fine concrete in fifty-five cribs. Exhibit 1A, allows for the same item \$16,239.30, a difference of \$2,323.20.

*Q.* Was there, in the works as constructed an amount of fine concrete behind the masonry wall equivalent to that claimed for in Exhibit 6? *A.* Under the change of plan and the substitution of the stone face and coarse concrete backing in lieu of the timber face and fine concrete backing. There was a change made in the plan and height of the substructure. Under the original contract, the substructure was to have been built three feet above low water, and under the order from the resident engineer, the substructure of both docks was made at the same height. This left one foot of the original quantities of fine concrete in the original bills, in the substructure of the works. This change was done under Defendants' Exhibit at Enquête B 13.

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*Q.* What effect did that substitution have upon the quantity of fine concrete to be availed in payment of the change to coarse concrete and stone face? *A.* It reduced the quantity of fine concrete in the wet dock wall one foot for the entire length of the wall.

*Q.* What effect did it have upon the height of the masonry wall? *A.* The superstructure of the timber face under the original contract was 21 feet in height. The superstructure under the change in the masonry face was 20 feet in height.

*Q.* Where was this foot deducted—at the top or bottom? *A.* At the bottom. It remained in the works and other concrete was substituted for it.

*Q.* In the substructure? *A.* In the substructure.

*Q.* Have you made a calculation whether the amount claimed in Plaintiffs' Exhibit 6, for fine concrete in 55 cribs is estimated upon the fine concrete in the twenty-one feet originally provided for in the timber face plan.

*Q.* Bill No. 1, in Exhibit 6, appears to be computed from the quantities stated in the bills of quantities on page 50 for the fine concrete in thirty-one cribs? *A.* They figure the same. This answer applies to thirty-one cribs, and I shall now give you an answer with respect to the fifty-five cribs.

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Q. Have you made a calculation whether the amount claimed in Plaintiff's Exhibit 6, for fine concrete in the fifty-five cribs is estimated upon the fine concrete in the twenty-one feet originally provided for in the timber face plan? A. It is. From three feet above low water.

Q. What was the height above low water, from which the masonry face was really built? A. Four feet.

Q. What quantity of coarse concrete was actually placed behind the wall of the superstructure? (Objected to: Objection reserved by the Court.)

A. There was placed in rear of the masonry walls, the tidal basin and wet dock wall in the superstructure from four feet above low water to coping level, sixteen thousand and seventy-nine cubic yards, approximately. 10

Q. Was that amount calculated by different persons? A. The concrete in rear of the masonry face and tidal basin and wet dock walls has been calculated by Mr. J. Vincent Brown, the contractors' engineer, Mr. St. Geo. Boswell, the resident engineer, the late Mr. Morris, the Chief Engineer, Mr. Pilkington, the resident engineer, and Mr. Henry J. Peters. Mr. Henry J. Peters, Mr. Woodford, Pilkington and Mr. Brown, make the quantities sixteen thousand and seventy-nine cubic yards. Mr. Boswell 16,068 cubic yards, and Mr. Morris a few yards less than 16,000.

Q. Have you got the calculation made by Mr. Harry Peters? A. I have. 20

Q. Will you produce it? A. I now produce and file it as Defendants' Exhibit at Enquête B26.

Q. What time was this calculation made? A. That calculation was made in the early summer of 1882, and was produced by Mr. H. J. Peters before the Dominion Board of Arbitrators in giving his testimony as to the quantities of concrete in rear of the wall, and as to the quantities of stone in the masonry face.

Q. After that contract was closed? A. After the contract was closed.

Q. Will you refer to Defendants' Exhibit 1, annexed to the Commission and state how many cubic yards of 8 to 1 concrete is allowed for the backing of the masonry wall? A. In items 30, 31 and 32 the money value, computed at \$4.75 per cubic yard, the schedule rates of the coarse concrete in the contract amounts to 13,005 cubic yards and five sixths of a yard. There is also in the four extra cribs blocks in item 2,540 cubic yards, making the total allowance in Exhibit 1 of 13,545 cubic yards and a fraction of a yard. 30

Q. Have you calculated the total area of the walls occupied by the timber face under the original contract drawing? (Objected to: Objection reserved by the Court.) A. I have calculated the quantities of timber, of the superstructure under the original bills of quantities, as per the bills of quantities in bills No. 1 and No. 4, and added the four extra blocks to the amount of timber. That I consider a deduction that was made in substituting the masonry face and coarse concrete backing for the timber face and fine concrete backing. 40

Q. What did it amount to? A. 2,408 cubic yards.

Q. What was the total number of cubic yards in the superstructure of the tidal basin and wet dock from four feet above low water, in rear of the timber face? A. As allowed for in Defendants' Exhibit 1A, 3,994 cubic yards.

Q. That would make a total of how many cubic yards for the timber and fine concrete? A. That would make a total of 6,402 cubic yards of timber and fine concrete.

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Q. Now, what was the number of cubic yards in the stone face of the superstructure from four feet above low water to coping level? A. As computed by Mr. Boswell, 4,255 cubic yards and as computed by Mr. Harry J. Peters 4,255 cubic yards.

Q. How many cubic yards would this leave of space to be filled with coarse concrete? A. 2,147 cubic yards.

Q. That is, a space filled with coarse concrete? A. In lieu of the fine concrete.

Q. In other words, I understand that under the original contract the timber face and fine concrete occupied a certain cubical space which you have estimated at 6,402 cubic yards, and, under the substitution of the stone face, the stone face occupied 4,255 cubic yards, leaving a space of 2,147 cubic yards, which was filled with coarse concrete? A. It was.

Q. As a matter of fact, Colonel, did you put that quantity, 2,147 cubic yards of coarse concrete into the superstructure over and above the actual amount allowed in the final certificate? A. We placed in rear of the walls, in the tidal basin and wet dock superstructure, 287 yards, in excess of that quantity—in excess of the 2,147 cubic yards.

Q. Is that in excess of the amount that is allowed in the final certificate No. 1, annexed to the Commission? A. That is in excess of the amount allowed in the final certificate for the concrete in the superstructure of the walls, in rear of the masonry—the total excess 2,434 cubic yards.

Q. Referring to the account for \$433.75, dated 30th November, 1877, claimed by the Plaintiffs from you, will you state when that account was first rendered to you? A. That account was rendered to me, or handed to me by Mr. Peters, in October, 1883.

Q. Prior to that date, had there been any claim made against you with respect to any of the items that are claimed there? A. There was not.

Q. Had you had at that time several settlements of accounts with Mr. Peters for goods supplied or for any other cause? A. We had.

Q. Had this amount ever been in question, or had it ever been put forward by Mr. Peters prior to that date? A. I never heard of it from Mr. Peters, or from anyone else, until the account was given to me in October, 1883.

Q. Now, as a matter of fact, were services rendered to you, or did you have the use of Mr. Peters' property to any appreciable value, and if so, what value with respect to the sums there are claimed from you there? A. We built a small portion of our plant in one of the docks in rear of Mr. Peters' mill, at his urgent request, that he might get the advantage of the supplying of the timber and labour. We had, at the same time, a yard we had leased upon the Cantin shore known as the Cantin yard, where we were doing our work, and built the most of our plant.

Q. Now, taking these items, did you in fact occupy and use a portion of the middle wharf, a portion of the yard and property not included in above, and was there any special portion of the yard that was allotted you or any price made for it, or any delimitation in any way of the part of the yard that was assigned to you? A. There was no particular portion of the yard allotted to us specially. We were permitted to use, or reach our works, upon one or two of the different wharves in Mr. Peters' yard.

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Q. From whom did you purchase the material with which you constructed your plant that you constructed in Mr. Peters' yard? A. We purchased the material from different parties. A large portion of it from Mr. Peters, which was prepared by Mr. Peters in his mill.

Q. Will you refer to Defendants' Exhibit at Enquête B19, and state whether that account was rendered and settled after the alleged services of the 30th November 1877, and after you were supposed to have had the use of the property? (Exhibit is handed to witness.) A. That account was settled on the 6th June, 1878, some months after this property was used, and I also state that in this bill and the prior statements contains items for the timber and iron work done by late Mr. Peters for us upon the plant that we built in the yard. 10

Q. Under what circumstances did you build your plant there? A. I built it at the urgent request of Mr. Peters, that he might receive an advantage in supplying us with material, and doing work.

Q. Was there any question, at the time you went there, of the terms on which you were to go? A. He said that if we would come down there, the use of the yard and privileges would cost us nothing, as we were then under a lease for the yard, which was adequately large to build all the plant we needed.

Q. Had you an office at Cantin's yard? We had.

Q. At the time referred to in that account, 30th November, 1877? A. We 20 had. We occupied the whole of a building.

Q. Will you refer to the account for time and material and state when first any claim was made against you with respect to the alleged want of sand filling behind the crib on the northern embankment? A. In the fall, or in October of 1883, when the bill was presented to me by Mr. Peters.

Q. When did you first have any complaints in respect to the alleged want of filling? A. I am under the impression that we received a letter in the spring of 1881 or 1880.

Q. Will you refer to the letter, Defendants' Exhibit at Enquête B20, and state whether that is the letter you refer to, or whether you received any communication prior to that, with respect to this claim which is now put forward? A. That is the first. 30

Q. After the letter of the 20th October 1880, did you receive any further communication, or any account, or any claim prior to the receiving of the copy of accounts now sued upon, in October 1883? A. That referred to this account?

Q. That referred to this account, yes? A. No, sir.

Q. Refer now to the next account, contained in Plaintiff's Exhibit 6 being page 23 of that Exhibit, and state whether you know anything whatever about that? A. I have no recollection of the matter whatever.

Q. Did you get a certain quantity of material for your works from Mr. Peters, continuously as the works went along? A. We were buying material from time to time, and had certain works done at the mill. 40

Q. In what way were these matters settled? Did you have a regular settlement? A. We settled them from time to time, taking his bills.

Q. Can you state whether you had settlements during the years 1879 and 1880, for materials which you may have purchased from him? A. I think we must have had, but I should want to refer to my bills and receipts to speak positively upon that matter.

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Q. Will you refer to the account on page 19 of Exhibit 6, being for labour incurred and material supplied owing to the bottom not being properly prepared to receive the cribs, and state when you first received that account from Mr. Peters? A. In October 1883, with the other accounts.

Q. Prior to that date, had you had any claim for the matters that are referred to in that account? A. I had not.

Q. Had the matter ever been brought to you in any way? A. It had not.

Q. In fact, was it in any way your fault that any of the cribs were injured, or that it was necessary to lift them? A. In connection with this account, I would state that that labour upon them cribs was largely caused by the crib turning over.

Q. What happened to it? A. The bottom of the first 120 ft., crib was ready on the 20th day of July, that was on a Saturday. On Sunday, or Saturday night, the crib turned over, breaking away from its fastenings and dumping a lot of the material placed in the crib for ballast out into the berth. The crib was righted, and placed into position by the contractors' engineers, and sunk, and the bottom was found to be too high. The crib was removed, and a dredge placed in the trench to redredge the trench, and the crib moved back and sunk. In sinking the crib it was not sunk in alignment, and it was sunk upon square blocks, the system adopted by Mr. Peters prior to the adoption of stub piling, and there were some few days labour in getting the crib upon alignment.

Q. Whose work was the sinking of the cribs? A. Mr. Peters.

Q. Had you anything whatever to do with it? A. Nothing whatever to do with it.

Q. When you say that the crib turned bottom up, this naturally must have occurred before it was sunk? A. Oh certainly. The crib was not sunk until some four or five days after the turning over.

Q. How long after the bottom of the trench was ready to receive the crib was it actually sunk? A. The bottom of the trench was ready on the 20th, and the crib was sunk on the 27th.

Q. Was this delay calculated to affect the bottom of the trench at all? A. Most certainly, because it was right at the end of the ballast wharf where there was a strong tidal current passing round the angle of the wharf, carrying bodies of sand with it. On the ebb and flood tides.

Q. I understand that after all this occurrence it was not until 1883 that any claim was put forth against you? A. Yes, Sir. The balance of the bill I know nothing whatever of the items, excepting what I see in Plaintiffs' Exhibit No. 6.

Q. Will you refer to the account, Defendants' Exhibit No. 4, and state what it is, how it was incurred, and under what circumstances you now claim it from the Plaintiff? A. That is an itemized account of the engineering expenses connected with the contract of Peters, Moore & Wright with the Quebec Harbour Commissioners, under the terms of the contracts between Peters, Moore & Wright and the Quebec Harbour Commissioners.

Q. Will you refer to these items in detail and state who J. B. Navarre was? A. He was the engineer of the joint contractors.

Q. Who paid him? A. Moore & Wright.

Q. Who paid all the items that are mentioned there? A. They were all

RECORD. paid through the office of Messrs. Moore & Wright, either by our clerk, Mr. Jacobs.

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*Q.* Were these entered at the time in the books of Moore & Wright?  
*A.* They are. That is a copy of the books of Moore & Wright.

*Q.* I see several items for amounts paid boatmen. Will you state how many boatmen there were, and who used them, and how you came to pay for them?

*A.* Under the terms of the contract we were obliged to furnish boatmen for the resident engineer. That boat was used by the resident engineer, his assistant, and occasionally by the contractors, and the contractors' engineer, Mr. Brown. We used a second boatman for the special use of Mr. Brown, or Mr. Navarre, and Mr. Woodford, when he was there, for a short time he was there, and for the joint contractors, and when the other boat was in use, when Mr. Pilkington or Mr. Boswell, if either of them wished to go up on the works, they used the other boat. In other words we used two boatmen, but in that bill is simply the boatman that was used by the Harbour Commissioners' Engineer, the resident Engineer, and furnished by an order from the Engineer.

*Q.* Did they make a demand upon you for the use of the boat? *A.* They did.

*Q.* For the exclusive use of the resident Engineer? *A.* They did, and objected to having that boat used by the foreman or other parties connected with the work.

*Q.* I see various items for the small expenses of an office. What office were these expenses connected with... small expense of an office, such as washing towels? *A.* They were for the resident Engineer's office.

*Q.* A charge also for wood and that kind of thing, for what office was that?  
*A.* The engineer's office, the resident Engineer's.

*Q.* Now, how much a year did you pay Mr. Brown? *A.* I am unable to answer without examining the books as to what salary he was paid.

*Q.* How much have you charged here? *A.* I am unable to state.

*Q.* I see an item of the 14th January 1882 "J. V. Brown, Contractors' engineer, from June 5th 1879 to 12th January 1882, \$3,135.86." *A.* That amount was paid to Mr. Brown, from time to time, as shown upon our books, and consolidated into one item.

*Q.* Now, I see various sums here charged—"to amount paid messenger." Under what circumstances was that paid, and whose messenger was it? *A.* It was a messenger for the resident Engineer, who kept the resident Engineer's office, and took care of it.

*Q.* I see a sum of \$100 under date 31st August 1882, "Paid J. V. Brown, account services before Arbitrators, 27 days." Will you state whether that amount was paid Mr. Brown? *A.* It was, and I have his receipt.

*Q.* In whose interest was Mr. Brown here in connection with that Arbitration? *A.* In the interest of the contractors, Peters, Moore & Wright.

*Q.* Did Mr. Peters profit by Mr. Brown's services on that arbitration?  
*A.* Well, he profited.

*Q.* Well, did he use his services? *A.* He used his services as far as the other contractors did, but the Arbitration was annulled and neither of us got any benefit from it.

*Q.* Now, I see a sum of \$56.35 paid to Russell Hotel Company for board during session of Arbitrators, was that amount paid? *A.* That amount was paid according to our books.

*Q.* Was any portion of these sums recovered in any way, as a result of the Arbitration? *A.* There was not.

*Q.* I see a further sum, the last item but one of this account, \$285.05 engineering expenses, state what the account refers to? *A.* This account refers to labour of men used by Mr. Brown in the general interest of the contractors, in laying out the works, taking measurements and instrumental work, in other words it is the engineering account of labour performed by men who were paid by Moore & Wright and the accounts rendered up by Mr. Brown, from time to time from his note books.

*Q.* Were the different sums paid by Moore & Wright? *A.* They were in the pay roll of Moore & Wright.

*Q.* Who is the person who is mentioned as Cummings here? *A.* Mr. Cummings was one of our Engineers, that is the contractors' Moore & Wright.

*Q.* This then is for labour by persons in the employ of Moore & Wright in connection with the engineering on the joint contract? *A.* It is.

*Q.* Assistance supplied to the engineer for the joint contractors? *A.* For the joint contractors.

*Q.* Is the account correct? *A.* I think it is correct, although I am not able to swear to every item of it, because it was a matter that was in the hands of our engineer and our book-keeper, and taken from our books.

*Q.* By whom was the account prepared in its present shape? *A.* I am even unable to state that, but I think it was prepared at the close of our works, but not at the close of our contract—sometime during the fall of 1883, at our office, when we were making up our accounts, and a copy of which, with the accounts which you have just shown to me, was prepared and sent to Mr. Peters.

