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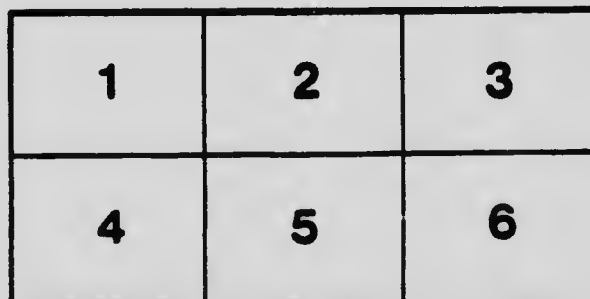
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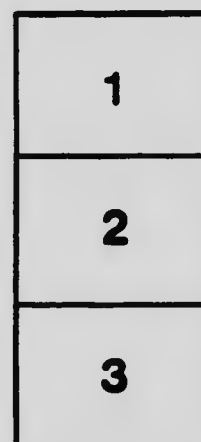
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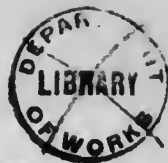
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REPORT OF HIS HONOR THE COUNTY JUDGE IN RELATION TO THE
Municipal WATER WORKS INTAKE, AND THE WORK AND ACCOUNTS IN
CONNECTION THEREWITH.

Toronto, December 9th, 1912.

H. C. Hocken, Esq., Mayor of the City of Toronto:

SIR,—I have the honor to present the report of my investigation into the Water Works Intake repairs accounts. On the 20th February, 1912, I received a copy of the following resolution, adopted by the City Council at its meeting held on the 19th February:

"Pursuant to the instructions of Council the Board have given further consideration to the clause embodied in Report No. 2 of the Board *re* Water Works Intake Judicial Investigation, and herewith again submit the same to Council for adoption, viz.:

"The Board recommend that whereas statements have been made that indicate serious irregularities in connection with the wages paid to persons engaged upon repairs to the Water Works Intake, while the Lesslie Contracting Company were in charge of this work, particularly that amounts in excess of rates arranged for have been paid, the County Judge be requested to investigate such statements, and for that purpose to examine witnesses in relation thereto and report the result of his investigation therein to the City Council.

"And also, that His Honor the County Judge be requested to examine the City's diver, Mr. Margerison, in connection with the present condition of the Water Works Intake in order that a full inquiry under oath may be made relative to the matter to ascertain exactly the true state of affairs so far as the Intake is concerned."

On the 12th March, 1912, I received a letter from the City Clerk, stating that the Board of Control, at its meeting on March 11th, had granted permission to Controller Foster to present to me for consideration and investigation a number of accounts paid by the City in connection with expenditures on repairs to the Water Works Intake.

Subsequently, on the 28th of May, 1912, I received a copy of a resolution, adopted by the City Council at its meeting on the 27th of May, as follows:

"Whereas by resolution of Council, passed on the 19th day of February, 1912, certain alleged irregularities in connection with wages paid to persons engaged upon repairs to the Water Works Intake while the Lesslie Contracting Company were in charge of this work, and other matters therein referred to, were referred to His Honor, Judge Winchester, under the authority of Section 324 of the Consolidated Municipal Act, to investigate the facts and circumstances in connection therewith;

"And whereas during the progress of such investigation certain accounts with the Miller, Cumming & Robertson Company for work done in connection with the Water Works Intake, including work done on the East Toronto Intake, have been produced;

"And whereas it is desirable that His Honor should have authority to investigate the facts and circumstances in connection with the work done by the said Company upon the East Toronto Intake, as well as on the Water Works Intake, and all force contracts in connection with Water Works matters;

"Therefore be it resolved that under the authority of Section 324 of the Consolidated Municipal Act, His Honor, Judge Winchester, be requested to investigate the facts and circumstances in connection with all accounts of any contractor on force contracts for work done in connection with Water Works matters; and His Honor is further requested with all convenient speed to report to the Council the result of such inquiry and the evidence taken thereon."

On the 6th May, 1912, I proceeded with the inquiry, and was assisted by Mr. H. L. Drayton, K.C., as Counsel for the City of Toronto. Witnesses were examined on the following days: May 6th, 7th, 9th, 10th, 11th, 13th, 14th, June 4th, 5th, 12th, 21st, 22nd, 26th, 27th, 28th, July 3rd and 4th, and November 13th, 14th, 15th and 26th. On this latter date I was assisted by Mr. G. R. Geary, K.C., as Counsel for the City.

Forty-nine witnesses were examined during the investigation, and many of these were recalled a number of times.

I inquired into the accounts presented to me by Controller Foster, amounting to \$218,993.44, up to the 22nd day of February, 1912, chargeable as follows:

Extension of intake	\$34,313 05
Repairs to conduit	156,375 68
Clandeboyne cut	20,686 19
Repairs, East Toronto	5,617 79
Capt. Midford re examination of conduit.....	2,000 73

Total \$218,993 44

I have also gone into the accounts paid by the City in connection with such works subsequent to the above amounts, namely, those rendered up to the 1st October, 1912, amounting to the sum of \$92,785.36, making a total of \$311,778.80.

In addition to the above items, amounting to \$311,778.80, I have gone into further accounts of Miller, Cumming & Robertson on which they claim a balance of \$51,837.56.

After considering and inquiring into all the above accounts, the only accounts in reference to which I considered it necessary to take evidence were those of the Lesslie Contracting Company, Miller, Cumming & Robertson, Dill, Russell & Chambers, John E. Russell & Co., Weddell & Co., and of Joseph Goodwin, and as to the wages paid by the City to the men employed by the City Engineer's Department.

I. THE LESSLIE CONTRACTING COMPANY'S ACCOUNT.

FOR LAYING 500 FEET OF NEW INTAKE PIPE.

By letter of September 2nd, 1910, the City Engineer accepted the offer of the Lesslie Contracting Co., of Kingston, to superintend for the City the laying of 500 feet of new intake with connections. The letter of acceptance addressed to them is as follows:

Intake Extension.

GENTLEMEN,—Our Company to superintend, for the City, the laying of 500 feet of new intake pipe with connections, for the sum of \$500 a month, during which time the work to be supervised by your Mr. William Lesslie, Manager, who is to devote his entire time to such supervision, with the condition that if the work is not completed this fall, your Company shall be paid \$250 a month for Mr. Lesslie's services during the winter until such time as active operations begin in the spring again. The said Mr. Lesslie's services to be, of course, during this time, at the disposal of the City. All of which is accepted.

The offer also to rent a steam barge and derrick to the City, you to supply engineer and firemen on same for the sum of \$33 per day up to the close of the season, and for diver outfit, including compression, \$10 per day, is satisfactory.

The estimate of your Mr. Lesslie as to the labor required, viz.: A diver at \$6 per day, foreman at \$6 per day, and eight men at \$2.50 per day, is satisfactory.

The City will supply the winches necessary, ropes and buoys and wire hose; also insure the barge and diving outfit; will purchase the centrifugal pump and engine, and will supply coal for the barge and pump.

Yours truly,

(Sgd.) C. H. RUST,
City Engineer.

(1) RENT OF STEAM BARGE.

Under this contract Mr. Lesslie entered upon the work connected with the 500 feet extension of the intake and chartered the steam barge *Ida E.* from Capt. Horn for four months, namely, up to the 11th January, 1911.

She reached Toronto on or about the 11th of September with a load of coal from Erie which had been ordered by Mr. Lesslie on behalf of the City, and for which the City paid as follows:

To Swift & Co., for 249.850 net tons, $\frac{3}{4}$ lump Yoho coal, the sum of \$627.81, being \$2.50 per ton, \$623.56; insurance, \$4.25; to Capt. Horn, the owner of the Ida E., for freight at 65 cents per ton, \$162.12, and to customs for duty on 175 tons only at 53 cents a ton and brokerage, \$93.75.

Mr. Lesslie said he took over the Ida E. on the 13th of September, from the owner; that she got here about the 11th, and was allowed two days for unloading the coal.

"Q. About that coal business, as a matter of fact, was there more than the 174 tons brought into the City? A. Yes, the whole invoice, whatever it was—that was used while on the work.

"Q. There was 75 tons allowed for ship's use? A. Yes.

"Q. Had that been used for coming over? A. No, we did not use any of it coming over; all the coal was their's (the City's); the customs allowed us that after a fight; they wanted us to pay duty on the whole of it; it was referred to Ottawa and they eventually allowed us to bring in 75 tons.

"Q. The City got the use of that 75 tons? A. Yes. They got the benefit of that and paid no duty on it; the duty was paid on the balance."

Mr. Fellowes stated that there was no check made by him as to the quantity of coal received by the City, or used on the barge in coming to Toronto.

Mr. Fellowes was asked:

"Q. If you had known it (the barge) was only worth \$6,000 would not you rather have purchased it than paid the rent? You see in six months' time you would own the barge and have the barge for good, is not that right—in six months' time you would very nearly own the barge? A. We did not know we would need it for that time."

Mr. Lesslie gave the following evidence:

"Q. Look at this little book (produced by him); after the charter was entered you figured how much your profits per month would be, did you not? A. I may have. (Reading from little memorandum book):

"Charter Ida E., \$43 per day for 30 days.....	\$1,290
"Salary	500
	<hr/>
	\$1,790

"Charter, \$400 a month; engineer, \$75; fireman, \$50—showing a net profit of \$1,265 per month—this was an estimate before I made any bargain

at all, because I have entered here the engineer at \$75; he was not paid \$75, he only got \$65." (As a matter of fact his account book showed that he only paid the engineer \$60 a month and fireman \$35 a month from the 13th September, 1910, to 13th November, and from 13th November to 10th January, \$65 and \$40 per month respectively, making the net profit \$1,295 per month until 13th November, and \$1,285 per month from that date to the 10th January, 1911).

Mr. Fellowes stated that he had no knowledge of the sum Mr. Lesslie was paying for the steam barge when the agreement of September, 1910, was entered into.

(2) RENT OF DERRICK.

At the time of the arrival of the barge, the material for the construction of the derrick to be put upon it had not been received by Mr. Lesslie, and the living outfit was not in a completed condition for use.

Mr. Lesslie employed, for part of the first week ending September 17th, 1910, four men and a cook, the wages being \$49.43; the same number for the week ending the 24th of September, wages \$74.69. In the third week ending the 1st October, a diver had been added; the wages for that week amounted to \$81.69. The fourth week, ending 8th October, wages amounted to \$88.69; the week ending the 15th October, another diver was added; the wages paid being \$107.19. These sums were in addition to the \$500 a month paid to Mr. Lesslie from the 1st of September.

Mr. Lesslie was asked:

"Q. You were continuing to work on that derrick on the 29th and 30th September? A. Yes.

"Q. Is it fair to say then that in connection with this third week, amounting to \$81.69, the whole of that time is also put in on works of preparation? A. Yes.

"Q. In which the derrick plays an important part? A. Yes.

"Q. So that the result of the whole thing of the first month of work is that you are still working on preliminaries and have not got down to business yet? A. Yes."

With reference to the time of the City's men who worked on the derrick, the following evidence was given by Mr. Lesslie:

"Q. How many weeks were the City men working on the construction of this derrick? A. I figured up at the time that the City's men worked \$52 on that derrick. I gave Mr. Fellowes a memorandum of it or told him, I have forgotten which.

"Q. Was that charged to you? A. Yes.

"Q. This derrick was to be put on your boat? A. Yes.

"Q. Were not you to supply the boat with the derrick in place? A. I was to furnish a complete derrick.

"Q. Were not they working on the derrick for four weeks off and on? A. Yes, off and on.

"Q. What would it cost putting it upon the boat? A. It would cost \$30.

"Q. That would be \$32 of the City time altogether put in on the time? A. Part of it was City time, not all. . . . I grant you that was all done out of the pay list.

"Q. That is another credit which should be given? A. What I figured was the \$52; the other \$30 was part and parcel of the work adapting that derrick to the special job for which it was on.

"Q. I do not suppose you object to giving the City the \$82? A. Well, I will allow the \$82.

"Q. It would be quite safe to say the total cost, the value of the derrick, materials and everything, would not be over \$600? A. That is it.

"Q. You start charging for the derrick, which as we have seen was not completed until some time in October, was it? A. Some time in October, yes.

"Q. Although the derrick was not built you start charging for it? A. Yes, quite agree with you.

"Q. At the \$3 a day? A. Yes.

"Q. The rate is charged every day; you charge Sundays as well as other days for the derrick? A. Yes, sir.

"Q. So that the result is that you are paid for the derrick from and including the 12th of September, 1910, to the 5th of November, 1911, \$1,287? A. Yes.

"Q. In that period of a little over a year, under this arrangement, you not only get the whole original cost of your derrick, but you get 100 per cent. profit as well? A. Yes."

William Henderson, in his evidence, stated that they were making the derrick at the time he came on the job under Mr. Lesslie.

"Q. The derrick was being made at that time; do you remember when they finished making the derrick? A. It was in October some time when they used it.

"Q. Some time in October . . . ore it was finished? A. Yes."

Mr. Fellowes gave the following evidence with reference to the derrick in question:

"Q. At what date was it, or have you any records to show what date it was that the derrick was completed? A. I could not tell you from memory at all.

"Q. Have you any record that will show it? A. I do not know that I have.

"Q. The barge would not be ready till the derrick was ready? A. No, that is right.

"Q. You start paying him rent for the derrick, don't you, on the 13th September, from then on was that question (as to the derrick being complete) considered at all? A. No, it was not.

"Q. Was credit to be given to the City in respect to the time put in by the City's men in making Lesalle's derrick considered? A. I asked Mr. Lesalle whether he was paying for the construction of the derrick himself, and he informed me that he was; so that I never dreamt of its being in the account at all.

"Q. Did you check that at all for the purpose of verifying the statement? A. No, I did not.

"Q. What he says is that he told you and he gave you in writing a computation of the time which the City's men had put in in the City time paid by the City, amounting to some fifty-two dollars and some cents that the City should get a rebate for; did he tell you that at all? A. I have no recollection of his ever having said so; and I certainly have not any memorandum to that effect.

"Q. What is your idea about paying a rent such as is shown here, the advisability of paying such a thing for an article that cost, as a matter of fact, from \$580 to \$613, according to the owner himself—you see at that rate during the time you had it you paid according to the accounts, \$1,287 for the derrick in rent; besides doing that you also engaged to keep it in order, any repairs as you went along you paid them, didn't you—maintenance was a term, the man was to get his plant back in the same condition as he rented it? A. Ordinary wear and tear excepted.

"Q. You had to insure it, you insured it for \$500? A. Yes.

"Q. And being subject then to the risk, the carrying charges being off his hands, you see in a little over a year, from the 12th September, 1910, to the 15th November, 1911, he makes \$1,287; was any report made at all by anybody on the state of affairs? A. No, we did not, of course, no one dreamt this derrick would be in commission as long as it was.

"Q. How long did you expect it to be in commission? A. About three months at the outside, that was the time limit on the laying of the 500 feet extension, she was built for that.

"Q. Three months on that, that would have amounted to pretty well half the cost in three months' time? A. Very near."

(3) RENT OF DIVING OUTFIT.

Mr. Lessile gave the following evidence with reference to the diving outfit referred to in the agreement:

"Q. When was the diving outfit ready for use, what time in October? A. It was ready just as soon as we got started with the rest. I do not know as it was wanted, because we did not have occasion to use it, as soon as we got the steam connection it was coupled up, it was all ready.

"Q. So at any rate, it was not ready for use till after the 23rd September? A. No, not till then.

"Q. So that on your own showing that would be 11 days for which you got the rate of \$10 a day, when you had not the stuff here? A. Because we had no use for it.

"Q. And is it also the fact that you were paid rent on it from the 12th September inclusive? A. Yes. All this work is paid for from the date the contract is made.

"Q. Whether you have it ready or not? A. Yes, it takes time to put these things together.

"Q. Still you say the City should pay for the use they never had, is that right? A. From the date that I bought the Ida E. and took her over and put the stuff on.

"Q. You say the City should pay for the use of diving outfits they never got during that period? A. I do not say so, sir.

Mr. Fellowes gave the following evidence:

"Q. Can you tell me what day it was that the diver's outfit was completed and ready? A. I could not tell you from memory at all. I do not know as a matter of fact, there was any attention paid to it; when the barge was ready the diving outfit was ready. The diving outfit might be ready, but it would not be used.

"Q. The barge would not be ready till the derrick was ready? A. No, that is right.

"Q. And that is in the same position as the diving outfit? A. I think so."

(4) INSURANCE.

Mr. Fellowes had the barge insured for one year, from the 12th of September, 1910, for \$6,000, being the value of the harge. A premium of \$480 was paid. There were also insured at the same time the derrick, diving outfit, and compressor, and the pump, for which a premium of \$132 was paid.

Insurance was placed on the men employed, and a premium of \$236 paid. It will be noticed that although the harge was only chartered until the 11th of January, 1911, the insurance was taken for one year, from the 12th September, 1910, as also on the derrick, diving outfit, compressor, and pump.

Mr. Fellowes was asked if he had anything to do with the insurance on the Ida E., to which he answered:

"A. Yes, we pay the premiums, but they (the City Treasurer's Department) as a rule look after the insurance part of it. I think we have just one insurance.

"Q. Was the refund obtained there? A. Not to my knowledge.

"Q. Whose duty was it to see the refund was got? A. I do not know.

"Q. What would be the refund? A. About \$230."

The City Treasurer stated the insurance was put on by the Engineer, but that he paid the premiums. He promised to apply for a rebate on the premiums.

(5) RENEWING THE CHARTER OF THE BAROE.

The charter of the barge Ida E. ran out on the 11th of January, 1911, when Capt. Horn raised the price to Mr. Lesslie to \$16 a day from that date, and Mr. Lesslie arranged with Mr. Fellowes to charge the engineer and firemen's time from January 11th, to the City, he, Mr. Lesslie, to pay Capt. Horn the additional charter from the same date. The harge continued in the service of the City until the 28th February, 1911, when the owner took her over.

(6) MR. LESSLIE CLAIMS RENTAL FROM 12TH SEPTEMBER, 1910.

Mr. Lesslie claims that he was entitled to the rent of the hoat, the derrick and diving outfit from the time he took the hoat over, namely, the 12th September, 1910, that he was delayed in fitting up the boat by reason of the City not supplying him with the centrifugal pump and engine referred to in his agreement until some time in October, and gave the following evidence as to same:

"Q. Should not you have had this boat in shape for work before you start charging for her? A. No, we did not get that pump for quite a long time. We wanted the pump the first thing; we could not do anything.

"Q. Your idea is that on supplying the boat and that in whatever plight she was they would start to run, and that all necessary improvements or adjustments, everything that was necessary to be done in order to make the boat serviceable for the work, would have to be done at the City's expense, both for men and material? A. Yes.

"Q. Who made that arrangement with you? A. Mr. Fellowes.

"Q. How long after this letter was written? A. It was just at that time.

"Q. Do you mean to say you had a collateral, verbal arrangement under which the City was, if necessary, to make the boat serviceable? A. Yes, if you will notice there they were to furnish the pump and outfit, and that is the first thing we required; we could not do anything until we got the pump. . . . She had all her ordinary connections, but we had to put a special connection on the boiler for running this pump. I was hunting all over the country to get a pump, and I eventually had to send to Duluth for one.

"Q. When did you get it? A. October 15th, got new centrifugal pump.

"Q. That is when you started? A. October 15th it arrived from Duluth.

"Q. Was the securing of that pump in your hands or was that in Mr. Fellowes' or Mr. Randall's hands? A. We all tried; I went to Brantford and to Welland and to Hamilton to try and get a pump and could not succeed."

Mr. Fellowes, in this connection, was asked:

"Q. Then you do not go out and get any work done on the grounds until apparently the 14th October, so that you have a whole month, probably the best season available to you for working in? A. Simply because we had not material; we had to get the pumps and we had to get the engines and the suction, that had to be made.

"Q. Who was looking after that, anybody except Lesslie? A. Lesslie and myself were consulting together and telegraphing different places to get bids for pumps, and then we had to wait of course for the pumps; when we bought it we had to wait for it to be shipped. There is always a certain amount of fitting up to do. The engine had to be entirely overhauled; the suction had to be constructed."

(7) MR. LESSLIE'S DUTIES AND WAGES.

Mr. Lesslie's wages commenced to run from the 1st September, 1910, at the rate of \$500 per month. He states that prior to the 13th September, when he took possession of the barge *Ida E.*, he was making preparations for the work, that he worked until about the 15th December, whenever they had suitable weather in which they could work; and when it was too rough

and they could not go out they generally had to do work on the boat; but about the 15th December he recommended Mr. Rust to discontinue the work, told him that they were throwing away money. He said:

"We had worked pretty well up to that time, but it was getting so bad then I thought we were throwing away money and I advised Mr. Rust to discontinue. He told me to do so, and we started then to take off the outfit, and the second day after, or the next day, there was the meeting of the Council, and they ordered us to go right on again."

Mr. Fellowes stated:

"Mr. Lesslie was appointed as Superintendent to look after the work and to design the best method of laying this intake pipe, the extension. . . . He was engaged just the same as any other engineer as an assistant in the City to look after the work."

"Q. Did he have the right to purchase without reference to you at all?
A. I suppose he had in small items, but not in large.

"Q. You found the work you did in December was being thrown away and you advised the Board to stop altogether? A. Yes.

"Q. Is it fair to say you were getting good returns then, making progress from the 14th October till the end of November? A. Well, considering the weather, we were doing very well I thought.

"Q. From the end of November until when was the money being practically wasted? A. Until February, when we stopped because the intake pipe gave way.

"Q. The result in your mind is, that whether the extension was a good thing or not, all the work done in connection with the intake extension from December and in January and February until it was stopped was work for which nothing useful is to be shown? A. That is my opinion.

