MOONEYS CLAIM THEY WERE DECEIVED IN SITE OF DAM

First Day of Trial in $25,000 Water Extension Suit Against City—Point at Issue Brought Out in Examination of First Witness, G. Gray Murdoch—Jurors Take Part in Questioning—City Produces Plan—Contractor McVey on the Stand.

The case of B. Mooney & Sons vs. the City of St. John, an action for the recovery of $25,000 out of claims in the construction of the dam on the Loch Lomond water extension, was begun in the circuit court Tuesday. The evidence of G. Gray Murdoch, who surveyed the land in the vicinity of the dam, occupied the greater part of the day. He testified in his examination that no borings were taken on the site of the dam, but under cross-examination, on production of a plan by the city showing that borings were marked on the site of the dam, recollected that the plan in question had been prepared under his supervision and that he had forwarded it to F. A. Barbour, the consulting engineer.

A feature of the proceedings was in the questions and remarks by the jury as the case proceeded. William McVey, one of the water extension contractors, who went out to inspect the locality with Mr. Barbour, was on the stand when the court adjourned until this morning.

The plaintiffs are represented by H. A. Powell, M. G. Teed and W. H. Harrison, while the city's interests are in the hands of Recorder Skinner and J. B. M. Baxter.

The jurymen are: W. S. Fisher, Alfred Porter, A. W. Adams, L. G. Crosby, James Patterson, F. P. Starr and E. W. Sipp. The absentees on the jury list were L. T. Nase, Thos. Foley, T. H. Estabrooks, G. H. Waterbury, Beverley R. Macaulay and H. W. deForest. W. A. Porter was excused for reasons.

Messrs. Mooney's Contention.

Mr. Teed, in opening the case for the plaintiff, contended that the plans submitted by the city did not show the exact site or location of the dam, and that Mr. Barbour pointed out to the contractors a site where ledge was close to the surface. They tendered, he said, on the strength of these assurances, but when ready to go on with the contract learned that the site was a considerable distance above that previously shown them, and that there was deep rock excavation. Messrs. Mooney, he said, refused to go on, but, after being directed to keep account of the work done, completed the contract. He contended that no test pits were sunk on the site, and alleged fraud on the part of the city in representing conditions which did not exist, the conditions of the contract not being applicable to the site of the present dam. The plaintiffs claimed a loss of $25,000.

G. Gray Murdoch First Witness.

G. Gray Murdoch, land surveyor, who had charge of the work of making surveys in the vicinity of the site for the dam in 1904-5, was the first witness called for the plaintiffs. Examined by Mr. Powell, he said he surveyed section 3 from Latimer Lake to the site of the dam.

Mr. Powell asking what he did in connection with the dam, the recorder objected on the ground that there was no dam there at the time, and that the witness should be allowed to tell what he did.

Mr. Powell—"In connection with the proposed site, did you do anything?"

"The survey covered it."

"Where was the site of the dam?"

"At the foot of Robertson's Lake."

"Was a survey made on the site of the present dam?"

"The survey covered it in a general way."

Mr. Powell was about to use the city's plans lying on the table to explain the locality when the recorder objected and Mr. Powell expressed some surprise, adding that he understood both sides were to be permitted to use them.

Replying further to Mr. Powell, the witness said the notes of the surveys were in the field books in the water office.

Mr. Powell called for them, and it was decided to have them in court after recess.

The witness explained that there was an old bridge near the outlet from Robertson's lake, and that looking up stream from the bridge would be facing north. Test pits were sunk on both sides of the stream and a number of lines were run over. It would be hard to say how far up stream the farthest was. He took his instructions from Mr. Barbour. The pits were sunk under the direction of the witness.

Mr. Murdoch was about to refer to the subject of a conversation with Mr. Barbour when the recorder said he must formally take exception to any conversations with Mr. Barbour being given, as at the time he was not actually the engineer engaged in connection with the contract.

Continuing, the witness said soundings were made where he was told to make them. The first line of soundings would be about fifty feet above the bridge and they covered a range of 200 feet or a little more up stream.

His honor interrupted at this point with the remark that it was a pity there was no plan to explain the situation.

Mr. Powell said he would get over the difficulty later.

In reply to further questions the witness said the dam was to be placed within the range of the soundings, but he did not know the exact location. He knew where the present site was and had no recollection of making any borings in connection with it before the plaintiffs began to work. The present site was not within 100 feet of the test pits.

Mr. Powell then called on Mr. Skinner to produce the contour plan of the ground and reservoir farther up the stream. The plan was produced and was marked A on being put in evidence.

