

ENGINEER HOLT ON STAND ALL DAY

Mooney Water Extension Case Resumed in Circuit Court

LAWYERS WRANGLE

Judge, One Time, Calls Counsel to Account for It—Site of the Dam Again the Point Most Prominent in the Questioning.

The case of B. Mooney & Sons vs. the City of St. John for damages in connection with their water extension contract was resumed in the Circuit Court Tuesday before Judge Landry, Engineer F. W. Holt was called by the plaintiffs and he was on the stand all day and his examination will be continued this morning.

The evidence given was largely technical, dealing with the nature of the ground at the site of the dam and Mr. Holt's interpretation of the plans prepared by Snow & Barbour. There were several times during counsel and the judge on one or two occasions reminded them that such pleasantries as the personal remarks made about one another should not be indulged in.

At the morning session Mr. Holt was examined by Mr. Powell. Several photographs of the location of the two sites of the dam were placed in evidence, showing the nature of the work done and the excavation on the upper site. Mr. Holt said he had five years experience on the Mispic stream and knew the volume of the water. He went out with the contractors, and Mr. Barbour pointed out the site of the dam, near the outlet of the lake. He assisted Mr. Mooney in making his tender.

After the contract had been let out he learned for the first time that the site of the dam was to be changed. On the first site one would have to excavate from two to three feet ledge rock, whereas on the upper site it would be necessary to dig from eight and one half feet to eighteen feet. It would not cost so much to build the dam on the lower site. The expenditure had been increased by additional excavation, the deeper water and the cofferdam, also by additional pumps and engines. From 90 to 600 tons more fuel had been used in connection with the engines. He would rely on the test pits and soundings as far as they went. These would be sufficient with the site to tender with little or no risk.

Cross-examined by Mr. Baxter, the witness said that the dam as shown in the plans could be readily built on the lower site but the roll way might not come in the exact centre of the stream.

On cross-examination Mr. Holt was asked to show the plans of the dam and questioned the witness regarding them. Mr. Holt said that as far as he knew these plans were the same as he had seen in the city hall previous to the contract being awarded.

Asked if reference to these plans would show the existence of the bridge, he said it would.

Asked if the plan would not indicate that the proposed dam bridge be replaced that it would, the place where the dam was to be was not perfectly flat. A plan showing the north and south abutments had been examined and the witness was asked as to the meaning of the figures stating the backwater at the dam. The figures 283, he said, were below the normal spot.

After some time had been spent in this examination, his honor asked Mr. Baxter if these questions would not rather find points which would not affect the case materially.

Mr. Baxter replied that he wished to show that the plan which had been introduced before the contract was entered into showed the conditions correctly.

On resuming, Mr. Holt, in reply to Mr. Baxter, said the plans would indicate that the dam had to be built eight feet below the water. He described at length the composition of the shore and the nature of the stream at that point showing where rocks, gravel or mud was found. He explained about the material encountered in building a coffer dam and said he would not consider it advisable to sink test pits in the stream to learn where the dam was to be built, and Mr. Barbour had shown them, vailing his hand toward the spot.

Several of the photographs put in evidence in the morning were shown the witness. He said the photographs showed the water in the day that a great deal lower than on the day they visited there. He had not figured on any definite depth of excavation.

Mr. Powell interjected that many of the articles in the agreement were "Yankeeisms" that did not apply to New Brunswick.

Mr. Baxter remarked that Mr. Powell was getting childish.

Mr. Powell then re-examined the witness.

This original plan with the markings, Mr. Skinner said, he had no such plan. Mr. Powell made some remarks as to the unfairness of the defence in not producing the plan when it had been agreed between counsel to do so.

Mr. Skinner—"That is untrue, Mr. Powell."

Mr. Powell—"It is not untrue." "Then the case is a squabble between the counsel, ending in his honor having to call them to order."

Mr. Powell showed another plan and questioned the witness concerning it, Mr. Skinner objecting.

The questions continued on technical points and Skinner making objections. He accused Mr. Powell of stalling up and glaring at the jury for effect, but this Mr. Powell denied.

After some further testimony the court adjourned until this morning at 10 o'clock, when Mr. Holt will again be on the stand.

A feature in the hearing of the case of B. Mooney & Sons vs. the city of St. John in the Circuit Court Wednesday was the statement of Engineer Barbour that the dam could not have been built at the lower site where the plaintiffs state they thought it was to go to work on the fact that there was not room there for a roadway 200 feet in length.

The case for the plaintiffs was concluded at the morning session and in the afternoon Mr. Baxter outlined the case for the defence and Engineer Barbour was called as the first witness.