"Q. No result was got? A. That is what I think.

"Q. Had you anyone there representing the City in looking after the time or materials that were put in and used? A. Mr. Lesslie was doing that just the same as any other engineer, no one outside of him; he was representing the City. He was a City employee just the same as any other.

"Q. Should not Lesslie have got at the rate of \$500 for the days he worked, and for the days he did not work \$250? A. I do not think so; that was not the intention at all. I do not think you could get him to work for \$250 during the winter months when it is really very much harder. If he is out in active operations he is entitled to \$500 whether winter or summer.

"Q. But when you are just waiting in the winter months for decent weather, it is just the same whether they are working or not? A. Yes, I am sure that is the intention."

(8) MEN EMPLOYED BY MR. LESSLIE, THEIR WAGES, ETC.

Under the written agreement, the Lesslie Company was to provide an engineer and firemen on the steam barge at their own expense, the other employees were to be paid for by the City. It was shown in evidence that the word "firemen" was not intended. Both Mr. Rust and Mr. Fellowes, as well as Mr. Lesslie, stated that there was only one fireman to be provided by Mr. Lesslie.

Mr. Lesslie employed at the beginning four men and one cook; the cook was hired by the month, which was figured at so much per day to cover the amount per month. He stated she started in, he thought, at \$35 a month, but the account shows that she was paid \$1.33 for each day in the month, by the City, including Sundays, which totalled \$40 per month at least. The foreman was charged at the rate of \$5 a day, including Sundays. Some of the other men were apparently hired by the month, but paid by the day, which amounted to a little more than the monthly wages; in fact the only men that were paid by the month were the two men (engineer and fireman) whom he had to pay out of his own pocket.

While putting on his pay sheets Sundays for the men that he employed on the barge when they did not work, Mr. Lesslie did not put on Chantler or Grant (who had been sent to him by the City) for those days. He was asked:

"Q. Why should not they get it (time) on Sundays? A. Because they understood distinctly we were not going out.

"Q. So did the other men? A. The other men were there to go if we wanted them.

"Q. Look at your log; the first Sunday there was no work; the second and third Sunday no work, and yet you allowed \$5 a day to the foreman and so much a day to the other men? A. They were right there; they were paid when they worked only.

"Q. There is no work until after the 11th; the first Sunday there was any work on is the 23rd October, is not that right? A. I have forgotten just why those days were paid. At that time these men were all living on the boat, and paid right along.

"Q. The City was supporting them, provisioning them and giving them their meals and their lodgings, and these other men had to go home and take their provisions with their family and did not get paid for it? A. There was a little difference this way; these men we took on here that were working at that time for the City had been working just day's work; these other men

that we hired on the boat were practically sailors; they were hired in that way anyway to be there at all times; if we did not work on Sunday there would have been some reason for it; if the weather was fine and we could not get out we were not ready to get out.

"Q. Was there a single day that was bad during all the first month, the 12th September to the 12th October?

"MR. DRAYTON: I think he said there was one day; you see that was really a good month to work . . . Up to the 23rd October the weather was good and the work could have been done.

"A. Excuse me, Sunday, October 16th, no work, waiting for pump connections; we had not anything to do work with."

John Grant in his evidence stated that he was working with Mr. Lesslie from October, 1910, to May, 1911. He was asked:

"Q. I see some of the men got extra time under certain circumstances, and then they got time on Sundays when they were not working; how did that apply to you? A. From October to May, sir, I did not get it.

"Q. At any rate you did not get your Sundays when you were not working? A. No sir.

"Q. Were the other men working when you were not working? A. I could not say. I live in Toronto and I went home; I could not say anything about that.

"Q. You went down to see them on the Sundays? A. Yes, sir.

"Q. And they were not working? A. No, sir."

His foreman was paid \$5 a day and the others on the boat at the several rates charged for Sundays, 18th, 25th of September, 2nd, 9th, 16th October; 4th, 11th, 18th, 25th December, etc., on which no work was done, the wages thus paid amounted to \$78.54.

(9) WAGES OF D. C. FELLOWES AND W. A. KENNEDY.

On the 29th October, 1910, Mr. Lesslie added to his pay sheet the names of Mr. D. C. Fellowes and W. A. Kennedy who were in charge of the small steam launch called the "Queen." He returned the name of D. C. Fellowes on his pay sheets until the 4th March, 1911. On the pay sheet for the week ending the 11th February, he returned Mr. D. C. Fellowes for 11 days during that week, and Mr. Henderson, the assistant diver, also for 11 days; and on the pay sheet for the week ending the 18th February he returned Mr. D. C. Fellowes as having worked 13 days; and for the week ending the 25th February he returned him as having worked 9½ days.

Mr. Lesslie was asked:—

"Q. Your pay roll was made greater than it otherwise would be made by the addition of the 'Queen' to the crew? A. Yes, I was told to put their time in with ours.

"Q. You treated them as part of your crew? A. Yes.

"Q. You deducted no lost time there at all? A. No.

"Q. Why was that? A. I did not know what time they were working; they were sent off at other work in connection with the intake work.

"Q. You never kept their time? A. I gave them full time.

"Q. That is not keeping their time, you always gave them full time and you did not know they were working? A. I knew they were working but not for me, not at this work.

"Q. How did you know? A. I knew they were sent away; I had not charge of their boat all the time. Fellowes was in charge of the boat and he came and went; when we wanted him particularly we went there and he came; the rest of the time he was working on the other in connection with the Water Works; I do not know what he was doing.

"Q. How is it that in the week of February 11th Fellowes is certified at 11 days in a week and McArthur is certified at 7 days in the week? A. These men I think at that date went over to the Island . . . I had nothing to do with them.

"Q. If you will look at the next week, February 15th, the time certified in that week is 13 days? A. For Fellowes.

"Q. I might go right on to the end of February, it is just the same in them all is it not? A. Yes.

"Q. You are the certifying officer there on whose certificate the City is paying; I want to know if you knew anything about it? A. I had those men's names on my list and their time was sent over to me.

"Q. Did you know anything about it at all? A. Well, except I knew they were over there; they came back to the boat and they went over there to work. The time was given to me by Mr. Randall's clerk over there; he had a clerk on the Island that kept track of these things and he gave me each day . . . I had no interest in these men's time in any shape or form except to return it when it was given to me.

"Q. Why did you continue their pay when the boat was hauled out, it could not be in commission? A. I gave them the time as it was handed to me where they were working.

"Q. You do not know anything about their other work? A. No.

"Q. The only thing you had to do with them was in connection with the boat? A. Yes."

Mr. Kennedy, who acted as Engineer on the "Queen," was asked as to the difference in the time given to him and that given to Mr. Fellowes, and said that he knew nothing about that, that he was always there when Mr. Fellowes was there. He said that Mr. Fellowes never asked him about his time and that he (Kennedy) never told any one the hours that he put in; saw no time kept; never saw Mr. Fellowes making up his time for Mr. Lesslie; he could not tell what time he put in, having kept no record of it.

Mr. C. L. Fellowes gave the following evidence:—

"Q. Lesslie says he had not anything to do with either Fellowes or Kennedy? A. No, but Fellowes and Kennedy were running the launch the 'Queen,' and they had been all the summer prior to any intake work at all.

"Q. So that both these men were regular civic employees? A. Yes, they had been employed all year.

"Q. Had there been any change made in their salaries at all? A. I think there was some, but I did not make it.

"Q. Whatever the list was, did Lesslie make it? A. I am not sure whether it was Lesslie or whether it was made afterwards by Mr. Randall.

"Q. Why was it, under whose instructions was it that Lesslie was to certify to their pay when he says he knew nothing about their time? A. I think that that arose through these two men being on Lesslie's pay sheet, and Mr. Randall had their time sent over on his work. I know they had been on the account there, and rather than transfer them they sent over the time.

(10) BOARD OF MR. LESSLIE AND HIS TWO MEN.

The accounts produced show that Mr. Lesslie obtained supplies and provisions for the board of himself and his men while on the Ida E.; Mr. Lesslie gave the following evidence:

"Q. Then, Captain, how is it that the City is charged with feeding and maintaining all the men? A. That was the agreement.

"Q. Not in your contract? A. I do not know as to that; it was understood that they paid the crew.

"Q. There is nothing here about that at all, you know; who did you mention that to? A. I told Mr. Fellowes and Mr. Rust both. We had a conversation in the office and that memorandum was drawn up. That was a little loosely drawn, but the understanding was that they were—I told them that I would furnish the boat and the engineer and the fireman and they paid all the other expenses; it was done. . . . When the Ida E. was given up

we wanted that bedding for the City scow; I told Mr. Fellowes at the time 'Now, that stuff I bought to have on the Ida E. I charged nothing to the City for the time, if you want it we will put it on the scow and bill it to you.' It had not been used much; and he agreed to it."

Mr. Fellowes in his evidence was asked about the boarding of the men:

"Q. Was any arrangement made so far as you are concerned with him which would allow the purchase of the supplies and the boarding of men? A. Well, the boarding of the men was of course arranged for, that was our men, but nothing was said about his men.

"Q. Who are our men? A. All except the engineer and fireman."

Mr. Rust was asked:

"Q. Did you have any talk at all or make any arrangement at all with Lesslie as to feeding his men? A. I did not; Mr. Fellowes may have made that arrangement, I do not remember that.

"Q. You did not make any arrangement at all with him as to that? A. No, I expect Mr. Fellowes did that; I certainly did not.

"Q. Apparently he has never made any allowance to the City for feeding his men during the whole period? A. No.

"Q. I see that the City is charged by other contractors at the rate of 20 cents a meal for food, for example, that is what Russell charges, is that a fair rate? A. It seems very reasonable, 20 cents a meal.

"Q. It seems to me that would be a fair basis of charge for Lesslie's men? A. Yes.

(11) NO TIMEKEEPER.

The evidence shows that there was no timekeeper employed by the City in connection with Mr. Lesslie's work, the reason assigned by Mr. Fellowes being that he considered Mr. Lesslie a civic employee who should look after the time similar to other employees having charge of special work.

(12) SNUBBING POSTS.

Mr. Lesslie ordered some 16 snubbing machines from Ingils & Sons after talking over the matter with Mr. Fellowes, who said to order them.

"Q. Did you tell him you wanted them? A. I told him I thought it was the best thing to have for that work for the lowering of the 500 feet of pipe, the extension; they cost \$93 each, or \$1,488.

"Q. You never used them? A. No, we have not attempted to lay the pipe yet; that is what they were for.

"Q. How much longer will they stand exposure to the weather? A. They will last forever if they are put under cover; there is nothing very delicate about them.

"Q. Are not they just rusting on the shore? A. I suppose they are; we painted them all while we had them there, and I do not think there has been any care taken of them since."

Mr. Grant stated:

"Q. What about those snubbing machines? A. They are lying at John Street.

"Q. Are they rusting? A. Yes.

"Q. Rusting away; have they ever been used or attempted to be used? A. We fixed three up some time in February and they were never used. They were bought for that 500-foot extension that Lesslie was to lay."

FINDINGS.

LESSLIE CONTRACTING COMPANY'S ACCOUNT FOR THE 500 FEET OF NEW INTAKE PIPE.

I find that under the agreement made by this company with the City on the 2nd of September, 1910, Mr. Lesslie chartered the steam barge, Ida E., which he rented under his agreement with the City, including a derrick, for \$33 per day up to the close of the season, and for a diver outfit, including compression, \$10 per day, he was to supply an engineer and fireman in addition thereto; that he did not deliver the steam barge until the 13th September, 1910; and that at that date neither the derrick nor the diver's outfit were ready; the evidence shows that they were not placed in position until some time about the middle of October, that Mr. Lesslie charged the City for the rental of the barge, derrick and diver's outfit from the 13th September, 1910, notwithstanding the fact that the City could derive no benefit from same. He claimed the City Engineer was in default in not providing the centrifugal pump and engine, and until they were provided he could not do any work with the boat, derrick or outfit, and that the pump and engine were not provided until October, 1910. The evidence shows that he charged the City the wages of the City's men for making and putting the derrick on the boat.

He stated he gave Mr. Fellowes a memorandum as to the amount he would be willing to be charged with for the men's time, but Mr. Fellowes denied that he ever received same, and I find as a matter of fact there was no statement given by Mr. Lesslie to the Department, but that he charged the whole of the men's time to the City for such work and they were paid for same. In his evidence he stated that he was willing to be charged with \$82 in connection with that work. It was shown in evidence that both Mr. Fellowes and Mr. Lesslie consulted about getting the pump and engine, but apparently were not able to do so until the 15th October, 1910. It appears

to me that the Lesslie Contracting Company should make some adjustment for the time which was lost by reason of the plant not being ready for operation on the 13th September, the date from which the City paid rental for same.

BOARD AND LODGING OF MR. LESSLIE AND HIS MEN.

Mr. Lesslie and his engineer and fireman were boarded and lodged at the expense of the City from the 13th September until 11th January, 1911. The contract is silent about their board and lodging. Mr. Lesslie said he understood the City was to pay for them, while both Mr. Rust and Mr. Fellowes stated there was no arrangement whatever made as to provisioning Mr. Lesslie or his men, that they were to provide only for the City's men. I find the City supplied Mr. Lesslie and his engineer and fireman provisions, and that these provisions were paid for on the certificate of Mr. Lesslie from time to time. In my opinion he should refund to the City a proper amount to cover this board and lodging. It was shown in evidence that 20 cents a meal was reasonable, or at the rate of \$4 a week for each person, which for the period mentioned, namely, 17 weeks, would amount to the sum of \$204.

WAGES PAID THE MEN UNDER MR. LESSLIE.

Mr. Lesslie employed an engineer and fireman at the rate of \$60 and \$35 a month respectively from the 13th of September to the 13th November, and from the 13th November to the 10th January, 1911, \$65 and \$40 per month respectively. He also employed four men and a cook who were paid by the City. He stated that the cook was employed by the month at \$35 a month. However, the City was charged by his certified pay list \$1.33 per day including Sundays for the cook, and this was subsequently increased; the men employed by him on behalf of the City were also paid their wages at a daily rate. Mr. Lesslie certified the time of the regular men working on the barge and paid by the City, with a number of Sundays on which no work was done, while the men working for the City, but who did not board or lodge on the barge, did not receive their wages for Sundays on which no work was done. As a result of these charges the City paid much more than should have been charged. Mr. Lesslie clearly favored those employees who had been previously in his service at the expense of the City. For the Sundays on which no work was done in 1910 the City paid these employees \$78.54.

CHARTER OF THE IDA E.

On the 11th January, 1911, the charter of the barge Ida E. ran out. The owner demanded an increased rate from \$400 per month, which Mr. Lesslie had been paying, to \$16 per day, or an increase of \$80 a month for 30 days. Mr. Lesslie proposed to Mr. Fellowes that the City should pay the wages of the engineer and fireman on account of this increase. At this time their wages were \$65 and \$40 per month respectively. Mr. Fellowes agreed to this and in this way gave Mr. Lesslie an increase of \$25 per month profit on rental of the barge.

These men were immediately placed on the City pay roll from the 11th January, 1911, at the rate of \$2.50 and \$1.34 per day respectively, equal to the rate of \$75 and \$40 per month respectively, of 30 days. This continued until the end of February, when the boat was delivered up to her owner.

I find that Mr. Lesslie chartered the Ida E. for \$400 a month from the 13th September, 1910, and paid at the rate of \$60 a month and \$35 to the engineer and fireman respectively, or \$95 per month to the 13th November, and from then to 10th January, 1911, at \$105 per month for the engineer and fireman. He received from the City for the barge, derrick and diving outfit \$43 per day, equal to \$1,290 for 30 days. His expenditure for the charter of the barge and the wages of the engineer and fireman to the 13th November was \$495 per month, and from the 13th November to the 10th January \$505 per month; and from the 11th January to the 28th February, after the new arrangement with the Engineer's Department, at the rate of \$480 per month; thus showing a profit to Mr. Lesslie on this item of \$790 to \$800 per month in addition to the salary he was receiving from the City, of \$500 per month; or in all Mr. Lesslie was receiving \$1,290 to \$1,300 per month.

Mr. Fellowes in his evidence stated he had no knowledge of the sum Mr. Lesslie was paying for the steam barge when the agreement was entered into September, 1910.

MATERIAL ON HAND.

In the accounts referred for inquiry there is an item for 16 snubbing machines ordered by Mr. Lesslie at a cost of \$93 each, or \$1,488.

They are now lying on the shore and rusting away. There is also an account of \$7,992 for steel pipe furnished by the Canada Foundry Company, which remains unused.

EXPENDITURE ON THE 500 FEET EXTENSION OF INTAKE.

The accounts show that the expenditure in connection with the work of the 500 foot extension of the Intake amounted in the year 1910 to \$26,526.84, and in 1911 to \$7,786.21, making a total of \$34,313.05. This included the steel pipes furnished by the Canada Foundry Company, \$7,992, the posts \$1,488.

Mr. Lesslie's wages, \$2,750.

Rental of barge, derrick and diving outfit, \$5,476.22; and for wages of men, \$7,049.67.

Insurance on plant and men, \$2,151.50.

Wire rope, \$674.70.

Rubber goods, \$331.83.

R. Weddell & Co., towing \$1,990.48, and a large number of smaller items, making together, \$3,992.65.

II. INTAKE OR CONDUIT REPAIRS UNDER MR. LESSLIE.

(1) MR. LESSLIE ON THE INTAKE OR CONDUIT REPAIRS.

Mr. Lesslie was continued in the City's service to lift the pipe, in connection with the Intake, broken in February, 1911. On the 28th February, 1911, he made the following entry in his log:

"I delivered Ida E. over and paid Capt. Horn to date in full . . . End of Intake extension for present. All expenses chargeable to conduit repairs (meaning all future expenses would be against conduit repairs)."

Mr. Fellowes in his evidence states that Mr. Lesslie's work on the extension stopped on the 7th February and he came over from that date to help with the lifting of the pipes.

"Q. Was he kept actively at work on the Intake just the same as on the other work? A. Just exactly the same.

"Q. Was there any necessity for a \$500 a month man on that? A. Well, we were instructed by the Board to spare no expense, put on all the divers we could get whether we required them or not, so that they would be there to hustle the thing along, and my instructions from Mr. Rust were to spare no expense. I said we did not use these men. He says 'It does not make any difference, have them there . . . Mr. Lesslie was looking after the work outside where they were trying to raise the pipe. We had pumps and men in the pipe getting the sand out between a point about 400 feet south of the shore, back to the shore crib at a distance about 900 feet; we were working the men there day and night.

"Q. You think that work was proper? A. I think that work was well done."

(2) WAGES CERTIFIED BY MR. LESSLIE FOR PAYMENT.

(a) *Wages of Mr. Thomas Parks, the Cook.*

Mr. Parks stated that he was employed by Mr. Lesslie as cook on the scow at the foot of John Street on the 20th April, 1911, and left on the 25th May, that he was hired by the month, at \$50 a month, but was paid weekly; in the second week he was there he was paid three days' wages and he tried to figure it out at the rate of \$50 a month and he could not get either hours or days; eventually on his discharge ticket he found he was paid so much per hour, but how they made the time up he could not tell. After his third day he stated that he asked Mr. Lesslie what was meant by his being paid weekly on a monthly engagement. Mr. Lesslie asked him if he was satisfied to which Parks replied, "I am more than satisfied, but that is not it." Mr. Lesslie answered, "What have you to kick about"? Parks said: "There is a kick coming somewhere, if everybody on this job and other jobs through the Water Works Department are being paid the same as I am being paid there must be some irregularities going on." To which Mr. Lesslie replied:

"Oh, well, that is not my trouble." He said that he had further conversations with Mr. Lesslie on the same lines. He said: "I did not expect any hours at all, I was not engaged by the hour. My hours consisted of the time it took to prepare and serve the meals, and until we were through regularly my time would take anything from ten to eleven hours a day; that we do not kick at."

"Q. The amount that you would be entitled to under your hiring at \$50 a month up to the time you left would be \$58.38? A. Something around there.

"Q. And you actually received for that time \$95.14, is that correct? A. I believe so.

"Q. That is, you received \$36.79 to which you did not consider yourself entitled? A. That is it."

Upon being shown that he was allowed for the week ending the 29th April, 101 hours, the week ending the 6th May, 86 hours, the week ending the 13th May, 92 hours, the week ending the 18th May, 105 hours, he was asked:

"Q. Did you put all those hours in there? A. No, sir, it was not necessary at all; I engaged by the month and hours or days were never mentioned to me at all; they simply mentioned to me that I would have to be on duty to do the cooking, three meals a day; when I was through with that I was through with my work. There never was any arrangement made with me so far as hours or overtime or special time or anything that way was concerned."

Mr. Lesslie gave the following evidence:

"Q. You hired him (Parks) at \$50 a month? A. Yes, he was hired by the month; cooks always are hired by the month.

"Q. Did you pay him on that basis of \$50 a month; as a matter of fact did not Parks point out to you that he was getting over payment? A. Never. I never found any man yet that said he was getting too much.

"Q. Did you give him too much? A. No sir, \$1.67 a day, that is \$50 a month. . . He had a lot of extra time in that last week when we were out there.

"Q. Did you give the cooks extra time? A. Yes. They had to get up and cook in the night, give extra meals in the night, we were out there three days working day and night, and he got some time here.

"Q. Where did you allow him the extra time? A. Right here in May. He gets 24 hours on the 14th, that is Sunday, and on the 15th he got 20 hours, on the 16th 28, on the 17th he got 18, on the 18th 15, that is all I have.