Mr. Powell regretted that they had not a copy, as the plan was very cumbersome to handle.

Mr. Skinner said his learned friend knew very well why there was no copy.

Mr. Powell protested he knew nothing about it.

Location of the Dam.

The witness, after examining the plan, gave the opinion that the dam was intended to be placed about 250 feet above the bridge at the end of the conduit as he laid it out. The pipe line, he said, was extended farther north afterwards. He received no definite instructions to stop at any particular spot.

An objection to a question as to why the witness ended the line there was sustained.

Replying further to Mr. Powell, the witness said he did not know if the pipe line ended at that spot at the time the contract was signed. The test pits were sunk in the fall of 1904 and the site for the dam laid out in the spring of 1905. The projection of the pipe line to meet it was made the same day. The plaintiffs had been at work on section 3 some days before the line was extended. Mr. Hunter, the resident engineer, had charge of laying out the dam. The witness used the instruments.

A question as to conversation with Mr. Hunter was objected to.

Resuming his evidence, the witness called attention to the fact that the site was not the same as he had in mind. When Messrs. Mooney went to work they constructed coffer dams for the purpose of keeping out the water. After a while they struck rock. The deepest spot was eighteen feet on the west side running out to nothing.

Mr. Powell then called for the plans and profiles of the Lake Robertson dam, as submitted to Messrs. Mooney, and prepared for their tender.

The plans were put in evidence and marked B. The plan referred to in evidence showed the line of the original surface and the line of approximate ledge.

Taking the plan, the witness pointed out a spot near the head works where he said rock had been found at a depth of 18 feet and where it was marked at less than 3 feet on the plan.

His honor, addressing Mr. Powell, said the situation seemed a little out of the ordinary. The plan represented labor done at another place. The contractors tendered on that, but the dam was not built there. It created some confusion in his mind.

Mr. Powell replied that his point was to show there was 18 feet excavation instead of three feet.

This concluded the direct examination and the court took recess.

On resuming at 2.15 p. m. Mr. Murdoch was cross-examined by the recorder.

The preliminary questions were devoted to finding out the extent of the survey from the base lines and the extent of the contour lines.

The witness said the survey would give the general nature of the ground 300 feet up from the bridge. Soundings were taken by Mr. Chestnut. He was out there himself but at the time was nearer Loch Lomond. There were also borings in the vicinity of the dam. He had heard that test pits had been sunk near the site of the dam some years before, but he had no knowledge of them. He measured the distance of the dam from the inital point near the bridge and said it was 465 feet. If it had been on the original spot it would have been 200 feet. The dam was never located on any other spot than where it was built.

Jurors Ask Questions.

In reply to Mr. Fisher, a juror, the witness said the contractors were not misled as to the original intention of the engineer.

Mr. Powell—"We will show you where Mr. Barbour represented the dam to be."

Mr. Crosby, a juror—"But could not an engineer go out and ascertain within a foot where the dam is to be?"

The Recorder—"That's what the plan is for."

Mr. Crosby—"It strikes me the plan would not be much use unless the dam could be located."

Mr. Powell—"Mr. Barbour located it on the ground."

Mr. Fisher—"Did not Mr. Barbour locate the dam before the plan was produced?"

The Witness—"Decidedly."

The Recorder—"We are seeking to prove that anterior to the contract the dam was located as that plan locates it."

In reply to Mr. Fisher, the witness said the plan could not have been used 200 feet lower down.

Mr. Crosby—"You could locate it to a foot."

In reply to Mr. Porter, a juror, the witness said the surface of the ground was entirely different. No one could have been mistaken in the two spots.

The recorder then produced a plan of all the borings taken in the vicinity of the dam. The plan was marked for identification.

The recorder to the witness—"Do you know who made this plan?"

Mr. Powell—"I object."

The witness, after examining it carefully—"I have seen it before. It is made from notes of different surveys."

Mr. Powell—"You don't know who made it?"

The witness—"Yes I do, I saw it made."

The Recorder—"What was it made for?"

The Witness—"All the work was done with a view to the location of the dam."

In reply to Mr. Fisher, the witness said the borings indicated that there was three or four feet of earth above ledge. There were no borings nearer than 40 feet from the zero point on the dam. The 18 feet to ledge was about 20 feet east of the zero point.

Several of the jury expressed the opinion that the great depth to ledge was due to a pocket.

In reply to Mr. Porter, the witness said the rock dipped off in a westerly direction.

In reply to the recorder, the witness said the plan in question was made under his superintendence and was sent by him to Mr. Barbour.