At the morning session Engineer Holt was again on the stand, and his evidence revealed nothing of importance, save that he declared he relied entirely on Mr. Barbour's calculations.

He might, if he had taken the trouble, have ascertained where the base line started, but he relied on the engineer as final authority. He used his calculations in the tender on the site as shown him by Mr. Barbour.

Mr. F. Mooney, one of the plaintiffs, was next called, and stated that he looked at the site in company with his brother, Patrick, before the contract was signed. His brother pointed out the site and he inspected the test pits. Had the dam been constructed on the site pointed out by Mr. Barbour, it would have cost little if anything to construct the water and build the dam on dry ground. This could be done by filling up the dam at the foot of Loch Lomond, and stopping the flow of water into Lake Robert's bay. He stated that the total cost of the dam in its present position to the plaintiffs was \$62,000, and all the city had paid them was about \$48,000. The item for pumping alone cost upwards of \$7,000.

P. J. Mooney was next called, and said that all the plaintiffs got from the city was \$47,000, and the balance submitted to the city engineers, then to the water and sewerage board, and by them referred back to himself and Mr. Barbour to adjust. An expert went over the books with Mr. Barbour, who cut off \$14,000 in addition, which he thought should not be borne by the city. Mr. Mooney's evidence closed the case for the plaintiffs.

The defence. The court then adjourned until 3 o'clock when Mr. Baxter, opening the case for the defence, stated the contents in the case. The first was that all the money due had been paid. There was a nominal sum still due that the city had held. This they would not dispute.

The second claim was that there had been misrepresentation as to the site where the dam was to be built. This they would endeavor to disprove. The third claim was that the contractors had been deceived as to the nature of the soil at the place where the dam was to be built. He explained at length how in previous cases claims of this kind had been turned down by the highest courts.

There was, he said, no attempt made to show that the work done by the contractors had been other than satisfactory. The city had on the other hand, in an honorable manner in insisting on the contract being performed as set forth and agreed to. It was the duty of the contractors to see that competent men were employed to go over the plans and the ground where the pipe line was to be laid.

He quoted sections of the contract to the effect that the city did not guarantee the conditions as stated. The contractors should have ascertained what the conditions actually were, otherwise they had no claim.

With regard to the order from Mr. Hunter regarding the doing of certain work it was not an order for extra work but as definite orders from an engineer as to the carrying out of certain work, Mr. Barbour and Mr. Hunter would give evidence that this work should not be classed as an extra.

dated Nov. 5, 1904, was handed to the witness and he said he recognized it having seen it before. The letter was put in evidence. It was addressed to Mr. Barbour, and related to the employment of surveyors and of their work along the proposed line of water extension.

The plans prepared by Engineer Hunter, under direction of Mr. Barbour, were then examined and the witness said that he had seen them and that they were the plans that he had used in the work that he had done.

In answer to his honor, Mr. Baxter said he had the rolls made less than a year ago and he had a greater amount of water on the crest of the dam and consequently a backing up of the water in Loch Lomond.

Continuing, Mr. Barbour said that the dam could not have been placed where it was stated by the plaintiffs it was thought it would be done if the same plan was used. It would have been necessary to excavate the banks at the sides of the stream in order to get the proper width for the roadway.

It was also impossible, he said, to have used the lower site because the head work and the dam would have been changed from the plans.

In answer to the jurymen the witness stated his reasons why he had done as he did. He was asked if the plans were prepared from the plan of platting with his supervision, he having been over the ground personally.

Mr. Powell, jumping up—"I object to that."

Mr. Baxter—"I am not going to be balked at, Mr. Powell."

Mr. Powell—"I have a perfect right to object."

walked over dry-shod the previous summer. One of the main topics of conversation was the transportation of fuel for use in the building of shanties, etc. The estimated number of barrels of cement used in the structure was 6,000.

His Talk to Mr. Mooney. To Mr. Fisher the witness said he depended on the plans for exact information as to the work to be done.

He did not tell Mr. Hunter that the dam was to be placed on the lower site. He had a conversation with Mr. Mooney relative to section two and Mr. Mooney examined it on his (Barbour's) recommendation. He further said that Mr. Mooney had told him he had saved him from getting it. The witness declared he had never at any time made a statement to Mr. Mooney relative to the location of the work that he did not honestly believe to be true, nor did he say anything to either of them to indicate a way to get away from it.

In a conversation with Mr. Mooney the witness said that according to the provisions of the contract the city was not responsible. Soundings were made on the site and the witness said it was concluded to go to ledge.

In his conversation with Mr. Mooney there was no reference to the provisions of the contract and no orders or authorize anybody in writing to do the extra work.