"Q. At what rate did you allow him for his extra time? A. In the same proportion as the others were; they were allowed full time till 5 o'clock. Up till 9 o'clock time and a quarter; there was a regular standard which they had here which they gave me a memorandum of at the time; the day is up at 5 o'clock, after that till 9 o'clock, I think, they had time and a quarter, to 12 o'clock, I think, it was time and a half, and if it was all night, I think it was double time.

"Q. How can you get such a basis on a monthly hiring? A. If a man is hired by the month he is supposed to put in his nine or ten hours whatever the regular rate is; it was nine hours there; and the extra time that was done over that he would be paid for; he would be paid for his extra time according to this schedule which was given me by Mr. Fellowes.

"Q. As a matter of fact none of your men received extra time until after the break? A. That was about the fact.

"Q. Although they worked overtime and worked on Sundays, is not that a fact? A. They were paid for their Sundays.

"Q. Not double time? A. No, well, the whole thing arose from the time of the break, which I had nothing to do with. . . . I was ordered to credit the men at that time.

"Q. Did Parks never point out to you that while he was only hired by the month he was getting more money and he wanted to know if it was right? A. No sir, never once.

"Q. Did he never tell you he was a ratepayer and he did not want to be getting anything he was not entitled to? A. No, never heard anything of that kind.

"Q. Then he says when the second large amount of \$18.74 was made I went to the Captain and said: 'I cannot understand how I am being paid. I was engaged by the month,' and you said that the City paid all our cooks and everybody else by the week—did you say that? A. No, I say the men were all paid by the week, no matter if they were hired by the month, they were paid up at the end of each week. . . . I do not remember any conversation with him with regard to discussing the wages. I was not interested in any of these wages; if there is anything overpaid there it is not through any wish of mine to pay the men too much or to pay them too little; I had no interest in them whatever, just to give them in as they were given to me."

(b) *William Henderson's Wages.*

Referring to Henderson, diver's assistant, who had been taken for other work while Mr. Lesslie was looking after the pontoons in March, 1911, Mr. Lesslie was asked:

"Q. You got him back, but he was continued in the arrangement he had made with Mr. Fellowes or Mr. Randall for increased pay? A. Yes.

"Q. And it is also the fact that you had had no trouble with Henderson while you were here? A. No, I never had any trouble with him after he came back.

"Q. He was quite satisfied with his former rate of remuneration? A. While on the boat.

"Q. He was kept on at the higher rate? A. Yes."

William Henderson, in his evidence, stated that he had been under Mr. Lesslie before he came to Toronto and continued with him until March, 1911, when Mr. Lesslie went for the pontoons; he stated that Mr. Lesslie was paying him \$2 and \$2.25 without board before he came here; that he paid \$4 a week for board and lodging; then when he came here he received \$2 a day, being kept and boarded until March, 1911, when he was transferred from Mr. Lesslie to the City's pay sheet at the time that Lesslie went down to Collins' Bay for the pontoons.

"Q. Did you go back to Capt. Lesslie or continue with the City? A. I went back with Capt. Lesslie.

"Q. They had increased your wages? A. Yes sir, they gave me \$2.50 a day and all City overtime.

"Q. You were not receiving those extra hours under Capt. Lesslie? A. No sir.

"Q. What was the arrangement made with Capt. Lesslie after he returned and you came back to him as to your wage? A. Just the same arrangements I had made with Mr. Fellowes and Mr. Randall.

"Q. Mr. Randall and Mr. Fellowes had made an arrangement with you for \$2.50 a day and extra time? A. Yes.

"Q. That was continued by Mr. Lesslie after he returned? A. Yes."

Mr. C. L. Fellowes was examined as to the wages paid the men as follows:

"Q. You yourself have nothing to do with the question of time here one way or the other? A. No, I do not know.

"Q. Did you know the men were getting this time and a quarter and time and a half and double time on Sundays? A. Yes.

"Q. What is the reason of that? A. That is an ordinance, I understand, of the City's, that is my information on the subject; it is the custom at any rate of the City.

"Q. Is there any by-law about that? A. I have never seen it, but it is what we have always paid the men; men that are temporarily employed are always paid that way."

(c) *Extra Time and Wages Allowed.*

Mr. Lesslie, upon being asked about the general increase in the extra time, said:

"About the time of the accident, after that time, that was when most of the time was increased; you see there were a lot of men that were brought from the City here, they were very particular as to their hours and they were allowed, they commenced at once to allow the extra time, and as soon as one lot got it they all wanted it."

(3) THE HIRING OF MR. LESSLIE'S PONTOONS.

Mr. Fellowes gave the following evidence as to the pontoons:

"Q. How did you come to get those particular ones (pontoons); did Lesslie tell you he had them? A. Yes, when we found out the conditions there I asked Lesslie what in creation we were going to do—'Where are those steel pontoons you have;' he said, 'They are down in Newfoundland'; but he says 'I have four down at Collins' Bay.' I said, 'Are they any good?' He said, 'Certainly, they are.' I told him, 'I think that is the best thing you can do to get them;' and he came over and saw Mr. Rust and he says, 'Undoubtedly, rush them up;' that is the whole transaction.

"Q. How was it there was no contract at all of any kind made for these pontoons? A. In the first place it was a rush job; the only things that we knew of that we could use to raise the pipe with; the only other scow in the City that we knew of as capable of lifting at all was the 'Weddell scow,' and that was only good for 25 tons.

"Q. Is it the fact that no arrangement whatever was made as to the cost of these pontoons? A. No arrangement at all; they were simply sent for because we knew we must have them, because it was the only arrangement we knew of. There was not a thing discussed in connection with the rental or the sale of the pontoons.

"Q. If he gets rent for these and his time and money in raising them and bringing them up here, what adjustment should he made as to his time--you see the City is paying him \$500 a month; he puts in about ten days of your time down there in getting these old pontoons of his and spent some \$280 or \$300, and also had two men that the City were paying to go down and help raise those pontoons; was there anything said at all about that? A. No, not a word.

"Q. Was he working for himself in bringing those pontoons up or was he working for you? A. He was working for us, I take it.

"Q. The appliances were insufficient? A. Yes, in fact the pontoons had to be supplemented by two big derricks before we could get the pipe up and get it to shore."

Mr. Lessile in his evidence stated there was no arrangement made as to the pontoons.

"I was ordered by Mr. Rust to go to Kingston as quick as possible and get the pontoons and bring them up; I was never asked what I would charge.

"Q. You were acting as agent for the City in getting them? A. Yes, I was ordered to go down and get them.

"Q. The City paid you for all the expenses in connection with that? A. Yes, they paid the expenses.

"Q. Your instructions were to go and get the pontoons for the City? A. Yes, these pontoons were submerged under the ice, the ice was then getting bad, so that we had great difficulty in getting them. I took two men from here and I hired men down there. Rankin's account was \$286.14, that was for putting them on the train.

"Q. When were those pontoons built? A. I cannot tell you just when; they were probably built ten years before that; we used them for one job, lifting a tug, that is all.

"Q. What duty were they capable of performing when you brought them here? A. Lifting 30 tons apiece besides their own weight.

"Q. Are those the pontoons which we found proved insufficient for the work of lifting the pipe? A. Yes.

"Q. Did you say anything one way or the other as to their sufficiency? A. I told Mr. Rust what they would lift when we spoke of using them . . . I told them we could not tell what it would take to lift the pipe because it was impossible to tell whether it was full of sand or merely the end blocked.

"Q. From that time do you think the City should pay you that rental? A. I charged from the time that they were put on the car at Collins' Bay. I should have charged from the day we moved them, that is our usual rate."

John Grant in his evidence stated that the pontoons were insufficient.

"Q. Were they inefficient pontoons or not? A. There were three of them in pretty good shape; the other one seemed to leak.

"Q. Did the other three give you good efficiencies? A. Yes, that was proved in the bay when I eased the air from them, the other two derricks could not hold the pipe, could not hold one end of it. . . . The other did not seem as if she was doing the same work as the other three."

Mr. J. E. Russell gave the following evidence as to his account against the City for calking the pontoons:

"Q. Calking pontoons at John Street, 2 men at 81 hours at 40 cents, and then 162 hours; caulking of these pontoons, I suppose that would mean to make the pontoons water-tight? A. So that they would be air-tight.

"Q. And make the lift? A. Yes.

"Q. They paid other men also for working on the pontoon calking the pontoons besides your men? A. Yes, men from Peter Arnot, I believe.

"Q. Were they in bad shape? A. They looked as if they wanted a little bit of fixing up all right. . . . Apparently wanted calking and some new planks in them, some new rings; I guess if they had some new rings and new calking they would have been all right, and new ends in them.

"Q. Did they look as if they were ten years old? A. Honestly they looked as if their usefulness had been outlived long ago.

"Q. Lesslie's pontoons looked as if they had outlived their usefulness? A. Yes, I want to further state I am not an expert on that particular thing."

Mr. W. H. Randall was also examined with reference to them as follows:

"Q. You say the pontoons were insufficient and it was necessary to call for two large derrick scows of 50 tons lifting capacity each to assist in bringing it in? A. Yes, sir.

"Q. Would not the pontoons hold air? A. The pontoons were leaking a little. I never considered, and I don't think Mr. Lesslie did, that those pontoons could possibly lift that pipe under the conditions that it was in; you must remember that the pipe was partly full of sand.

"Q. Were they any good at all to you? A. I would not say they were not any good, because pontoons have lifted a great deal, but I think myself that the system adopted by Miller, Cumming & Robertson was the more practical. . . . You see he had to keep the air in those pontoons; if you did not keep air there they were no use; there was one of the pontoons that was dragging all the time.

"Q. One of them out of business all the time? A. Practically. There is no question about it that the pontoons could not have brought that pipe up; Mr. Lesslie and I talked over the thing and finally he gave in to my sending for the derricks and I got them."

Mr. C. H. Rust in his evidence said:

"Q. With reference to the pontoons, do you remember instructing Mr. Lesslie as to getting the pontoons? A. Well, I do not know as I did; Mr. Fellowes spoke to me about it and I said, 'Well, we have to get that

pipe up, and if Lesslie is the only man that has got pontoons we will have to get them.'

"Q. Had you any conversation with Mr. Lesslie about pontoons? A. I don't think I did.

"Q. You are not aware whether there was any arrangement as to the price to be paid for them? A. No, when the bill came in I thought it was too high for the pontoons. I cut it down and then he was not satisfied and the account is still outstanding. . . . They were of course the only thing we could think of at the time. We had no derricks at the time. I know that Lesslie felt quite satisfied that the best way to lift that pipe would be by those pontoons.

"Q. And you left the matter in his hands? A. Yes. We thought he knew more about it; and I think perhaps the pontoons would have lifted the pipe had it not been for the sand in it and that is something probably Lesslie had not foreseen; there were tons of sand in the pipe.

"Q. What condition were they in? A. They were not in very good condition; they wanted some repairs. One of them, I think, one or two of them in fairly good shape, but according to my recollection the others wanted calking; they were leaking.

"Q. We have accounts for calking running up to quite a sum of money? A. I know we had to spend a good deal of money getting them put into shape.

"Q. You do not know anything as to any arrangement as to what you were to pay for them? A. No, I do not know whether Mr. Fellowes arranged for them with Lesslie or not; I did not. We could not help ourselves and it was absolutely necessary to get what we could and we practically had to get what Lesslie wanted there."

(4) LIFTING AND DELIVERY OF FIRST LENGTH OF THE PIPE.

Mr. Lesslie lifted the broken part of the pipe on the 18th of May after a great deal of difficulty, and brought it into the John Street slip on that date. He says:

"I had nothing to do with it after it struck the shore; my discharge was in the office and I went up and got it; I turned everything over to Mr. Fellowes.

"Q. Did you have her sufficiently secured bringing her in? A. Yes.

"Q. How did you bring it in? A. Under the scow and supported by the pontoons, by the scow and by the derricks; we put the end of the pipe up to where they proposed pulling it up and fastened it there with a line ashore, and I got off and had nothing more to do with it from that time until

this . . . I turned it over to Mr. Fellowes at once. 'Mr. Fellowes, here is your pipe, you attend to it; I am going to the office for my discharge.'

Mr. Fellowes gave the following evidence:

"Q. Were you down at the slip when the pipe was brought in by Lesslie? A. Yes. That pipe was partly under the scow and of course had to be dropped in order to get it clear of the scow, pulled up to the scows. As far as my judgment goes I thought they had to drop it; that was the feeling I had about it. . . . And then we turned around and asked the Miller, Cumming & Robertson people to handle the pipe.

"Q. Had no preparations been made for docking this pipe before it came in? A. Yes, we had some ways there prepared for it; those are the ways it was drawn up on.

"Q. The original ways were insufficient? A. Yes.

"Q. You had to get stronger ways? A. Yes, had to repair them.

"Q. Was that pipe allowed to drop to the bottom because of the failure of these original ways? A. I do not think so . . . They dropped it to get the pontoons out of the road, that is one reason why; the pontoons were held towards the centre of the pipe, and the derricks were at both ends; in order to get the pontoons out of the way so that they could send the pipe up they dropped the pipe, because they had to do that in order to let go of the pontoons and they took the pontoons out of the way and the two derricks handled it.

"Q. What did they lift the pipe with the second time? A. With the two derricks.

"Q. Well, now, why would they have to drop the pipe in order to do that, if those two derricks were capable of lifting the pipe, surely they were capable of holding it? A. They could not get the pontoons out from between the derricks, unfortunately they are long derricks."

Mr. William Henderson in his evidence stated:

"Q. You got instructions from Grant with the other men to drop that pipe? A. Yes, it was done deliberately.

"Q. How long after the pipe was brought in was it dropped? A. The same afternoon I believe. We got there about noon and in the afternoon I think we dropped it, an hour or two after Capt. Lesslie had gone.

"Q. So when he left the pipe was still afloat? A. Yes. I saw Mr. Fellowes on the dock; I could not say if he was exactly on the dock when we dropped the pipe. Randall was there too. It was dropped right off the dock, the end was close to the dock, just a few feet. I believe there were some men there getting ready some ways.

"Q. Were they ready then? A. No, I do not think so.

"Q. Was that why the pipe was dropped, because the ways were not ready to put it on? A. No, but the way the scows were fixed, they had to drop the pipe to get ready to lift them; they had to move the pontoons up the nose of the pipe to lift her up to the dock. . . . We had three derricks there as well as the pontoons, Weddell's, Miller, Cumming & Robertson, and the City's and four pontoons.

"Q. When they let go did they keep on their fastenings on the pipe? A. Yes. So that they could lift it again. They had to take their pontoons off and put them on to the end. The derricks could lift that pipe, but our derrick had to get out of the road; we had to get to one side.

Mr. W. H. Randall in his evidence said:

"Q. Something has been said about throwing away \$1,775 by dropping the pipe into the slip instead of landing it on the dock; you want to make an explanation as to that? A. On the last evening over at the Island—I went over to him and I said, 'Mr. Lesslie, don't you think you had better get a derrick scow out here; I am afraid you cannot lift it,' and he said, 'Well, Mr. Randall, go and get a derrick.' I telephoned to Miller, Cumming & Robertson and to the Weddell people. These two derrick scows were coupled up on to the end of the pipe, and it was after considerable difficulty that the pipe was raised. The pipe was brought in straight head on, and perhaps showing some 2 feet or 18 inches just above the water at the front and down at the back, and the pontoons in the front of it with the City derrick scow, and air plant over the top of it. That air plant had to pump air into the pontoons, otherwise they would go down. The pontoons were leaking a little; they had been through a very serious campaign on two or three occasions. . . . In the condition it (the pipe) came in, no man living could have done other than what we did, that was to drop the pipe to the bottom, take the derrick scow out of the way and take the pontoons out of the way and bring the cables along the pipes."

FINDINGS ON INTAKE REPAIRS UNDER MR. LESSLIE.

After the 7th February, 1911, Mr. Lesslie was employed to assist on the repairs to the conduit or intake at the same rate that he had been receiving previously, his duties being to lift the broken pipe.

WAGES OF MEN.

Immediately after the break of the pipe the amount of Mr. Lesslie's weekly pay list increased very rapidly, the men being allowed extra time in the same manner as was being allowed on the Island by Mr. Randall. Mr. Lesslie's explanation of that was that there were a number of men who were brought from the City who were very particular as to their hours,

and they were allowed extra time, and as soon as one lot got it they all wanted it, and he increased the wages by extra time to all the men under him.

MA, PARKS' WAGES.

I find that Mr. Parks was hired as a cook at the rate of \$50 a month, that shortly after his employment he received weekly pay envelopes, and at the time he left the City's service on the 25th of May he had served one month and five days, which would amount to \$58.38 at the rate of \$50 a month, while he actually received for that time \$95.17, being \$36.79 more than he considered himself entitled to. Mr. Parks said he asked Mr. Lesslie for an explanation as to why he was being paid weekly on a monthly engagement, but received no explanation. Mr. Lesslie denied the statements made by Mr. Parks as to Mr. Parks objecting to the wages paid to him and stated that he gave him the extra time in the same way as to the other men and this amounted to the difference in the wages.

WILLIAM HENDERSON'S WAGES.

I find that Mr. Henderson had been receiving \$2 a day with board and lodging from Mr. Lesslie until March, 1911, when he was transferred from Mr. Lesslie's pay roll to the City's pay sheets, after which he received \$2.50 per day and overtime. Afterwards Mr. Lesslie received him back, but on condition that \$2.50 a day and overtime was to be allowed him. Previous to his being transferred to the City pay roll he was quite satisfied with the wages he had been receiving under Mr. Lesslie.

HIRING OF MA. LESSLIE'S PONTOONS.

I find that Mr. Lesslie's four pontoons were ordered to be obtained by Mr. Rust and Mr. Fellowes on the statement that Mr. Lesslie made to them that they were good. There was no arrangement made as to the rental of same. The evidence shows that the pontoons when brought here were leaking and had to be caulked and other repairs made to them at the City's expense, and even after that one continued to leak during the whole time it was in use. On the 1st June, 1911, Mr. Lesslie put in an account to the City Engineer for rental of these pontoons for 70 days, \$1,500; this was not paid by the City and he has since issued a writ against the City in connection with this claim for \$3,360.

COST OF LIFTING PIPE AT JOHN STREET.

There was an account of over \$1,775 for lifting the pipe at John Street slip after it had been delivered by Mr. Lesslie. The evidence shows that Mr. Lesslie brought the pipe to the slip, it was dropped in order to relieve the plant as the pipe could not be brought on shore in the condition in which it was attached to the derricks and pontoons, and that cost was incurred by lifting same and placing it on the shore.

III. INTAKE REPAIRS UNDER SUPERINTENDENCE OF MR. W. H. RANDALL.

(1) CITY TIMEKEEPER, MR. W. WINTER.

Owing to the very large sums charged for wages in the pay sheets, and the number of hours returned as having been earned, evidence was gone into as to the manner of keeping the men's time, while Mr. Randall had charge of the work under Mr. Fellowes. In his evidence Mr. Randall stated that the first time he was called to the Island was on or about the 7th February. He placed Mr. Winter, who was his driver, in charge as timekeeper, that he checked the time after he got the organization ready. It was entered first by Mr. Winter and afterwards checked over by Mr. Randall's clerk, Mr. P. H. Wilson. He stated that a daily list was made up of the men employed, which was brought in at the end of each day. There was a good deal of time that was very uncertain; sometimes he had to call the men out and keep them out in the lake all hours of the night, and if they were working out all night the time would be made out in the morning. They placed the time on a pad which was afterwards transferred into time books and then destroyed. The ordinary day was 9 hours a day, and after 9 hours they were entitled to extra time; they were also entitled to half a day on Saturday according to the City By-law; that is, if a man worked $5\frac{1}{2}$ days a week he would be entitled to 6 days a week, and if he worked on Saturday afternoons he would be paid for that Saturday afternoon, time and a quarter as an extra to the six days allowed him.

He added:

"You will find that our men were employed Sundays, Saturdays, nights and every other day, in connection with the pipe, even in shore. There were no days when no work was done, and time put in on the time sheets; no men's time put in there unless he was working. If I held the men all day during the day and they were not working out in the lake, I gave them something to do in the way of repairing diving suits or something else during the day, and if I had to call them out at night I would pay them the regular rate of overtime; but if they went away home or anything after time they did not get it. . . . I always had plenty of work for the men to do and moreover I want to say this, when I had two divers and three divers over there, I had Mr. Rust come over and say to me, 'Mr. Randall, the Board of Control are not satisfied, you will have to get five divers. Now, there were times when it was not necessary for me to have five divers, but there were times when it really was necessary to have five divers. . . . We were told to spare no expense. I did the best I could; I was called into a position where I had no right to be called into. The men that got that money earned it.'"

Mr. W. Winter gave evidence as follows:

"The foremen on the different gangs would come around in the morning with a slip or something they would have the time on, and I would check

It off. I would check them when the men started, up to 5 o'clock they got regular time, and for the hours after 5 o'clock at night, they got time and a quarter, and from 12 at night to 7 in the morning they got time and a half, and from 7 in the morning for the next 9 hours they would get single time; from 12 o'clock Saturday night till 12 o'clock Sunday night they got double time; I believe that is the rule on the Water Works, and all the different works in the City.

"Q. The foremen really kept time in each instance? A. They kept the number of hours.

"Q. You just wrote down what the foremen told you? A. I wrote down after figuring out that they were entitled to so many quarter hours, and so many half hours added.

"Q. Who were the foremen? A. Fellowes, Cain, Creys, Stuart, Grant, Margerison.

"Q. These men fixed the question as to the length of hours in every case? A. Mr. Randall was around at all hours, and he saw it; in the morning or at night, when we would tab up the time we would go through it together. . . . There was something that Jack Fellowes wanted to put in that he thought was a little too much; there were some words about it; anyhow he did not get it; it was in the early part and I cannot say what it was now.