Replying to his honor, the witness said he was in charge of the work. He did not know that there were any borings taken on the site of the dam. The plan indicated a few. The figures on the plan near the site of the dam were made by young Mr. Holt.

In reply to Mr. Fisher the witness said he did not think the soundings were correct on the line where it intersected the dam. It was a frequent occurrence to strike boulders and be deceived.

Replying to the recorder, the witness said when he sent the plan to Mr. Barbour he did not know of any errors. He had no more information than was contained in the plan. The object of the plan was to ascertain the depth of rock. He thought he knew all the men under him. They were fairly competent. Mr. McLean, now, he thought, in Moncton, had done the work on the site of the dam with an assistant. He did not know who he was. He had no doubt as to the accuracy of the work when he forwarded it to Mr. Barbour.

Replying to his honor, the witness said he thought the borings on the site of the dam had been made into mud and not rock.

In reply to Mr. Powell, the witness said the plan showed only two soundings on the line of the dam. The nearest test pit was 180 feet away.

Mr. Powell—"Looking at the cross section in plan B and looking at plan A, is there anything in the contour on A to indicate to an ordinary man that the dam is intended for its present site and not the site lower down?"

The witness—"There is some difference."

Mr. Powell—"To an ordinary man?"

The witness—"Yes, considerable difference."

Mr. Powell—"All right."

The recorder—"Could the dam as it appears on plan B have been put in any part of that territory?"

Witness—"No."

The recorder—"Any man seeing the plan would know where the dam would go?"

The witness—"Certainly."

Mr. Baxter—"You suggest the borings on the site of the dam were in mud."

The witness—"Yes."

Mr. Baxter—"Yet you sent that plan forward to Mr. Barbour as representing rock and had a request from Mr. Barbour to show rock?"

The witness—"I can't say."

Re-examined by Mr. Powell, the witness said there was plenty of room to put the concrete portion of the dam as profiled on the lower site. He would think an ordinary man would notice the difference.

Mr. Powell—"There is not a single sounding on the site of the dam that goes down to rock at all?"

Witness—"No."

Contractor McVey Called.

This closed Mr. Murdoch's evidence. William McVey was called. In reply to Mr. Powell he said he remembered going out to the locality of the dam with other contractors in August, 1905.

The recorder intimated that all conversations before the contract was signed would be objected to.

Mr. Powell said he would put in evidence the invitation of the city to the contractors to visit the locality. He asked the witness if he went to the dam.

The recorder—"He couldn't go to the dam. It wasn't there. It's not for counsel to take the witness through the sinuosities of the roads."

The witness said the party went to the bridge and Mr. Barbour pointed out where the site of the dam would be.

The recorder objected to anything Mr. Barbour said.

A feature of the second day of the trial of Mooney vs. the city of St. John, which is being heard before Judge Landry and a special jury, was that Patrick Mooney, one of the contractors who are suing the city, was on the stand. The evidence of William McVey, George McArthur and Joseph McVey, contractors, who visited the vicinity of the dam with F. A. Barbour, was also given. Wm. McNamara, John Horgan and Engineer Kenneth Chestnut gave details of survey work to locate the dam.

Several little breezes between counsel occasionally enlivened the proceedings. The case is not likely to be finished this week and may be adjourned until Feb. 11.

Morning Session.

William McVey, who was on the stand when the court adjourned on Tuesday, resumed his evidence yesterday. He said Mr. Barbour pointed out from the bridge where the dam would be located. He saw a ledge rock on either side but could not say how far the place was from the present dam. All the observations were made from the bridge, as far as he knew.

In cross-examination by Mr. Baxter, he was asked if Mr. Barbour pointed out the lines of any other part of the work in the same way as he did the dam.

After some hesitation the witness said Mr. Barbour had pointed out the ground over which the pipe line would run.

He examined plan B. and said that the concrete work of the dam was 666 feet. With information from the plan before him, he had visited the locality referred to, where the location of the dam was pointed out to him. When there he asked Mr. Barbour several questions relative to the location of the dam but could not recall the exact replies.

To Mr. Powell, he said that the more water a contractor had to encounter the more expensive would be the work.

George McArthur Called.

George McArthur was next called, and said he tendered for the dam on the Mispec river, having previously seen the plans. After referring to the visit to the bridge near the site of the dam and giving similar evidence to the previous witness, he was going on to recount some conversation, when Mr. Skinner stopped the witness.

"I beg your pardon," said Mr. McArthur.

"You needn't beg my pardon," was Mr. Skinner's retort.

"I'm a little hard of hearing," said the witness.