*Q.* Now, Colonel, referring to Exhibit 4, will you state whether any portion of that account is covered by the receipt filed in this case as Defendants' Exhibit at Enquête B19? *A.* I am unable to state positively about a few smaller items.

*Q.* As far as you can see, there is none? *A.* As far as I can see, there is none. I should want to compare them more carefully with the books. There may be a few dollars, but I am unable to say.

*Q.* Will you now refer to Defendants' Exhibit No. 6, and state what it is for, and under what circumstances you claim it from the Plaintiff? *A.* I claim the amount of the different items stated in Defendants' Exhibit 6, on the ground that they have been paid out for the joint interest of the contractors Peters, Moore & Wright, by my firm of Moore & Wright, under the requirements of the contract and for the disbursements on account of our legal and engineering expenses connected with the contract.

*Q.* Were all the amounts that are referred to there paid at the time and to the persons mentioned therein by Moore & Wright? *A.* They were.

*Q.* The different items for boatmen that are mentioned in this account, Defendants' Exhibit 6, are they the same as those referred to in the account Defendants' Exhibit 4? *A.* As I have already stated, the items of Defendants' Exhibit 4, as paid out for boatmen refer to the engineers', the resident Engineer's

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boatmen, or to the boatmen and had charge of the boat that was specially used for the resident engineer and assistant engineer.

*Q.* The boat charged for in Defendants' Exhibit No. 7, was used by whom?  
*A.* By the joint contractors—the contractors' engineer.

*Q.* I see an item in 1879 "Paid to Mr. Wm. Cook on account of Peters, Moore & Wright, \$450.00" Do you recollect what that was for, and in whose interest it was paid?  
*A.* That was for legal services as our Counsel. Mr. Cook was our Counsel during the progress of the works, and after the completion of them.

*Q.* Whose Counsel more particularly was Mr. Cook in the matters in which you were jointly interested?  
*A.* Mr. Cook was Counsel to Mr. Peters prior to our coming to Quebec, and that is why we came to retain him.

*Q.* And in the subsequent litigation which took place, when both Mr. Cook and Mr. Bossé were retained, was either of them more particularly the Counsel of one or other of the contractors?  
*A.* I believe that Mr. Cook was the Counsel for Mr. Peters, in his private interest, while he was Counsel for Peters, Moore & Wright during the litigation, and until the close of our litigation.

*Q.* Can you state what the item of 16th September 1879 "Paid judgment A. Paquet \$529.55" was for?  
*A.* That was the result of a suit brought against the contractors Peters, Moore & Wright on account of a vessel running on to our works.

*Q.* Was that paid in the general interests of both?  
*A.* That was paid by Moore & Wright, in the general interest of the contractors.

*Q.* I see December 23rd, "Paid Wm. Cook legal services on matters connected with our account Q. H. C. \$450.00." For what was that paid?  
*A.* That was services which he rendered, and for which I have a receipt from the firm of W. & A. H. Cook.

*Q.* Now, I see that there are various items here for fare and expenses of Brown, Cummings, Edward Moore, and sums paid to the Russel Hotel Co., in connection with the Dominion Arbitration. In whose interest were these gentlemen brought on?  
*A.* In the interest of Peters, Moore & Wright in the Arbitration before the Board of Dominion Arbitrators in August 1882.

*Q.* Were these several sums paid as stated?  
*A.* They were.

*Q.* Now, I see an item: "Paid ~~J. V. Brown~~ on account of services rendered before Dominion Board of Arbitrators \$1,200.00." Can you state whether that is the same sum that is referred to in Plaintiffs' Exhibit 6, item 28?  
*A.* I should say that that refers to the same item.

*Q.* There are various items here for "Paid Brown for expenses to Quebec, making up accounts against Quebec Harbour Commissioners on the 22nd November 1883." In whose interest was Mr. Brown brought here?  
*A.* He was brought here in the interest of the joint contractors to prepare our accounts at the time that we brought our suit.

*Q.* Was that the first or second suit?  
*A.* That was the first suit before the Courts.

*Q.* Now there are various sums throughout this account for your own travelling expenses and for hotel expenses during the time that you were here. Will you state whether these sums were paid by you at the time that they bear

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date? *A.* They were paid for my travelling and hotel expenses while travelling from my home to Quebec and *vice versa*, and whilst stopping at Quebec attending to matters in the interest of the joint contractors.

*Q.* Was your attendance here, at the different times stated there, necessary for the purpose of the suits which were proceeding at the time—the arbitration and different suits in the interest of the joint contractors? *A.* I think they were.

*Q.* I see a sum of \$200 paid to Woodford Pilkington on the 29th June 1884, will you state whether that was paid, and for what purpose? *A.* It was paid to Mr. Pilkington for services rendered to Peters, Moore & Wright at the time that our case was before the Courts here, and preparing copies of Mr. Kinipple's first award and other matters in connection with the suit.

*Q.* I see there were sums paid for cables to Kinipple & Morris in connection with the final certificate. At whose request did you communicate with Kinipple & Morris at the time? *A.* At the request of our Counsel, and of the late Mr. Peters.

*Q.* Was Mr. Peters fully informed at the time of your communicating with Kinipple & Morris? *A.* If my memory serves me aright, he sent me a copy of the cable which was written by our Counsel.

*Q.* I see two items in April and December 1885: "Paid Woodford Pilkington for services in connection with the certificate, amounting to \$340.00. Will you state whether these sums were paid, and under what circumstances? *A.* The item of \$40 was paid to Mr. Pilkington, for his fare and expenses and for his trouble in coming from Boston to my home, in Deering, to meet with Mr. Peters and myself to consult with reference to obtaining our final certificate, Plaintiff's Exhibit 1, annexed to the Commission. The \$300 is what we paid him for services rendered in going over to London, and conferring with Kinipple & Morris, to get the certificate No. 1 attached to the Commission.

*Q.* Now, will you state whether this next item of the 4th February, \$1,779.56 is the same item as is charged in Plaintiff's Exhibit 11, in the last item? *A.* That refers to the same item. That was deducted by the Quebec Harbour Commissioners from the amount due us at the time of the settlement for expenses under the terms of the contract for preparing the contract between the Quebec Harbour Commissioners and the Contractors, of which, under the terms of the contract, the contractors were required to pay one half of the legal and notarial expenses, and for documents and for rent of office occupied by the resident engineer and his assistant, and those occupied by the contractors and the contractors' agent.

*Q.* Now, with reference to this office, how many rooms were there in it, and by whom were they occupied? *A.* We had four rooms in the office that we occupied as offices; there was a shed and an entry-way besides. Three rooms was occupied by the Resident Engineer, his assistant and the messenger. One of the rooms was occupied by the joint-contractors and their engineer and Moore & Wright.

*Q.* Had the Contractors any other office upon the works than this room that you have referred to? *A.* We had not.

*Q.* Had Mr. Peters any office on the works other than this? *A.* No, sir.

*Q.* What was the sign upon the door of the office? *A.* "Contractors' Office, Peters, Moore & Wright, Q. H. I. (Quebec Harbour Improvements)."

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*Q.* Does what you have said apply to the whole time of the contract? *A.* It does, and is under the terms of the contract.

*Q.* Now I see several items for expenses for your own travelling. Does your previous answer apply to this as well as to the other expenses referred to? *A.* It does.

*Q.* There is a sum of \$200 paid to Mr. Bossé, on account of fees and disbursements. Was that sum paid, and for what? *A.* That sum was paid to Mr. Bossé, as interest upon an order which we had given him upon the Harbor Commissioners, which remained unpaid for a number of months, for the balance of his bill for legal services rendered to the joint contractors Peters, Moore & Wright. 10

*Q.* Is that the \$1,200 above referred to? *A.* No, sir. It was an order for some eighteen hundred and some odd dollars—a joint order upon the Quebec Harbour Commissioners' which was not settled until the judgment of the Supreme Court.

*Q.* This item of \$200 is on the 21st June, 1886. Had you, at that time, any litigation pending in which Mr. Bossé was acting for the joint contractors? *A.* I wish to correct that. That was paid to Mr. Bossé, for legal services as our Counsel while the suit against the Quebec Harbour Commissioners was going on.

*Q.* How many suits did the joint contractors institute against the Quebec Harbour Commissioners, in which Mr. Bossé acted for them as their Counsel? *A.* Two.

*Q.* There is a sum of \$10 paid to Simon & Libby, what are the nature of the services for which that was rendered? *A.* That was in reference to a paper connected with our contract, which Mr. Bossé, wished me to take counsel of our American Counsel upon points of law.

*Q.* There are several items between the 14th April 1887 and 27th April 1887: "Paid for expenses of Brown and Cummings, travelling expenses and others." In connection with what were these sums paid? *A.* It was in connection with the second suit. 30

*Q.* That is the suit which ultimately went to the Supreme Court? *A.* That is the suit which ultimately went to the Supreme Court?

*Q.* And these sums were paid? *A.* These sums were paid.

*Q.* Also this sum paid to Mr. Jacobs, \$96.00? *A.* Paid to Mr. Jacobs, including his hotel and railway fares.

*Q.* This sum of \$25 paid to G. Glackmeyer, DeRousseau, Lagacé, for what was that? *A.* Witnesses' fees in the suit against the Quebec Harbour Commissioners.

*Q.* These several sums paid to Mr. Cook and Mr. Bossé, were they too in connection with that same suit? *A.* They were. 40

*Q.* The items here—paid to General Casey and others, amounting to \$179.00 for what and under what circumstances were these sums paid? *A.* That was on the commission that was taken out for the purpose of taking the testimony of those experts in the United States.

*Q.* Do you recollect whether, under the judgment of the Supreme Court these different sums were allowed in the bill or refused? *A.* I am unable to state.

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Q. This sum of \$400 for Commissioners at Portland was paid to the persons who took the Commission? A. Who took the Commission. The late Judge Cleaves and Mr. Locke.

Q. All these other sums that are referred to here as being paid to Mr. Cook, will you state whether they were paid in that suit of Peters, Moore & Wright against the Harbour Commissioners which ultimately went to the Supreme Court?

A. All the disbursements named on pages 9, 10, 11 and 12 are in connection with the suit of Peters, Moore & Wright against the Quebec Harbour Commissioners.

10 Q. Will you state whether all these sums were necessary expenses and whether they were in the joint interest of the contractors? They were.

Q. Now, with respect to these two items on the last page of the account—paid J. G. Bossé \$1,871.50 and W. & A. H. Cook \$4,841.47, will you state whether these are the same items as are in part referred to in the two last items of the second page of Plaintiff's Exhibit 6? A. We paid in two items the first order for \$4,000 and the second for \$841.47 to Mr. Cook all of which Mr. Cook's bill shows, and I think they are the same items as are referred to in Plaintiff's Exhibit 6.

20 Q. There was an additional sum paid to Mr. Cook, \$898.34? A. That was paid.

Q. Now, this last item \$297.65? A. Is the one that I was answering previously, by mistake.

Q. It refers to interest on draft of Harbour Commissioners, which was not paid for a considerable time after it was given? A. The amount paid \$1,871.50 to Mr. Bossé.

Q. Will you refer to Plaintiff's Exhibit 7, and state what it is, and why you claim it from Mr. Peters? A. That account is for men, tools and labour performed for Mr. Peters, or upon his portion of the work, in his interest and returned to our office by our joint engineer.

30 Q. Under what circumstances were these services rendered? A. Under different circumstances.

A. What part of the work? A. The divers and armours and men were for assisting him on his crib work and the substructure. Labor and dredge filling material into his crib work. The use of tug, men assisting him at different times and for use of bateaux, which were in our employ, and for which we paid for stone that was taken from bateaux, and for which Moore & Wright paid.

40 Q. Now, referring to the item at top of page 7 of Exhibit 7 can you state whose work that stone was put into by Moore & Wright? A. That stone was taken from the bateaux, by order of the Engineer, placed on the northern crib work and shoal cribs during November and December 1879, to protect the same from the ice.

Q. Whose work was the northern crib work and shoal cribs? A. It was Mr. Peters' work.

Q. And the stone was Moore & Wright's stone? A. It was.

Q. What was this charge—protecting the end of masonry in low crib work in 1879? A. That refers to labour placing stone and material to protect the masonry from the ice.

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Q. By whose direction was it done? A. The contractors' engineer.

Q. Whose was the work? A. The work was Mr. Peters'

Q. Now, there are two items for a certain quantity of concrete replaced. What have you to say with reference to that? A. The end of masonry wall was injured or crushed out by the ice, it not being properly protected, and Peters, Moore & Wright, were obliged to supply or replace quite a large quantity of concrete which was damaged by the ice.

Q. The item for 56 toises of stone, who did that stone belong to, and whose work was it used in? A. Another item of stone, which was taken from bateaux of stone, which was paid for by Messrs. Moore & Wright, and used in rear of the 10 capping of the substructure on the works.

Q. Are all these sums the amounts that were actually paid for the different works? A. These were the sums paid, as rendered to us by our Engineers.

Q. And as entered in your books at the time? A. And as entered in our books as the time.

Q. Will you refer to Plaintiff's Exhibit at Enquete A25, and state whether you know anything whatever about it? (Witness refers to Exhibit A25.) A. I have no recollection of this particular document. We were making so many statements from the time we commenced our suit before the Dominion Arbitrators until its close, that it would be very difficult to. 20

Q. Have you any recollection at all of ever having seen the document? A. No. I have not.

Q. Does it refer to a portion of your work at all? A. Yes sir. It refers to a portion of our work. I am unable to state what the second page refers to: it is dimmed. It refers to the works of both Messrs. Moore & Wright and Peters.

Q. Will you refer to the statement, Plaintiffs' Exhibit 12, being memorandum of work specified but not carried out by Moore & Wright, and not deducted and state whether that is accurate? A. It is not correct, as the 4 to 1 concrete was displaced by a 3 to 1 concrete under a mutual arrangement with the engineers and the contractors to avoid putting timber work in rear of fine concrete. 30 Nor the bottom items are not correct. Two bottom items.

Q. Did you make a calculation with respect to Defendants' Exhibit at Enquete B4, and how that account would stand with charging amounts received by Mr. Peters since that date? A. I think I have made a calculation, but I have not it with me in reference to this statement.

Enquete is adjourned till the 17th December instant.

At 10 A. M. on the 17th December instant, enquete is continued, and the witness, Mr. Edward Moore is cross-examined, as follows:

The Plaintiff's Counsel objects to the evidence of the Defendant, Col. Moore, as proving his own case on his Exhibits 4, 5, 6 & 7: 40

*Cross-Examined.*

Q. Colonel Moore, in connection with the Harbour Works, which were carried on by Peters, Moore & Wright, Moore & Wright kept, I presume, regular business books did they not? A. Well, we kept books.

Q. You kept a ledger and journal and cash book, and so on, did you not? A. Memorandum books, diaries and engineering books.

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Q. You have them here? A. I have not all of them, no sir.

Q. You have the chief or main books here, the ledger and journal? A. I have our books relating to accounts and disbursements connected with the works, in part.

Q. These books were closed and audited after the works had been finished were they not, and in 1883, certain accounts delivered to Mr. Peters? A. The books were not closed or audited, but certain accounts was delivered to Mr. Peters, taken from the books, the diaries and the note books of our time keepers and engineer.

10 Q. Have the books since been closed and audited? A. They have not.

Q. Can you not state from the books that you have, what moneys were expended for labour and material, engineering accounts and salaries, by referring to the books?

(Objected to on the ground that any matter contained in the books, not referring to or connected with the accounts filed by the Defendant is irrelevant to the present issue: Objection maintained.)

Q. In the business books to which you have referred, is there an account which would show the amount of concrete put into the works? A. There is not.

20 Q. Then there is no statement concerning the amount of cement used in the works? A. These matters would not be kept in our business books, but would be kept by our engineer in his note books from day to date as the works progressed.

Q. Is there any statement at all in your books showing the amount of cement used in the works—the actual number of barrels of cement? A. I have already answered, and I answer again there is not.

30 Q. So that your calculations of yesterday were based upon measurements, and supposed measurements, and not upon actual quantities taken from your books? A. I was not aware that I had made any calculations or statements in reference to cement used in the works.

Q. You made, did you not, a calculation yesterday telling us how many yards of coarse concrete were used behind the stone wall, or a portion of it? A. I did, in connection with one of the Exhibits.

Q. That calculation that you made was from measurements or supposed measurements of the works, was it, or was it not? A. That calculation was from measurements made by Mr. Brown, Mr. Pilkington, Mr. Morris—made from measurements of these parties.

40 Q. And therefore it was not made from the actual quantities taken from any of your books? A. It was not made from any quantities taken from my books.

Q. And therefore there is no entry that can be readily referred to in your books, showing the amount of concrete or the amount of cement used in the works in its entirety? A. There is no entry in our books showing the quantity of concrete placed in the work—these entries are upon the exhibits that are now in the case.