"Q. Take a case like the week ending May 27th, where you got 136 hours? A. On some occasions, on one or two or three occasions, I had to go over to the City, and after working all day came over and worked at night, and back over at the Island the next day; I do not know whether that was one of the weeks or not, breaking of a main.

"Q. As a matter of fact the men were paid for meal time? A. Yes, in an ordinary day you know they had breakfast before six o'clock in the morning and they had their supper after six o'clock at night, so that a 12-hour day, all they would have would be their few minutes at dinner; there was no hour off for dinner.

"Q. You got your instructions entirely from Mr. Randall as to rates? A. Mr. Randall and Mr. Fellowes.

"Q. Here are two men allowed 162 hours a week? A. Those were two men that were out on the scow. They were out there all the time, they could not get away.

"Q. What doing? A. That is the time the pipe was being raised.

"Q. Were they working all the time they were on the scow or sleeping? A. No, they must have been working. I got my report that they were working.

"Q. Who gave you the report that they were working 162 hours? A. Stuart, I think."

I examined the foremen who were available as to the hours worked by their gang, namely Messrs. Cain, Creys, Grant, Stuart and Margerison. Messrs. Creys, Grant and Margerison were the only ones who kept time for themselves and their men, and I found that the time which they gave to Mr. Winter was entered by them in their time book, but it was not stated when the men started work or when they left off, merely the total number of hours each day. No time was allowed for meals. Mr. Winter made out the time according to the system which he understood from Mr. Randall and Mr. Fellowes to be in force, namely, 9 hours straight time, after that up to 12 o'clock midnight time and a quarter, and from 12 o'clock midnight to the next morning, time and a half, and double time for holidays and Sundays. Mr. Winter explained that the employees of the City, who were transferred to the Island in connection with this work, were allowed pay for Saturday afternoons, without working for it; but if they worked the Saturday afternoon they were allowed in addition to this a further half day at time and a quarter, in other words, if they worked the full 9 hours on Saturday they received 14 hours pay, but the employees not so transferred did not receive the Saturday afternoon.

There were some small discrepancies between the returns by Mr. Creys and the time made up by Mr. Winter for Mr. Creys and his men. It was explained by these foremen that they and their men frequently worked all night as well as during the daytime for two or three days each week, for which they were allowed time, time and a quarter, time and a half and double time on Sundays and Sunday nights.

(2) TIME OF JOHN ROWLAND, STOREKEEPER AT ISLAND.

In his evidence Mr. Rowland stated he had formerly worked at the press house cleaning meters, and was making \$2.25 a day; that Mr. Randall early in February, arranged with him to go over and take charge of the store on the Island at the same wage.

"Q. You had your meals thrown in when you were living there? A. Yes.

"Q. You were never out on the work at all, you were just stock keeper? A. Stock keeper all the time.

"Q. How on earth can it be you can get in extra time if you were just stock keeper? A. Practically speaking I was on the job all the time, I was never away from there.

"Q. Who kept track of your time? A. Mr. Winter.

"Q. Did you give your time to Winter? A. No, sir.

"Q. How on earth would Winter know whether you were asleep or whether you were awake waiting for somebody to come for a length of wire

or hose? A. He would know I was there from the time the men started in the morning till it was finished at night time.

"Q. You had something more than keeping store to do? A. Yes, any odd job I could do when I was in the storehouse I did it. We had some 45 to 60 lanterns a day in the pipe, they all had to be cleaned, re-filled with oil, and put in shape ready to go back to work again. I did that all the time; also repaired rubber boots that had any holes in them. My time started at 6 o'clock in the morning and I was paid for 14 hours a day; it did not matter whether I was called out a dozen times in the night or whether I was called out at all.

"Q. You were entitled to 14 hours a day? A. That is what I was paid at, sir.

"Q. If you were paid at a higher rate than 14 hours you would be paid too much? A. I would.

"Q. Were you also to be paid for 14 hours a day on Sunday? A. Yes.

"Q. That is how you were paid, that is right, so that there is no necessity for any one to keep track of when you open shop or when you close shop? A. No, sir.

"Q. And after you had been in the store a couple of days Mr. Randall arranged with you it would be 14 hours instead of 9 hours? A. 14 hours a day.

"Q. How was it that that arrangement was made; did you speak to him at all about it? A. No, sir. . . . He came in and gave me my instructions of what I would have to do. 'You will have to sleep in this place and you will have to be at the beck and call of the men day and night, and for your services you will receive 14 hours a day.' I was changing men's rubber boots there at night and had to dress them at half past five the next morning.

"Q. And it was in consideration of the fact that you were to be knocked up at all hours, as you tell me, that he gave you the 14 hours' straight work? A. 14 hours' straight pay.

"Q. Did he say anything at all at that time about double time for Sundays when the arrangement was made of that special character? A. No, sir.

"Q. Did you say anything at all to Winter with a view of getting that pushed up later on? A. No, sir.

"Q. Can you now give me any reason why we should have these varying numbers of hours in view of the arrangement which you have sworn to? A. No, sir. I cannot explain it at all.

"Q. Why was it that the understanding was not stuck to? A. It was to the best of my knowledge all through the time I was at the Island.

"Q. You see 14 hours a day, seven days, would be 98 hours? A. Yes, I guess it is right if you say so; I do not know; I have not figured it out.

"Q. The record I have here is for the week ending March 11th, you only got 97 hours, that is one hour too little; on March 18th the multiplication of 14 by 7 gives you a result, according to Mr. Winter of 116 hours; that is a bad mistake the other way; the next week, March 25th, there is 118 hours; there are 20 hours ahead there; April 1st, 124½ hours; April 8th, 124½ hours; April 15th, 130 hours; April 22nd, 132 hours; April 29th, 124½ hours, and so on; do you think that was the arrangement that you were to get those 14 hours a day for 7 days a week? A. 14 hours a day for 7 days a week?

"Q. That was the real arrangement? A. Yes.

"Q. So that there should be a re-adjustment of that time? A. According to my figures that is the way I was paid; I do not know any difference to that.

"Q. What did they usually run, how much? A. \$31.12.

"Q. \$31.12 was the usual run? A. Yes. That would be 25 cents an hour . . . I accepted the envelope as it came to me as being right; I did figure it out one or two weeks, and I found I was being paid according to the number of hours I worked."

Further on in his examination, Mr. Rowland said:

"You are not taking it that we were paid double time for Sunday.

"Q. You think another 14 hours should be put on that? A. Yes.

"Q. So then you were not figuring on the 98, but you were figuring on another 14 which would give you 112 hours? A. Yes, sir.

"Q. Is that right now, or is there anything else that you want to add to that? A. Yes, there is an hour and a quarter a day more goes on that yet.

"Q. So you now want to add to that an additional, how much? A. 7½ hours more.

"Q. That is for six days, you do not want to get that for Sundays, where you already are getting double? A. No, you cannot collect it twice.

"Q. That would be 1¼ hours for the six days per week, that would give you 7½ hours. Is there anything more to come? A. Yes.

"Q. Let us have it? A. There are four hours for Saturday afternoon.

"Q. Any more? A. That is all.

"Q. How do you get the four hours for Saturday afternoon and the 1¼ as well for Saturdays? A. Mr. Randall explained that to you the way they were paid on Saturday afternoons.

"Q. I never had it on the 14-hour basis; it was the actual time as I understood it; you were not paid actual time according to you at all; it is declared that 14 hours is your day; you do not start out with a day of nine hours and then add the extra time you actually work; your way of giving it to me is new. I daresay it is right; is there anything else to add? A. No, sir.

"Q. That is final, is it? A. Yes."

Walter Winter, being examined as to Rowland's time, stated:

"A day of 14 hours gave him 15½ one day and 15 the following, making 15¼ hours a day, and on Saturdays he was allowed 4½ hours because he got the afternoon, and on Sunday he got 24 hours, which would mean altogether 15½, 15, 15½, 15, 15½, 20 and 28, making 124½ hours every week."

Mr. Randall said: "This man was living right in the shop by himself right where he had the supplies, he had to get out at all hours of the night when men went there and take their wet clothes and hang them up around the stove, and change their boots and that sort of thing."

"Q. If the arrangement was the man would be practically on duty all the time, and you fixed that at 14 hours a day, there is an end of it? A. I fixed it this way: I said 'Rowland, I want you to go there and stay there, and I will see you do not get less than 14 hours a day; if I have to call you up in the hours of the night when the other men are called you will get paid from time to time.'

"Q. Is that the arrangement? A. Yes, that is exactly how it was done; for instance, on some nights I have had to take him away, lock up the storehouse and take him out to other work where I was short, and then we paid him. I think there were only a few weeks like that though."

FINDINGS.

INTAKE REPAIRS UNDER SUPERINTENDENCE OF W. H. RANDALL.

I find, from Mr. Randall's evidence, that he was placed in a position in which he should not have been placed, and that he did the best he could under all the circumstances. In my opinion the evidence shows that a large number of hours were spent by the men occupied in connection with the work in consequence of the break in the pipe. I find that there is no By-law or Ordinance of the City under which time and a quarter and time and a half and double time should be allowed to the men. I find, however, that it was customary in the Water Works Department, to allow such time when

men were brought out temporarily after their day's work in connection with the break in a pipe in the City. Mr. Randall applied that custom to the work in question here. In consequence of this being done, not only did the other employees who were hired after the break demand it from the City and were paid it, but also the contractors allowed it to their men.

MR. ROWLAND'S TIME.

Mr. Rowland's evidence showed that he was employed as storekeeper on the Island by Mr. Randall in February, 1911; that after he had been there two or three days Mr. Randall told him that his time would be 14 hours straight per day, including Sundays, and that is what he considered he was receiving while he was there. He was, however, allowed greater time than that, as appears from the time books kept by Mr. Winter, and the pay sheets. Mr. Randall, in his evidence stated that what he told Mr. Rowland was that he would not get less than 14 hours a day, and that he used him at other times, for which he was entitled to extra hours. Mr. Creys, who was one of the foremen, stated that, in conversation with Mr. Rowland, Mr. Rowland told him that he was being paid at the rate of 14 hours a day straight time. Mr. Rowland, after setting forth the agreement as he understood it, namely, 14 hours a day, stated that he was entitled to time and a quarter and time and a half and double time in addition. In my opinion Mr. Rowland was entitled to only 14 hours a day, according to the agreement he made with Mr. Randall, and that he should not have been paid for the additional time.

IV. DILL, RUSSELL & CHAMBERS' ACCOUNT RE INTAKE REPAIRS.

This firm did some work for the City in connection with the repairs to the Intake under a force contract, that is, actual cost of labor and material plus 15 per cent. Slips were made out daily and sent to Mr. Fellowes' office showing the amount charged for labor and the materials.

Mr. C. W. Dill was asked:

"Q. Was there any change in the wages of your men at all? A. No, I am quite safe in saying no.

"Q. Those accounts should be certified at what per hour? A. Whatever we paid the men at the time. . . . We never paid any of the men on holidays, so that if they did not work they would not get any pay, and if they did work on a holiday they would get their ordinary wages."

Mr. Randall was examined as to these accounts and admitted receiving a daily sheet, checking and certifying same. He said he inquired once from a mechanic employed by the firm as to the wages paid to them, and it corresponded with the amount charged the City, but he did not ask to see the time-book of the firm to check off the wages charged. Subsequently Mr. John Lyons, the former bookkeeper of Dill, Russell & Chambers, having obtained the timebooks of the firm, gave evidence with reference to the charges made

against the City from time to time. He stated that when the first account was made out that he had made it out according to the regular rates paid the men. Then Mr. McKay, Superintendent, asked him what he had charged, and when he was told, he said: "You had better add a little more," and he went over the account with Lyons and charged in some cases eight-ninths of a cent to two and eight-ninths cents per hour, his reason being that 15 per cent. would not cover general expenses in connection with the work. The total thus overcharged the City amounted to \$136.82.

There were some items of material referred to by Mr. Rowland as not having been returned by the firm to the City. A list of these articles has been forwarded by me to Messrs. Dill, Russell & Chambers, and also to the Commissioner of Works, with a statement of the above overcharge. The firm has agreed to reduce their account by the amount of the above overcharge, but state that they are unable to account for the articles referred to in the list, supplied by Rowland, the storekeeper. Their accounts in other respects were correct.

CAPTAIN JOSEPH GOODWIN'S ACCOUNT.

Capt. Goodwin had rendered a number of accounts to the City in connection with the hire of his tug during the year 1911. On going over his books, as also the books kept by Mr. Jeffrey, the timekeeper, and Capt. McSherry, it was shown that there had been overcharges against the City amounting in all to \$96.50. Capt. Goodwin was unable to say that this was incorrect. He stated that his books were kept by his wife and could not be absolutely relied on. He paid the amount thus agreed upon to the City Treasurer in June, 1912.

JOHN E. RUSSELL.

John E. Russell had a number of accounts against the City in connection with the rental of his tug, and also supplying labor and material under force contracts. The tug was rented under a written agreement. On the 28th April, 1911, Mr. Russell wrote the City Engineer as follows:

"As per arrangements with your Mr. Fellowes, I hereby agree to furnish your Department with the tug 'Russell,' crew, and coal, for the sum of \$25 per day of 12 hours. Any additional time over the 12 hours extra time to be allowed the crew only. Tug will be ready to start work at 5 a.m. Sunday morning."

This was accepted by Mr. Rust on the 1st May, 1911. In his account rendered on the 1st June, 1911, Mr. Russell charged for the hire of the tug "Russell" from April 30th to May 31st, 37 days at \$25, \$925. This was certified to by Mr. Randall and Mr. Fellowes, and paid to Mr. Russell. On Mr. Russell's attention being called to the overcharge of six days, he stated:

"When I went to see Mr. Fellowes to make the charter for the tug he gave me to understand that they would have lots of idle days, and that he

did not want to pay me for it; we should get so much an hour right through; if we worked two or three hours over the 12 hours we should be paid pro rata after the day's work. Mr. Fellowes arranged with me to pay the men only. They had her out there pretty nearly two weeks continuously; we were burning coal night and day, and I asked for a few extra days, and it was allowed me to represent the pay of the coal. It was optional with him whether he would give it to me, but I asked him for it, but they kept on burning coal. I remember distinctly I made that charge because they were getting too much for their money then."

"Q. But you had entered into a solemn contract then? A. It is all right; I think I can explain when the time comes."

Mr. Russell subsequently returned the \$125 to the City Treasurer in July, 1912. I went over all his other accounts and found them to be honestly charged according to the actual moneys paid by him to his men and for material supplied to the City.

WEDDELL & SONS ACCOUNT.

The accounts of this firm appeared to me to be very large, and evidence was accordingly taken with reference to them; the result of the evidence showed that they had entered into written contracts with the City Engineer's Department, and the amounts charged were according to these contracts, the work done was not adequate to the amount charged, but that, the contractors contended, was not their fault, but rather the fault of the Engineer's Department.

V. MILLER, CUMMING & ROBERTSON.

1. INTAKE REPAIRS AT THE ISLAND.

Messrs. Miller, Cumming & Robertson entered into a contract with the City on the 29th May, 1911, to do certain work in connection with the repairs to the intake pipe for which they agreed to accept and were to be paid in the manner set forth in the contract: "The cost thereof to the contractors plus twenty per cent. profit." In sending in their tender on the 25th May, 1911, the contractors wrote: "Should this tender be considered we are prepared to arrange the details and begin this work at once, as we have the plant necessary and men now working for us who are quite familiar with submarine work in the lake."

At the time the firm started the work, which was not earlier than the 9th June, 1911, as appears from their Superintendent's diary, they had other contracts on hand, namely, the outfall sewer contract under the City, certain stevedore work, the East Toronto Intake repairs and Hydro-Electric power plant to build at Walkerton, and subsequently the construction of the syphon under the Don for the City. In addition to these contracts they were building scows and repairing their own plant from time to time. Mr. Solomon Thompson acted as their Superintendent on the work, and was

their Superintendent on the outfall sewer contract at the time he took charge. The contractors agreed to render to the City Engineer daily pay sheets in which were to be set forth the names of the men working, the hours during which they claimed they worked, and the amount which they claimed to have paid them. These sheets were certified to by Mr. Thompson, the Superintendent, and Mr. F. L. Richardson, the contractor's timekeeper, and the totals of these were put into monthly statements in which also appeared their charges for materials supplied during the previous month, and the rental of their plant, together with their 20 per cent. on the whole sum.

(1) *City Timekeepers on the Work.*

Mr. John Jeffrey was appointed by Mr. Randall as Inspector and book-keeper in connection with this work. He commenced his duties on or about the 12th July, 1911. Mr. Jeffrey could not tell how many hours the contractor's men worked each day, either at John Street or on the scows. All that he did was to put down a general note as to what occurred during the day. He relied on the contractor's timekeeper for the number of men and their time. He was the only one there to check the time and material on behalf of the City until November.

Referring to the time sheet for the 22nd of June, 1911, Coronation Day, in which the contractor's superintendent, timekeeper and men were each entered as being entitled to 20 hours, he said that he reported the matter to Mr. Randall, who in turn reported it to Mr. Fellowes, and Mr. Fellowes said he would stop that in future. This account was, however, certified by Mr. Fellowes and Mr. Randall and paid by the City. He stated that nearly every bill that was brought in was reduced by him, largely on account of mistakes in addition, *that he did not get the June or July accounts to check over until some time in August, after they had been paid by the City,* and that he did not receive any invoice as to material until September, although the contractors kept promising all the time to supply them; that he and Mr. Randall checked them on the understanding that all errors of anything that had been entered incorrectly was to be returned to the City at the completion of the job, when the final settlement was made. He also stated that his check of the time was merely a check of additions; that his check as to the number of men employed did not agree with the sheets as put in by the contractors; that when their time sheets would come in sometimes they would have three or four men in more than he had, and he would say: "What are these men?" and they would say, "That is the blacksmith and helper making stuff down here or at the outfall sewer or somewhere else," and he had no means of checking them. "The contractors' timekeeper said the money was coming to them and they were going to have it, and they got it."

He considered there was time wasted at times, especially in connection with the wheeling of the stone and unloading of the plies at Spadina Avenue; that there was a difference between the progress made by the

City's men and the progress made by the contractors' men, for whom the City was paying. In his opinion, the City's men were doing more work than the contractors' men.

Mr. Randall stated that he brought Mr. Jeffrey there under instructions from Mr. Fellowes, to take the number of men employed by the contractors and to check up what they were delivering; that he checked up with him week after week the sheets and also the bills when they came in. He said Jeffrey was there during the most of the time when the men were there, and he (Randall) was there during the evening and when the men quit at night he was always there. But if they were doing some work designing or some work away off in Ashhridge's Bay or somewhere else he could not see them and had to accept the statements put in by the contractors, to which he objected on more than one occasion; that they could not possibly check their time accurately because they were not working always in the one place.

He said that he did not remember that they ever raised the wages. He objected time and again by drawing the attention of the contractors to the prices paid to their various men, because he thought they were exorbitant—"I thought they were getting too high, and I drew their attention to it. . . . I reported the matter to Mr. Fellowes, and Mr. Cumming assured me that that was what they were paying, and not only that, I went so far as to say to him on one occasion, 'Now, look here, I have just been through one investigation and I do not want another.' I have tried to do what is right, and I said, 'If you are wrong the responsibility is yours.'"

He said he did not go through the contractors' books to find out what they were paying the men, as he had no chance to do so, but merely asked if the wages they were giving were right, and they said that is what it cost them. He says he O.K.'d both as to price and hours, but the understanding with Mr. Fellowes was that he was doing that as far as time was concerned, and any material that they had supplied had to be arranged for afterwards.

He was asked:

"Q. Have you any memorandum as to their time at all except what Mr. Jeffrey has in that book, which he explained this morning? A. I could not have anything else; I had him to do that; that is what he was there for; I could not be here, there and all over."

Mr. C. W. Allen, the engineer in charge at the Island for the City, said that the contractors were supposed to turn in a sheet with a record of each man's time, and also a record of the plant. Those sheets did not always come in on time, not within three or four days. The City's timekeeper checked his time off with those sheets, and they worked out very well; there was not much discrepancy. They made adjustments; in nearly every case there were some little adjustments to be made every month.

Mr. Fred. L. Richardson, the contractors' timekeeper, was asked if he ever told the City timekeeper that he was getting extra hours in on him

and he replied he could not say whether he did or not. He said there was a City timekeeper on the job all the time who was checking the contractors' time, and he did not need to tell him that he had put a couple of hours on here and there; he was supposed to know.

"Q. You were not telling him you were putting in a false return of hours and getting his check to it? A. No, I did not recollect telling him that.

"Q. Did you tell any of the City employees that? A. No sir, I did not."

Mr. Fellowes, in his evidence, stated that the City's timekeeper checked Mr. Cumming's account as to time, but he could not check it as to wages. So far as he knew the City timekeeper was getting all the time that they charged. He stated he was not familiar with the hours and that sort of thing, but he had to certify to those different accounts; he never went over them. He said: "I may say that both Mr. Rust and myself came to the conclusion that the proper thing for us to do was to send an auditor down and have him audit their books before coming to a final settlement. I think the City has \$30,000 or \$40,000 of money in their hand and we thought we were safe, the main thing being to have the pipe laid, and as they were the only people who were equipped for that kind of work we let them go ahead."