"You're not," was the reply.

The witness was briefly cross-examined by Mr. Skinner.

Joseph McVey was next sworn and testified to the visit to the site of the dam and the conversation with Mr. Barbour on the bridge. After some further evidence Mr. Baxter asked him the location of the river; when Mr. Powell remarked: "Your friend thinks the channel of a river is always in the centre!"

"If your friend had come from Westmorland," replied Mr. Baxter, "he would have known everything."

"Did you make a statement in writing to the city that you had carefully examined the site of the proposed work?" asked Mr. Baxter.

The witness answered in the affirmative.

The witness was asked by Mr. Baxter if the water in Mispec River was fresh or salt.

The witness replied that it was fresh, because he had tasted it.

"Well," asked Mr. Baxter, "was it half as fresh as Mr. Powell?"

Recess was taken at 1 o'clock.

Afternoon Session.

On resuming at 2.30 Mr. McVey was again on the stand. It was not long before there was another breeze between the counsel. Mr. Powell was examining the witness as to the different places where the dam might have been built when Mr. Skinner again objected to his methods.

"Remember, Mr. Powell, there is someone else in 'the case,'" he said with some heat, "I protest against your carrying on a conversation with the witness and will not submit to it."

The witness was then examined as to the placing of the dam just above the bridge. It was wide enough there, he said, except that an extension of the abutments might be necessary. There was a gradual rise in the land on either side and the water would make a channel for itself.

After some remarks by his honor on the nature of a fishway, the witness said in reply to Mr. Powell that there would be no difficulty in making an excavation at the lower site to provide a fishway.

Cross-examined by the recorder the attention of the witness was directed to there being nothing in the city's plans to show that there would have to be excavation for a fishway.

The witness replied that he would have built according to the plans.

William McNamara, who worked on the preliminary survey, was examined by W. H. Harrison. He said he acted as chainman to G. G. Murdoch on section 4 and was engaged putting stakes in the river at stated intervals from the bridge nearly to Loch Lomond. No iron rod to find rock was used. "If we went down on anything hard we were ordered to report it as rock," he said. Test pits were dug above the bridge about seventy-five feet up stream. He knew of none farther up.

In cross-examination he said he was on the work in the fall of 1904 and took only a few soundings near Loch Lomond in 1905. Later on he worked for Messrs. Mooney.

John Horgan, a foreman on the preliminary survey, testified to taking soundings above the bridge with a steel bar eight or nine feet long. The results were noted by Mr. Chestnut. Soundings were taken to about 225 feet up stream and to a point about 150 feet below the present dam. The witness' attention was called to the barns on the western bank where the contractors left their horses on the day of their visit. He said there was a path leading to the present site, which they could have gone down.

In cross-examination the witness said the path was only used in winter by Mr. Watters to water his cattle. It was not used by anyone else.

Kenneth Chestnut, of Fredericton, a civil engineer, who was engaged on the preliminary survey in 1904-5, told that he was instructed by Mr. Murdoch to take soundings for bed rock for the purpose of building a dam. He began above the bridge and went up about 100 feet. He had never been there since and did not know where the dam was built.

On cross-examination by Mr. Baxter the witness said James McLean was the other engineer on the work. He was senior to the witness and was paid $5 a day. His own salary was $2, increased to $3. He believed Mr. McLean was working on the I. C. R., near Bathurst, three weeks ago.

P. J. Mooney Tells of the Dam.

Patrick J. Mooney, one of the plaintiffs, was the next witness. Examined by Mr. Powell he said when tenders were called for in the spring of 1905 he employed F. W. Holt as engineer and went with him to the office of the common clerk on several occasions and examined the plans. On April 11, after meeting Mr. Barbour at the Royal Hotel, he drove out to the site of the dam with other contractors. He started from the barns with Mr. Holt and after examining a test pit near the bridge went on to the bridge with Mr. Barbour and the others. Mr. Holt asked Mr. Barbour to show them the site of the dam and he (Barbour) said it went across near a spot where an old boat and some logs were lying and opposite a blazed tree.

In reply to his honor the witness said the spot would be about seventy-five feet above the bridge. Continuing, he said he asked Mr. Barbour if a coffer dam would be necessary and was told that in the previous fall he (Barbour) had walked across the place in low shoes. Standing on the bridge they could see the rock at intervals above the water and extending on the west to the pipe line. There was snow on the ground in places. He saw no stakes and no reference was made to a base line. No intimation of any other site was given. He put in his tender the following day.