All extra work done from the time the dam was taken was paid for at the price bid in the contract. Surface excavation included all excavation of extra wall and all material used in the embankment to be paid for twice.

Prior to putting the matter before the council, the Mooney books were gone over and the witness cut down as agreed by the Mooneys.

On resuming at 2:30 o'clock Mr. Baxter read the report of Engineer Barbour with regard to the dam. The witness said this was the report submitted to the council.

Mr. Baxter was going on to question the witness as to the statement in the report when Mr. Powell objected and after some argument his honor ruled the questions out.

Mr. Powell said he had always given Messrs. Mooney to understand that their claims would have to be adjusted by the council and not by him as engineer.

Mr. Powell—"I have a perfect right to object."

location of the dam as its present site. The coffer dam in connection with the building of the dam was erected by Mr. Kelly, though Kelly was "bust in" several times.

The witness was questioned at some length as to the manner in which this point adjustment was suggested, and his honor made the remarks as reported.

OBITUARY. John Esler. John Esler, a resident of Portland (Me.), died in his home there last Wednesday. He was born in Hillsboro (N. B.) in 1860, the son of Christian and Mary Esler. He went to Portland when a young man and remained a few years, when he returned to New Brunswick and was married, after which he again went back to city and made his home there until his death. He leaves his wife, one son and one daughter.

Mrs. Deborah Armstrong. John Collins, I. C. R. policeman here, has received word of the death of his sister, Mrs. Deborah Armstrong, in Ottawa. She was about sixty-seven years of age, and had been a resident of Ottawa for many years. She was married to a Mr. Armstrong, who was a prominent business man in Ottawa. She was also a member of the Wesleyan Methodist church. She was sixty-six years of age and is survived by her widow, daughter of the late Bowman Corning, three sons, Harold S. Corning, a resident of Ottawa, and two daughters, Mrs. M. L. Corning, of New York, and Mrs. M. L. Corning, of Providence, and Miss Mary, at home.

Weddings. Richardson-Johnston. Word has been received by relatives here that on Jan. 11, at Bar Harbor (Me.), Miss Sarah M. Johnston, formerly of this city, and Chester W. Richardson, of Somerville, were married in the Methodist parsonage by Rev. G. Garland.

Harrington-Murphy. A pretty morning wedding took place in the cathedral Tuesday, when Michael Harrington, a former St. John man, but now in the electrical business in Connecticut, was united in marriage to Miss Mary Murphy, daughter of Patrick Murphy, Rev. A. W. Meahan performed the ceremony, which was witnessed by a large gathering of friends. The bride wore a gown of white satin trimmed with pale blue cloth and trimmed with broad, which she wore with a white hat trimmed with plumes and a set of mink fur, the gift of her brother.

Mrs. David D. Spencer. Mrs. Eliza Spencer, widow of David D. Spencer, died Tuesday morning in her home, 57 Millington street, at the age of 83 years. She had been ill for upwards of a year suffering from rheumatism. Mrs. Spencer is survived by two sons—D. G. and Wm. J. Spencer, both living in St. John, one brother, James Wilson, of Boston, and one sister, Mrs. George Chamberlain, of this city.

Mrs. David Munroe. Newcastle Creek, Queens Co., N. B., Feb. 10.—Mrs. Mary Munroe, wife of the late David Munroe, died at her home Feb. 8, from heart trouble, leaving nine children, most of whom are now in the employ of John Munroe, Mrs. John Sypher, Mrs. George E. Wasson, Newcastle Creek; Mrs. E. F. Allen, Vancouver; Mrs. J. W. Haverhill, Mass.; Mrs. John Murphy, of Maiden (Mass.); Mrs. Jarvis, of South Poland Springs (Me.), and fourteen grandchildren.

William Elliott. Anagance Ridge, Feb. 7.—William Elliott, a resident of Anagance Ridge, Kings county, died at his home Monday, Feb. 7, in the first year of his age. He was born in Glasgow, Scotland, and came to this province with his parents when a child. He was educated in the Mechanics' school and there made for himself a home until his family grew up. Some 25 years ago they all moved to Anagance Ridge and he was in that fine farming district made for themselves good farms and well furnished homes. Mr. Elliott was very religious and was a member of the Wesleyan Methodist church. He was a very active and earnest worker in the same, being very gifted in prayer. He was a leader in Sunday school work and temperance reform, or in any good work that had for its object the elevation of man. He was a kind and affectionate husband and father. He is survived by a widow, who was a Miss McLaughlin, of Hammond, and four children—Martha, stenographer for W. Daniel & Co., of St. John; James, Ethel and Gertrude, at home, also five brothers and four sisters—James, jeweler in Sussex; Alexander, Thomas, John and George, all residing on farms of Anagance Ridge, and Mrs. Ward Hunt, Mrs. Abner Ross, Mrs. John McQuin and Jane, at home.