Mr. Vinen stated that when he was first on the Engineer's staff at the Island he kept time incidentally; that Jeffrey was the only timekeeper at that time. Starting in November, he made some check on their time, not as a timekeeper, because that would have necessitated a man being here, there and everywhere; it was impossible. He watched the men once or twice a day, to see if the men were there as the foreman claimed; and at the same time he tried to make that agree with the time kept by the contractors' timekeeper. Often he was unable to do that, that when the January sheets came in the contractors were notified that they could not be accepted, there was a difference of over \$100, including the 20 per cent., between their time and the contractors' in favor of the contractors, and the contractors sent their timekeeper to go over them. . . . "This check on the January account was made in March, two months after the work had taken place, so that there was absolutely no chance of taking certain cases and saying the man was not there and they saying the man was there, it was too far back; we said the man was not there and they agreed to that."

"Q. You have no knowledge of any raise in anything except the foremen's wages to the City? A. Absolutely none. On the contrary, I had the assurances from the contractors that there was no such thing.

"Q. Who gave you the assurance? A. Mr. Cumming. One day last week I rang him up on the telephone and asked him to tell me his way with regard to the rate, the difference in the rate of foremen, and I said, 'That was all?' and he said 'Yes, that is the only thing I know of,' and he

added that they had nothing to conceal, that everything was perfectly straight, and I believed it."

Mr. Cumming: "That is what I told Mr. Vinen."

Mr. Colvin, who looked after the time from the 17th January, 1912, stated that he would visit the men on the work usually twice a day, but for the number of hours worked by them he would have to accept the foremen's statement, as the men were working in different places at the same time. He did not go over the contractors' time-book, but the contractors' time-keeper would phone to him his time as he had it and they would check it off in that way; the contractors' timekeeper's time-sheets and Mr. Colvin's time-sheets would be checked off, not each day, but when the time-sheets came in from the contractors.

(2) Wages Paid by Contractors and the Amounts of same as Charged to the City.

Upon comparing the time-book kept by the contractors with the time-sheets rendered to the City by them it was seen that larger sums were charged to the City than were paid to the men for the same number of hours. It was also seen that the hours allowed to the men by the contractors in their time-book were in a large number of instances less than the number of hours charged to the City in their pay-sheets, thus showing that the pay-sheets were padded, not only in reference to increased wages for the men but also for increased hours. Upon the examination of their time-keeper and Mr. Cumming, the partner in charge of the work, they admitted that this was true; that they had charged to the City larger sums for the men's wages than what they had actually paid them; that they had also charged a greater number of hours of work against the City than put in by the men. In addition, 20 per cent. was added to the increased rate and increased hours.

Mr. Cumming, in his evidence, stated it was part of his duty to set the rates of the men and check over the amount of hours charged to the City; that the rate of wages charged the City included their cost of the men. He was asked:

"Q. Do you want to say when you are getting 20 per cent. of your cost, that your practice is to pay the men one rate and return to the employer the other rate? A. Yes, sir.

"Q. Is there a different standard in marine and in land work? A. Definitely so, most decidedly so. In railroad work you put in your bills at the exact rate you pay your men. . . . The increases in the rates charged to the City over what we pay the men are for carrying our organization through the winter."

In figuring out cost of carrying their organization, he said that he had to take into consideration the loss that they had in operating their camp at

the Woodbine Beach, where these men that were working on the work were boarding, also bonuses which they paid to certain men from time to time, although that did not amount to much. Also insurance on the men and a number of small things, for instance, they often paid medical expenses for men not covered by insurance, and also interest on the money the City had not paid. He was unable to give the basis upon which he apportioned the percentage. He raised the amounts, not on calculation, but chiefly on experience.

"Q. Was that put on under your instructions or anybody else's? A. Under my instructions.

"Q. Besides that, did you do anything else in connection with these sheets? A. Yes. I instructed the men making out the sheets to protect us in our loss that resulted from intake work on the outfall sewer; what I mean by that is, when we started this work up here we had to make one of two decisions, either we had to organize a complete separate gang for the repair work and put them to work on that pipe, and they would have to get permanent wages out of the City for that, whether you could work on the lake or not, or we could take the other alternative, and that is, use the one gang of men on both pipe lines, the work being so similar; we decided to use the one organization to do both contracts with the results that when we first started that work the plant and men would come up from the other jobs. I think they came up about eight separate and distinct times to do specific things; came up in fine weather when it was fine on the lake, and then went back to the other job, with the result that the other job carried by far, probably seven-eighths of bad weather, for that crew and plant during the first four months of this work, and we lost as a result I think down there about seven or eight thousand dollars on the outfall sewer work.

"Q. How much did you get back through the pay-sheets out of that? A. I think we got back about \$2,000 or \$2,500 at the outside, that is only a rough estimation.

"Q. You padded the wages just \$2,500 more for that other work down there? A. That being I suppose ten times cheaper than it would have cost the City had we taken the other system of doing the work.

"Q. Did you tell Mr. Fellowes that, having lost on your outfall sewer contract such a large sum of money, you were taking back from the City under the guise of pay-sheets in connection with these intake repairs \$2,500? A. I told him that the City had to help us stand their share of this lost time, and that we were paying the shot and losing the money regularly.

"Q. So you certified to the City not only amounts which were not true, if they were intended to show wages so far as the rate of wages were concerned, but also pay-sheets which were incorrect so far as hours were concerned? A. Yes, sir.

"Q. How many hours did you instruct Mr. Richardson to certify to in excess of the hours actually earned? A. Generally there would be about two hours. . . . I would consult with Robertson, who was then running the outfall sewer when Thompson came up here, about how much money he was losing as the result of running the two contracts in conjunction.

"Q. So that from time to time you changed the amount of the extra hours being charged? A. Yes, just from week to week I would keep in touch with Robertson."

Mr. Richardson stated that he was given instructions by Mr. Cumming to raise the number of hours certified; the number varied from time to time; he started to add to the hours in June, 1911, and continued adding to them, he thought, till about the end of August. Any time that was added after that would be very slight; he would add perhaps one to two hours on six or seven of the men.

"Q. Who had to do with fixing the amount which the wages were raised? A. Mr. Cumming, I think, did that. He gave instructions to me to do that."

Referring to instances of increased hours and increased rates, he was asked:

"Q. What about Cowan; you have Cowan down there for 21 hours at 37½ cents an hour, you know exactly what you paid him? A. The amount paid was 10½ hours at 30 cents an hour.

"Q. Mullner, blacksmith, he was down for the same rate, was not he, 37½ cents? He is certified to for 22 hours, and as a matter of fact he is paid for 11 hours? A. That was the time he worked on that day, 11 hours at 32½ cents.

"Q. Did Mr. Cumming tell you, in addition to putting in hours, shoving on an hour here and a hour there, to double up men's time like that? A. I don't remember whether he did or not.

"Q. You see they are doubled up in those instances I gave you, it is not the case of an hour here and an hour there, but they are absolutely doubled? A. Yes.

"Q. Why was Stewart down there on the 24th December, 1911? I am not going over all these. I want to see if you can make any possible explanation; the explanation of one may do for others? A. I see apparently he is not working there.

"Q. He is not working but he is returned to the City as working ten hours? A. Yes.

"Q. That was not a holiday that day. Have you any explanation for that? A. It may have been a mistake, as it may have been put in there simply in order that we would get our cost on the work.

"Q. Then Milligan, on the 27th and 31st December? A. Milligan is on on the 27th December, and on the 31st he is on.

"Q. How many hours on the 27th? A. Ten hours.

"Q. How many hours on the 31st? A. Two hours.

"Q. And ten charged for; can you explain that? A. The same thing.

"Q. To get even with the outfall sewer? A. Yes.

"Q. The same answers will apply to the rest of these things? A. Largely so.

"Q. There is a long list? A. I think about the same answer would apply to them all."

Mr. Richardson was also asked:

"Q. You say you may have put on men that were never on the work at all? A. I am saying that.

"Q. Don't you know you did it? A. I think there may have been one or two cases where I did, yes.

"Q. Why did you do it? A. We had to do it to get our cost on the work.

"Q. Was that done by you or under the instructions of Mr. Cumming? A. Mr. Cumming told me to put in these extra charges.

"Q. Is it true he told you to put on men who were not there? A. I do not know whether he did or not.

"Q. How much of a deficit were you trying to make up on the outfall sewer by adding to these accounts? A. I do not know that it ever was calculated exactly. I did not know just how much; I knew there was a great deal. The outfall sewer was not finished until this work was started and well under way. . . . I think at least \$4,000 or \$5,000 was dropped on the outfall sewer."

Mr. Fellowes said he gave no instructions to the engineers under him to allow a greater number of hours than those actually put in the work to be certified. He said that the contractors claimed the right to charge for certain men, but they had no consent from him to do it; that he did not know, as a matter of fact, that the accounts which had been paid contained hours which had not been worked and sums which had not been paid, and he gave instructions to no one in connection with that matter. He

said Mr. Allen was looking after the time, with Mr. Vinen, so that he knew very little about it excepting the fact of discrepancies being found.

"Q. Are the accounts themselves outside of your knowledge, that you just rely on the certificate of Vinen and Allen? A. Yes. I could not pretend to follow them or check them or do anything like that; it is outside the question."

It had been agreed between the contractors and engineers, on behalf of the City, that when the men were called out and unable to work they were to be allowed two hours for their coming and going for that day. Mr. Allen also stated that when the contractors worked on Sundays and holidays their men were allowed double time, because the City's men got it and he supposed they thought they were entitled to it—it seemed to be the rule of the Department—as they were working side by side with City men.

"Q. The practical result of working this thing out is while this work is being carried on, just the same as City day work, the contractors get their 20 per cent. over and above those figures? A. Yes.

(3) Reasons for Charging Increased Wages and Hours.

Mr. Cumming was asked by Mr. Kilmer:

"Q. In reference to this amount that was added on to the wages that you call the cost of organization, the principal expense that is intended to cover is in carrying the organization over the dull season in the winter? A. That is the principal expense.

"Q. Your men on this were, as a matter of fact, employed all the winter by the City? A. Yes, sir.

"Q. And that being so, you would not be under the expense or so much expense, organization expense, in connection with this contract? A. No, not as much.

"Q. Did you discuss the organization cost with the City Engineer before you made those extra charges? A. Not definitely, no, sir. We told him we were going to do it and he agreed to it.

"Q. What do you propose to do about carrying the charge for organization, do you propose to charge that? A. As soon as we found out that the work was going to go on through the winter we wrote Mr. Fellowes or Mr. Rust, and told them that these increases would be cut out.

"Q. So that, as a matter of fact, you were willing to and had arranged to allow and re-credit those sums? A. Yes, sir.

"Q. The lost time would be all against the outfall sewer contract? A. Yes."

(4) *Alleged Agreement as to Increased Rate of Wages.*

in his evidence Mr. Cumming stated Mr. Fellowes and Mr. Rust agreed to the increased rate of charges over the actual amount which they paid the men:

"We told both Mr. Rust and Mr. Fellowes that we had to do it, and they agreed to it.

"Q. Did you fix the amount or rate with them at all? A. No, sir.

"Q. Was that left to you? A. Yes, sir.

On the 4th April, 1912, after the investigation had been ordered, Mr. Cumming wrote the following letter to Mr. Rust:

Dear Sir,—Memo. of verbal agreement between C. L. Fellowes, representing the City of Toronto, and R. Cumming and S. Thompson, representing Miller, Cumming & Robertson, regarding wages charged on intake repairs for foremen, divers and others of our regular employees, arrived at in conference, June 20th, 1911.

We beg to say that we absolutely refuse to allow these men to go on the City time-sheets at exactly the rate paid by us to them, as this would not cover our actual cost, for several reasons:

First, we employ these men the year round, and during the winter season from, say, January 1st until spring, the wages paid them are hardly ever earned by them at that time, but we consider are made up for during the summer season when working full time.

Second, during the winter it is impossible to work on the lake economically, and therefore we will be carrying these men at our expense at that time in order to be ready to start with experienced crews in the spring.

As you know that men skilled and trained to this kind of work are not to be picked up whenever required. We therefore consider that it is only fair that we be remunerated for carrying them at our expense during that time.

Third, we have and are compelled, in order to facilitate the work, to operate a camp on the lake front at a loss. This loss alone amounts to at least \$1,000 a year, and, as stated, is a direct charge to wages.

Fourth, we are at present, and will be for some time, carrying this entire force of men on our own pay-sheets, and supplying and charging the City for them only on the hours they are required for work on the repairs, but are always at the City's command at a moment's notice. As we are carrying them probably five days to one that they are under pay from the City, you can readily see why we claim this as part of the cost of these men.

We consider these good and sufficient reasons for putting in the wages as above stated.

It is understood that in no case will these wages be in excess of the standard wage for these classes of work, and not more than, or as much as, we have charged the Government, railways, and other industrial companies under similar conditions.

If this meets your approval, we are prepared to go ahead, otherwise we will be compelled to withdraw these men from this work, as these items are as much a part of our cost for wages as actual cash paid per diem.

Yours truly,

MILLER, CUMMINO & ROBERTSON,
Per R. Cumming.

In support of the alleged agreement of 20th June, 1911, Mr. Cumming produced the entry in his diary as follows:

"R. Cumming and S. Thompson discussed East Toronto Intake with Mr. C. L. Fellowes, who told us to go ahead, as per detail arranged by himself and Thompson, and to proceed until further instructions were given. Rates of wages and charges for our regular men on intake repairs were then discussed. We refused to go on with work unless allowed an increase in our wages beyond that which we paid on the pay-sheet to cover some of our force costs in maintaining these men. Cited the necessity of carrying men the year round at a loss in the winter, the unprofitable winter contract, the loss in operating a camp, the irregularity of employment of our men by the City, agreed to in no case charge beyond regular prices for this class of work, nor any more than we charged railroads and others under similar circumstances."

He stated he made this entry either the day or the next day after the conversation occurred, and that it was a true record of what took place. It was intended to show the agreement or arrangement made that day. The entry appeared to have been made at two different times, the first three lines of it, namely, "R. Cumming and S. Thompson discussed East Toronto Intake with Mr. C. L. Fellowes, who told us to go ahead as per detail arranged by himself and Thompson," is in the same ink as other entries in the book, made during the month of June, while all subsequent to such part was in a different ink as if made at a different time from the first part.

He was asked:

"Q. You came to an arrangement with Mr. Fellowes that day on your oath which would enable you to charge up this extra rate per day and these extra hours? A. Yes.

"Q. Do you want to swear in the face of your own entry, in the face of your own superintendent's oath, that an arrangement was made that day

whereby you could charge in the way you have charged? A. Mr. Fellowes said we had to get our costs out of it.

"Q. Let me refer to one other matter; in the face of your oath given the other day in this investigation? A. Yes, sir, that he agreed to the increase in the rate charged.

"Q. And that that applies to all these different things, the superintendent and the foremen, to the divers and to the laborers? A. To our regular laborers, yes, sir.

"Q. And to the laborers because you have not contented yourself with adding percentages to your regular men, and you swore a moment ago that he consented to your accounts as charged? A. I did not understand that.

"Q. Did you swear a moment ago that Fellowes agreed that you should get your account as charged? A. I swore that Mr. Fellowes agreed to our getting this increase in the rates on the men.

"Q. As charged, did you swear that, made use of the word yourself? A. There never was on that day, I know the amount of increase was not discussed, if that is what you mean.

"Q. No amount of increase was discussed, so that it would be inaccurate to say that? A. Except that we promised, I have said, it would not be in excess in any case of what we charged under other circumstances, or what the City was paying their own men.

"Q. Do you remember what you told me about railway work before? A. Yes.

"Q. And that is, that you never made these extra charges on railways? A. That is all right too, because when I speak about charging railways, understand, we do not do railway work, but we did work on railways on bridge sub-structures where we charged divers at \$1 an hour where we charged the City 80 cents an hour.

"Q. Why did you write this letter of April 4th? A. Because at that particular time I wanted to get a thorough understanding between the engineers and ourselves, and we were reducing our charges to the exact per diem paid the men at that particular time.

"Q. Did you write this letter for the purpose of making evidence? A. No sir, we were not concealing anything in this matter whatever.

"Q. And am I right in understanding from your prior evidence that the reason for your making these additions both in the percentages on the pay and in extra hours, was by reason of the fact that you had the winter to carry your men through where you were not making any money? A. That was one reason, one of the chief reasons; it is as chief as any; it is as important as any.

"Q. Is it also correct to say that at the time we were here last when you gave your evidence before on some of the other accounts that you said an adjustment should be made owing to the fact that the work had run on through the winter, you had not been idle through the winter as you had expected? A. Yes.

"Q. So that by reason of that these accounts should be gone over with a view of striking off these extra hours and those added percentages? A. No, I do not think they should, because of the fact of the work having been carried through the winter has no effect whatever in the increase of hours, we charge for the lost time which the other contracts pay for.

"Q. What should be taken off that in view of the fact that this work went on and you expected it would not? A. Before I could make a statement of that I should like to analyze that closely and see just what our cost really is for the overhead charges."

Referring to Mr. Vinen's evidence, Mr. Cumming said:

"That is what I told Mr. Vinen, and what I referred to there before was, I think it is on the 4th April this year that Mr. Rust asked me if there was anything further than the increase in the rate of wages which we had done in connection with this work, and I told him there was nothing else, as Mr. Richardson will recollect. It seems a funny thing to say, but it is absolutely true, that I forgot about the increase in the hours of June, July and August of last year, and when I told Mr. Rust what I told him I was sincere in what I told him, because I would not tell Mr. Rust what I did not believe."

Mr. S. Thompson, the superintendent of the contractors, was examined as to what took place on the 20th of June in connection with the increase of rates sworn to by Mr. Cumming:

"Q. Were you present at any time when the question of advanced charges for wages against the City was discussed? Rate for wages charged on those intake repairs for foremen and divers and others? A. We did meet in Mr. Fellowes' office one day about the intake, I remember, when the East Toronto work was brought up. I remember Mr. Cumming asking about some rates, saying we would have to charge some different rates; there was nothing decided definitely at that time; there was something said about it though.

"Q. What was said? A. Mr. Cumming said we would have to make some different arrangement, charge more for those men, skilled labor and foremen. But there was nothing settled that day; that was the only time.

"Q. That was the only meeting at which this was ever discussed at which you were present? A. Yes, with Mr. Fellowes and our firm. I am not clear just what was said at that day; there was not very much said. Nothing was done, unless Mr. Cumming said he would write—Mr. Cumming

said 'I will write you a letter about it,' but I was taking no interest in that at that time at all; I am not clear on anything that you may ask me along that line on rates and conversation with Mr. Fellowes and Mr. Cumming on that day; I do remember them talking rates, and I think Mr. Cumming said 'I will write you about that.' "

Mr. Fellowes, in his examination, was asked:

"Q. I want to draw to your attention a letter from Miller, Cumming & Robertson of date April 4th, 1912. I want to know about that matter? A. As far as any agreement is concerned or arrangement arrived at there was none; there was a discussion in which they stated they were justly entitled to charge more than they were paid on account of carrying men over the winter. The only two men that they had any consent to such an arrangement were the two, Rogers and Thompson, and when their names came up I took Mr. Cumming in to Mr. Rust and we discussed the question there, and he consented to their putting these on because they stated they were paying between three and four thousand dollars a year to Thompson. They thought they were entitled to it, and they said they were going to get it—I supposed by process of law—that is the only way I know of. There was no conclusion arrived at, and certainly no consent on my part to any such charges being made.

"Q. That is what you told us the other day, but I point out to you in addition to that Mr. Cumming now swears to a verbal agreement and I want to know whether there is anything at all in that matter, good, bad or indifferent? A. Certainly not; there was no verbal agreement; there was no arrangement of any kind made by me.

"Q. Is there any question whether or not there were more names mentioned, or rather agreed to, because apparently these others were mentioned by Mr. Cumming, was there any understanding except as to those two men? A. None, absolutely none. They claimed the right to charge for certain other men, but they got no consent from me to do it."

The evidence of Mr. Cumming, with reference to the alleged agreement between Mr. Cumming and Mr. Fellowes, having been read to Mr. Rust, he was asked whether that was true or not, that they agreed to the increased rate. He said: "All I recollect having a conversation with Mr. Cumming about, we thought the work was costing too much, and I referred specially, I think, to the amount that he was charging for Thompson's services, and he explained that Thompson was worth that money; he was paying that amount of money, and he would not work for less, and there was some discussion about some of the other items. I do not recollect what it was now, but I certainly did not consent to Mr. Cumming paying anything more for the men than what he was paying."

"Q. You did not know that the rolls were being padded either as to time or value? A. I did not.

"Q. You gave no consent to it of any kind? A. Decidedly not.

(5) WAGES OF THE SUPERINTENDENT AND TIMEKEEPER, ETC.

(a) *Superintendent Mr. S. Thompson.*

Mr. Thompson's wages were charged to the City at the rate of \$2 per hour, and the hours at times charged doubled for Sundays and holidays. Mr. Allen, in his evidence, stated that the contractors represented to him it cost them \$2 an hour to carry Mr. Thompson, and he had to accept that. "That charge was afterwards reduced when we found that the work was going on. At that time we all thought that that work would be finished up in the fall, and on this kind of work a man is carried dead during the winter almost."

Mr. Cumming, referring to Mr. Thompson, said he was superintendent of the outfall sewer up to July or August, that that work was finished in the end of September, and Thompson had been on the intake repairs exclusively since that until he left their firm. He was under salary at \$150 a month on the outfall sewer.

"Q. Was not that for his time and was not that for his wages? A. Yes.

"Q. He was to get a bonus? A. Yes. . . . He was to get a bonus on the completion of the contract, on the outfall sewer contract, nothing else."