Mr. Powell then referred to section 3 article 6 of the contract which related to contractors having no claim in the event of incorrect statements. He asked the witness if he relied on the statement as to the test pits. The witness replied that he did.

Claims Untrue Statements Were Made.

After some objections by counsel for the defense, Mr. Powell, addressing his honor, said the plaintiffs contended as part of their case that untrue representations had been made to them and that statements had been made recklessly and without regard for the truth.

Objection was taken to a question put to the witness as to whether he relied on Mr. Barbour's statement as to the site of the dam. His honor permitted the witness to answer, and he replied that he certainly did.

After further argument, the witness was asked if at any time before the contract was signed he had any idea of any other site than the one pointed out to him by Mr. Barbour. He replied that he had not. The attention of the witness was then directed to the time when work started and he noticed the present site of the dam was being staked out. It was staked out, he said, in the middle of May by men under G. G. Murdoch. He said he pointed out to Mr. Murdoch that the dam did not go there and he replied that he was told to stake it out by Mr. Hunter. The witness then remarked that it was not where Mr. Barbour had shown him.

When Mr. Hunter came along he told the witness they were plotting out the site for the dam and added that when he (Hunter) first came Mr. Barbour had showed him the other site also. The witness had replied that if they wanted the dam there and the conditions were the same it made no difference to him.

Mr. Hunter also told him that the plans and profiles had been made and soundings and borings taken and that the conditions were the same.

The recorder, in a discussion as to the admission of certain evidence, contended that no engineer would have any right to alter the contract.

Mr. Powell said a point in his case was that if the minds of the city and the plaintiffs were not the same he would be prepared to argue that there could be no contract.

The witness then went on to testify as to building a coffer dam and finding the rock much deeper in places. He stopped work except the pumping and saw Mr. Hunter, who was in charge. "I said to him 'Here's a nice fix,'" continued the witness.

An objection by the recorder to any opinions being given in conversation was allowed.

Continuing, the witness said Mr. Hunter gave him an order to make, as an extra, five lengths of pipe to take soundings.

The communication was offered in evidence and objected to by the recorder on the ground that such an order by an engineer was ultra vires.

His honor allowed the document to be put in evidence.

As the court was about to adjourn there was some discussion as to the length of time the case would take.

The recorder suggested as they could not finish this week that the court should not sit on Saturday.

His honor said he could not sit next week as he had to keep term. He hoped they might finish this week.

The recorder said in his view it would take longer. "We know enough now," he added, "for our case to take three or four days."

Several of the jury suggested night sessions.

His honor said they would see how the trial progressed on Thursday. He would be quite willing if it would expedite the case. In the event of it not being finished this week he thought the earliest they could resume would be Feb. 11.

The third day of the trial of the case of Mooney vs. the City of St. John which was completed Thursday was noteworthy for an informal conference at the midday adjournment with a view to a settlement. While no basis of agreement was arrived at it was rumored in court in the afternoon that an understanding at a later stage was not improbable.

When the case was resumed in the morning Patrick J. Mooney was on the stand and his examination in chief was concluded when the court took recess. In the afternoon he was under cross-examination by the recorder. Many points of interest arose and at times heated arguments between counsel tended to enliven the proceedings.

It was decided that at the adjournment this afternoon the case should be resumed on Feb. 11.

Morning Proceedings.

The examination of Mr. Mooney was continued when the case was resumed Thursday morning. In reply to Mr. Powell he said in some places at the site of the dam where soundings were taken bottom was not reached. He informed Mr. Barbour that he could not go on and said he was told to go on and it would be all right.

He was questioned as to a conversation with Mr. Hunter in which he said he was informed that the city would pay the cost of the extra excavating plus 15 per cent.

Mr. Powell read a letter signed by Mr. Hunter directing the plaintiffs to do extra digging, pumping, sheathing, etc., and to keep on with the work. The witness said he was directed to have the requisite material on the ground as soon as possible and started work the same day. He related the means taken to keep out the water and keep the earth from falling in and told of difficulties encountered at the increased depth.

The work having been finished the witness said he met the water and sewerage board and discussed the matter. With Mr. Barbour he agreed as to the cost of the extra depth and the cost of the additional work was gone into.

The witness was asked in regard to the conditions of the agreement but objection was taken until the document was produced. After giving particulars as to the accounts kept the witness was shown the plan of the present dam and explained the position. He said trees were on either side of the river at the site of the present dam at the time Mr. Barbour was on the bridge with the contractors. The site of the eastern side of the dam could be seen but the western side would be obscured. He could not tell whether the plan was adapted to that site. The plan was not fitted for the site pointed out by Mr. Barbour.