Q. Then, as you cannot tell from your books, these quantities, would you state how you made up your claim for your portion of the money which is in the Union Bank? A. What claim do you refer to?

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Q. I refer to your claim to have a right to draw from the Union Bank moneys from the deposit made therein? A. I do not understand your question.

Q. Do you claim any portion of the money that is in the Union Bank deposited? A. I do.

Q. How much of it do you claim? A. I claim the whole of it.

Q. Now, will you state, please upon what basis do you claim it, how did you make out your claim to that? A. Because in the moneys received by Mr. Peters and for the works done by Mr. Peters on the Quebec Harbour Works, he has already overdrawn the amount that is due him upon the works.

Q. And your claim is then, that having overdrawn, according to your statement, the rest of the money belongs to you? A. It does.

Q. Now, will you give us the particulars upon which you claim that. You have given some of them already, yesterday—the amount of coarse concrete that you gave us the calculation about, would you give us the other figures? A. Allow me to refer to Defendants' Exhibit 1A, and also the statement of account that is put in. (Said documents are handed to witness.)

Q. I am not asking you for the amount payable to Mr. Peters, I am asking you for the amount payable to yourself. A. Under the final certificate, Defendants' Exhibit 1A, Mr. Peters is entitled under the terms of our contract, to the wood and iron work, and for the allowances allowed for masonry and for the 20 extra work done, which amounts according to Defendants' Exhibit No. 2 to \$242,723.65. He has received from the Harbour Commissioners \$267,452.11.

Q. Now, you have given us Mr. Peters' amount, according to Defendants' Exhibit 1A. Would you give us the figures that you are entitled to, according to your view? A. Under the terms of the contract between Mr. Peters and ourselves, we are entitled to the concrete, the dredging and certain extra works allowed in the detailed final certificate, Defendants' Exhibit 1A, under the heading of dredging and concrete work, all of which is shown in Defendants' Exhibit 1A in detail.

Q. But is it not a fact that item 5, bill 3 of Exhibit 1A, was abandoned? A. It was.

Q. Is it not true that bill 6, item 10 was abandoned? A. Bill No. 6 was abandoned?

Q. Is it not true that bill No. 10 was abandoned? A. Bill No. 10 was abandoned.

Q. Is it not true that bill No. 11 was abandoned? A. Bill No. 11 was abandoned.

Q. Wasn't bill 12 abandoned? A. Bill 12 was abandoned.

Q. And wasn't bill No. 13 abandoned? A. Bill No. 13 was abandoned.

Q. And none of the work mentioned in these bills was done or performed? A. None of it.

Q. Is it not a fact that in bill No. 14 the deductions were not precisely as those stated in bill 14, and in fact were they not as follows: \$8,668.80, \$2,550.20, \$500.00, \$35.00, \$102.50, and \$161.00 instead of the amounts mentioned in Exhibit 1A? A. In item \$8,668.80 I think the figures were transposed. The item for forming roadway \$2,550.00 was abandoned, and the item for depositing stone and clay in the dredged trenches, \$875.00 for labour, was abandoned.

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Q. Would you answer the question as to the amounts asked you? A. The figures, as named by you in that Exhibit, I do not think are correct deductions, as named in bill No. 14.

Q. Is it not a fact that the deductions, the true deductions amount to the sum of \$12,017.30? A. I am unable to state, without going into the details. (Witness refers to books, documents and says:)—No sir. I should say that was not the way the deductions were made, that \$12,017.30, as there was an allowance in bill No. 14 of \$875.00 for placing a toeing at the foot of slope, and the whole amount of that bill was deducted, and by agreement with the engineers an allowance of \$375.00 was made for work done before the embankment was widened from 200 to 300 feet.

Q. Holding the Defendants' Exhibit 1 A in your hand, will you say is it not also true that the work mentioned in item 2 was not performed—\$7,593.75? A. It was not performed in that manner.

Q. Was it performed at all? Was there any fine or 4 to 1 concrete put in on that item? A. There was no fine 4 to 1 concrete put in. That item refers to the substitution of the stone face and coarse concrete backing to the timber face and fine concrete backing.

Q. Consequently the work in that item was not done? A. Was not done in that form.

Q. Is it not a fact that the work mentioned in item 7 of Defendants' Exhibit 1 A was not done? A. The items in Defendants' Exhibit 1 A are not numbered.

Q. The amount of it is \$16,239.30. Is it not a fact that that work was not done? A. That work was not done in that form.

Q. That is to say, there was no 4 to 1 fine concrete put in on that crib? A. There was no 4 to 1 fine concrete put in.

Q. Is it not a fact that in the additional work the second item charged at \$1,125.00 was not done? A. There was no fine or 4 to 1 concrete placed in the superstructure of the four blocks covering that item of \$1,125.00.

Q. Is it not a fact that the amount of \$16,239.30 shown in the seventh item of that certificate calculated by the Blue Book, amounts to the sum of \$18,562.50 The other calculation being a mistake? A. The amount calculated by the Blue Book for the concrete in rear of the timber face, from three feet above low water to coping level would be \$18562.52. I do not consider the other calculation is a mistake.

Q. For what reason? A. For that reason that there was a portion of that material that remained in the superstructure above the three feet level under the change of July 22nd 1879.

Q. Now the next item. Is it not a fact that the item 8, mentioned in Exhibit 1 A at \$103,669.90 should be, as per Blue Book, \$95,108.75? A. I am unable to state, without going into lengthy calculation of the amounts of concrete in the different blocks of the superstructure and substructure, and taking into consideration the deductions made by the engineers in their one hundred and sixteen thousand dollars of which I have not the data at hand.

Q. But, according to the Blue Book itself, is it not a fact that there are fifty five cribs at \$1,729.25 for fine and coarse concrete, making the total \$95.

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108.75? A. I have computed the quantities, upon page 73, of the concrete for 4 to 1 Portland cement fine concrete at back of face, piling from three feet above low water. The 8 to 1 coarse concrete for the walls and counter forts behind the face, and the 8 to 1 Portland cement coarse concrete from foundation to three feet above low water, and I make the sum stated there \$94,898.75. I may have made an error in the calculation. And that does not cover the value of the full amount of concrete placed in the cribs.

Q. There was a small quantity left out in that calculation, to go around the bollards, making the amount correct, as asked in that question? A. I have not figured in the bollard concrete of \$4.00 to the bollard. 10

Q. Then, Colonel Moore, if I understand you correctly, with regard to this Exhibit 1A, you claim that the items 2 to 7 and 20 should not be deducted from you, although they may have gone to the stone wall, as between the Commissioners and the Contractors? A. Under the terms of our contract, I claim that should not be deducted, but in equity I claim that Mr. Peters should be allowed for what portion of fine concrete that stone wall displaced and that Moore & Wright should be allowed for what concrete they placed in the works in excess of the amount that the stone wall will displace.

Q. Without referring to equity, according to the position taken by you, you claim, do you not, that these items 2, 7 and 20 are really payable to you? A. Under the terms of the agreement or contract between us, the contract between Mr. Peters and Moore & Wright I claim that all amounts for concrete work belonged Moore & Wright. 20

Q. Then, when these items come to be deducted to go towards the stone wall, you hold that as far as you were concerned, and as between you and Peters, they should not be deducted. Do you claim from Peters, according to what you say would be an equitable arrangement, or do you claim according to the contract? A. We claim according to the contract—the interpretation of the contract.

Q. In a word, under the main contract, when the stone wall was substituted, the work not necessary to be done was to be deducted as between the Harbour Commissioners and Peters, Moore & Wright, was it not? A. It was, and to go in payment of the stone wall and coarse concrete backing. 30

Q. Well now, as a matter of fact, you have said that the fine concrete the 4 to 1 one concrete in items 2, 7 and 20 were not done and were deducted and went towards the stone wall? A. I beg your pardon.

Q. They were deducted? A. Yes.

Q. Well then, why were they deducted? A. They were deducted as they went in payment for the masonry face and coarse concrete backing.

Q. That deduction was as between the Harbour Commissioners and Peters, Moore & Wright, was it not? A. Yes, sir. 40

Q. As between Peters and Moore & Wright, if I understand you correctly, you are contending that full deductions should not be made on the items 2, 7 and 20? A. I am unable to answer that question in the manner in which it is put, as I do not understand fully the meaning of the term deductions.

Q. I will put it in another way. According to your contention, what work ought to have been deducted to go towards the stone wall? A. Just that portion of the fine concrete which the masonry wall displaced, in equity.

Q. What would that be? A. That would be approximately some 1800 cubic yards.

Q. What would the value be? A. Approximately some \$12,000.00.

Q. That is \$23,000 instead of the \$27,008 that we contend should be deducted is that not so? A. That is so, as a portion of that space was filled with concrete in excess of what the engineers have allowed in their final certificates, contending that under our contract for the substitution of the masonry face and concrete backing for the timber face and fine concrete backing we agreed to substitute the masonry face and the coarse concrete between the lines shown upon the old plan and the line of the stone wall.

Q. So that Mr. Peters instead of getting the benefit, as it were, of that \$27,000.00—I am speaking in round numbers—mentioned in items 2, 7 and 20, he should, according to your statement, now only obtain about the benefit of, in round numbers \$12,000? A. \$12,000. And not take the portion of work which Moore & Wright was compelled to do.

Q. In reference to the last answer you have given, would you look at Exhibit 23 of Plaintiff. (Plaintiffs' Exhibit 23 is placed before witness). On this drawing there is shown, is there not, at the head of the superstructure an Elm capping? A. There is.

Q. Originally there was to have been no Elm capping, under the original contracts, the Blue Book? A. There was.

Q. In the Blue Book is there an Elm capping provided for? A. There is an Elm capping provided for under the original plan showing the timber face—not exactly a capping, but a waling piece, which went—I cannot give the number of inches.

Q. In the wet dock, was there an Elm capping? A. You are in the wet dock there.

Q. Would you look at Plaintiffs' Exhibit No. 24, and state whether the Elm capping appears there? A. By this plan there is not what we would term strictly an Elm capping, but there is shown nearly to the top of the wet dock basin a waling piece in rear of the face piling, I take it to be, but this plan is not one of the original plans, and does not show the work as it was originally intended to have been built.

Q. Were not the wet dock cribs raised up one foot more than was originally intended? A. They were in the substructure.

Q. I think, you said, Col. Moore, that you were the sole person interested now in this contract, and that Mr. Wright had no further interest? A. I did.

Q. During the winter seasons, were you in Quebec while the work was progressing? A. A portion of the time.

Q. What portion... a small portion? A. One season I spent the entire winter here. Other seasons parts of the winter, at different times.

Q. Used you to pay short visits or long visits? What was the duration of your residence? A. It would be difficult to answer that question, as to the exact time I was here unless I could refer to my personal diaries, which I have not with me, for the different years.

Q. You have spoken of a clam-shell dredge and a dipper dredge. Do you know which of the two was built first? A. The dipper dredge.

RECORD.

In the Superior Court.

No. 63 Defendants' Evidence Deposition of Edward Moore, 16th Dec. 1895. continued—

*Plan*

*Plan*

RECORD.

In the  
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Evidence  
Deposition  
of  
Edward  
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continued—

Q. Do you know where it was built? A. I would not want to swear positively where it was built, whether it was built in Cantin's yard, or whether it was one of the hulls we built in Mr. Peter's yard.

Q. You are not sure? A. I am not sure, but I am inclined to think it was built at Cantin's yard—the dipper dredge.

Q. It is not a fact the clam-shell dredge was built at Cantin's? A. I could not say which one of the two was built at Mr. Peters, or whether either one of them was built at Mr. Peters. We had a large number of hulls upon the works, which were built at Mr. Cantin's yard, and one or two of them was built at Mr. Cantin's yard, but which they were I am unable to state. 10

Q. Will you look at the bills referring to use of the yard. (A copy of Plaintiff's Exhibit 6 is handed to witness, who says: That does not enlighten me any.)

Q. You stated in your examination that Mr. Peters did the stub piling under a certain letter or contract with you. Do you remember that? A. I do.

Q. And the value which you put on Mr. Peters' services was how much? A. My answer to that question, if I remember correctly, was that one half the amount would be a liberal sum for the amount of work done.

Q. That would be something in the neighborhood of \$800? A. \$800.

Q. You did not do any of the work yourself? A. I have been doing that class of work for 20 years. 20

Q. No, not that class but did you do that particular work in question? A. No.

Q. Did you do any part of it? A. Not, as far as the pile driving. I supervised the driving of them, and directed how they should be driven.

Q. But, did you do any of the work, you or your men? A. Occasionally some of our men were upon the pile driver working.

Q. Do you mean to say that you paid for any of the work done in connection with that pile driving? A. I mean to say that at times there were some of our men taken and worked upon the pile driver. 30

Q. Well, of course the men taken from you, and who worked upon that pile driver would be paid by Mr. Peters? A. Not at all sir. They were paid by Moore & Wright.

Q. Did you make any charge against Mr. Peters for that? A. It may be included in Mr. Peters' bill.

Q. Yes or no, did you make any charge against Mr. Peters? A. I could not state until I would look over the books.

Q. Your accounts are before you, in connection with that pile driving, and let me know whether you made any charge against him in connection with that? (Witness refers to accounts). A. We did. 40

Q. Would you say what charge you made? A. Whatever the price was per hour for the men.

Q. I am talking of the piling. Would you say what the charge was, please? A. I find here, November 21st 1878, "Labour of two men, half a day" on the 22nd, "Labour of four men, half a day" on piles and pile driver, amounting to \$3.75, being the amount paid them. Then there is other items in the bill.

Q. I want you to state them? A. I am unable to state whether they were on the pile driver, or preparing the piles.

Q. What is the total sum charged Mr. Peters for any work done in connection with the pile driving in your accounts? A. I have stated the amounts which are stated specifically in this bill, Defendants' Exhibit No. 7, of \$3.75, and there are other small amounts which it does not state where the men were at work.

Q. These small amounts exceed \$3.75? A. I find two here of \$3.00, which, may be, covers the items which I see in the bill for labor.

Q. And these small items are all that you can find in your account as having been charged against Mr. Peters in connection with that pile driving? A. Specifically, yes.

10 Q. Now, the amount allowed for that pile driving in the Defendants' Exhibit No. 1, what is the amount? A. The charge is the same in both Defendants' Exhibits I and 1A, \$4378.65.

Q. Now, seeing that the amount allowed by the engineers was this sum of \$4378.65 how is it that you came to the conclusion, seeing that Mr. Peters did all the work, that a sum in or about eight hundred dollars was a large allowance for the work done! A. I do not consider that the amount allowed by the engineers has anything to do as to the amount to be allowed for work done.

Q. I think it has. A. We differ in opinion.

20 Q. Do I understand you to say, then, to conclude, that the amount allowed by the engineers was excessive? A. I do not.

Q. You think it a reasonable amount? A. I do.

Q. And yet the work being performed by Mr. Peters you consider it was worth only about eight hundred dollars. Will you explain why this is? A. Because the contractors had to assume certain risks, large risks in the maintenance of the works.

Q. And the difference, then between these two amounts would represent the risk? A. In large part, yes sir.

30 Q. There is an item also for understated quantities in Exhibit 1. Would you state what part of that sum you claim? A. I claim the whole of it. It is allowed to us in Exhibit No. 1 and in Exhibit 1A for concrete understated in bills of quantities in the tidal basin walls.

Q. Did you put in that concrete that is allowed for there as understated quantities? A. Did we.

Q. Yes? A. And more too.

Q. What places? A. I put it in rear of the masonry wall.

40 Q. That is, that sum of \$4180.00 was for concrete put in rear of the masonry wall, if I understand you rightly? A. That sum of \$4180.00 forms part of the three items amounting to 13005 cubic yards concrete which the engineers have allowed in their final certificates, Defendants' Exhibit No. 1, and Defendants' Exhibit 1A, while there were 16,079 cubic yards placed in rear of the wall of tidal basin and wet dock walls.

Q. Would you just please specify whether the amount of \$4180.00 went behind the wall in the wet dock or any other place? A. It went into the wet dock.

Q. What caused the error. Colonel Moore, whereby this sum was allowed —this additional sum of \$4180.00? A. I am unable to answer that question without referring to the evidence of Mr. Morris, of the firm of Kinipple & Morris, as given before the Dominion Board of Arbitrators.

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continued—

*Q.* That sum of \$4180.00 is probably the amount claimed by you as being rear elm capping in wet dock? *A.* No, sir, it is not for that.

*Q.* Referring to your Exhibits Nos. 4, 5, 6 and 7, would you state whether or not the items in Exhibits 4, 5 and 7 form part of Exhibit 6? *A.* Defendants' Exhibit No. 4 and Defendants' Exhibit No. 5, are itemized accounts which are contained in Exhibit No. 6.