Subsequently Mr. Cumming stated that they were paying Thompson \$500 a month in the month of June, and their books should show it; that when Thompson came to the Intake repairs the agreement with him was he was to get \$150 a month, he was to get \$150 in cash as the months went by; that he did not need the balance of the money and he offered to let the firm retain the balance of \$350 until they were paid for their contract. He said: "The agreement with the City was that we were to get \$500 for Thompson. It was a verbal agreement between myself and Mr. Fellowes. My agreement with Mr. Fellowes was that Mr. Thompson was to get \$500 for running the intake repairs, and when he was still running the outfall sewer and the intake repairs they only charged \$2 per hour for the time he was on the intake repairs and worked it on that basis. Mr. Thompson refused to go on point blank with the City for less than \$500; he said he would do it on our work but he would not do it with the City.

"Q. In other words, Thompson refused to work for the City except for the \$500, while he was willing to work for you for \$150? A. That is the fact.

"Q. Did you tell Mr. Fellowes that? A. Yes, I told Mr. Fellowes.

"Q. Did you tell Mr. Fellowes that his usual pay was \$150? A. No, I do not think so.

"Q. And your books show that that has been the highest pay that that man has ever received, do not they? A. Yes, sir.

"Q. Of course, so far as you are concerned, that meant your profit, difference of 20 per cent. on \$500 a month as against \$150 a month? A. I could have easily got superintendents for \$150 or \$200 for that City work.

"Q. Did you tell Mr. Fellowes that? A. Why, yes. There is no record of the time that he (Thompson) devoted to the different works.

"Q. You could put down just as you pleased? A. We could have.

"Q. And you did? A. We put down what we thought was right.

"Q. In each case? A. Yes.

"Q. No check at all either on Richardson's time? A. No.

"Q. Did you ever hear of overtime for a superintendent's day; are not they straight salary, no overtime? A. No, except the proper kind of a superintendent, you always give him bonuses at the end of a season like that for the extra work he does.

"Q. I notice your book shows a charge for Thompson in June of \$332; July, 313; August, \$485; September, 432; October, \$465; and November, \$450; and that in each case his account carried in the book has only \$150, and is paid for at that rate? A. Yes, sir, I never told the bookkeeper.

"Q. You never paid Thompson the balance owing to him in respect of moneys actually in hand? A. We credited his account in the ledger; I remember telling Mr. Rice to do it.

"Q. When was it you told the bookkeeper that? A. When he was leaving our firm, when we were closing our accounts, about six weeks ago.

"Q. During the period down to December 31st, 1911, it is just \$150 a month, and paid at that rate? A. Yes.

"Q. How did you arrive at Thompson's credit; you say you gave the bookkeeper instructions to open a credit to Thompson in the new book, how did you arrive at that credit? A. The total time from when he started to take charge of the Intake repairs till when he left our firm at \$350 a month; I suppose it would be about ten months or whatever it is—from the fifth June until about six weeks ago.

"Q. Did you talk that over with any of your partners? A. I don't think so; I don't remember having done so.

"Q. So this was an arrangement which was privy entirely to you and to Thompson until this entry was made in the book some six weeks ago? A. Yes, that is true.

"Q. He had been getting \$150 a month, and according to your evidence that would amount for the ten months to \$3,500 that he would be entitled

to at \$350 a month; he was to receive a credit at the rate of \$350 a month in the books? A. Yes.

"Q. It was never touched until after Council had ordered these accounts to be examined into; you knew that Council had ordered that examination at the time that charge appears in the books? A. Yes, sir, I knew it.

"Q. And you never even took time if you did to get your entry right even in the way you tell me to-day. Because you have the whole thing down there as if nothing had been paid at all; ten months at \$500 a month? A. That is the first time I have seen it. In fact I know I told the bookkeeper to credit him with \$350 a month for all the time he was at work.

"Q. Here is the original journal entry (1912, April 23), 'Intake repairs, Dr., S. Thompson, salary, ten months at \$500 a month'? A. I do not understand that."

Mr. Fellowes stated:

"Mr. Cumming informed Mr. Rust and myself that they had to carry Mr. Thompson and the foreman over the winter, and for that reason they considered that during the working months they were entitled to charge more than the actual amount they were paying him during that time as they carried him while he was doing practically nothing during the winter months. And after discussing it with Mr. Rust and after looking the contract over wherein we could not see any particular clause that gave us the right to dictate what he should charge for it, and in view of the urgency of the case the contractors insisting upon their right to do this or else to stop the work, we decided to let it go on.

"Q. That is merely as to Thompson and one foreman? A. Yes, that is all we agreed to at any rate.

"Q. You were not told he was making \$150 a month? A. No, I understood he was making over \$3,000 a year.

"Q. Who told you that? A. Mr. Cumming.

"Q. Were you told, for example, that this man would work for the contractors for \$150 and refuse to work for the City unless he got \$500? A. No."

Mr. Thompson in his evidence stated that he had worked as superintendent for Mr. Cumming at \$150 for 14 or 18 months; that rate had been his rate for some years, and this was the rate at which he was being paid when he was put in charge of the City work. He stated he gave up all his time to the Intake work repairs early in July, 1911, that he worked on the outfall sewer up till July, 1911, and that he did no work on it after he left to go to the City work. Thompson in his evidence said:

"I was getting \$150 with a bonus from the firm when the question came up of raising the pipe.

"Q. If you had been successful in earning it (the bonus) all you would have got is \$900? A. Something like that.

"Q. Then had you earned any of that bonus—had you finished the first section at that time? A. No. We had not finished the first section. I would have got the larger one anyway.

"Q. You would have got the \$500 one anyway? A. The outside work.

"Q. So then when you went on the City work, as you are telling me you abandoned your claim for this bonus? A. Yes.

"Q. Now have you any agreement in writing at all? A. Not any agreement.

"Q. Stating it broadly, your whole objection was that while you were willing to work for Cumming at \$150 a month, if the City was to pay the bills you insisted on \$500 a month? A. That is it.

"Q. That is your whole argument and all you considered? A. All I considered.

"Q. If that is all you considered, that is the only reason for making the demand? A. I considered at the time under the circumstances that the job at hand was worth the money, and I wanted it, if I was the man to do the work.

"Q. Why, you had no greater responsibility? A. I do not know that I had. I do not know that I was under greater responsibility.

"Q. Now then, Mr. Thompson, as a matter of fact you have only been paid \$150 a month? A. That is all.

"Q. That is all you have been paid; now when was this agreement made? A. In July some time when the work commenced, I went on, half a day after we raised the first pipe I made a demand for \$500. I have their word of honour they would pay me what they promised me. Mr. Cumming promised to pay me. I have no reason to doubt it at all about my salary, in fact it is ready for me at any moment if I ask for it. I never did. I told them not to give it to me, that I did not need it, and I knew they needed it. I never discussed it at any time with anybody except Mr. Cumming."

Mr. Fred. L. Richardsou in his evidence said that Mr. Thompson did not report to him when he was on the job and when he was off, but that he usually had a good idea where he was. He would ask Mr. Thompson what amount of time should be charged up on the Intake and he entered same on the sheets. He could not produce any sheets showing that Mr. Thompson's time was charged up to any other work. He says he was charged for at full

time in October and November as he devoted nearly all his time to the Intake.

Mr. O. W. Rice, the bookkeeper, stated that he made the entry in the journal, April 23rd, 1912, at Mr. Cumming's request, that he understood that Mr. Thompson was to be paid \$500 a month for all the time he worked on the Intake repairs, he had been told that by Mr. Cumming five or six months previously, or after Mr. Thompson had been working on the Intake in the neighborhood of three or four months. Mr. Cumming used to come to him from time to time to find out what the profit was on the work, what it was costing, and so on, and he would say that does not include certain salaries, and then there is somebody must be charged with \$500 a month.

Mr. L. Marsen, who was inspector on behalf of the City at the outfall sewer, stated that he recognized Mr. Thompson as the manager on that job until it was finished, up to about the last of August, or early part of September, when the last pipe was laid, and then he stopped. He was there while the pipes were being laid nearly all the time. The last couple of weeks in August he did not think he was there very much.

Irving Nevitt, engineer in charge of the outfall sewer on behalf of the City, stated that the last pipe was laid on the 14th of September, 1911.

From the evidence it is shown that Mr. Thompson acted as superintendent on the outfall sewer contract for the contractors up to September, 1911, and a portion of his salary should be assigned to that work. In March, 1911, the books of the firm showed that they received from the C. N. O. Ry. the sum of \$5 per day for 22 days for Mr. Thompson's salary, or at the rate of \$150 per month.

The only evidence as to any change in this amount being paid to him is given by himself and Mr. Cumming, two interested parties. No document was signed nor were the other members of the firm consulted in the matter and no entries made in the firm's books until after this enquiry had been ordered. Mr. Cumming stated that he could get a superintendent for \$150 to \$200 per month to do the work. The alleged transaction between Mr. Cumming and Mr. Thompson has the appearance of having been agreed to between these two men with a view of making an additional sum out of the City. Mr. Cumming had been previously charging the City with Mr. Thompson's wages at the rate of \$2 per hour while admittedly only \$150 per month was being paid. The agreement alleged to have been made between Mr. Cumming and Mr. Fellowes as to the increase of Thompson's wages, was made by Mr. Fellowes on the statement that Mr. Thompson was being paid the sums charged. This statement at the time was apparently incorrect.

The sums charged on the Intake repairs from June to end of September at \$2 per hour amounted to \$1,562, while if charged at the rate of \$150 per month the amount would be \$450, or a difference of \$1,112.

In the months of October, November, December, his wages were charged at the rate of \$15 per day, making the amount paid \$1,290, as against \$450 if paid at the rate of \$150 per month, or a difference of \$1,140.

In January, February, and March, 1912, he was charged at the rate of \$500 per month, \$1,500, and from April 1st to 4th, four days, at \$15 per day, \$60—\$1,560, while at the rate of \$150 per month the amount would be \$470 or a difference of \$1,090.

These differences of \$1,112, \$1,140 and \$1,090, make a total of \$3,342, which counsel for the City contended was improperly charged to the City by the contractors on this account.

(b) *Superintendent W. Wallace.*

Mr. Cumming stated that Mr. Wallace was the night superintendent and he paid him at the rate of \$250 a month, and the books would show what he received. Mr. Richardson said he did not keep Wallace's time as there was no necessity for it, as he was always on the job.

(c) *Timekeeper's Wages.*

Mr. Cumming was asked:

"The timekeeper that you have shown as looking after all these different jobs, keeping time, did you instruct him to have that all his time unloaded on the City? A. He assumed a whole lot of more work, and in addition to the regular charge bonused pretty heavy for this extra work he was doing. I remember one time giving him \$100 as a present, and I remember another time he was given about \$180.

"Q. The fact is so far as all his wages were concerned, although all this other work was going on, the whole of his wages were charged up to the City with the 20 per cent. of your own on top of it? A. I do not know if that is true or not; if it is I am responsible for it; I know that what we have charged the City is right. I thought that what was charged the City was what we were paying him for the work he did for the City.

"Q. And you think it is right to charge the whole of his time to the City although he was not engaged for the whole of his time in City work? A. No, I do not think that is right."

Mr. F. L. Richardson, timekeeper, stated that he was paid in cash \$85 a month by the contractors, and the contractors charged the City for his time 30 cents per hour, generally ten hours a day, equal to \$3 a day; occasionally he was charged at the rate of 20 hours a day for Sundays or a holiday. He was looking after the intake repairs, the outfall sewer contract, the East Toronto Intake, the Don Syphon when it started, plant construction and other matters at the same time. He received his present of \$100 at Christmas, 1911. There was no previous arrangement as to his getting it, there was no promise of any bonus, good, bad or indifferent. He was asked:

"Q. Do you mean to say that you were working on five or six different jobs and on your own initiative you make this charge against the City? A. I took my instructions from Mr. Cumming."

The accounts rendered the City show the contractors charged the City for Mr. Richardson's wages as follows:

1911: June, \$75; July, \$78.90; August, \$75; September, \$81; October, \$103.20; November, \$93.60; December, \$90.

1912: January, \$90; February, \$87; March, \$90; April, \$90; May, \$96, a total of \$1,049.70.

It appears from the contractors' ledger, that prior to the middle of June, 1911, Mr. Richardson only received \$70 per month, but after the work on the intake commenced he was increased to \$85 per month.

A fair proportion of his wages chargeable to the Intake repairs would in my opinion be one-third of his salary, which would amount, from the commencement of the work until the first of June, 1912, to the sum of \$339.96. He has been charged to the City for the same period at the sum of \$1,049.70, making a difference of \$713.70 on that account.

(d) Amount Paid Albert E. Gibson.

Albert E. Gibson was connected with the firm and was working for Roger Miller & Sons, and interested with Miller, Cumming & Robertson in one or two contracts. Mr. Cumming stated he was their chief engineer and his duties were as to questions of design, estimation of contracts for tendering purposes and general engineering work. He was not entered in the time book.

Mr. Gibson in his evidence stated that he was employed by Roger Miller & Sons to take charge of the duplicate Intake pipe at \$200 a month. He said that while he was working on the designing of the plant (meaning in connection with the Intake repairs) he was not looking after the other work, just temporarily.

"Q. So that for the length of time that you were on this other work it would be fair to charge your proportion, proportion of the \$200 a month to this work? A. I think it would be quite fair.

"Q. And do you know how many days you were at work in designing this plant? A. Well, I kept track of it at the time and handed it in to Mr. Rice, I don't know off-hand.

"Q. So that it would be idle to say that the expenses to them would be greater than the proportion of this \$200? A. I think it would. I was getting \$200 a month. Of course the time I put in that was more irregular time. I would not expect they would get my services for a short time for that. . . . I was only to start that work for Miller, Cumming &

Robertson, build the derrick for them; I was really looking after the work for Roger Miller & Sons.

"Q. That is the fact, you just got that \$200 from Roger Miller & Sons, and they allowed you in their time to do this work for Miller, Cumming & Robertson? A. Yes.

His time was charged to the City at \$1 per hour or \$10 a day of 10 hours, amounting in August, 1911, for 26 days, to \$260, and in September, for 14½ days, to \$145, together, \$405, while he was only paid at the rate of \$200 per month, or \$6.67 per day of ten hours, or \$311.43, showing a difference of \$93.57 on that account.

(6) MATERIALS SUPPLIED AND MATERIALS CHECKED.

Mr. Randall in his evidence said that as far as possible they checked the amount of the materials charged for in the accounts while he was there, that Mr. Jeffrey went over a great deal of it and a great deal of it he personally saw himself. He was asked if he went over any of the items of charges made by the contractors for their own material supplied from the outfall sewer. He replied that he did not go over them; he said that if they came in his time Mr. Jeffrey would, but there was an account passed through for \$5,000 that did not reach him until after it had gone through; they were forcing for money and that account went through and then it was sent back to him to look over afterwards; they adjusted it afterwards. He drew Mr. Fellowes' attention to it.

"Q. As far as your own personal attention was concerned you knew nothing about it? A. No, except that stuff was used on this side."

Mr. Jeffrey in his evidence was asked if he was able to check the lumber and material. He said no, they did not use any lumber to amount to anything in his time. "It was all paid for before I had anything to do with it, that is in building sheds."

"Q. You did not check any of that? A. No, sir."

Mr. Allen in his evidence stated:

"I do not know what material they ordered."

"Q. How can you check the material then? A. I cannot check it.

"Q. Could not you have had a material book, something which would show every bit of material as soon as delivered? A. You could not do it really; it was not practical. There is not very much of it in the first place and most of it is small stuff, odds and ends, it does not amount to very much, and it is ordered from their office by their superintendent or from their office.

"Q. Then we are largely in their hands on the material question? A. Very largely.

"Q. You could not check prices up, but so far as quantities are concerned you would be in their hands? A. Except in a general way; when they put in these accounts we know where they go; of course we do take their word for it to a large extent; the only two big materials are the cement and the piling."

Mr. Cumming in his evidence was asked if he did the same padding business in connection with the materials, and he answered, "No, it would not hold on them."

"Q. Did you add any percentage there? A. No, not one single cent."

"Q. In every single instance your purchases for material represent cost? A. Absolutely; if anything it is less than cost in some of the materials we supplied."

"Q. The invoices were subject to time discounts? The invoices in each case will show the exact amount you paid and the exact amount which you billed the City? A. Yes, sir."

Mr. Fellowes was asked if materials were ever discussed between him and Mr. Cumming, and he said no, never, not in any way at all. He said that after the plan was determined on of carrying the work the contractor ordered the material necessary for that, and "I think supplied invoices, I am sure he did, invoices with the return."

"Q. Was there any other arrangement made by which he could be paid any commission? A. No."

"Q. Or any discount or anything else? A. No."

"Q. Or was the City to get the advantages of the cash discounts so that the City was to get it at the actual net cost? A. Yes."

(7) PILE DRIVER ACCOUNT.

In connection with the pile driver account charged to Intake repairs, there was a detailed account of labor in connection with rigging the pile driver for Intake work. Superintendent, 32½ hours, foremen, 138; labor, 316; carpenter, 239½; blacksmith and helper, 77½; machinist, 161½; these hours were added as being incurred from 9th June to 3rd July, 1911, and put in the monthly account for July, 1911, received in the Engineer's Department on the 27th day of October, 1911, and amounted to \$427.88, plus 20 per cent. profit, \$85.58—together, \$513.46.

Mr. Richardson was examined with reference to this account and asked to show his time sheets for the labor. He said:

"I do not think we sent in daily sheets for it."

"Q. As a matter of fact is it not true, that the time these men put in on this pile driver was time that the City was already being charged in con-

nection with the other accounts? A. No, sir, not to my knowledge anyway; I know that that work was put on the plant.

"Q. Can you pick out yourself in your own pay sheets how the items of that \$427.88 charge are made up? A. No, not now I cannot."

He stated that there were slips made out at the time and handed in to the bookkeeper.

"Q. In other words, this money had to be spent on it before it was in shape to do the work? A. Yes, had to be set up, that is so."

Mr. Ittce, the bookkeeper, was asked if he could substantiate in his books the details of this charge of \$427.88 for rigging pile driver. He said:

"I have not any details that will show how this account is made up. If I remember rightly Richardson would tell me from time to time what time would be chargeable to this work."

Mr. Jeffrey, the timekeeper for the City, was asked with reference to the hours charged in connection with the pile driver:

"Q. The men working on this (rigging up pile driver) you thought were the same as the men working on the Intake repairs? A. Yes. When the sheets came in there was a discrepancy between the number of men that I found working and what Mr. Richardson had working on his sheets. I asked Mr. Richardson how he accounted for it. 'Well,' he says, 'some of these men were working down on the pile driver and some working other places, or at the Harbour Brick yard, and some other place,' and of course I supposed that that was all in on the sheets. When the account came in a couple of months after I drew Mr. Randall's attention to the fact that they had charged us again for the pile driver.

"Q. That is, charged labor again for the pile driver? A. Yes, and he, I think, wrote a letter to Mr. Fellowes about the matter.

"Q. You drew Richardson's attention to that, and he told you they were working among other places, doing work on this pile driver? A. Yes.

"Q. And that is how he accounted for their presence? A. Yes.

"Q. Did you accept that explanation from Richardson? A. I certainly did; I could not do anything else. I reported the matter to Mr. Randall as soon as we got the account and went over it and made it up."

Mr. Randall in his evidence said that he wrote to Mr. Fellowes on the 26th October, 1911, in connection with this account for pile driving, as follows:

"In connection with the bills for the intake repairs for the months of June and July, I find that they have charged \$513.48 for rigging up the pile driver. I am simply drawing your attention to this in case you have to make some adjustment with them later."

Mr. March, the Inspector for the City on the outfall sewer, said he remembered the pile driver in question. It was used for driving the bank pile bents and anchor pile bents on the outfall sewer before it was taken over to the Island, it being the same pile driver that was now on the Island. He said they came back and drove anchor piles after they had been on the Intake with it.

"Q. Then do you know anything about the work which was said to be on that pile driver amounting to \$427.88? A. No, I could not see much alterations on there yesterday, there might have been some, but I could not see much.

"Q. Was it a proper kind of pile driver the way it was equipped in the outfall sewer work? A. Yes, very up-to-date plant in every detail.

"Q. And well equipped for that work being done on the outfall sewer contract? A. Yes."

Mr. Irving Nevitt, the engineer in charge on the outfall sewer, said he remembered the pile driver.

"That pile driver, the double leads were built for the outfall sewer, and it was put on the scow and then in the spring of 1911, it was changed over to another scow and that scow worked for a short time on the outfall sewer contract before it went up to the Intake. I have a very hazy recollection of a conversation I had with Mr. Cumming, in which he stated, my recollection is it was for the duplicate Intake, but I found out since it duplicate Intake contract was not let up to that time, so it must have been for Intake repairs.

"Q. So far as the plant was concerned it was the same plant put on another scow? A. I think there was a new engine put on the scow, I am not sure, I think there was.

"Q. After working on the Island, did it come back and work on the outfall sewer contract? A. Yes."

Mr. Richardson was asked if he had some discussion with Mr. Jeffrey and the men on the list with Jeffrey did not see on the Island, to which he replied "Yes."

"Q. I suppose it is also true that you told him that these men were working at other places? A. Yes, sir.

"Q. And among the other places that you mentioned to him was the work on the beach on this pile driver? A. No, sir, I do not think that is true. I think Mr. Jeffrey is altogether mistaken.

"Q. Without instructions you made no return to the City because you did not think it was work that the City was going to pay for? A. I did

not know that they were going to pay for it, therefore I did not make any returns.

"Q. Did you keep it distinct at all? A. Kept it distinct because it was part of the rigging of the plant, but I did not keep it distinct for the purpose of sending into the City at that time, I knew what the work was on it.

"Q. Why was the charge made? A. Well, it is just the same as any charge; it is made for rigging up plants; the plant was got ready particularly for Intake work; we had no work of our own.