After the court took recess there was a conference between counsel as to the amount to be fixed for the extra work. It was ascertained that the amount was about $14,000. It is understood that the possibility of a settlement of the case was referred to. The city is said to be willing to settle the claims on sections three and four together, but no point of agreement could be arrived at.

Afternoon Session.

In the afternoon the cross-examination of Mr. Mooney was taken up by the recorder. His attention was first directed to the visit to the vicinity of the site for the dam on April 11 with the other contractors and Mr. Barbour.

The recorder asked if going to the bridge at the end of the lake would not be the most convenient place to view the whole stream.

The witness—"It would to view the lower site which Mr. Barbour showed us."

The recorder—"I'm not asking you that. Take the whole of the lake."

The witness—"From the barns would be better for the present site."

The recorder—"I'm not asking you that, Mr. Mooney."

The witness—"There would have been the same result from the barns."

Eventually the witness replied that the bridge would be the best.

The recorder then referred to the condition of the water just above the bridge. "How many feet up stream, Mr. Mooney, could you see under the water?"

"On the surface about twenty or thirty feet."

"I'm not asking you that. How far under the stream?"

"Stones on the surface could be seen about 75 feet up stream."

"I'm not asking you that. If you can't tell we'll leave it."

The next point was how far up stream the witness could see from the bridge. He said in a straight line there was an open view to a house near Loch Lomond.

The recorder—"Now without giving Mr. Barbour's words in what way did he point out the site?"

"Witness—"He said the dam goes——"

"I'm not asking what he said. What did he do?"

The witness indicated by a move of his hand from right to left.

"How long were you there?"

"About twenty minutes, and we then went down the pipe line."

"That was the fullest investigation you made?"

"Oh, no I——"

"I mean with Mr. Barbour?"

"Mr. Holt and I——"

"No, was that the end, your visit to the bridge with Mr. Barbour?"

"Yes, that ended it."

The witness was then asked with reference to his examination of the test pits. He said he examined a pit before but not after going on the bridge, but of course he was well acquainted with the place.

"I'm not asking you that," replied the recorder. "That was all the investigation you made before you signed the contract?"

"That was all."

Replying to further questions the witness said he saw no one except Mr. Barbour and did not talk over the matter with anyone else connected with the city. The next morning he went with Mr. Holt, his engineer, to look over the drawings and figure on the details. He made up his tender and put it in.

The recorder—"That was the entire investigation?"

"We were calculating on and off for four weeks."

"That was before that. So you had it all in readiness?"

The witness replied amid much laughter: "Well we went up to Fredericton with you."

"If I'd made as much money on that trip as you did," the recorder remarked amid renewed laughter, "I should not be here today."

The witness was then asked why, if everything was in readiness, he went out to the lake with Mr. Barbour. He replied that he wanted to see if the rock was in the right place and examine the test pits.

"But," said the recorder, "you were ready to tender."

Mr. Teed at this point made some reference to the method of the counsel's cross-examination.

Mr. Baxter retorted with a reference to Mr. Powell.

Resuming, the recorder asked what the witness had to investigate.

"Quantities," replied the witness.

"But you were paid for quantities, that made no difference."

"I mean conditions," answered the witness, adding "Let me tell this in my own way. No price was paid for pumping water. We had to find that out, and add so much per yard for the labor of taking it out."

The recorder—"But there would be no pumping, if the dam were built where you said. How does that strike you?"

"We don't understand each other," replied the witness. "You are only speaking of the dam."

The recorder—"The dam's enough for me."

The witness—"I was speaking of the whole line."

After a few more questions as to what was investigated when the witness went out three or four times with Mr. Holt on No. 4 section (the section for the dam) the plans for the dam on which the tenders were based were shown the witness."

"Presuming," said the recorder, pointing to the plan, "that this refers to the lower site"——

"It was never the site," replied the witness quickly."

The recorder—"You were not asked that."

The witness—"Well, what was I asked?"

The recorder—"What did you investigate when you were out three or four days with Mr. Holt?"

The witness took the plans and turned them over, showing the different sections, the gatehouse, headworks, etc., remarking, "It won't take me long to look at that."

The recorder—"Now we are back to first principles. I'm sorry you lost your temper. You can generally keep it. Now I want to know what you investigated. If you don't know, say so."

The witness—"I made the quantities up. That's all."

"Is not rock a necessary quantity?"

"Yes, the number of yards of rock and earth. Mr. Holt made them up."

"Oh, he did the investigating and you had the result?"

"He did all the figuring."

"And you relied on him?"

"That's what I paid him for."