*Q.* So Defendants' Exhibit No. 6, is the main account which comprises all these charges? *A.* Not at all—these two itemized accounts to which I have just referred.

*Q.* And the other items which are in Exhibit No. 6? *A.* And there are 10 other items in Exhibit No. 6 which are not covered.

*Q.* The account Defendants' Exhibit No. 5, is to be found in the books of Moore & Wright, is it not? *A.* It is.

*Q.* Would you please refer to it? (Witness produces an account book.) This account is to be found in a journal? *A.* Yes.

*Q.* The account in that journal appears to be made by Mr. Jacobs? *A.* Yes, it is in his handwriting.

*Q.* And where did he obtain the items of that account? *A.* That account was given to him by the contractors' engineer, Mr. J. Vincent Brown.

*Q.* Which account you hold in your hand? *A.* I hold. I have not examined 20 the two accounts; but I think this is, from as far as I have examined it, a correct copy.

*Q.* The book is a correct copy of Brown's account? *A.* Yes, as well as I can see, excepting that the price for the labor is not put in Mr. Brown's notes, as he would not know what price we were paying the men from time to time.

*Q.* The first item of June 12th—1 man, 2 hours? *A.* Mr. Brown has given the time without stating the price.

*Q.* Without stating the price. And with that exception this account in your books is a copy of Brown's statement, adding in the prices? *A.* Adding in the prices and designating the amount—the prices paid to the men. 30

*Q.* Brown's statement which you hold in your hand appears to be a clean document and written all out at the same time? *A.* It was made at the close of the works, and taken probably from his diaries which we have examined since and gone over to compare them, before making up our accounts.

*Q.* Brown, then, at the end of the works took these items from his diaries, copied then out as you hold them there in your hand, and then they were recopied by Mr. Jacobs into this book? *A.* Yes, sir, and the prices added.

*Q.* It was all done at once: so it was not done day by day? *A.* During the progress of the works, you mean?

*Q.* I say the accounts to which you have just alluded, the one copied by 40 Jacobs, and the one from which he took it of Mr. J. Vincent Brown, were not entries made from day to day but were entries taken from diaries? *A.* They were entries taken from diaries, but they may have been a number of days in making it up at the close of the work: they were made at the close of the work.

*Q.* Was that in 1881, or what year? *A.* These were made up in 1883, as I remember it.

*Q.* A copy of that was sent to Mr. Peters in 1883, you have already stated?

A. I think there was a copy of this engineering account, a copy of the engineer's expenses and salary of—

Q. That would be Exhibits Nos. 4 and 5? A. Exhibits 4 and 5.

Q. The total amount of Exhibit No. 4, without interest, would be \$7,069.06 would it not? A. Without the item of interest dated August 15th. There may be a small interest account on the engineering account.

Q. That account, Exhibit No. 4, includes Exhibit No. 5, doesn't it? A. No, sir, it does not, the amount of exhibit included in Exhibit No. 4, is represented by the item of \$8,471.00 on the 4th page of Exhibit No. 6.

10 Q. Now, Defendants' Exhibit No. 5 purports, does it not, to be the details of the item \$285.05 in Exhibit No. 4? A. Yes, that is intended for the engineering expenses, as detailed in Exhibit No. 5.

Q. Will you state whether or not the details in Exhibit No. 5 are represented by the item of \$285.05, shewn as the last item, in type-writing in Exhibit No. 4? A. I say it is intended to cover that item.

Q. Which of these accounts, Exhibits 4, 5, 6 and 7, were sent to Mr. Peters in 1883? A. Copies of Exhibits Nos. 4, 5 and 7.

Q. When was Exhibit No. 6 prepared? A. Some time during the fall of 1883, I think. That had been prepared earlier in the season.

20 Q. Why was not a copy of that sent to Mr. Peters? (Witness again refers to Defendants' Exhibit No. 6, and says:) A. That was prepared within the past year. That is a summary of all the items. A copy of that has not been sent to Mr. Peters.

Q. You are now speaking of Defendants' Exhibit 6, a copy of which has not been sent to Mr. Peters, and which was recently prepared? A. A copy of this Exhibit 6 was not sent to Mr. Peters.

Q. And it was recently prepared? A. It has been prepared within the past year.

Q. For the purposes of this suit? A. For the purposes of this suit.

30 Q. Can you state why a similar account to this was not made up in 1883, and sent to Mr. Peters? A. I should be unable to, because there are disbursements there that have continued since 1883, in that account.

Q. Does this account only start from the date where the other Exhibits finish, Exhibits 4, 5 and 7? A. This account contains the items in the Exhibits already named and also the disbursements for engineering expenses and for boatmen that is not contained in the items.

40 Q. The items in the account Exhibit No. 6, which are not contained in the accounts Exhibits 4, 5 and 7, as regards these, would you please state why they were not put into accounts, Exhibits 4, 5 and 7? A. The account upon the first page had been rendered to Mr. Peters, and a partial settlement made by his paying us a certain sum of money.

Q. Then, why did you charge it to him upon that Exhibit, and not credit apparently that settlement that you speak of? A. The amount of money paid by Mr. Peters on account of the disbursements should be credited to him on the general account of his *pro rata* proportion of the expenses.

Q. How much was that? A. I am unable to state until this suit is settled.

Q. What had it been considered up to the time of this suit? A. We never had but one settlement.

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*Q.* On what was the proportion based? *A.* It was on one-third.

*Q.* So you do not find any credit given in this account for the first page of that Exhibit? *A.* There is no credit given in this account. Mr. Peters had an account for the same class of work.

*Q.* Would you now state, please, why the items in Exhibit No. 6. of Defendants' that you say are not included in Exhibits 4, 5 and 7, why they were not put into Exhibits 4, 5 and 7, when the accounts were delivered to Mr. Peters at the close of the works in 1883? *A.* Many of the items were overlooked, as they were contained in note-books and diaries of the engineers.

*Q.* Do I understand that they were forgotten? *A.* They were not handed in. 10

*Q.* And when you came to prepare the account for the purposes of this suit you looked up these diaries and you found these items and consequently made your account Exhibit No. 6. I suppose? *A.* When we made up the account we took everything into consideration that we considered belonged to the engineering account.

*Q.* You went over your books for that purpose? *A.* Went over all the note-books and diaries.

*Q.* And made up your Defendants' Exhibit 6 from them? *A.* From them.

*Q.* Did I understand you to say that you sent Mr. Peters a copy of Defendants' Exhibit No. 7 in 1883? *A.* I am quite sure that a copy of this was sent 20 with the others.

*Q.* Would you look at the account Exhibit 4 and state where these items were got from? *A.* These items were got from payments made by the engineers, by our clerks, and by ourselves and by the time-keeper and handed in to our office.

*Q.* Can you point out in that the items of which you have a personal knowledge, if any there be? *A.* Oh, I couldn't. You are asking me too much.

*Q.* You could not, then, swear from your own personal knowledge as to any particular items of that account? *A.* Oh, I can, a number of important items—services of Mr. Navarre. 30

*Q.* That is to your personal knowledge that that was paid? *A.* That is to my personal knowledge.

*Q.* Is there any other item? *A.* I know from time to time during the progress of the works that these items were referred to me and to my partner, and we ordered them to be paid.

*Q.* I ask you now to speak from your own recollection and to tell me, if you can, any items they are to your personal knowledge besides the item already pointed out of the payment to Navarre? *A.* I am unable to make out any particular items, but I know that I ordered these items.

*Q.* Which ones? *A.* All of them. 40

*Q.* You know it in a general way? *A.* In a general way, and they are contained in our books.

*Q.* But from personal recollection you cannot now speak? *A.* I couldn't pick out any of these small items, but I have a general recollection of a great many of them.

*Q.* Would you look at Defendants' Exhibit No. 7 and state which of its items are to your personal knowledge, if any? *A.* I am unable to pick out any

particular item, but in a general way I have a remembrance of many of the items here. These items was taken from the books of our engineers and time-keepers, and that statement was made up from them. The prices were attached to the items by myself for what we considered a fair compensation for the use of the plant, divers, and labor and material in the bill.

*Q.* Have you any copy of that account in your books? *A.* I have not. It was made up from data from the note-books at the close of the works, and diaries.

*Q.* And no entry was ever made in your books of this account? *A.* No entries: it was picked out from the accounts.

10 *Q.* But, Colonel Moore, would there not be a copy of this in your books, when it was sent to Mr. Peters in 1883? *A.* No, it would not, because it was made up in that form and was not put into the books at all, except in the form that I have already stated.

*Q.* Well, now, seeing that this has not been put into the books in this form but simply picked out items, as you have stated from memoranda and note-books, are you in a position to say that Mr. Peters ever received a copy of that, Defendants' Exhibit No. 7? *A.* I state to the best of my knowledge and belief that Mr. Peters was given a copy of that account.

20 *Q.* But you stated a little while ago that you were quite sure it was given to him? *A.* I am now. I am quite sure, as I have always said.

*Q.* Is there anything that brings that to your recollection or any fact or circumstance which induces you to believe that, and, if so, would you state it, please? *A.* A few days afterwards I received from Mr. Peters copies of the bills which are now in the case.

*Q.* Specify which ones. *A.* The bills charging Moore & Wright for certain labor and other materials.

*Q.* What has that to do with this Exhibit No. 7? *A.* You asked me if there was anything that would refresh my memory, and I have stated a circumstance.

30 *Q.* That is, that Mr. Peters sent in his bill. . . . *A.* Sent in his bill in return for our own.

*Q.* And you conclude from that, or it refreshes your memory to say, that this account was delivered, because Mr. Peters sent you his account? *A.* Yes.

*Q.* And you therefore feel sure that this account was delivered to Mr. Peters? *A.* Yes.

*Q.* These three bills, Exhibits 4, 5 and 7 would all be delivered to Mr. Peters about the same time, I suppose? *A.* I think they were.

40 *Q.* Referring to the second page now of Exhibit 6, have you any vouchers or receipts for these amounts? *A.* No, I have not. The items were made up and taken from diaries and note-books, and in this form: for instance, an item taken from Navarre's diary as follows: "May 7th, Paid for levelling rod, tape lines, including freight and duties \$51.98." These were got for Mr. Pilkington.

*Q.* You said you had no vouchers: consequently you have not got the receipts or accounts with regard to that? *A.* I have not.

*Q.* Then, as regards to other items, the same remark applies? *A.* In part. If you will let me see what items you are referring to. . . . I have no vouchers for these, because they are in the pay accounts at the time, and paid in the general rolls—many of them were paid in the general pay rolls of the contractors.

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*Q.* Who paid the money on these pay rolls? *A.* Our different clerks.

*Q.* Mr. Jacobs? *A.* Principally, at the latter part of the contract, and others prior to that.

*Q.* Seeing that Mr. Jacobs is the person who principally made these payments, how is it that Mr. Jacobs says he knows nothing of this account, in his testimony? *A.* These were prior to him. These accounts relating to during the time that he was employed, he was the principal one who paid them, but prior to that, Mr. Runyon and Mr. Glackmeyer.

*Q.* You are now speaking of the items in the second page, when you say it was prior to Mr. Jacob's employment, are you? *A.* Yes, sir, it was prior to Mr 10  
 Jacobs' employment. It came under Mr. Ruynon and Mr. Glackmeyer.

*Q.* And were these items not entered in the Exhibits which, you say, were delivered to Mr. Peters in 1883? *A.* I have already stated that they were overlooked and made up after the close of the work.

*Q.* So that these items were only found about twelve years afterwards? *A.* No, I did not state that.

*Q.* I am asking you the question? *A.* I have already stated that the account was made up in 1883, and the items there are of 1878, which makes a difference of five years, instead of twelve.

*Q.* The items here are of 1878, but inasmuch as Mr. Peters never received 20  
 this account, as stated by you, you are asked how it is that these items of 1878 are not entered in the accounts delivered to Mr. Peters in 1883? *A.* I stated that they were overlooked and found afterwards, I do not mean to state that these items were found and put in at the same time the other items were put in last year.

*Q.* This account was made in 1893, Defendants' Exhibit No. 6? *A.* It was made in 1893 from data, portions of which was made in 1883.

*Q.* Don't you think it a remarkable circumstances that what was prepared in 1883 was not delivered to Mr. Peters? *A.* No, I do not.

*Q.* Why? *A.* Because I left Quebec.

*Q.* The amount, I suppose, was too trifling to give it your attention, was that it? *A.* You can place your own inference upon it.

*Q.* What is the inference? *A.* I have already stated.

*Q.* You have none other to state? *A.* No.

*Q.* Cummings was with you a long time, was he? *A.* He was.

*Q.* Well, these charges that are payable to Cummings, say, May 31st 1878, Cummings, \$36.00; June 30th, Cummings, \$27.00—and so on down through the account; July 3rd, Cummings, \$30.00—How is it that any error could have occurred in charging Cummings' salary, or salary paid? How is it it could have been overlooked? Hadn't you a good book-keeper? *A.* I have already stated 40  
 that these items were taken from the engineer's note-books and data, and diaries, and other sources.

*Q.* You cannot state how they were overlooked, then, or why they were overlooked? *A.* Because I didn't look up the diaries and note-books of the engineers at the time the other statements were made. I would further state that the charges for Mr. Cummings' services were for labor performed by him assisting Mr. Navarre in laying out and attending the engineering work, as oftentimes it required two engineers to do the work.

Q. Well, now, Cummings was paid a regular salary, was he not? A. He was. RECORD.

Q. What was his salary? A. I think his salary was one hundred dollars a month. *In the Superior Court.*

Q. These different charges such as I have mentioned, . . . paid Cummings . . . all the way down, through the account, is your estimate of the value of some of the services that Cummings had performed while working with Brown, is that it? A. With Mr. Navarre. No. 63 Defendants' Evidence Deposition of

Q. How much, then, do you charge by that account to Mr. Peters? A. Per 10 diem or per hour? we charge four dollars a day. Edward Moore, 16th Dec. 1895.

Q. Four dollars is what you generally charged for Cummings service? A. Yes, continued—

Q. But, now, did Mr. Peters give you any order? did he write you a letter or anything of that kind asking you to employ Cummings? A. We didn't employ him: the contractor's engineer took him and employed him.

Q. Upon what authority did you send Cummings to do this work mentioned in this Exhibit and charge Mr. Peters for it? A. I have already stated that he was taken and used by the contractors' engineer, who had power and authority to take men from Moore & Wright and from Mr. Peters to assist him in laying 20 out the works.

Q. These charges, then, are made against Mr. Peters on the ground that Brown used Cummings' services without consultation with Peters or yourself? A. These charges are made, as the account states, for the benefit of the joint contractors, Peters, Moore & Wright, and, as further stated, were made by the contractors' Engineer.

Q. Now, what I want to get at is this? These charges are made against Mr. Peters? A. They are made against the joint contractors.

Q. These charges are made by yourself, being the value, as you allege, of Cummings' services, is that so? A. Yes, sir.

Q. And Cummings was ordered to do this work by whom? A. By the 30 engineer for the joint contractors.

Q. You don't mean to say that you were present on each occasion when Brown ordered work to be done, were you? A. No. As I have already stated, he was given full authority to take off men that he needed to advance the work,

Q. You were not present, and you have no personal knowledge of Brown's having done this? A. I had a personal knowledge to this extent, that he often spoke to me about the matter—both Mr. Navarre and Mr. Brown.

Q. He spoke to you about the matter, and he had authority to do this, but you were not present on the occasions on which he did it, or on the occasions on 40 which Cummings and Navarre worked together? A. I was not present on every occasions, although I was there at times.

Q. Then, you cannot speak of these items, from your own personal knowledge, can you? A. I cannot.

Q. The disbursements likewise that are mentioned in this account are taken from the memoranda or books or diaries, made at the time by either Brown or Cummings, or some person in the service of Moore & Wright? A. In the items of 1878, they are, with the exception of the two bottom items.

RECORD.

*In the  
Superior  
Court.*

No. 63.  
Defendants'  
Evidence  
Deposition  
of  
Edward  
Moore,  
16th Dec.,  
1895.  
*continued—*

*Q.* Mr. Peters had a boatman of his own, had he not? *A.* Not to my recollection.

*Q.* He had not, to your recollection? *A.* No, sir, not in the sense that a boatman is used there.

*Q.* You must surely recollect that there were several boats in the employ of Mr. Peters, getting ashore and going out to the works, do you not? *A.* No, sir, Mr. Peters used the boatman paid for by Moore & Wright, and the engineers' boatman, paid for by Moore & Wright, his foreman used it.

*Q.* Now, here is an item for \$529.50, paid judgment of A. Paquet. Have you got a copy of that judgment? You say there is a judgment? *A.* The 10 vouchers are put in.

*Q.* This was an amount paid by Moore & Wright to Paquet? *A.* Well, it was paid to Alleyn and Chauveau, our counsel, to settle the judgment.

*Q.* It was a settlement, then, that was made? *A.* It was an amount that was paid to Alleyn and Chauveau on account of a judgment that was obtained against us by Paquet.