The funeral took place Wednesday and notwithstanding the very cold day it was largely attended. Some came more than twenty miles, showing the esteem in which he was held. His four brothers and one son were the pall-bearers. Rev. Mr. Bell, Petticoat, conducted the service at the house and grave.

A memorial service will be held in the Methodist church here on Sunday, the 15th inst., at 3 p. m., a church that the deceased and his wife, Mrs. Elizabeth, with several others, had built and dedicated, some two years ago, it being the first Methodist church ever built in this beautiful section of country, showing clearly what earnest Christian men can do. In what earnest Christian men can do. In what earnest Christian men can do.

Miss Ivey Hale. Woodstock, N. B., Feb. 12.—Word had been received of the death in Enderby (C.), at the residence of her uncle, F. J. Hale, ex-M. P., of Miss Ivey Hale, daughter of the late George Hale, of Grafton. Deceased was a trained nurse by profession. She was the last survivor of the family, her parents and sister having predeceased her.

Mrs. Honora Burke. Mrs. Honora Burke, widow of John Burke, of St. John, died on Tuesday evening in Ottawa, N. B. She was 87 years of age. She was married to John Burke, of the private council department. She was in her ninety-second year. Besides her son, in St. John—Timothy Burke, inspector in the inland revenue department. Owing to absence from home on business, Mr. Burke did not receive notice of his mother's death in time to permit him to reach Ottawa for the funeral, which took place yesterday morning after requiem mass in St. Joseph's church.

Mrs. Margaret Dock. Mrs. Margaret Dock, widow of James Dock, died at her residence, 23 St. David street, Thursday. She had been ill for a short time, having been stricken with paralysis. She was a sister of William Bell, of the late Thos. Youngbloods.

Mrs. John Ames. After a lingering illness, Mrs. Annie Ames, wife of John Ames, died Thursday night at her residence, 42 Exmouth street. Mrs. Ames was an elderly woman and had been a patient sufferer for many years. She leaves her husband and one daughter, Miss Emma, at home.

Samuel A. Crowell. Yarmouth, Feb. 12.—(Special)—The death occurred last night of Samuel A. Crowell, head of the hardware firm of S. A. Crowell & Co., and one of the best known business men in the province. Mr. Crowell was able to be out on Monday, although complaining, but on Tuesday morning he was stricken with apoplexy. He became unconscious, and remained in that condition until his death. The deceased

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LOCAL NEWS. Rev. E. C. Jenkins, of Ludlow street Baptist church, has resigned and will go to Hartland about May 1.

Construction work on the sections of the Transcontinental railway in New Brunswick has been about suspended until spring. Real estate is advancing in price along the line.

Colonel White, D. O. C., has been granted brevet rank of colonel in the militia, and will continue his duties as district officer commanding for this province. Major A. H. Macdonell, D. S. O., is made deputy assistant quartermaster general at Halifax.

The civil servants' committee have been advised to appeal from the decision of the supreme court of this province in regard to tax on their incomes. It has been decided, however, to get the opinion of Dr. A. O. Earle before taking further action.

Without food for two days and depending upon strangers to provide her with lodging for the night, Martha Marvin, aged seventeen, from Halifax, applied to the North End police for protection Wednesday and was taken to the Evangelical Home, where she spent the night. The story the girl told the police is a touching one.

There may soon be interesting developments in Indiantown over the ownership of a house on the Cunard wharf. D. J. Purdy, John Purdy, and Captain John E. Purdy hold claim ownership. Each has warned the tenants to pay no rent except to him, and has also served notice on the tenants to leave the premises on May 1.

PERSONALS. F. C. Ebbett, of Gagetown, was registered at the Victoria Wednesday. Lady Middleton left Ottawa yesterday for St. John, whence she will return Wednesday for England. The Hon. Sybil Bodrick will leave later with Lady Evelyn Grey to attend Lady Ruby Lyell's marriage in England—Montreal news, Tuesday.

Have You Winter Dysentery? In summer, when abundance of green or unripe fruit is eaten, bowel troubles are exceedingly common. Almost as prevalent is dysentery in the winter. The cause being congested bowels due to cold. Physicians say it is not a difficult matter to cure dysentery and bowel disorders if a suitable remedy is employed. Probably, nothing affords such quick relief as small doses of Nervine, repeat every hour or two. If there is pain, relief is immediate—stomach is strengthened, the patient able at once to benefit of Nervine. Those who know, say there is no ache or pain inside or outside, that Nervine won't cure. This good plan, why hundreds of thousands of homes are sold every year—it does good.