"He told you the result and you accepted it?"

"I was with him."

"Then you were governed by him?"

"Principally."

The witness went on to say, in reply to the recorder, that an estimate of $500 was made by Mr. Holt for water and showed with reference to the plan where the coffer dam would be built and that there would be less construction at the lower site. He did not go any nearer the place than the bridge before he signed the contract. He judged the depth of water over the lower site to be two feet. Ledge went right across the river and up into the woods.

The witness was then cross-examined on conversations with Mr. Hunter before he started work in May, 1905. He spoke to Mr. Hunter, he said, about the site of the dam about the middle of May. That was the first time he knew it was to be built in a different place. He had no idea of it until he saw the men staking it out.

The recorder, again referring to the lower site, asked if there was any ledge visible above water when the witness was on the bridge.

Mr. Mooney said there was some rock visible over the whole distance. It might be boulders or ledge. He determined that from his previous knowledge of the place.

At this point the witness asked for a glass of water, which was brought him by Mr. Barbour. Some amusement was caused by his drinking to Mr. Barbour's good health.

Plan A was then shown the witness and he was questioned as to the back flow of the water as marked. He said he knew the situation from previous knowledge.

The recorder then referred to plan B on which tenders were based and, calling attention to the words "approximate surface of ledge," pointed out that none showed above the surface of the water. "If you had examined that plan," he said to the witness, "would it not tell you that it did not refer to the site you proposed?"

The witness said it would not. No water line was marked.

The recorder—"But the surface of the rock is two or three feet from the soil. Is that all you have to say?"

The witness—"Yes. I never traced the lines on the plan out."

The recorder then called attention to the witness having said that rock appeared on the surface at the lower site and to his having objected to the depth of water over the rock at the present site. "You will notice," he said, pointing to the plan of the dam, "that where the aqueduct enters the core wall of the dam the rock is two or three feet below the surface?"

The witness—"Yes."

The recorder—"Then this plan could not refer to the place you saw lower down where rock is on the surface?"

The witness said he had never looked at it in that light.

The recorder—"If you had studied the plan you must under your evidence have known that the dam is not built where you say Mr. Barbour pointed out. Would not the fishway and log sluice in that case have been right up against the land?"

The witness—"That depends whether the rollway is in the middle of the stream or not."

The recorder—"Has the bed of the stream been changed in building the dam? Is it in the middle?"

The witness—"I don't think it."

Mr. Powell objected to the line of cross-examination.

The recorder said he was entitled to ask Mr. Mooney to interpret the plan. "Do you give it up?" he asked the witness.

The witness—"Yes."

Mr. Powell to the recorder—"Your engineer made a mistake of 300 feet. I think that shows the difficulty."

The recorder—"I'm not an engineer and I understand it."

His honor said they had so far only the evidence on one side. They had not heard Mr. Barbour yet.

In reply to further questions, the witness said he could not say from the plans if the dam was in the middle. He increased Mr. Holt's estimate of $500 for the coffer dam and pumping to $1,100 after he had been out with Mr. Barbour. Mr. Barbour had no plans with him on that occasion. He did not ask him as to the site before he went out. He never saw anyone working on the site.

The recorder referred to conversations with Mr. Hunter with regard to conditions at the site of the dam and read a letter from Mr. Hunter to the witness directing him to do all the trenching to ledge. "You had refused to go on?" asked the recorder.

The witness—"Yes."

The recorder—"Could Mr. Hunter have done anything else than direct you to go on?"

The witness—"He might have told us to get out."

The recorder—"You threatened to go out?"

The witness—"Yes."

The recorder—"Then Mr. Hunter yielded to your threats?"

The witness—"I don't think he did."

The recorder—"Well you refused to go on without an order?"

The witness—"Yes."

The recorder then read article 12 in the contract, to the effect that the engineer might make changes in the lines, grades, plans or dimensions before or after the contract was signed and increase or diminish the payments as necessary without any claim being made for damages. He asked the witness if the items on which he was seeking to recover did not go into the monthly estimates and if he was not paid for them.

The question was objected to and allowed.

The witness said he claimed the conditions were found to be different and outside the contract.

The recorder—"After you were clear of water there was not much difference?"

The witness—"We were never clear of water."

After some questions as to the payments for concrete, the recorder read article 3 that all work must be satisfactory to the engineer, who was to decide all questions as to the fulfillment of the contract and whose decision would be final. He asked the witness if Mr. Barbour did not decide he should go on.

The witness said he did not think so. Mr. Hunter had told him someone had blundered in the soundings.

Not Bound if Mistakes Were Made.