*Q.* And that judgment was obtained for what? *A.* On account of the building of the harbour works, as near as I could understand it at the time.

*Q.* Was it in damages against you? What was it? *A.* Well, it was a vessel that ran upon the embankment, and we were condemned to pay it on 20 account of not having given proper legal notice, as I remember it.

*Q.* Where was that? *A.* That was right down near the ballast wharf.

*Q.* In what year? *A.* The year 1879. I should say it was either in the fall of 1878 or the early summer of 1879, as the suit was settled in September, 1879.

*Q.* You have alleged a number of legal expenses, legal opinions obtained, and legal charges.—Is it not a fact, Colonel Moore, that Mr. Peters always contended that he was satisfied with the certificate. Defendants' Exhibit No. 1 attached to the Commission and that he was always willing to receive that as the final settlement between the Harbour Commissioners and Peters, Moore & 30 Wright? *A.* It is not a fact.

*Q.* Would you please produce Mr. Peters' letters on that subject, say, of the 4th March, 1886? *A.* I don't think I have them here in Court, but I will look them up.

*Q.* Please produce also the letter on the 24th May, 1887? Can you not recollect that he wrote to the Harbour Commissioners also to the same effect, that he was satisfied with the final certificate, \$52,011.00? *A.* I have a recollection that there was a letter put into our case by the Harbour Commissioners to that effect at the time that he was trying to receive some money from them.

*Q.* In that letter did he declare himself to be satisfied with the certificate of 40 \$52,011.00? *A.* As I recollect it, it did.

*Q.* I think that is the letter of the 8th August 1887, to be found in the Supreme Court book, is it not? *A.* I think it was I stated. Plaintiff's Exhibit at Enquête A51, is a copy of that letter to which I have just alluded.

*Q.* You know, do you not, that the main contention in the case, brought after the giving of the certificate for the \$52,011.00 between yourselves and the Harbour Commissioners, was, what is known as the clerical error, the

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item known as the clerical error? *A.* I do not consider it was the main contention. It was one of the items of contention.

*Q.* As a matter of fact, you know this, at all events, that legal opinions were obtained upon that question, and from the persons mentioned in this account, and to whom you paid the charges, as you say, as per this account, Exhibit No. 6?

*A.* Oh, yes, we received opinions from them, Mr. G. O. Stuart.

*Q.* And these opinions that you received were in reference to that particular point of the case? *A.* In reference to that suit, and that particular point.

*Q.* Now these opinions, and these legal expenses were chiefly with respect to that point, were they not? *A.* Oh, no, they were not.

*Q.* The opinions were, however? *A.* The opinions you have just referred to were upon that point.

*Q.* There were several opinions, were there not? *A.* Not charged for there, as I recollect it.

*Q.* And these legal opinions are charged for in this account? *A.* The legal opinions which were obtained from G. O. Stuart is charged for in that account. I know of no other legal opinion with the exception of a small item of ten dollars that was paid to Simons & Libby.

*Q.* There was also another charge, wasn't there, paid to General T. N. Casey and other legal gentlemen, under the date of 30th August, 1887, \$179.00? *A.* The item referred to of August 30th are the expenses of the Commission taken out at Portland, and these are the sums paid to the experts who appeared before the Commission.

*Q.* That was an expertise on concretes? *A.* That was an expertise on concretes and other matters connected with the contention of the contractors.

At 1 o'clock the Court adjourns till 2 P. M. At 2 P. M. *cross-examination* of witness is continued.

*Q.* I wish you to produce the letters which you were requested to produce this morning? *A.* I was asked to produce a letter of the 4th March, 1886, and one of the 24th May, 1887. I have been unable to place my hand upon the letter of the 4th March, 1886, but I have the one of the 24th May, 1887, which I now produce and file as Plaintiff's Exhibit at Enquête A52.

*Q.* Would you look at the copy of the letter, the original of which you have been unable to find, and state whether that is not a copy, to the best of your knowledge and belief? (Witness takes communication of copy of letter.) *A.* I am unable to state whether it is a copy of the letter I have received.

*Q.* Would you refer to your letter-book and say whether you answered the letter of the 4th March, 1886? *A.* I have no letter-book here. That would be in the private book at my home. (The said copy of letter is filed as Plaintiff's Exhibit at Enquête A53.)

*Q.* Referring for a moment to that judgment of Paquet's, which you say you paid, will you state whether the same was not an action brought against the contractors for alleged damages done to a schooner in running on to a bank of sand? *A.* It was an action brought by the owners or agents of a schooner for running on the Harbour Works.

*Q.* The works that they ran against, were they not a bank of sand and debris on your part of the works? *A.* It was a portion of the embankment, sand and boulders.

RECORD

In the  
Superior  
Court.No. 63  
Defendants'  
Evidence  
Deposition  
of  
Edward  
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continued—

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RECORD.

—  
In the  
Superior  
Court.  
—

No. 63.  
Defendants'  
Evidence  
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continued—

Q. Placed there by Moore & Wright? A. Placed there by Moore & Wright, yes, sir.

Q. And you were sued, I think you said this morning, on account of an alleged breach of harbour regulations for not putting a light or a buoy or something of that kind? What was the alleged trouble? A. We were sued on account of damages to a vessel, and a judgment was brought against us for placing an obstruction in the St. Charles River.

Q. You have got with you the factum in that case? A. I think I have.

Q. Shew it please? A. I now produce the said factum and file it as Plaintiff's Exhibit at Enquête A54. 10

Q. Did you get any orders or letters from Mr. Peters asking you to bring on Mr. Brown to Quebec in 1882? If so, would you produce them? A. I will look them over and see.

Q. Have you got any? A. Not to my recollection here with me. I may have some.

Q. As far as your memory serves you, for the present, you have none, but you will not swear that you haven't any? A. I have a recollection of Mr. Peters writing to me once or twice in reference to Mr. Brown.

Q. There is an item of October 13th 1882. \$1200.00, would you state who it was that paid that, whether it was Moore & Wright or Peters, Moore & Wright? A. That was paid by the Harbour Commissioners to Mr. Bossé, as it states there. 20

Q. Why do you charge it in that account there? A. Because all the incidental and engineering expenses are charged in that account, of Peters, Moore & Wright.

Q. If I understand your account, Defendants' Exhibit No. 6, you contend that a certain portion of this should be paid by Mr. Peters? A. I pretend that the terms of the contract should be carried out, and that Mr. Peters should pay a *pro rata* portion of the incidental, legal and other expenses connected with the contract. 30

Q. Then, in paying this *pro rata* portion, seeing that this \$1200 was paid by the Commissioners, it ought to be eliminated from this account? A. No, sir, it should not, because as Mr. Peters never made any account of it in any of his statements that he rendered to me and—

Q. But this \$1,200.00 is added up in this account? A. It is, and it forms part of it.

Q. And you acknowledge that that \$1,200.00 was paid by the Commissioners on an order from Peters, Moore & Wright was it not? A. It was, and forms part of the legal expenses connected with the contract.

Q. Do you hold any receipts from J. Vincent Brown for all these numerous sums of money mentioned in pages 4, 5 and 6 of this account, Defendants' Exhibit No. 6? A. Wherever I paid him by cheque. 40

Q. Can you produce any of them? A. I can produce some of them, yes, sir.

I now produce what cheques I have in my possession, but most of the accounts or items were paid to him in cash at different times, at different places, of which I have an account in my diaries, and which I transferred to the accounts.

Q. As regards the cheques for the 7th October, 1881, can you see in this

account of yours any item answering to that on that date? *A.* I think that is one of the cheques that belongs to his salary account. RECORD.

*Q.* Look at the cheque of 30th August, 1882, and state whether that is not the same thing? *A.* No, Sir, it is not. That is in the charge for services on account of the arbitration. In the  
Superior  
Court.

*Q.* Will you say whether that is entered in that account, Exhibit No. 6 of Defendants? *A.* You will find that in the item of \$8,471.48 on the 4th page. No. 63  
Defendants'  
Evidence  
Deposition

*Q.* That sum of \$100.00 is included in the sum of— *A.* Yes, Sir, and if you will look at the items of the account which you have had this morning, you will find that charge at the bottom of it. Witness refers to Defendants' Exhibit No. 4 and says: Under date of August 31st, J. V. Brown paid on account of services, and this receipt is the voucher for it, Edward  
Moore,  
16th Dec.  
1895.

*Q.* That is a receipt: it is not a cheque? *A.* Certainly. It is the document you passed me. Three cheques and receipt and a telegraph order are filed as Defendants' Exhibit at Enquete B28. continued—

*Q.* Would you now look at the next item of Defendants' Exhibit No. 6 being December 23rd, paid Mr. Cook \$450.00, and state whether it is not a fact that \$450.00 was paid to Mr. Cook for the costs and charges in the case of Paquet? *A.* It was not. p. 629-30  
l.30

*Q.* Well, what was it for? *A.* It was for legal services rendered to the contractors, Peters, Moore & Wright.

*Q.* In Mr. Cook's account under that item are not the costs of Paquet's case charged? *A.* Mr. Cook had nothing to do with the case as far as we are concerned.

*Q.* Have you the account for that \$450.00? *A.* No, but I think I have the cheque.

*Q.* The cheque would be no use. I want to know what it was for? *A.* I don't think he rendered but one account to us, which I have, of the services connected with the suit.

*Q.* Have you an account in which the costs in Paquet's case are shewn? *A.* It has already been filed.

*Q.* I mean with respect to Mr. Cook. *A.* There is no item with respect to Mr. Cook, as Mr. Cook had nothing whatever to do with the case. Alleyne and Chauveau were our attorneys at the date. Mr. Cook was then the attorney of Mr. Peters.

*Q.* Have you got any receipt for \$200.00, June 29th 1884, paid Mr. Pilkington? *A.* I have got the cheque.

The said cheque is produced, and filed as Defendants' Exhibit, at Enquete B29.

*Q.* 1885, January 10th, Cost of cabling to England, I think you told us about that before, didn't you? What was your authority to cable to England on that? *A.* The authority came from Mr. Peters by the advice of our counsel, I had a copy of the cablegram: it was in Mr. Bosse's handwriting in reference to the final certificate. p. 630 l.30

*Q.* Would you look now at your letter of the 9th January, 1885, and state if you were not mistaken in giving the previous answer? (Paper-writing is handed to witness). *A.* Yes, and that is a copy of the cable that was forwarded to me from our counsel.

RECORD.

In the  
Superior  
Court.

No. 63.  
Defendants'  
Evidence  
Deposition  
of  
Edward  
Moore,  
16th Dec.,  
1895.  
continued—

Q. So you were mistaken when you said just now that Mr. Peters authorized the sending of that? A. No, I am not.

Q. Is it not contradictory with this letter of your own in which you state; "As you said nothing as to the cable to be sent them, I have thought best to cable them as follows:" as Mr. Peters had said nothing? A. It was a cable, copy of which, under the advice of our counsel had been forwarded to us and sent by the advice of Mr. Peters.

Q. In your letter of the 9th January you speak to the contrary, don't you? A. I refer in that statement—"As you said nothing as to the cable to be sent them I have thought best to cable them as follows:"—referring to the cable that had been forwarded. 10

Q. You are persuaded now that he had said nothing about this cable? A. In a letter which he wrote to me then.

Letter of 9th January, 1885, above referred to is filed as Plaintiffs' Exhibit at Enquête A55.

Q. I see you charge all your own travelling expenses—going and coming from Portland to Quebec, in reference to making up of accounts. These were your own personal and private expenses, were they not? A. They were in the interest of the joint contractors.

Q. I see also that throughout this account you charge interest and compound interest—that is, interest on interest. Have you observed that yourself? A. I observe that interest has been charged upon the document, and an item of interest has been charged upon the statement rendered to Mr. Peters of eight thousand and some odd dollars. 20

Q. Where the balances have been made up in this account and interest added up, interest has been charged up, on the total amount including the previous interest? A. Yes.

Q. You have referred in some part of your examination to attempted settlements that have been made between yourself and the late Mr. Peters. Did you make any offers to Mr. Peters at any time to accept any special sum of money in settlement? A. I have attempted a number of times to arrive at a settlement between Mr. Peters and ourselves but have never succeeded in bringing about a settlement. 30

Q. Would you look at your own letter of the 24th September, 1883, and state whether you wrote that letter? (Letter is handed to witness.) A. I think I did. That is my writing.

Q. This contains, does it not, an offer on your part to give Mr. Peters \$17,000.00 in full settlement? A. The letter shews that I made him a proposition of \$17,000.00 for his interest in the claim against the Quebec Harbour Commissioners at that date. (The said letter is filed as Plaintiffs' Exhibit at Enquête A56.) 40

Q. In reference to the item alluded to once already, item of \$179.00, in Exhibit No. 6.—Paid General T. N. Casey—you have stated that it was in connection with services connected with the Commission to the States? A. I did.

Q. Was that not entirely a commission upon your part of the work? A. It was.

p. 591-2  
C. 23

p. 592-3  
C. 12

Q. This Commission to which you have referred was one which was issued in the case of Peters, Moore & Wright against the Harbour Commissioners, which case went to the Supreme Court? A. It is.

Q. And in settlement of which the money now on deposit in the Union Bank was paid? A. It is.

Q. Will you look at the cheques and the accounts now produced as Defendants' Exhibit at Enquête B30 and state whether these are the accounts and receipts from Mr. Cook which are referred to in your bill of particulars? A. They are as to these items.

Q. Will you look at the accounts and receipts now produced as Defendants' Exhibit at Enquete B31 and state whether these are the account and receipts for professional services rendered by Mr. Justice Bossé and referred to in your accounts? A. They are.

Q. You have been questioned and cross-examined with respect to the stub foundation. Would you say what would have been the result to Moore & Wright, if the stub foundation had failed in any way? A. If there had been a settlement the result would have been very disastrous and very expensive to Moore & Wright.

Q. What work would it have involved? A. The rebuilding of the entire wall.

Q. You said that with reference to the understated bill of quantities in the concrete that on reference to Mr. Morris' testimony you could state what it was that he referred to. Will you now refer to that testimony and tell us what he then said?

Witness refers to said testimony and reads as follows: "Under this clause 10 of specification I have to correct an error in the bills of quantities in the amount of 8 to 1 concrete mentioned in page 73, last clause bills of quantities. I find that 880 cubic yards as a total for the whole of this length of wet dock should be added. This multiplied at the schedule rates comes to \$4,180.00 to be added."

Q. That is the testimony which Mr. Morris gave before the Dominion Board of Arbitrators when the claim of Peters, Moore & Wright was before them? A. That is a certified copy of the testimony of Mr. Morris before the Dominion Board of Arbitrators.

Q. Now, Colonel Moore, you were asked whether in your books you have any account of the cement used. Will you state whether such an account would be any evidence at all of the quantity of concrete placed in the back of the walls or in any particular part of the works?

40 Objected to on the ground of its being matter of opinion:

Q. Were there any other parts of the work in which cement was used besides the back of the wall? A. There was.

Q. What were they? A. In the trench of the tidal basin there was concrete used and in the foundation of the entire works, substructure.

Q. Were there concretes of different qualities used in different parts of the works? A. There was concrete of different qualities in different parts of the works.

RECORD.

In the  
Superior  
Court.

No. 63.  
Defendants'  
Evidence  
Deposition  
of  
Edward  
Moore,  
16th Dec.  
1895.

continued—

Q. Do engineers ever calculate the quantity of concrete in a particular piece of work from the number of barrels of cement which may be used in it? A. I never knew of such an instance, and I should think it would be a very difficult feat to perform.

Q. During the time that the suit of Peters, Moore & Wright against the Quebec Harbour Commissioners was in progress, did Mr. Peters take any part in the conduct of that suit? A. He took a very active part in the conduct of that suit.

Q. In what way? A. Originally in making up statements, in conferring with counsel, and conference with different parties connected with the Govern- 10  
ment in an effort to bring about a settlement.

Q. Did he bring up certain witnesses at the trial do you recollect? A. He did

Q. Was he present at the argument in the Supreme Court? A. He was, I think, I am quite sure he was.

Defendants' Counsel at the request of Plaintiffs' Counsel produces a letter of Simon Peters to Colonel Moore, of 24th September, 1883, which letter is filed as Plaintiffs' Exhibit at Enquête A56.

At the request of Defendants the Plaintiffs produce Colonel Moore's letter of 27th May, 1887, in answer to Mr. Peters' letter of 24th May, 1887, which letter is filled as Defendants' Exhibit at Enquête B32. 20

I, the undersigned, do hereby certify that the foregoing deposition is a true and correct transcription of my shorthand notes.

M. J. MORRISON,  
Stenographer.

No. 64  
Defendants'  
Evidence'  
Deposition  
of  
Phillippe  
Malouin,  
17th Dec.,  
1895.