"Q. Is it true that you used that plant for your own work? A. Yes, it was afterwards used for our own work, but here is the point. The work that we used it at afterwards was extra work on the outfall sewer that we did not expect to have to do, and when we rigged this pile driver up we did not know that we were going to drive a few extra bents which was in the outfall sewer; we did not know that was to be done; that was decided later by the engineers."

Mr. Cumming in his evidence was asked:

"Q. Perhaps you can give us your version of this charge in connection with improving the pile driver? Mr. Richardson says that he kept no track of that time to the City, on the ground that at that time he did not know it was to be charged? A. That is perfectly correct.

"Q. Then apparently there is no charge made in your books for this against the City—I suppose also for the same reason at that time you had not determined to charge for it? A. The mistake is all on my part clerically.

"Q. That is the fact—that is the reason why it does not appear on your books? A. Yes, I had not instructed Mr. Richardson to charge as instructed me by Mr. Fellowes.

"Q. You had not instructed him. So far as Rice is concerned is that the reason why your books show nothing—that Rice had no instructions to make a charge against the City in connection with the work? A. At that particular time Mr. Rice would not know anything about this.

"Q. He says that would be shortly before the City got the account—that was in October? A. I do not recollect that part; I thought it was earlier than that; I think it would not be later than August, near the first of August, as I recollect it. I think that it is quite possible that what Mr. Nevitt says is correct. A double lead pile driving outfit is not necessary for driving bearing bents. It hastens the work, especially if there are quite a few to drive. We had come so near the completion of the pile work on the outfall sewer, that in order to equip this derrick scow we dismantled the pile driving outfit completely; put the double leads on the shore. Mr. Fellowes asked me to get a pile driving outfit ready for work on the Intake repairs. The first work that that driver did was on the Intake repairs, and I think it is just an over-

sight on the part of Mr. Nevitt and Mr. Marsh when they say it did a little work on the outfall sewer first. They are thinking of the work that the derrick scow did there as double lead pipe driver that spring, and then at that time I had not instructed Mr. Richardson to charge that as a charge to the City getting plant ready, which has been the system all through. It is something we always do. The first man I spoke to about this was Richardson. I think it was in August, it might have been July, it might have been in September, I would not put myself on oath as saying the date, but I remember I said, 'Fred, did you bill the City for equipping that plant for the pile driver?' He said, 'No, I have charged it in in our general plant repairs.' I said, 'That should be charged to the City,' and so I think what happened is that Mr. Richardson went to the foreman who would be Frank McKenzie, and between them they would have some memos and some slips, and they would estimate the time.

"Q. You hear what he says; he does not say that? A. I know he does not; I don't want to contradict him. I think it is absolutely impossible to find out from us now. I know I cannot find it out, and my bookkeeper cannot find it out. Looking at it in a practical way I know that it is a reasonable charge for the work they did.

"Q. You did, however, get your rent for this plant? A. Yes.

"Q. Do you think that the City should pay for the plant in the first instance and then pay for the rental as well? A. They did not pay for the plant; we are not charging the City for any piece of that plant; if there is any fixture on that plant that is charged for it belongs to the City; it does not belong to us.

"Q. You know the labor is far greater than the material? A. So it ought to be; they have done a lot of work.

"Q. It rented for more to the City being capable of doing that work better than before? A. Yes, of course it does.

"Q. You were getting \$3 an hour for rental, with 20 per cent. on top, making \$3.60 an hour for the scow? A. For the complete outfit."

The above sum of \$427.88 with 20 per cent. added, was charged to the City as an afterthought, and should in my opinion, under the circumstances set forth in the evidence, be deducted from the accounts.

(8) ACCOUNT FOR STONE.

Mr. Rice was asked about an account of \$586.96 rendered for 366 tons, and 1,700 pounds of granite hardheads. He said they were used for filling the cribs.

"Mr. Wallace went down to Cherrywood and bought that stuff up from the farmers in the fields and teamed it to the cars, and loaded it and shipped it in.

"Q. So that whatever he paid out and whatever his fees were would be the cost of that? A. Yes, \$1.60 was what it figured out.

"Q. Do you know how much profit you made out of it? A. We did not make any profit out of it; we hired Wallace to supply that stone. I do not know whether they told him they would give him \$1.60 a ton or not.

"Q. The account shows entirely different; look at your ledger, stone contract? A. There is a credit of \$75.73.

"Q. That is your profit? A. No, that is to be paid to Mr. Wallace, that is his profit.

"Q. What did you pay him for it? A. We are to pay him whatever we get from the City here.

"Q. You paid him \$6 a day and his expenses? A. Yes. As near as I can recollect Wallace was to go down there and get that stone; he did not state any amount, but the time I paid Wallace I paid him \$6 a day.

"Q. For his time getting out that stone? A. Yes, as I understood it from Mr. Cumming.

"Q. There is the cost to you in the ledger account, is not that the cost? A. That is the cost as shown to us.

"Q. The profits should have been deducted from that amount of \$586.96 from the City? A. That I cannot say. Any charge that I put in there I just put in as I was instructed.

"Q. By whom were you instructed? A. By Mr. Cumming.

"Q. You know perfectly well the cost here did not amount to \$586.96? A. I did not take the trouble to find out.

"Q. Are there many accounts like that? A. Not to my knowledge."

Mr. Cumming also claimed that this profit of \$75.73 belonged to W. Wallace, his former night superintendent. In my opinion the ledger account should be accepted and this amount credited to the City.

(9) ACCOUNT FOR PILES.

Mr. Rice was asked:

"Q. There are all these piles; you know perfectly well those did not cost you the amount you put them at, didn't you? A. No, I understood that was the cost of the piles.

"Q. From whom did you understand that? A. Mr. Cumming.

"Q. What did he say? A. Any time I had piling to charge, I asked what I would charge.

"Q. He told you a certain sum and every sum was greater than the amount it cost your firm? A. That I cannot say.

"Q. And the accounts kept in your book are entirely different from the accounts you rendered to the City? A. They are.

"Q. And that was all done at Mr. Cumming's request was it not, or was it? A. He told me what to charge for the goods.

"Q. And that was not the cost? A. We paid so much a foot on the piles delivered here and we paid the freight for Dudley and deducted it from his account."

(10) CARLOAD OF CEMENT.

Mr. Jeffrey stated that "When they were concreting the joint out there, they charged me I think it was for ten barrels and a half of cement, and I asked why they charged me for cement when they had procured a carload in June that had not been used and they said it had been used, and I asked Mr. Thompson, the superintendent, and he said the City had paid for it, and it should not be charged. Richardson would not strike it off the bill, and I would not O.K. it, and I spoke to Mr. Cumming about it, and Mr. Cumming said he remembered the cement; he had forgotten just exactly how much they had used of it; that he spoke to Mr. Fellowes about it, that they were shy of cement and he asked Mr. Fellowes if he could use the balance of this cement that was left, and he would replace it on the job again, and Mr. Fellowes said yes."

Mr. Jeffrey asked him to give a letter that he had used that cement so as to be a protection to him in sending the bills through and he received a letter dated the 11th September, 1911, as follows:

"In reply to your inquiries re car of cement purchased for repairs to Intake this spring, this car contained 170 barrels, of which we used on our own work 106½ barrels. I trust that this information will be sufficient, and if there is anything further I can do you will call on me.

"Yours truly,

"Miller, Cumming & Robertson,

"Per O. W. Rice."

"Q. They had charged and had been paid for that cement in June account? A. According to that, yes.

"Q. Who certified to the June account? A. June and July account was paid before I got hold of it at all.

"Q. Has credit been given to the City for that on any subsequent account that you certified? A. No, sir.

"Q. How many other things are there like that that should be charged back? A. There were some oak timbers that were charged there. There was

an overcharge on the number of feet that was in the timber and they had charged me for the timber again after that, and it had to be knocked off."

Mr. Randall in his evidence also referred to the cement in corroboration of Mr. Jeffery's evidence. Mr. Rice, the bookkeeper of the firm, was asked why the deduction was not made in connection with the car of cement from the City account, and he replied: "Because the City never sent us their voucher for it; we notified them that the cement had been used."

He was asked if he knew personally how much cement was used and he said, "No, only the report I got from the foreman Nestor."

"My recollection of it is that I was told by Nestor, I am practically positive Nestor told me the amount of cement he used, and, whoever it was, for me to notify the City, most likely Mr. Cumming.

"Q. Why was it there was no entry made of that quantity of cement used by the Harbour Brick Co.? A. I would not make any entry until I got a voucher for it."

Mr. Terry, Manager of the Harbour Brick Co., on whose work the contractors used this cement, said that Nestor was the foreman on the job for Miller, Cumming & Robertson; they were building it for the Harbour Brick Co. He said there was approximately 68 yards of concrete if he remembered right.

"Q. You understand there are 106½ barrels of cement chargeable to the Harbour Brick Co. in connection with that work, did you ever hear about that before? A. No, sir."

The Harbour Brick Co., who used the cement taken by the contractors, is composed of Messrs. Miller, Cumming & Robertson, Rice and Terry as shareholders.

The amount of the cement thus taken and for which the City is entitled to be refunded is \$192.21 with 20 per cent. to be added.

(11) CRUSHED STONE.

There appears to have been a quantity of crushed stone used by Miller, Cumming & Robertson in connection with the construction of the Harbour Brick Company's plant. All the stone received there appears to have been charged to the City, and Mr. Terry was asked:

"Q. There is no stone charged against you, but all the stone has been charged to the Intake repair account; we think that is not right; we think you ought to pay for the stone you used? A. That is right.

"Q. And you agree with me? A. Yes, that is right; I don't know what is in the account; I judge there were about two cars.

"Q. Do you know how many tons that would be? A. No, sir."

The quantity estimated as having been taken is worth \$92.82.

(12) COAL TAKEN BY THE CONTRACTORS.

From the evidence of Mr. Jeffrey it appears that the contractors received on the 5th July, 17 bags of coal; 8th July, 7 bags; August 3rd, two tons; August 9th, 6 bags; September 18th to September 25th, 96 bags of coal; this being City coal for which no credit was given by the contractors in their account.

Mr. Rice was asked:

"Q. You have taken coal from the City for the use of your tugs? A. Yes.

"Q. Have you an account of what coal you have taken? A. I have not any record of it; I cannot tell you."

Mr. Richardson said that he thought he had an account of it which would be in the neighborhood of possibly 20 tons.

"Q. Is that in addition to the number of bags Mr. Jeffrey charged you with? A. That which Mr. Jeffrey charged us with is something I do not know anything about."

The amount of coal taken is estimated at 30½ tons at \$4.50 per ton, or \$137.25.

(13) CARTAGE AND HORSE HIRE.

In their accounts against the City for cartage and horse hire, the amounts appear to have been increased over and above those paid by them to the different agents. Mr. Radcliffe supplied a horse and wagon and man at the rate of \$3 per day from the 3rd January to the 14th March of 1912. He says: "After they had been engaged for some time and had received the \$3 a day straight, the driver came to him and said if he had to work on Sunday he must be paid double time. He was receiving at that time \$10 a week."

Mr. Radcliffe stated:

"Q. You had merely asked for double pay for the men, which would make it altogether \$4.65 for Sunday, and Mr. Thompson told you (his man) you could have double time for the whole thing, which makes \$6 a day? A. Yes, sir.

"Q. And you tell me you had not asked for that? A. No, sir.

"Q. How many Sundays had you worked without being told you could get the \$6 instead of the \$3? A. It was in January and perhaps a couple of Sundays in February.

"Q. Before that arrangement was made? A. Yes.

"Q. Because I noticed you go back in your books and you raised the previous Sundays to \$6? A. Yes, sir.

"Q. You had been paid \$3 a day throughout with an extra \$3 for Sunday work? A. Yes, sir."

Mr. Rice, the bookkeeper, was examined as to this, and stated that all they paid to Radcliffe was \$3 a day while they charged the City \$5 a day. The reason for the increase was that they had to pay the Harbour Brick Co. for the use of their stables and the board of the horse.

Mr. Terry, Manager of the Harbour Brick Co., said that he had no entry with reference to the charge for the rent of the stable or board of the horse belonging to Radcliffe, no basis of charge having been made.

Mr. Thompson, the Superintendent, denied that he promised the driver to have double time Sundays. He said the driver spoke to him and he was told he would have to make his arrangements with Mr. Radcliffe, that he had nothing to do with the rates whatever. He said there was no conversation of any kind between him as to the horse getting double time for working on Sunday, and that he did not know anything about that. He made the arrangement with Mr. C. W. Allen about the keep of the horse; that he arranged with Mr. Radcliffe for \$3, and Mr. Rice told him he thought it would be about 50 cents a day for the stabling.

"Q. \$3.50 it would cost the City? A. I was not sure whether Mr. Rice meant the feed and the stable or not.

"Q. That is what you told Allen? A. I told him that I thought the stabling would be 50 cents a day; the feeding was not mentioned."

Mr. Allen, in his evidence, stated that he agreed with Mr. Thompson as to the price for Radcliffe's horse and rig and man at \$3 a day for ten hours' work and 50 cents for stabling; the horse was to be fed there. That is what he understood it was for, to keep the horse. Nothing was said about the double time on Sundays for the horse.

In the other accounts for cartage there were a large number of hours charged to the City than the agents charged or were paid for, as shown by the evidence in connection with payments to Dalley, the Lake Simcoe Co., John E. Russell and Colville.

Counsel for the contractors agreed that all the charges for cartage and teaming should be reduced to the amounts paid by the contractors for such work. The amount of the overcharge in these accounts is \$148.35, with twenty per cent. to be added.

(14) SHEET PILING ACCOUNTS AND PERCENTAGE THEREON.

Mr. Sydney Fellowes, in explaining his connection with obtaining orders from business people in connection with materials and supplies ordered by contractors, as also by the Engineer's Department, stated that the contractors were not getting their 20 per cent. on the United States Steel Products, sheet piling. He stated that before the City bought it, Miller, Cumming & Robertson were buying it and that the City took the account off the contractors' hands and paid it.

Mr. C. L. Fellowes stated that he understood the contractors were abandoning their 20 per cent. on that at that time.

Mr. Cumming said:

"On the 27th June, 1911, Mr. Fellowes told me to order wooden piling. We ordered in 1,300 wooden piles, and on the 26th of July three carloads had arrived, and Mr. Fellowes said that they decided to cut out wooden piling and substitute interlocking steel piling for construction purposes; and he told me to order in these steel pilings. I asked him what about the wooden piles we had already ordered, that three carloads costing about \$900 had arrived. He said that \$900 was a very small matter to us fellows, and we could cover that and not bill it. I did object to it, and he did not want to have two accounts for piling, and I gave up the \$900. . . . On the 26th July we ordered from the United States Steel Products Co., through Mr. Brunke, who is their representative, these steel piles. On the 3rd August invoices for these steel piles were in our office with sight drafts attached to them, and I was going to sign sight drafts as accepted for payment and Mr. Rust asked me to come up to the City Hall. I came up and met him and he told me he had been at the Board of Control that morning where he was asked if the City was going to buy the steel piles or the contractors', and Mr. Rust told me that while talking to the Board of Control he had made a mistake and he had told them that the City were going to buy the steel piling, and so he told me he was in trouble owing to this misunderstanding, and he asked me if we would not forego the 20 per cent. profit on \$15,000 of steel piling, which was \$3,000 to us, and I objected very seriously to it, pointing out that \$3,000 was a pretty nice profit to give up in a day, and he prevailed on my better judgment and I agreed to let these invoices go back and he said if we wanted to claim our 20 per cent. on that, that it was cost of the contract, and as the cost of that contract we would be entitled to it, but up to the present time we have done nothing about it. Mr. Rust told me, 'I know it is a legitimate profit to you,' and he practically jollied me out of it. I did not definitely promise not to bill the City, but I promised to forego it indefinitely.

"Q. Did you intend to charge for or was the arrangement that you were not to charge for it? A. I had never made up my mind. All that I promised Mr. Rust was that in the meantime I would say nothing about it."

The correspondence between the contractors and the engineer was put in. The first letter is dated August 3rd, 1911, from the City Engineer to Miller, Cumming & Robertson, in which he writes:

"The Board of Control have decided to purchase the steel sheet piling for the re-construction of the intake pipe. Will you please notify the company who are supplying the steel sheet piling to bill the City instead of billing yourselves."

And on the 4th August, 1911, letter to United States Steel Products Co. from the City Engineer, as follows:

"Please enter the City's order for 1,320 pieces of 35-pound, 18 feet long, interlocking United States steel piling, and see that the necessary certified invoices are supplied for taking the same out of customs and that your accounts are made out on the usual City form."

Mr. Cumming, during his evidence on the next day, stated as follows:

"Mr. Rust and Mr. Fellowes both promised me that in some future time they would pass in an account that would contain that profit; that is, they would O.K. 20 per cent. to us on \$15,000 steel piling if we ever put in the claim.

"Q. You say that was agreed to? A. Yes, that was agreed to.

"Q. So that what you now say is that you never in any way agreed to give it up? A. No.

"Q. Why did you sign that order—just simply to deceive the City? A. No, sir; to help Mr. Rust and Mr. Fellowes out of what would be trouble.

"Q. You knew that the idea the Controllers had was if they were buying you would get no commission, did you? A. Yes, I did.

"Q. And you were willing to change the order so that they would get that impression on the understanding that you were to hold your claim back and when the thing would be out of sight and forgotten that your claim would be paid? A. Well, we had never definitely made up our mind that we would claim our 20 per cent. profit. As I stated before, under oath, we had been repeatedly speaking to these engineers about claims for costs which we believed to be perfectly just and right, and I would have been prepared to recommend to my firm that this 20 per cent. would never be claimed if they had treated us justly in giving us what we considered a square deal.

"Q. You see you must have something definite about a contract, you yourself must see how absurd the idea is that you can charge up what you like as making up for other losses on other contracts on a force account. Now, was there any understanding between you and Mr. Fellowes and Mr. Rust, or anybody, that because you gave up your claim for this commission

that you were to be allowed to put in improper accounts? A. No, no such intention or agreement or anything else.

"Q. Nothing of that kind at all? A. Absolutely nothing."

Mr. Cumming referred to his diary, in which he had an entry under August 3rd, 1911, as follows:

"Mr. Fellowes called Mr. Cumming, who went to Fellowes' office and was there asked to cancel M. C. & R. order for steel sheet piling on City intake repairs, and that he and Mr. Rust would pass on our account which is to contain a profit of 20 per cent. on our original order for this steel piling."

In consequence of this evidence I wrote Mr. Rust, City Engineer, Victoria, on the 24th June, 1912, in which I quoted the evidence given by Mr. Cumming as to what took place between him and Mr. Rust and Mr. Fellowes as to his commission on the steel sheet piling. I also enclosed a copy of the entry in Mr. Cumming's diary, and concluded as follows:

"I would like very much to have a full statement from you as to this evidence, so that I may forward it with my report to the City Council."

Subsequently I received the following letter from Mr. Rust dated the 11th July, 1912:

Re Intake Inquiry.

Dear Sir,—Replying to your letter of the 24th of June, I was at a meeting of the Board of Control and they were discussing the question of steel sheet piling; I informed the Board that the Department had ordered some of the piling required. In discussing the matter with Mr. Fellowes afterwards, he told me that the contractors had ordered some piling. I immediately instructed Mr. Fellowes to send for Mr. Cumming, and after some discussion and considerable opposition the contractor agreed to allow the City to purchase the piling, but my recollection is that he did not waive his right to the 20 per cent. which he claimed he was entitled to under his contract. I said: "You may be entitled to it under your contract, but that is a matter that will have to be decided by the Legal Department, and if you are entitled to it, it will be paid to you." I certainly made no statement that we would pass on an account allowing him his profit of 20 per cent. unless he was legally entitled to it. Mr. Cumming is quite in error when he makes such a statement.

Yours truly,

C. H. Rust,
City Engineer.

Mr. C. L. Fellowes was asked:

"Q. Why were they (the contractors) to remit the 20 per cent.? A. Well, I suppose it was really to help the Department out of a hole; the Board of

Control were kicking up a row because the contractors were supplying the piling instead of the City, although, according to our interpretation of the contract, it was the contractors' right to supply it. . . . The commission comes to a great deal larger amount on the steel piling than it would on the wood piling. The steel piling was decided upon practically upon the experts insisting on our doing both sides and filling it in with concrete."

The evidence shows that Mr. Sydney Fellowes only acted as agent in connection with the sale of the sheet piling to Miller, Cumming & Robertson, and subsequently to the City; that he received his commission on such sale from the United States Steel Products Company, and the City suffered no loss by reason of his connection with the matter.

Mr. Cumming, in his earlier examination, was asked:

"Q. If the City bought the plant (referring to plant generally), you would not charge 20 per cent. on that? A. We would not do that.

"Q. For instance, any material the City bought, you never charged 20 per cent. on that? A. We never have, not that I know of. We can charge 20 per cent. on any material that the City buys. I discussed that with Mr. Fellowes, but he did not want to commit himself; I guess he knew what was right, all right; he knew what the facts were.

"Q. However, you have not meant to do that? A. It has not been our intention up to the present time."

Notwithstanding the above evidence, the contractors in their final account charged 20 per cent. on the cost of the steel piles purchased by the City, being \$16,568.34, making the charge for percentage \$3,313.67.

(15) OVERHEAD EXPENSE ACCOUNT.