The recorder—"Then the ground you take is that if mistakes were made you were not bound?"

The witness—"Certainly."

The recorder read that the contractor should conform to the lines, grades, plans and directions laid down by the engineer and that he should not be paid for anything unless ordered in writing.

The witness said he was not bound when there were misrepresentations as to the depth.

The recorder—"There is nothing in this contract as to how deep you shall go?"

The witness—"No, except the plans."

The recorder—"Suppose you met rotten ledge, you contend that if you touched it and had to go on two or three feet to find solid rock you would have to be paid?"

Mr. Powell objected to the witness being asked to construe the contract.

His honor said he understood one contention of the plaintiffs to be that the dam was not built where they said it should be and that if it had been they would have been bound to go to any depth.

The recorder asked Mr. Powell if that was so.

Mr. Powell did not answer the question, remarking that he would leave it to his learned friend.

The recorder hotly replied that as counsel he was not accustomed to be answered with ridicule or satire.

Mr. Powell said he did not understand the question to be asked seriously.

Replying to questions the witness said a contractor would take his chance if rock were found between test pits.

The recorder asked the witness how he would construe the article in the contract that, while the probable location of ledge rock was indicated, the city did not guarantee the position of rock even approximately, as indicated, and that the contractor would have no claim.

Mr. Powell objected. It was for the jury to say how the plaintiffs interpreted the contract.

The witness said they interpreted it that the test pits were not correct and that the rock varied in between.

The recorder, referring to the original plan of all soundings and borings, which was identified but not in evidence, asked the witness what his construction would be as to who should take the responsibility of removing earth above rock deeper than shown on a plan between two soundings 100 feet apart on either side of the site of the dam and which showed rock a foot or two below the surface. He added that there were two such soundings and the depth of rock between varied from eighteen feet to nothing.

Counsel Argue a Point.

Mr. Powell claimed his learned friend was misconstruing the evidence. The two soundings did not go down to rock.

The recorder contended that the evidence showed that an iron was used. They were not sounding for silt and supposing they were incorrect it was provided for by the contract.

Mr. Powell replied that Mr. Murdoch, in his evidence, said no soundings on the site were taken down to rock. The defense had no right to say it appeared in evidence when it did not. This section," he went on with some heat, "does not refer to rambling soundings and as to the construction the witness places on it we accept test pits if actually made, but not a lie in the mouth of the city of St. John. I protest against placing the construction of a complicated document to the witness. It is a dishonest endeavor to wrench something from Mr. Mooney in the hope that the jury will accept Mr. Mooney's view.

His honor suggested the question should be put hypothetically.

After some further argument, the recorder put his question hypothetically.

Mr. Teed interrupted that it was unfair to ask the witness to answer the question, which was wholly unintelligible.

His honor said if the witnes felt he could give an opinion he would allow it.

An addition defining the points where soundings were taken was made to the question.

The witness said it was a pretty hard thing to answer.

Mr. Powell suggested as it was 5 o'clock they should adjourn and the witness might ruminate on it all night.

The question was not answered when the court adjourned.

There are 80,000 more women than men in Massachusetts, according to statistics.

MAY WIPE RHEUMATISM OUT IN UNITED STATES

Simple Home-Made Treatment Said to Overcome Rheumatism.

When an eminent authority announced in the Scranton (Pa.), Times that he had found a new way to treat that dread American disease, Rheumatism, with just common, every-day drugs found in any drug store, the physicians were slow indeed to attach much importance to his claims. This was only a few months ago. Today nearly every newspaper in the country, even the metropolitan dailies, is announcing it and the splendid results achieved. It is so simple that any one can prepare it at home at small cost, it is made up as follows: Get from any good prescription pharmacy Fluid Extract Dandelion, one-half ounce; Compound Kargon, one ounce; Compound Syrup Sarsaparilla, three ounces. Mix by shaking in a bottle and take in teaspoonful doses after each meal and at bedtime. These are all simple ingredients, making an absolutely harmless home remedy at little cost.

Rheumatism, as every one knows, is a symptom of deranged kidneys. It is a condition produced by the failure of the kidneys to properly filter or strain from the blood the uric acid and other matter which, if not eradicated, either in the urine or through the skin pores, remains in the blood, decomposes and forms about the joints and muscles, causing the untold suffering and deformity of rheumatism.

This prescription is said to be a splendid healing, cleansing and invigorating tonic to the kidneys, and gives almost immediate relief in all forms of bladder and urinary troubles and backache. He also warns people in a leading New York paper against the indiscriminate use of many patent medicines.