PHILIPPE MALOUIIN, of Quebec, in the District of Quebec, Deputy Prothonotary, Superior Court, aged years, being duly sworn upon the Holy Evangelists, doth depose and say:

I do know the parties in this cause; I am not related, allied or of kin to, nor in the service or domestic of either of them, or interested in the event of this 30  
suit.

Q. You are the Deputy Prothonotary of the Superior Court for the District of Quebec? A. Yes, sir.

Q. Have you among the records of the Court a case instituted in the year 1883, wherein Simon Peters, Edward Moore & Augustus R. Wright, were Plaintiffs against the Quebec Harbour Commissioners? A. Yes, sir.

Q. Will you produce a copy of the writ and declaration in that case? A. I produce a copy and file it as Defendants' Exhibit at Enquête B38, also a copy of the bill of particulars upon which the action was founded, which is filed as Defendants' Exhibit at Enquête B34. 40

Q. How and at what date did that action terminate? A. On the 18th August, 1886, the Plaintiffs in the case by their attorney filed a desistement to the action, and that was the end of the suit.

Q. Was there subsequently a fresh suit instituted by Simon Peters, Edward Moore & Augustus R. Wright, against the Quebec Harbour Commissioners? A. Yes, sir, in 1886, under No. 957.

See p. 458 l. 41

p. 635-6  
l. 25

? 34 p. 636-8  
? 35 p. 639-41

Q. Will you produce a copy of the writ and declaration in that case?  
A. Yes, sir. (The said copy of writ and declaration are filed as Defendants' Exhibit at Enquête B55- 1336

Q. That is the suit which was ultimately terminated by the judgment of Supreme Court, is it not? A. Yes.

No Cross-Examination.

I, the undersigned, do hereby certify that the foregoing deposition is a true and correct transcription of my shorthand notes.

M. J. MORRISON,  
Stenographer.

RECORD.

In the Superior Court. p. 642-7

No. 64 Defendants' Evidence Deposition of Philippe Malouin, 17th Dec., 1895.

10

ST-GEORGE BOSWELL, of Quebec, in the District of Quebec, aged years, being duly sworn upon the Holy Evangelists, doth depose and say : I do know the parties in this cause ; I am not related, allied or of kin to, nor in the service or domestic of either of them, or interested in the event of this suit.

No. 65 Plaintiff's Evidence in rebuttal Deposition of St-George Boswell, 17th Dec. 1895.

Q. You have already been examined in this cause ? A. I have.

Q. You are the engineer for the Quebec Harbour Works at present ? A. Yes, I am the chief engineer of the Quebec Harbour Commission.

Q. Are you in a position to state from your knowledge of this case and the facts whether or not Moore & Wright, the defendants in the cause, were allowed in and by the final certificate, Defendants' Exhibit No. 1, whatever concrete they put into the works ?

p. 235-7

Objected to on the ground that it is not matter of evidence in rebuttal, as the Plaintiffs have fully gone into this point on their examination-in-chief : Objection taken *en délibéré*.

The Court is adjourned till the 18th December instant.

On the 18th December instant the enquête is continued.

The Court reserves the objection above stated.

A. Yes, they were allowed all the concrete they put into the works.

*Cross-examined subject to objections.*

Q. How do you know that, Mr. Boswell ? A. By the details of the final certificate.

Q. The details of the final certificate allow for concrete behind the stone wall, 13545 cubic yards of 8 to 1 concrete. I will refer you for the purpose of refreshing your memory to page 345 Supreme Court Book, in the case of Peters, Moore & Wright and the Quebec Harbour Commissioners in which you testified as follows : " In the final certificate the total number of cubic yards is 17,910 : " the amount of fine concrete in that is 4,365, leaving a balance of 13,545 cubic yards.

Q. Allowed to the contractors for concrete behind the stone wall ? A. As I say, the total allowance for concrete behind the stone wall was 17,910 cubic yards, and this amount is made up of 13,545 of 8 to 1 concrete and 4,365 cubic yards of 4 to 1 concrete." And again, at the top of page 346 this question is put :

RECORD.

*In the  
Superior  
Court.*

No. 65.  
Plaintiff's  
Evidence  
in rebuttal  
Deposition  
of  
St-George  
Boswell,  
17th Dec.,  
1895.  
*continued—*

" Q. You said that the 4,365 cubic yards of fine concrete had not been put into the work, did you not? A. I stated that the fine concrete amounting to 4,365 cubic yards had been replaced in the amended plan in part by 8 to 1 concrete and in part by the masonry face: that is, as I said before, a plan which was originally to have been occupied by masonry in part and in part by 8 to 1 concrete." A. That appears to be correct: but I thought you asked me how much concrete was actually put in, just now. I thought Mr. Stuart had asked me how much had actually been.

Q. Now, Mr. Boswell, will you refer to page 49 of the Supreme Court Book above referred to, and state whether you did not testify before the official arbitrators in the following manner: 10

" Q. Did you make a calculation of the actual amount of concrete put into the wall according to these plans? A. Yes.

" Q. How much was put? A. 20,323 cubic yards, including the stone, is the total contents of the wall: deducting the stone, the concrete would be 16,068 cubic yards. This does not include the concrete in rear of the coping course."

(Objected to on the ground that the deposition upon which the witness is being examined must be produced before he can be cross-examined on the said deposition): Objection overruled. A. If I did make a statement, a calculation of the kind, the result is incorrect, as the result shews the contents of the wall less the stone face: but from that should be taken the bollard boxes and the elm coping to give the net concrete. 20

Q. You further deposed, Mr. Boswell, in this same deposition upon cross-examination:

" Q. To arrive at the figures of 16,068 cubic yards given by you above, did you make any deductions of any kind beyond the mere masonry of the wall?

" A. No, I did not. Deducting the bollards the figures would be deducted to 15,888 cubic yards.

" Q. As to the concrete at the back of the coping, will you please say why you did not calculate that? A. Because it has never been ordered to my knowledge." That is true, is it not? 30

Objected to: same ruling as above. A. That appears to be true, certainly.

I, the undersigned, do hereby certify that the foregoing deposition is a true and correct transcription of my shorthand notes.

M. J. MORRISON,  
*Stenographer.*

No. 66  
Plaintiff's  
Evidence  
in rebuttal  
Deposition  
of Henry  
Joseph  
Peters,  
18th Dec.  
1895.

HENRY JOSEPH PETERS, of Montreal, in the District of Montreal, aged years, being duly sworn upon the Holy Evangelists, doth depose and say: 40  
I do know the parties in this cause.

Q. Would you look at Defendants' Exhibit at Enquête B26, and state whether that is a computation made by you of the contents of the concrete behind the stone wall in question in this case? (Exhibit is handed to witness.) A. This Exhibit is an arithmetical calculation on certain measurements given to me by Colonel Moore to prepare certain papers for the arbitration as near as I can recollect.

p. 679  
c. 15

Q. You made the arithmetical calculation in that document? A. Yes.

Q. You say upon what given to you? A. Upon figures given to me by Colonel Moore.

Q. In that document what are you responsible for? Is that the arithmetical calculation? A. That is all I am responsible for in this.

Q. You do not vouch for any calculation as to the quantities or as to the data upon which it is made? A. No.

Q. You say it was made at the request of Colonel Moore? A. Yes.

Q. And is merely an arithmetical calculation made by you! A. On certain 10 figures, yes.

Q. Now, there is an account produced by the Defendants in this case as exhibit No. 7. Wilt you state whether that account was ever at any time delivered to the late Mr. Peters or the items thereof in the shape of an account?

A. This exhibit No. 7 was never seen to my knowledge up to November 1882 or September 1882, the time I left Quebec.

Q. You say: this exhibit; but was any account similar to that exhibit ever delivered? Were the charges made in that exhibit ever made to the late Mr. Peters during your time? A. No they were not made, to my knowledge.

Q. That was up to September, 1882? A. September, 1882.

Q. Would you look at the items of this account regarding divers and the filling of cribs with stone particularly? A. Mr. Peters employed a diver of his own; and as to the filling of stone in low crib by order of the engineers during November and December, 1878, I think that we have got all the data that will shew that stone was placed there by M. Peters.

Q. Do you know during your time while you were there who filled the cribs with stone? A. Mr. Peters filled them with stone.

Q. Had Mr. Peters a steamboat for towing? A. Yes.

Q. When he had his work to do, what boat did he use? A. He used his own, and he employed other boats, which the receipts will shew in the receipt 30 book and paid for them too.

Q. About the diver, and the charges for diver and diving, had Mr. Peters a diver of his own? A. Yes.

Q. When he had diving work to do whom did he employ? A. He employed his own men and his own apparatus.

Q. Had he a private apparatus for diving also? A. Yes.

Q. What did he use when he wanted to do any work? A. He used his own apparatus, armour, pump, &c.

At 1 o'clock the enquête is adjourned till 2 P. M. At 2 P. M. examination of witness is continued.

Q. Mr. Peters, during the whole course of the time in which you were in your father's service had you any knowledge of Moore & Wright having done any work mentioned in that Exhibit No. 7 for the late Mr. Peters? A. No.

Q. You said, I believe, Mr. Peters, that you laid your own cribs, floated them down to be sunken when you started? A. These cribs appear to be for the northern embankment. If I understand, there was very little sinking required for them, it was so shallow—only a few feet.

Q. Would you look at the item under date of December 2nd, 1878, for

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A. About 100 bateau loads.

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Q. Now, is it possible that Moore & Wright could have put 100 bateau loads of stone into these cribs without your knowing it? A. I don't think so.

Q. You don't think so? Can you be sure or not? A. Yes; because we would have been notified by the contractors' engineer as to this fact, which we were never notified of. We don't know anything at all about it.

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Q. Would you please look at the item in that account at the head of the 7th page for \$525.00 and also the item under the heading of November 14, 1880, on the same page, for \$120.00, and state how many bateau loads of stone would be required for these items? A. Seventy and fourteen.

Q. That is, eighty-four in all? A. Eighty-four in all for these two items.

Q. Now, I ask you whether it is possible that Moore & Wright could have done that work without your knowing it? A. Not possible.

Q. Then, do you say that they did it or that they did not do it? A. I say they did not do it.

Q. You have examined pretty nearly every item in that bill, have you not? A. I have examined several items, yes.

Q. You have gone over the whole bill? A. There is one item here for removing concrete and also for replacing it subsequently. There was a gap left 20 in the wall to allow Moore & Wrights' scows to dump their stone inside. That is why that wall was left in that shape.

Q. So that that was their own affair? A. Yes.

Q. You have gone over pretty nearly every item of that account and have you any knowledge of any one of these items having been done by Moore & Wright for the late Mr. Peters? A. I have no knowledge.

*Cross-Examined.*

Q. Did you at any time make a calculation of the quantity of concrete in 30 rear of the masonry wall? A. I calculated the arithmetical part of it when certain figures were given to me.

Q. You made no independent calculations from the plans, then? A. I have no recollection at the moment.

p. 629 l. 15 Q. Do you recollect under what circumstances this Exhibit B26 was made? A. I think it was in connection with the arbitration.

Q. You were examined as a witness before the arbitrators? A. I was.

Q. I will now shew you a certified copy of the testimony which you gave before the Dominion Arbitrators upon the claim of Peters, Moore & Wright against the Harbour Commissioners, evidence given on the 30th August, 1882, 40 in which you said: "I am the son of one of the claimants, but I have no interest in this cause. I have verified the measurements on the actual work, and found them correspond to the Plaintiffs' Exhibit No. 5. I have calculated the amount of concrete in said works. I have come to the same quantity as that stated by "Mr. Brown, according to this plan." You testified in this sense? A. I did at the time.

Q. I now refer to the evidence of Mr. Brown before the arbitrators to which you referred in your testimony, and which reads as follows:

" Q. Referring to the items 30 and 31 please state if you have made any measurements of the amount of concrete actually placed behind the stone wall in accordance with the plan, Exhibit No. 6 and 9, and if so, give the quantities?"

" A. Yes, I have. The total cubic yards of concrete in the entire wall is 16,079 yards making \$76,375.25.

" Q. Is that quantity of concrete in accordance with the said plan, Exhibit No. 6, and state by whose order and under whose supervision it was made?"

" A. It is in accordance with tracings 6 and 9 and the work was done under the supervision of the resident engineer."

10 Q. Is that the calculation referred to by you in your evidence? A. I couldn't state at this length of time. There is no date on this, Defendants' Exhibit at Enquête B26. There is nothing to attach one to the other.

Q. I am not asking you whether B26 is referred to in your evidence but I am asking you whether the calculation referred to and sworn to by Mr. Brown is that to which you referred, when you said you found the same quantity as that stated by Mr. Brown? A. In making up the calculations we worked together, and my work was more a check upon his than actual measurements. My work was more arithmetical.

20 Q. You have not answered my question. Is the calculation referred to in the part of the evidence which I have just read to you that which was referred to by you when you testified before the arbitrators and used the words: "I have come to the same quantity as stated by Mr. Brown." A. I should judge so from that language. (Witness refers to deposition given before arbitrators.)

Q. Who was the diver employed by your father? What was his name? A. Young. He was hired for that purpose.

Q. Had he any other duty to perform besides diving? A. He also built the pile drivers before the diving was commenced.

Q. When were the pile drivers built? A. They were built during the winter, preparing for the season.

Q. After the pile drivers were built did he have anything to do with the running of them? A. For a short time he ran them, yes.

30 Q. Now, when, about, would he have taken to doing the work of diving exclusively? A. The diving that was required by Simon Peters he was taken from the work to do it.

Q. That is, if he happened to be wanted for that, he was used; otherwise he had a regular occupation of another character? A. Yes.

Q. And that occupation was the building of the pile driver, in the first instance, and the running of it afterwards? A. Yes.

Q. Do you recollect when you began driving the piles in the season of 1877? A. There were no piles driven in 1877. There may have been a few guide piles, but nothing more.

40 Q. In the beginning of 1878 were there any piles driven? A. Yes, there were piles driven in 1878.

Q. The beginning of the season? A. I couldn't say without referring to particulars.

Q. Did you know a man called Runyon who was in the employ of Moore & Wright? A. I remember seeing such a man in Mr. Moore's office.

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*No. 66. Plaintiff's Evidence in rebuttal Deposition of Henry Joseph Peters, 18th Dec. 1895. continued—*

*Q.* You knew that he was employed on the works, didn't you? *A.* I knew that he was employed in the office as a clerk.

*Q.* Will you look at the entry of the 24th July, 1878, in the diary now exhibited to you, being a diary of Moore & Wright, the entry being in these words: "Peters took Quebec floats this P. M." "Chains and diving armour, Jack and father," and state whether you know the handwriting in which that is? (Book is shewn to witness). *A.* It looks a little fresher than the rest, that is all; but I wouldn't like to say it was Runyon's, only the writing, and the pencil marks look much fresher than any of the rest, as having been put in not at the same period that this was done. 10

*Q.* You wouldn't say it was Runyon's handwriting? *A.* No, I wouldn't say.

*Q.* Would you look at the entry under date July 27th, 1878, in the same diary: "Peters had floats, chains, diving armour, Jack and father" "Mr. Peters had the use of tug for setting crib No. 4", and state whether you know the handwriting? *A.* No: but the pencil writing does not correspond with the rest: it is fresher, and not the class of writing, judging from what I see there.

*Q.* That is your opinion? *A.* Yes.

*Q.* Would you look at the ink writing here of the 1st August, 1878: "Peters had floats and diver with armour", and state whether you know that to be Runyon's handwriting? *A.* I couldn't state. I am not sufficiently familiar with it. 20

*Q.* Did you ever see his handwriting? *A.* I have seen it a good many years ago. It wasn't very characteristic, just ordinary writing.

*Q.* You cannot say here whether the writing of the 2nd August: "Peters had floats, diver with armour, and five men", is in Runyon's handwriting? *A.* No. It does not seem to correspond at all with the writing of the same date.

*Q.* I suppose that is very remarkable, seeing that the entries seem to be written in several handwritings? *A.* Anyone would judge from the writing that if Runyon kept this diary, that the writing would be the same at the bottom as any part. 30

*Q.* I suppose it is impossible that this diary should be one in which several would make entries as the work went along? Such a thing would be unheard of? *A.* That I couldn't say.

*Q.* Look at the entry of the third August, 1878, in these words: "Peters had divers with armour and four men putting blocks under crib, also use of floats", and state whether part of that entry is in the handwriting of Glackmeyer, who was a clerk in the employ of Moore & Wright and who is since dead? *A.* I wouldn't like to say whose writing it is in; but I notice there is no length of time stated when this was used. There is no number of hours mentioned, or whether it was an hour or a day or a week. The words "with armour" seem to be written in a different handwriting, and with a different pencil and deeper, a different shade. . . 40

*Q.* Will you state that the other words, except "with armour" and "also use of floats" at the end are not in Glackmeyer's handwriting? *A.* "Also use of floats" does not appear to be the same class of writing as the remainder, the first portion of it.

