

large steel pipes, used as penstocks at the works of the "Matabitchouan Power Development," in the district of Nipissing.

By the contract, dated June 16th, 1909, but not in fact executed until some time in September, of that year, the defendant company agreed to furnish, deliver and erect the pipes in question; the plaintiff—called in the agreement the purchaser—agreeing to make the necessary excavations, and to prepare the line of location of the pipe and also "to move all apparatus from Montreal River landing to the site of the work," and "to provide a standard gauge track along the right-of-way, with cars and Lidgerwood hoist for moving the same, for the distribution of material along the line of location close to the points at which it is to be finally installed."

Both parties concede that the term "right-of-way" is practically synonymous with the term "line of location," and indicates the place where the penstock was to be installed.

By the specifications, which were made part of the contract, it is provided "the material comprised shall be delivered by the contractor free on shore at Montreal River landing. The purchaser, under the direction of the contractor, will move all material from Montreal River landing to the site of the work, and will provide a standard gauge track adjacent to pipe line, with cars and Lidgerwood hoist, for moving the same for the distribution of material along the line of location."

The two parallel pipes are about twelve hundred feet in length, and run from the power house at the lower end to the dam upon the river, up an elevation of about three hundred feet.

The material was landed, after being brought from Montreal river, at a dock some four hundred yards from the power house. A tramway had been constructed by the plaintiff from the power house to the foot of this hill. The tram then ran up the hill at some little distance from the line of location. The cars were drawn to the foot of the hill by horse power, and were then taken up the hill by a Lidgerwood hoist.

Another tramway was constructed along the line of location. It also was operated by a Lidgerwood hoist. This is the tram referred to in the contract and specification.