Q. Answer the question I am asking you : whether with the exception of the words " with armour " and " also use of floats " whether the rest is not in the handwriting of Glackmeyer ? A. I wouldn't like to say at the moment.

Q. You have seen Glackmeyer's writing very frequently ? A. A long time ago.

Q. Very frequently ? A. No, very frequently, but many years ago, seven-teen years ago.

Defendants file as Defendants' Exhibit at Enquête B33 the diary of Moore & Wright for the year 1878.

10 Q. You know Navarre's handwriting. A. Yes, I know Navarre's hand-writing.

Q. Would you look at his diary under date 20th May, 1878, and state whether he has not entered therein : " Divers down at L. of B. wharf to get "bevel. Young was the diver. Alarie from 1 to 6 P. M., also two men to pump." Who was Alarie ? (Diary is handed to witness). A. That is Mr. Navarre's handwriting, yes. I can remember.

Q. Who was Alarie ? A. I know that Young was the diver.

Q. Do you know who Alarie was ? A. I couldn't state at the moment.

20 Q. You don't know that he was Moore & Wright's diver ? A. I couldn't state at the moment, but it distinctly states that Young was the diver.

Q. Didn't both Alaries, father and son, who were the divers employed by Moore & Wright, live close to Peters' mill ? A. I remember now Alarie was a diver. I don't say he was the diver. It states here distinctly Young was the diver.

Q. Alarie was the diver employed by Moore & Wright ? A. Alarie was the diver employed by Moore & Wright.

Q. The work referred to there in Navarre's diary was Simon Peters' work ? A. To get bevel, but it states distinctly that it was Young was the diver.

Q. You know Mr. Vincent Brown's handwriting ? A. I do.

30 Q. Will you look at the diary now produced under date of 29th August, 1878, and state whether that is in Mr. Brown's handwriting ? (Diary is handed to witness.) A. Yes, that is Mr. Brown's handwriting.

Q. Will you notice this entry : " Bill the diver was down for half an hour " to-day looking for rudder of Mr. Peters' yacht, couldn't find it." Do you know who the diver referred to there was ? A. I couldn't say from the Christian name.

Q. In any case, your diver's name was Richard Young ? A. Yes

Q. So it wasn't the diver employed by Mr. Peters ? A. To do a favor for Mr. Peters to find the rudder of his yacht, it don't appear to be Mr. Peters' diver.

40 Q. Do you know that a man named Bill Mosher or some such name was in the employ of Moore & Wright ? A. I do not.

Q. Will you look at the same diary under date of Friday the 5th Sep-tember, 1878, in which this entry appears ? " The three pile drivers at work and " large force on northern cribs. " " Divers with gang putting on sheeting to shoal " cribs. " Are you prepared to state that was not Moore & Wright's diver that was employed at this work ? A. I couldn't say from that whose divers they were.

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*Q.* You wouldn't be prepared to swear they were not Moore & Wright's divers, particularly in view of the fact that the three pile drivers were then at work? *A.* I wouldn't swear whose divers they were.

*Q.* Now, come, don't you think that in view of the fact that the pile driver that was run by Young, who was your diver, was working, that you may safely conclude that it was Moore & Wright's diver who was doing the work? *A.* I couldn't say.

*Q.* Now, I would refer to the same diary under date of 17th September, 1878, in which I find this entry: "The three pile drivers at work," and then lower down: "A bulkhead in end of No. 11 crib sunk to-day. Crib 12 and 13  
 10  
 "carpenters at work backing quay wall, and with the divers putting on sheeting to shoal cribs." Are you prepared to swear that it was not Moore & Wright's diver that was doing the work on that occasion? *A.* I couldn't say whose divers they were, because there were times when the pile drivers were delayed for an hour or two or three at a time by the dredges; although they were nominally at work. The dredges would be in the way and the pile driver would stop.

*Q.* We will just look at the entry of the 26th September, in which I find this: "Alarie went down this morning to change sheet piling for Mr. Peters, was two hours and a half at it." I suppose there is no doubt whatever that that was Moore & Wright's diver? *A.* Removing of piling that was possibly broken by  
 20  
 the dredging. A great many of the piles were broken by the dredges.

*Q.* You know he does not say "to remove broken piles": he says: "To change sheet piles for Mr. Peters"? *A.* Yes.

*Q.* We will look under date of October 1, 1878, in the same diary, and there we find: "Alarie and four men, 1 hour to-day, drawing piles for Mr. Peters." I suppose there is no doubt whatever that it was Moore & Wright's men who were doing the work? *A.* Not a doubt; but these piles very frequently were driven to give lines to Moore & Wright for their work, and they had to be removed subsequently.

*Q.* Now, I find under date October 17th, this entry: "The Alaries and gang  
 30  
 put in bulkhead." *A.* The Alaries were Moore & Wright's divers.

*Q.* And the putting in of the bulkheads was Moore & Wright's work? *A.* I wouldn't like to say for the moment without referring to particulars.

*Q.* The bulkheads in any case were timber work? They were made of timber and they were part of the cribs? *A.* They were made of wood.

*Q.* They were part of the cribs? *A.* They were supposed to keep in the crib.

*Q.* Look under date October 27th: "Jack Alarie and his father, 1 carpenter and 2 men taking out bottom of pockets in shoal cribs." Was that Mr. Peters' work? *A.* Taking out the bottom, I wouldn't be prepared to say that  
 40  
 taking out the bottom was his work.

*Q.* Putting it in was, anyway? *A.* Putting it in was.

*Q.* What was the ordinary price per toise paid for stone? *A.* Two dollars and a half.

*Q.* Did it ever come any higher than that? *A.* Some times very late in the season it might cost three dollars. I don't think we paid more than three dollars at any time.

Q. About how many toise would the average bateau hold? A. Going over eighty to a hundred bateaux the average would be two and a half toise.

Q. Some of bateaux were larger than that? A. Very very rarely, an odd one.

Q. Some of them run up as high as four and five toise? A. I have no recollection. It took too many men to run them when they were as large as that and too long to load them.

Q. I think you told us already in a previous cross-examination that you were by no means continuously on the works: you had no work which specially required your presence there; but that you were more at the office than on the works? A. During the time the crib work on the north side of the gas and ballast wharf was sunk I was there most of the time.

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*Re-examined.*

Q. Referring to the evidence given by Brown that has been read to you on your cross-examination do you state with respect to the measurements therein referred to whether they were made by you or by Brown? A. Made jointly.

Q. From what? A. From the figures that Brown took off the plan. We made them together.

Q. Was it you or Brown who took the figures off the plan? A. Brown took the measurements off the plan.

Q. Referring to the question of pile drivers, you have stated that Young was the pile driver employed by the late Mr. Peters? A. He was one of the piles drivers.

Q. Were there several? A. Yes.

Q. How many? A. Three or four or five, I think.

I, the undersigned, do hereby certify that the foregoing deposition is a true and correct transcription of my shorthand notes.

M. J. MORRISON,  
*Stenographer.*

ALBERT PETERS, of Quebec, in the District of Quebec, aged \_\_\_\_\_ years, being duly sworn upon the Holy Evangelists, doth depose and say:

I do know the parties in this cause.

Q. Would you look at the account, Defendants' Exhibit No. 7 and state whether that account was ever delivered to the late Mr. Peters, or are any of the items thereof to be found in his office? A. This account was never delivered to Mr. Peters' office in 1883 or since or before.

Q. There were two of these accounts, Defendants' Exhibits Nos. 4 and 5, would you state whether they were delivered to the late Mr. Peters? A. Yes, copies of Exhibits 4 and 5 were delivered to Mr. Peters' office in 1883. I have the copies.

Q. Would you look at Defendants' Exhibit No. 6, and state whether any copy of that account or the items thereof were delivered to the late Mr. Peters at any time? A. The first page of this account, at least, the account corresponding was delivered to Mr. Peters, as I found amongst the documents in the office,

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in 1878, the first page only. The balance of this Exhibit No. 6 has never been received by Mr. Peters or his office at any time, and the first time that it was seen by myself and Mr. Peters was in the present suit.

Q. Referring to that first page, that, I think, was the settled account mentioned in one of the Exhibits produced in this cause? A. Yes, that was settled and paid in 1878.

Q. Now, referring to this Exhibit No. 7. You have taken communication of the items thereof, have you not? A. Yes.

Q. Are you aware that the late Mr. Peters had divers and armour and employed divers in his business? A. Yes.

Q. When he did any work of that description whom did he employ? Objected to:

*By the Court:* Were you at your father's office at that time? A. I was not, but I had a perfect knowledge of everything that was done on the works, on the Harbour Works, whose men belonged to Moore & Wright and whose men belonged to Mr. Peters, because I spent my time there, every moment I used to have I used to spend on the work. Objection overruled.

*Plaintiff's Attorney:* When he did any work of that description whom did he employ? A. Mr. Peters had his diver and diving apparatus and pump, etc., and armour.

Q. When he had work of that description do you know whom he employed to do it? A. Mr. Peters' man, Mr. Young.

Q. Would you look at the items of this account, Defendants' Exhibit No. 7 and state whether you have any knowledge concerning any of them? A. I have no knowledge of any of that work being done, from the second page.

Q. Have you any knowledge of the previous work? A. Of the first page?

Q. Yes.

A. I have no knowledge of that either being done, as no return has ever been made to Mr. Peters' office, and the first time that account was seen was in this suit.

Q. Might this work have been done, that is mentioned in Exhibit No. 7 without your knowledge? A. If it had been done, it would have been on record.

Q. Somewhere in your office? A. Somewhere in our office.

Q. And you say there is no record of the doing of this work at all? A. No record.

Q. Do you recollect the facts connected with the running ashore of that schooner of Paquet's? A. I remember the time. I have got a recollection of the time that the schooner ran where the sand was dumped, and knew that it was not on any part of Mr. Peters' work that that schooner ran on, and that it was through negligence of Moore & Wright for the place not being marked.

Q. You used to go up and down in the steamboat, I believe you said? A. Yes.

Q. Did you work on Mr. Peters' steamboat? A. I did.

Q. Did you go on that steamboat often or seldom? A. I used to go almost every day. In the summer time of 1878 I was on it daily, in fact, I used to run it.

Q. So you had occasion to know these things and observed these things?

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You know the item for stub piling mentioned in the final certificate, Defendants' exhibit No. 1, allowed at \$4,378.00, with regard to the doing of which Colonel Moore has estimated the work in his testimony at \$800.00, and estimated the risk which he ran at the difference between \$800.00, and \$4,378.60. Do you know the nature of the risk which Colonel Moore ran in connection with this item?

(Objected to: Objection maintained.)

*Cross-Examined.*

10 Q. About how many men were employed on the works by your father in 1877?  
A. Have you got the time sheet there?

Q. I want it from memory. Were there two hundred? Were there three hundred? Were there five hundred? A. In 1877, I couldn't state exactly, but there was quite a number.

Q. Quite a gang? A. Quite a gang, yes.

Q. What would you call a gang? A. You can establish a gang at ten men, and you can establish a gang at a hundred.

Q. When you say "quite a gang" as applicable to your father's work what do you mean? A. I suppose about forty men.

20 Q. And in 1878? There was a larger number then? A. We had working in 1878, there were men working for father. I suppose 160 men.

Q. About how many men were employed by Moore & Wright in 1877? Have you any idea at all? A. I didn't take so particular attention to.

Q. You couldn't say whether there were fifty men or a hundred men employed by Moore & Wright? A. He had quite a little gang, too.

Q. As many as your father? A. That I couldn't quite say.

Q. In 1878? A. They must have had very nearly as many men as Mr. Peters.

30 Q. That would be about one hundred and sixty. Were all these employed down on the site of the works? A. No.

Q. How long was Young, the pile driver, in your father's employ? A. He was a winter and a summer and a fall and the fall before, and I think till the next spring.

Q. And what years would that cover? A. That would cover the winter of 1877, the year 1878, and up to the spring of 1879.

Q. That, is, he entered your father's employ in the autumn of the winter of 1877 and continued in his employ till the spring of 1879, isn't that right? A. As far as my memory serves me.

Q. Now, what year did the Paquet accident occur? A. 1877.

40 Q. Were you there when it occurred? A. As near as my memory can serve me, I remember the occasion.

Q. You saw it happen? A. No, I didn't say I saw it happen; but I remember seeing this schooner stuck on a sand pile, a pile that was not the natural formation of the ground.

Q. Where about was that? A. Down behind the breakwater.

Q. Outside or inside the breakwater? A. Just inside.

Q. What time of the year in 1877? A. I think it is, well, there was dredging done then, it must have been on towards the fall.

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*Q.* Any cribs being put down there? *A.* Yes, they were starting the crib-work. There were some posts. I remember the wharf, the way the cribwork was built; there were uprights placed, and the cribwork was brought along and tied to these timbers running up and the different courses went on. That was the course of construction in 1877, the way it went on?

*Q.* Is that the way the cribs were built in 1877? *A.* Down there. The cribs were continued up afterwards.

*Q.* Are you now referring to the northern cribwork, to the ballast wharf cribwork? *A.* Yes.

*Q.* And you tell us that in 1877 that cribwork was built by means of posts 10 and the cribwork was built along it then and there? *A.* No, I don't say that. I said that the construction of the wharf, to carry the wharf up, to bring it up to coping level in 1877; but that was the way it was built.

*Q.* So that necessarily when that wharf was being built cribs had already been sunk? *A.* Cribs had been placed there.

*Q.* Where she did strike was between the ballast wharf and the works, was not it? *A.* No between the ballast wharf and the gas house. Between yes, the ballast wharf, the Point a Carcy wharf.

*Q.* Do you mean the Point a Carcy wharf as the ballast wharf or the breakwater? *A.* I mean at the breakwater. 20

*Q.* Not the Point a Carcy wharf at all? *A.* No, the breakwater wharf.

*Q.* Did she come in between the Point a Carcy wharf and the breakwater or did she go around by the north? *A.* I wasn't there to see how she came in, but I saw her when the tide had gone down.

*Q.* And you cannot state from her position which way she came in exactly? *A.* In trying to float her off they may have turned her around.

I, the undersigned, do hereby certify that the foregoing deposition is a true and correct transcription of my shorthand notes.

M. J. MORRISON,  
*Stenographer.*

Judgment.

UNIVERSITY OF LONDON  
W.C.1.

21 OCT 1956

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LEGAL STUDIES

29503

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Moore and another v. Lamoureux and others, representatives of S. Peters, deceased, from the Court of Queen's Bench, Lower Canada; delivered 28th June 1898.*

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Present:

LORD WATSON.

LORD HOBHOUSE.

LORD DAVEY.

SIR RICHARD COUCH.

[*Delivered by Lord Davey.*]

On the 2nd of May 1877 the present Appellants and Simon Peters (since deceased) entered into a contract of that date with the Quebec Harbour Commissioners for the execution by them of certain works and improvements at the mouth of the river St. Charles in the Harbour of Quebec. The contract price was a lump sum of \$554,296. 31 including a provisional sum of \$25,000 to meet the expenses of any extra works. But that lump sum was founded on the bills of quantities and rates and prices set forth in the tender by the Contractors which was annexed to the contract and described as Specification B.

The contract contained a clause by which the Harbour Commissioners were empowered to substitute a stone facing backed with eight to one Portland cement concrete to the quay walls for the whole length of the walls (three thousand and five hundred and fifty feet in all) or for any less length thereof in lieu of the fine Portland cement concrete and timber face as

shown on the contract drawing for the sum of \$18,393. 58 for the whole length of the walls or a proportionate sum for any length of such walls as may be ordered. In the Specification B it was further provided that in event of the Commissioners determining to carry out the stone face to walls in lieu of the timber and concrete face and should the Contractor be called upon to dress the stone wall "Rough Bouchard" instead of "quarry faced" as mentioned in the specification the Contractor should be paid an extra sum of two cents and three-quarters per cubic foot of wall beyond the sum of eighteen thousand and three hundred and ninety-three dollars and fifty-eight cents. It is agreed that the latter provision added a sum of \$3,547. 3 to the previous amount making the total extra sum payable in respect of the alteration \$21,940. 61. The concrete described in these clauses as 8 to 1 cement concrete was called throughout the case "coarse concrete" and the 4 to 1 cement concrete was called "fine concrete." It may be presumed that this sum of \$21,940. 61 was arrived at by calculating the cost of the estimated quantity of stone wall at a certain price and deducting therefrom the cost of the work that would be saved by the substitution but the contract itself does not show the mode in which it was arrived at nor does the list of prices contain any price or rate for the stone work except that for "Rough Bouchard."

Clause 48 contained a power to add to or omit from and generally to modify or alter the works and materials. In event of any works being ordered for which the scheduled prices should not apply it was provided that the Engineers should measure value and price on such additions and measures as they should think reasonable.

Clauses 54 55 and 56 provided for advances at the rate of 90 dollars for every 100 dollars

worth of the contract and extra works executed being allowed to the Contractors as the work proceeded and upon the certificate of the Engineers and for a final certificate being given on completion of the works and by clause 58 it was provided that all works as they progressed should be measured from time to time by the Engineers and proper accounts bills of quantities or pay bills should be made up and priced out according to the rates and prices of the annexed schedule.

The Appellants and Peters were not partners in the main contract. As between themselves their rights were determined by an agreement between them dated the 4th May 1877 by which Peters undertook to execute all the timber and iron work and pitching of outer slopes and forming of roadway and the Appellants undertook all the works contracted for except those specially undertaken by Peters. It was agreed that the parties should be paid by the Commissioners for these aforesaid works as the same should progress in accordance with the schedule of prices annexed to the main contract and upon certificates to be granted by the Resident Engineer of the Commissioners and also that with respect to any incidental expenses attending the said works which had hitherto been unanticipated or unprovided for the same should be borne by the parties *pro rata* to the value (to be established by the schedule of prices annexed to the main contract) of the amounts of work to be by them respectively executed under this contract. The agreement then contained the following clause:—

“ And whereas it hath been stipulated in and  
 “ by the said Main Contract that it shall be  
 “ optional with the said Quebec Harbour Com-  
 “ missioners to demand that a certain wall  
 “ mentioned in the specification lettered B, and  
 “ annexed to the said Main Contract be faced

“ with stone, it is hereby agreed that should the  
“ Quebec Harbour Commissioners decide that  
“ the same shall be done the said Simon Peters  
“ shall execute the said work at the rates set  
“ forth in the said specification lettered B and  
“ annexed to the said Main Contract, but in the  
“ event of the said work being so performed or  
“ executed by the said Simon Peters, neither he  
“ the said Simon Peters nor the said Moore  
“ and Wright shall have any claim against each  
“ other respectively by reason of the deduction  
“ caused by such modification in the mode of  
“ constructing the said wall from the gross  
“ amount of the work by them respectively  
“ undertaken.”

The Harbour Commissioners exercised their option to substitute a stone wall for timber backed with fine concrete and required the contractor to dress the stone wall “Rough Bouchard” so that the whole additional sum of \$21,940 61 became payable and a great many other changes were made from time to time in the works. During the progress of the works certificates were delivered in accordance with the contract. The course of business was as follows. Mr. Browne the Engineer of the Contractors in the first instance made an estimate of the work done by them and the amount due in respect thereof from which he deducted 10 per cent. The Resident Engineer of the Commissioners revised this estimate and issued his own estimate stating the quantity and description of the work done the rate allowed and the balance due after the like deduction and then gave his certificate for the amount so arrived at. Usually separate certificates were given for the work done by Peters and that done by the Appellants but in a few instances the work done by each of them was included in the same estimate and certificate and in those cases a note was added by the

Resident Engineer stating the proportion of the certified sum payable to Peters and the Appellants respectively. Throughout these estimates and certificates it is to be observed (1) that there is no charge for fine concrete backing and none was in fact executed to the stone wall (2) that the coarse concrete work done by the Appellants is allowed at the scheduled rate and (3) that the stone wall is allowed to Peters and priced at 60 cents per cubic foot. There is evidence by letters and otherwise that this was done with the knowledge and acquiescence of the Appellants.

The Engineers made their final certificate dated the 4th February 1886 by which they certified that a sum of \$52,011. 21 was owing to the Contractors. In this certificate the Engineers credited the Contractors in the first instance with the lump sum of \$529,296. 13 and under the head of "additional work" with "in stone wall and Rough Bouchard" \$21,940. 61 and also with two sums making together \$57,597. 40 for "cubic yards in concrete in rear of stone wall tidal basin and wet dock" and a further sum of \$4,190 for "cubic yards in concrete in rear of stone wall wet dock understated in bills of quantities or error." It was stated by counsel for the Respondents and not denied that the two first sums for concrete in rear of stone wall were the sums of the amounts allowed for the same work in the progress certificates. Their Lordships have not thought it necessary to verify this statement. On the other hand the Engineers made a deduction expressed to be "as agreed with Contractors in Quebec" of \$116,104. 32. The deduction appears to have included the coarse concrete in bills 1 and 4 which must have been required according to the quantities in Schedule B. if the original plan of a timber face with fine concrete backing had been adhered to.

It should be mentioned that before the final

certificate was given there had been litigation between the Contractors and the Commissioners in which the Contractors contended that the contract had been so far departed from as to be inapplicable and claimed to be paid by measure and value. This litigation failed from want of the certificate. After the final certificate had been given the present Appellants were dissatisfied with it and a second action was commenced in the names of Peters and the Appellants against the Commissioners. This action resulted in a judgment of the Supreme Court of Canada of the 17th November 1891 by which a sum of \$35,457. 50 was added to the balance found due by the certificate making a total sum of \$87,468. 71 which it was adjudged that the Contractors were entitled to receive from the Commissioners in settlement of their claims. An examination of the declaration in this action shows that the matters in respect whereof a rectification of the final certificate was sought affected the present Appellants exclusively and letters were put in evidence indicating that Peters was prepared to acquiesce in the balance found by the final certificate. The balance found due by the judgment of the Supreme Court was reduced by certain payments on account and other payments made by the Commissioners and the balance \$68,972. 95 was by an arrangement between the parties paid into the Union Bank of Canada on deposit in joint names until the respective shares of the parties should be finally established.

The present action was commenced by Peters on the 16th October 1893 for the purpose of determining what sum he was entitled to receive out of the deposited moneys and to obtain payment thereof. Peters died during the progress of the action and his representatives were substituted. They are the present Respondents.

The first and principal question between the parties is as to the sum which Peters was entitled to be paid in respect of the stone wall substituted for a timber face with a fine concrete backing. The Respondents claim so much of the lump sum as represented the price according to the scheduled rates of the timber facing and fine concrete backing originally contemplated and in addition the extra sum of \$21,940. 61 allowed in case of the substitution being made. These sums amount in the aggregate to \$77,378. 50. Or alternatively they claim the actual quantity of stone wall at 60 cents. per cubic foot which they say amounts to the same sum. On the other hand the Appellants admit that the Respondents are entitled to the extra sum of \$21,940. 61 but they claim to be entitled to so much of the lump sum as was appropriated to or represented the price of work falling within their department whether such work was done or not and they contend therefore that they are entitled to so much as represents the price of the fine concrete backing originally contemplated and that the Respondents are entitled only to so much of the lump sum as represented the price of the wood and iron work which was within Peters's department. Both sides appeal to the clause in the contract of the 4th May 1877 between themselves quoted above. The Appellants say that the Respondents are thereby precluded from making any claim against (*i.e.*, in opposition to) them by reason of the deduction from the gross amount of concrete work undertaken by them or (in other words) they are not to be losers by reason of the modification in the mode of constructing the wall. The Respondents on the other hand contend that each party was to be paid and paid only for the work within his own department actually executed by him and that the effect of the proviso according to its true

construction is to preclude the Appellants from making any claim as against them for loss of profit or otherwise by reason of the gross amount of concrete work undertaken by the Appellants being reduced by the modification.

The Court of Queen's Bench decided this question in favour of the Respondents—on the general ground that there was sufficient evidence of an agreement between the parties that Peters should be paid for the stone wall at the rate of 60 cents per cubic foot and that he should have allotted to him to the sum representing the price of the fine concrete rendered unnecessary as well as that of the timber and iron work. Their Lordships agree in the result with the Court of Queen's Bench. They doubt whether a document dated prior to the deed which was put in evidence showing how the extra sum of \$21,940.61 was in fact arrived at was properly admissible for the purpose of explaining and supplementing the deed. But their Lordships think that the want of a rate for stone work in Specification B must be treated as a *casus omissus* either by oversight or because the parties knew what was meant and that the omission must be supplied by agreement or in default of agreement by evidence of a reasonable rate. The allowance of 60 cents per cubic foot in the progress estimates and certificates and the actings of the parties thereon do in the opinion of their Lordships afford evidence on which they can act of an agreement between them fixing the rate mentioned as the rate applicable to the contract or if not so then sufficient evidence of what was in the opinion of the Engineers as well as of the parties a reasonable rate to supply the lacuna in the Specification. The estimated number of cubic feet in the stone wall is shown by a document dated 9th November 1881 (Plaintiffs Exhibit A 38) and

verified by Albert H. Peters. It shows the balance claimed on masonry less ten per cent. by letter to the Chairman of the Harbour Commissioners signed by Peters Moore and Wright. The masonry is calculated at 128,964 cubic feet at 60 cents making a total of \$77,378. 50 and the total amount of the previous estimates \$62,784. 57 leaving a balance of \$14,593. 93 less 10 per cent. \$1,459. 39 thus bringing out a balance due of \$13,134. 54. The Respondents show that the amounts representing the price at scheduled rates of the estimated quantities of wood and iron and fine concrete in Bills Nos. 1 and 4 together with the extra sum of \$21,940. 61 (subject to a small correction) bring out the same figure of \$77,378. 50 and on the whole evidence their Lordships entertain no doubt of the intention of the parties that so much of the lump sum as represented the price of wood and iron and fine concrete backing which was rendered unnecessary by substitution of the stone wall should together with the extra sum be appropriated as the price at 60 cents per cubic foot of the stone wall.

The Appellants indeed say that on this basis they will not be paid for all the coarse concrete which they in fact executed. Their Lordships have already mentioned that in the final certificate they are allowed a sum of \$4,190 for coarse concrete in rear of stone wall wet dock understated in bills of quantities or error. It is possible but by no means proved that this allowance is insufficient to cover all the concrete work done by them in rear of the stone walls and not allowed in the progress certificates. But it must be observed that the Appellants have not thought fit to bring in any account of the work executed by them as they were invited by the Respondents to do and it is as impossible for their Lordships as it was for the Court below to

correct any error in calculation or in substance if any error there has been.

Their Lordships ought to add that they entirely agree with the Court below that the so-called "detailed certificate" signed by Mr. Kinipple in May 1893 (Exhibit 1A) possesses no probative value whatever and they have discarded it from their consideration.

The other questions discussed at the Bar are of a different character. They arise out of claims and cross-claims between the parties for contribution to incidental expenses attending the works and costs of litigation between the Contractors and the Commissioners (which it is contended come within that description) and for services rendered and work done by the parties for each other in the course of the works and other similar matters. So far as the claims of the Appellants have been allowed or those of the Respondents have been rejected there is no appeal but the Appellants say that some of the Respondents' claims against them have been improperly allowed and to a large extent the claims of the Appellants have been disallowed by the Court below on the ground that they were either unproved or prescribed by limitation of time and can only be allowed to the extent admitted by the Respondents. These questions are for the most part questions of detail and figures but before discussing the details their Lordships will express the opinion they have formed so far as questions of principle seem to be involved :—

(1.) Their Lordships think that according to the true construction of the contract of 4th May 1877 the parties were bound to contribute to the incidental expenses attending the works not provided for according to the respective values (to be determined according to and for the purpose of the contract between them and the

Commissioners) of the work done by them respectively or (in other words) *pro rata* in proportion to the amounts receivable by them respectively out of the total payments made by the Commissioners; but as these respective proportions have not been finally ascertained and will only be finally ascertained by the result of the present appeal it is obvious that no right of action for an unascertained contribution could be maintained until the appeal is disposed of and therefore no question of prescription by limitation of time can arise.

(2.) Their Lordships do not think that the costs of litigation between the Contractors and the Commissioners after the completion of the works and for the purpose of settling the amount payable by the Commissioners are "incidental expenses attending the said works" within the meaning of the contract of 4th May 1877. The right of contribution between the parties must therefore depend on general principles. The mere fact that Peters allowed his name to be used as co-Plaintiff will not settle the question. With regard to the first action against the Commissioners it appears from the declaration that it was for the purpose of enforcing claims by Peters and for his benefit as well as for the benefit of Moore and Wright. In the absence of any special agreement the costs of this action would be a joint debt and their Lordships think that Peters would be bound to contribute his proportion of the costs of this action paid by the two Appellants. But the right to contribution would arise and prescription would run from the date of payment by the Appellants of the joint debt. As to the second action it appears from the proceedings that the claims made in it exclusively concerned the Appellants and it was for their benefit only. It further appears from letters in evidence that Peters was prepared to acquiesce

in the final certificate of the Engineers and was averse to further litigation with the Commissioners. In these circumstances their Lordships think that it must be presumed that Peters allowed his name to be used as a formal co-Plaintiff at the request and for the benefit of the Appellants and in the absence of any agreement there was no right to contribution towards the costs of the second action in favour of the Appellants.

Their Lordships will now deal with the various items in dispute. The first item objected to by the Appellants is Item 4 in the account of the Respondents' \$6,838. 44 in respect of works in Bill No. 7. They contend that this item should be reduced to \$4,184. 21 by reason that part of the work included in Bill No. 7 was not executed. No part of Bill No. 7 it should be observed is appropriated by the Respondents towards the stone wall. The whole amount of this bill represented work within Peters' department and as it has been allowed by the Commissioners their Lordships agree with the Court below that Peters is entitled to it. If the whole amount was not done as specified it is quite possible that the whole value was allowed as a set-off for other work done by Peters. The contention of the Appellants seems to be that they are entitled to every part of the sum on deposit which the Respondents cannot prove to be in payment for work actually executed by Peters. Their Lordships can see no ground for this contention or for differing from the Court below on this item. Item No. 5—Bill No. 8—stands on the same footing and should be allowed. Item No. 25 was also rightly allowed by the Court below. Peters undertook to do certain work for Moore and Wright at cost price and the question is whether he has charged too much but their Lordships were referred to no evidence on the point

beyond Moore's own opinion. Nor do their Lordships see any reason for differing from the Court below on any others of the items in the Respondents' account which were objected to. The judgment of the Court below will therefore stand subject to correction if any of the Appellants' claims should be allowed.

The claims made by the Appellants in opposition to the Respondents are comprised in their Exhibits 4 5 6 and 7. The account in Exhibit 4 no doubt is not strictly proved. The items in it are not vouched in the manner which would be required in taking an account adversely in Chambers but some of these items are very small. The account is largely for the expense of maintaining an office for the Resident Engineer and a boat and boatman for his use as required by the contract and for the services of the Contractor's Engineer. These seem to come under the description of incidental expenses attending the works and it is not really in contest that some such expenses were incurred and the amount does not seem excessive though it is contended that the account as a whole is not strictly proved. Jacobs the clerk of the Appellants swears that all the items after 19th April 1879 are correct and have been checked with the original entries made by himself and states generally that the different sums were paid for the purposes that are stated in the account at the time and the services that are charged were rendered at the time. He further states that the details of the last item in the account being the total of Peters Moore and Wright's engineering account \$285. 05 have been checked with the books and with the exception of a small clerical error are correct and that they were given to him by Brown the Contractor's Engineer who is dead. He also states that the account was furnished to Peters in August 1883 and

apparently never objected to by him. On cross-examination he adheres to his statement that the services charged for were performed as well as the items of purchase. Colonel Moore one of the Appellants also swears generally to the correctness of the account but is unable naturally to swear to every item of the account. He was however cross-examined on several items and his answers tend to confirm the general correctness of the account. Their Lordships are of opinion that there is sufficient *primâ facie* evidence of the account to throw on the Respondents the burden of displacing it which they have not done and if as stated it was sent to Peters in 1883 and not objected to it must be taken not to have been seriously disputed by him. There are however a few items amounting to \$352. 82 which were apparently expenses attending the arbitration and not expenses attending the works within the meaning of the contract. Exhibit 5 contains the details of one of the items in Exhibit 4. The account contained in Exhibit 6 includes the claims of which Exhibits 4 and 5 are itemized accounts. It is an account prepared for the purpose of this suit and so far as it relates to incidental expenses not included in Exhibits 4 and 5 does not appear to be satisfactorily proved. As to so much of the account as relates to expenses of litigation their Lordships think it should be disallowed for the reasons already given. Mr. Warrington stated during the argument that he did not claim Exhibit 7. Their Lordships have already expressed their opinion that the claim for incidental expenses attending the works is not barred by prescription.

Their Lordships therefore think that \$352. 82 should be deducted from the amount due to the Appellants on the account contained in Exhibit 4 and that one-third of the remainder (which has been taken as the proportion payable

by Peters) with interest at 4 per cent. per annum from the 29th October 1892 the date of the deposit be deducted from the amount of the judgment given by the Queen's Bench. They will humbly advise Her Majesty accordingly and that subject thereto the Order appealed from be confirmed. In case the parties are unable to agree as to figures the case must be remitted to the Court of Queen's Bench.

With regard to costs it is of course impossible to do exact justice. The Respondents have succeeded entirely in the more important part of the appeal and in the larger number of the items brought into question. Their Lordships think that justice will be done if the Appellants pay to the Respondents three-fourth parts of their costs of this appeal and they so order accordingly and make no further order as to costs.

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