Mr. Cumming stated that early in the work, in June, 1911, he told Mr. Fellowes that the City must bear a portion of the overhead expenses of the firm. He did not say how they were to be made up or the amount of same. Mr. Fellowes in his evidence corroborates the statement by stating that Mr. Cumming had told him that a portion of the office expenses should be paid by the City, and Mr. Fellowes had no objection to that being done. The amount of this account is charged the City at \$2,385.84. On going over the items making up this amount it was seen that they were incorrect. Mr. Rice, the bookkeeper, enters his salary at \$1,872, while the books of the firm show that he was only paid \$100 a month from 1st June to 31st December, 1911, and \$150 a month from that date, or \$1,550 instead of \$1,872. The general expenses account also covers amounts that should not be charged to this account. He explained that their expenditures on their contracts during the year, May 29th, 1911, to June 10th, 1912, amounted to \$218,827.11—the work commenced 9th June, 1910. He omitted to charge in such account the expenditure in connection with the construction and mainten-

ance of the plant of the firm, the contract for the Walkerton Power and Light, and a number of other amounts as shown in their ledgers.

In addition to these omissions, the amounts stated in some of the items of his statement were incorrectly stated.

Counsel for the City contended that this was not a proper charge and should be disallowed. If this account is to be allowed, the method of ascertaining the correct amount of same should be settled between the City and the contractors.

(16) RENT OF HARBOUR BRICK GROUNDS AND DOCK.

The contractors in their final account charge \$180 for the rental of the Harbour Brick grounds and dock. Mr. Cumming stated that he arranged for these grounds and dock at the request of Mr. Fellowes, and that he considered the amount charged as a reasonable rental. On the other hand, Mr. Fellowes stated that he did not direct Mr. Cumming to make any arrangements for the use of these grounds, but that Mr. Cumming occupied such grounds because it was more convenient for their contract than the John Street slip, which could have been used for the purpose.

(17) RENTAL OF DERRICK SCOW No. 1, AND CHARGE FOR DAMAGE TO SAME.

Derrick scow No. 1 has been charged to the City at the rate of \$5 an hour, commencing with June, 1911, until December, when a new arrangement was made with reference to the rental, namely, \$6.50 an hour when in actual work and 30 per cent. of that amount when not working.

The amount charged the City from June, 1911, to April, 1912, amounted to \$7,736.90. While Mr. Miller and Mr. Cumming stated that the amount to be charged was \$5 an hour, the account of Roger Miller & Sons to Miller, Cumming & Robertson appears to be \$50 a day during the months of June, July, August and September, and apparently in October, November and December, when they worked night and day, the charge was increased to \$5 an hour. The accounts against the City show that instead of charging \$50 a day, they charged at the rate of \$5 an hour. In June it was used five days, which would amount to \$250, while they have charged the City \$270. In July it was used five days, which would amount to \$250, while they have charged the City \$270—making an overcharge of \$40 on this account.

The amounts charged for August, September, October, November, December and January appear to be correct.

The contractors seek to charge the City with the sum of \$4,000 estimated cost of repairs to this derrick. It appears from the evidence that the contractors placed upon her a concrete mixing plant. Mr. Cumming stated that notwithstanding the advice of their superintendent not to use the scow in the manner in which they did in lifting the pipe, they lifted the pipe in such a manner as to cause the buckling of the scow. Mr. Cumming stated that the concrete mixing plant with the loaded bins aggravated the damage.

In his letter to Mr. Rust, dated the 18th January, 1912, Mr. Cumming wrote:

"Regarding No. 1 derrick scow, we might say that since we started the erection of the concrete plant and up to the completion of the same, the scow could not have been used for other purposes without delaying the erection work in progress. This scow has been permanently injured fore and aft by the continuous loading resulting from the erection of this concrete plant, causing a 'hog' of 8 inches, which you well know is a most serious thing in a scow. As you have also been notified in our previous correspondence, we had planned to haul this scow out of the water this winter and make the necessary repairs to equip it thoroughly for the next season's work. This we have been prevented from doing by retaining it in the City's service during the winter, and just what the result will be in the spring is hard to foresee."

Inasmuch as the contractors have not paid for this damage and no work has been done on the scow to remedy the defect, if any, this account in the meantime should be disallowed.

(18) ACCOUNT FOR TUG "FRASER."

The evidence shows that this tug was purchased by Roger Miller & Sons about September, 1911, at a cost of about \$6,000, and Mr. Fred. Miller said that the extra cost would make it about \$8,000. It was rented to Miller, Cumming & Robertson on this work at the rate of \$45 a day of 12 hours, and \$75 a day when working day and night. The total amount charged to the City from October to May amounted to \$12,285. The tug appears to have been injured during the winter of 1911-12, and was taken to Dalhousie dry dock about the first of May for repairs. Notwithstanding that, the contractors charged the City \$585 for 13 days during the month of May while on dry dock, and are also charging for the repairs of the tug in their account, amounting to \$661.60. The tug was not used by the City after she left for Dalhousie. These two sums, making together \$1,246.60, have been disallowed in Mr. Vinen's statement.

(19) PERSONAL EXPENSES OF R. C. CUMMING CHARGED TO THE CITY.

In the contractors' account for December, 1911, there was an item, under the head of materials supplied, "car fare and ferry tickets for men paid by F. L. R. and R. C. (November), \$18.70." Upon investigating this item it was ascertained that it was composed of \$13.25 as having been paid by Mr. Cumming and \$3.45 as having been paid Mr. Richardson on account of the Intake repairs. Mr. Richardson's account (page 46 of the ledger) shows \$3.45 for car fare and ferry tickets in cash paid to him as per cash-book on the 4th November; Mr. Cumming's account on the same page in the ledger shows \$13.25. The slip which Mr. Cumming handed to Mr. Rice to have entered against the Intake repairs showed the item of \$13.25 to be made up as follows:

October 7th, cigars, Jeffries, "In. repairs".....	\$5 00
October 24th, lunch, "Int. repairs".....	4 50
October 28th, "Gen. Ex. In. Rep.".....	2 00
November 2nd, "Gen. Ex. J. H. Mc. Int. repairs"...	1 00
November 6th, "Ex. In. repairs".....	75

\$13 25

Mr. Cumming, in his evidence, stated he made a present of a box of cigars to Mr. Jeffrey, the City's timekeeper on the work; that it was a usual thing for him to give presents; that he did not intend having it charged up against the City. He could not explain the item for lunch, \$4.50, but admitted he had given a lunch to Mr. Allen at one time, but when, he could not say.

Mr. Jeffrey, in his evidence, said that he never received a box of cigars from Mr. Cumming at any time; that he had won a bet of \$5, but not at the time stated in Mr. Cummings account.

In my opinion the \$5 charged was the amount of money betted by Mr. Jeffrey.

This small amount charged by Mr. Cumming, which was a personal bet, was entered up in the books of the firm and charged in an account against the City with 20 per cent. profit on same.

Mr. Cumming, in his previous evidence, swore as follows:

"Q. Have you at any time paid any money or given any advantage to any civic employee or official? A. Absolutely nothing under any circumstances. This account was entered in the books of the firm and charged in the account rendered to the City for the month of December, 1911, with 20 per cent. profit on same."

This item of \$13.25 should be disallowed.

(20) LOSSES ON THE OUTFALL SEWER WORK.

During the investigation Mr. Cumming claimed that he was entitled to the increased rates of wages charged by him to the City, because of the loss sustained by the contractors in bringing away their men from the outfall sewer in good weather to work on the City Intake repairs, and that they were unable to work on the outfall sewer during the bad weather which followed, and that by reason of bad weather the trenches which they had taken out in connection with the outfall sewer were filled in during their absence, and they had to dig the trenches again at a loss to the contractors, and they claimed the loss would be five or six thousand dollars. Mr. Cumming was examined very fully in connection with the supposed loss on this work, but he was unable to give any evidence as to how much that loss amounted to. He could only speak in a general way as to a loss being incurred by reason of the manner in which they did their work. Mr. Marsh,

the inspector for the City on the outfall sewer work, gave evidence as to this matter. He stated that there was one occasion the contractors' derrick scow got sanded in, and they had to dig her out. That was on the 21st September, 1911. He could not give any evidence of any other occasion when that was done. He said there was one time the contractors missed some joints they had not finished, and they had to go back and dig around those joints and finish them. He said that was not to be charged to the City, because they should have finished the joints as they proceeded.

Mr. Nevitt, the engineer in charge of the work for the City, corroborated Mr. Marsh's statements, that the extra work took a week, if not less, in re-excavating the trenches which they had excavated. He remembers the time when they had to dig out the joints in connection with the pipes which they laid. He stated that they did not absolutely finish the work when on it, and he made them go back and tighten up the bolts.

In my opinion the loss sustained by the contractors will not be more than 10 or 15 per cent. of the amount claimed by them.

It is difficult to see how the contractors can make any claim in connection with this work for any damage they have suffered in their outfall sewer contract. They obtained the contract for the Intake work expressly on their statement, that they were prepared to arrange the details, and be given the work at once, as they had the plant necessary and the men working for them who were quite familiar with submarine work on the lake.

(21) ACCOUNT FOR 20 PER CENT. ON COST OF MATERIALS, WAGES AND PLANT USED ON CONTRACT WORK AND PAID FOR BY THE CITY.

The contractors claim to be entitled to be paid not only interest on their overdue accounts from time to time remaining unpaid, but also 20 per cent. on the cost of materials furnished by the City in connection with the work as well as on the wages of the City men working in connection with the Intake repairs, and the plant used in connection with same. No amount has been placed opposite this charge.

They have charged and been paid by the City the sum of \$830.03, being 20 per cent. on the rental of the tug "Russell," rented by the City from John E. Russell during the months of September, November, December, January, February, March and April.

Counsel for the City contended that this \$830.03 was improperly paid to the contractors under the circumstances; this sum should in the meantime be disallowed.

(22) TOTAL INCREASE OF RATES OF WAGES AND INCREASE OF HOURS CHARGED TO THE CITY.

The various accounts, together with the sheets supplied by the contractors from time to time in connection with the labor, have been carefully gone over by myself and Mr. S. C. Vinen, who has had charge of the account-

ing in connection with this work from November, 1911, and, as the result of much labor, it has been ascertained that the accounts for wages on the intake repairs at the Island appear to have been increased during the period of the work by the sum of \$5,011.46.

(23) OVERCHARGE FOR MATERIAL SUPPLIED AND RENTAL OF PLANT.

The accounts rendered for material supplied by the contractors from time to time and the rental of the plant charged by them have been gone over from time to time by Mr. Vinen, and he has taken off amounts other than those appearing in his report to the following extent, namely:

Material	\$279 11
Plant	97 89
Making together	\$377 00

(24) ACCOUNTS IN CONNECTION WITH CLANDEBOYE CUT AND DRIVING PROTECTION PILES IN THE BASIN.

The Miller, Cumming & Robertson firm, in March and April, 1911, agreed to make certain pontoons and piles and drive protection piles in connection with the Clandeboye Cut and the intake repairs, for which they were to receive a rental on their plant and wages for their men with 15 per cent. added. In connection with such work they rendered to the City three accounts.

The first account is from March 30th to April 6th, 1911, for driving protection piles and fitting up plant and wages, and for plant rental, amounting to \$401.21. This account was made the subject of comparison with the ledger and books of the firm and the examination of Mr. Richardson and Mr. Rice. The ledger account, page 254, sets forth the piles at \$77.40, while \$90.70 was charged to the City; teaming \$8.20, charged to the City \$18.20; wages for fitting up plant \$51.89; City charged \$61.58; coal \$13.50, City charged \$15.75; wages for driving piles \$79.73, charged to the City \$92.65; plant rental, 7 days, \$24.50, charged to City \$70; 15 per cent. profit was charged to the City on \$348.88, being \$52.33, or a total account of \$401.21.

On going over the different items of expense and wages with Mr. Rice and Mr. Richardson, it would appear that the amounts charged for wages had been raised in the accounts against the City: foreman, charged the City at 50 cents an hour and only paid 40 cents an hour; hoist runner, charged the City at 35 cents an hour and paid 30 cents an hour; the laborers were charged at 25 cents an hour, while paid 22½ cents an hour.

There appears to have been an overcharge of 100 hours for the laborers alone; the total sum chargeable for the work, as per the time-book, amounted to \$85.68, as against \$131.62 in the ledger, and \$154.43 charged the City. The difference in the other items as charged the City over and above the amounts charged in their ledger was \$71.05.

Mr. Rice could not explain how he came to enter \$24.50 plant rental, but in my opinion the reason for entering same was that that sum was the rental of the bare plant and that wages were intended to be included in the plant rental of \$10 a day charged to the City. The difference between the wages charged to the City, as per the time-book, and the wages entered in the ledger, amounted to \$45.94. Adding this difference to the \$24.50 would make 44 cents more than the \$70 charge, and in my opinion this charge is to be accounted for in that way. The account, I consider, should be allowed at the amount in the ledger, namely, \$255.22, with 15 per cent. added to same, being \$38.28. This would show an overcharge to the City of \$107.71 on that small account.

The second account, from the 7th to the 29th April, 1911, amounting to \$725.09, being for—

17 days' use of pile driver at \$35 per day.....	\$595 00
And two Sundays, half day each extra.....	35 00
And labor	79 90
Plus 15 per cent.	11 99
Ferry tickets	3 20
Total	\$725 09

The evidence of Mr. Cumming showed that he entered into a contract with the Engineer's Department on the 6th April, 1911, to rent a pile-driving outfit on the City scow for \$31 to \$35 a day, including coal, foreman, runner and four laborers, and the making of piles by three men extra on a force account. The evidence of Mr. Richardson showed that all of the six men, agreed to be supplied on the pile-driving outfit, did not work each day during the 17 days charged for, although the \$35 per day was charged each day; that the three men for making piles were not always on that work. Accepting this evidence, the number of hours engaged on the force account which was charged to the City—carpenter 104 hours and laborers 174, total 278 hours—having been compared with his time-book, it was shown that the amount therein charged was 207½ hours. The rates charged in their accounts were 35 cents an hour for carpenter and 25 cents an hour for laborers. The time-book showed that no carpenter was on this work during that time, and that the laborers were receiving only 22½ cents an hour, making the amount of the account for wages \$46.69, instead of \$79.90 charged the City. Allowing 15 per cent. on this \$46.69 at \$7, it makes \$53.69 instead of \$91.89 charged to the City, a difference of \$38.20.

The evidence also showed that the men on the pile driver were paid their full day on each of the Sundays during the 17 days charged for and no extra time paid to them for Sundays, although the account charges for the driver \$35 for the two Sundays, one-half day extra, and this I consider improper. These two sums of \$38.20 and \$35 amount to \$73.20 to be deducted from this account.

The third account is dated the 12th of May, 1911 (being from the 29th April to the 4th May), for making pontoons and rent of derrick with hoist runner and coal, amounting to \$463.80.

The number of hours charged for this work was found to be correct.

The rates, however, were increased as in the two former accounts. The City was charged \$34.83, while the amount paid by the contractors to the men appears to have been \$29.98. The overcharge to the City, including the percentage, was \$5.57 on the wages. The ledger shows that five gaskets were charged at \$3 each, while the accounts against the City amounted to \$5 each, or a difference of \$10 against the City.

The City was charged 6 hours' rent of tug at \$2 an hour, while their ledger showed the charge to be a dollar an hour, a difference of \$6. The ledger showed the rent of plant and coal 62 hours at \$1.50 an hour, \$93, while the City was charged \$5 an hour, \$310.

In addition to these charges, wages were entered in the ledger at \$51.40, and the City charged \$34.83.

Mr. Rice explained that this account was mixed up with two other accounts in connection with the City work at that time, that the rental of the derrick included the wages and coal which were not entered in this ledger account, but in another account which he was unable to point out.

Accepting Mr. Rice's statement that \$310 was properly charged to the City (and which would show that this account in the ledger is not correct), the amount of overcharge would be \$21.57 on this account.

(25) FORCE ACCOUNT FOR THE WORK IN TAKING OUT THE INTAKE PIPE AT JOHN STREET AND BRINGING IN SAME.

The greater part of this work was done in May, 1911, while the account is dated the 8th September, and was not received by the Engineer until the 2nd October. It amounts to \$2,241.54, made up as follows:

Material supplied	\$92 85
Labor supplied	1,775 10
Plus 20 per cent.	373 59
Total	\$2,241 54

The evidence, similar to that given as to the accounts re Clandeboye Cut, showed that there were no sheets supplied for the wages, and that there was no separate account entered in the books of the firm for such wages. The only amounts charged during the time this work was going on, as entered in the contractors' ledger, appeared to be:

Wages, May 29th	\$181 25
June 17th	3 50
June 30th	16 78
July 12th	6 51
	<hr/>
Making a total of.....	\$208 04

which Mr. Rice stated were the only items that he could identify as referring to this particular work. In addition to these items the charge was made of \$147 for 73½ hours at \$2 per hour for the superintendent. The evidence, however, showed that the superintendent was receiving at that date only \$150 per month. This would make the wages to be charged for superintendent, say 8½ days, \$42.50, which, added to the \$208.04, would make the wages chargeable against this work \$250.54, instead of \$512.60 charged in the account for labor.

The derrick scow No. 1 was engaged on this work for ten days and no more. Roger Miller & Sons charged the contractors for the use of this scow \$50 a day during that time, as sworn to by Mr. Fred. Miller and Mr. Rice. This would amount to \$500, instead of \$930 charged to the City in this account. This account also shows a charge for hoist engine for 67 days at \$2.50 per day, \$167.50. It was impossible to obtain any evidence to show how long this hoist engine was utilized in the work, and I am unable to report as to same; in the meantime I allow it at the amount charged for by the contractors. I also allow the amount charged for rental of the diving outfit \$135, and tug \$30.

In the charge for materials was included teaming the hoist to John Street and return. The evidence, however, showed that only \$16 was paid to Colville & Company for teaming the hoist. Mr. Rice could not explain how the balance was made up, other than by stating that they must have charged for taking it away again. No voucher, however, was produced to show that that amount was ever paid by the contractors.

They also charge in material account for repairing hoist damaged by the City hoist runner, \$40.10.

It was said, on behalf of the contractors, that the hoist was injured by Durham, one of the City's employees. Durham, however, swore that he was not near the hoist at the John Street slip at the time and knew nothing about the accident until some time after it had taken place. Mr. James Shields, in his evidence, stated that he was present at the time of the accident. In his examination he said: "After the pipe was hauled up as far as it was necessary, Fred. Rogers, the contractors' foreman, came on the job and that pipe was to be parbuckled to the east; we got the timbers all placed and I passed a parbuckle over the pipe, that is through a snatch block, and it was coupled up with hoisting engine. Billy Bishop took hold of the hoisting engine and started to run it, put her in gear and turned on the steam. The hoisting engine did not start that pipe on a steady pull;

Rogers was standing a little south of the hoisting engine, and he is a wild kind of a genius anyway, he came over and told him to jam her at it, that is, let her go slack till she was travelling fast and throw her in gear. The wire held and the pipe held and the engine went bad; that is the way the engine was husted."

Rogers was the contractors' foreman in charge of the work.

On this evidence, in my opinion, the City is not liable for the damage done by the contractors' own men.

This reduces the amount charged for material from \$92.85 to \$52.75. The total amount of the above items allowed in the account is \$1,151.79, plus 20 per cent., \$230.35; making a total of \$1,382.14, instead of \$2,241.54, or a difference of \$859.40 on this account.

2. EAST TORONTO INTAKE REPAIRS.

This was also a force contract entered into about the 1st of June. Mr. Cumming, in his evidence, stated that Mr. Fellowes called him up about the 1st of June and told him that the East Toronto Intake pipe was blocked and asked him to go down and clear it away. There was no tender, no contract, no correspondence of any kind, other than that he was told to send in their bills, what it cost them. Their accounts were rendered as of a force contract and 20 per cent. profit added to them. He admitted that he raised the rates of the workmen and also added hours to them in the same manner as he did on the Intake repairs contract. He explained the reasons for it were similar to the reasons he gave in connection with the Intake accounts, namely, that they took their men away from the outfall sewer work in good weather and used them on the East Toronto Intake and lost that time on their outfall sewer work, and when the bad weather came they could do nothing in either place. He stated he notified Mr. Fellowes verbally that he thought the increase was a legitimate charge.

Mr. Fellowes, in his evidence, stated he made the arrangement with Mr. Cumming that the charge for plant was to be by the day, that they would not be paid for a week's bad weather. If they took the plant down for a day and then were driven out of there they would be paid for that day. If used at all they would get a full day's rate per day; but if the plant was not used at all they would not get paid. That is his recollection of the arrangement between them.

In referring to the pay-sheets with reference to the East Toronto Intake, Mr. Richardson was requested to compare his diary and time-book with the pay-sheets rendered the City. Referring to the entries of diving on August 8th, 1911, he was asked:

"Q. Look at your time-book for August 8th and see if there was any diving done on August 8th; did you pay anything for diving that day?
A. Nothing at all.

"Q. Don't you charge 20 hours there on the 8th? A. Yes, I see that.

"Q. That is improperly charged in the account, is it not? A. That is 80 cents an hour, \$16 is it not?

"Q. You notice that your book shows no diving at all. Your diary here says it is too rough? A. I also notice that my sheet here does not show any diving.

"Q. How would that get put in that account? A. That is evidently a mistake, and it is a mistake. I did not notice and the City's officials who check those accounts did not notice."

(There were two men charged for diving on that day. Richardson said they were paid their regular rate).

"Q. Skinner would be paid only 25 cents an hour for ten hours instead of 80 cents? A. Yes.

"Q. O'Neill would be charged for at 50 cents when not diving? A. Yes.

"Q. So it is the difference between 25 cents and 80 cents? A. Yes, and 50 cents and 80 cents.

"Q. Is it not the same for the next day, the 9th, 23 hours charged there while really there was no diving, was there? A. I don't know whether there was any diving or not. That appears to be a clerical error both on my part and on the part of the men who checked it.

"Q. In the same direction? A. Yes.

"Q. The 13th (Sunday) is that the same again, 72 hours? A. I see the men were paid (by City) for diving on the 13th; 72 hours, that is what is in there. (45 hours only charged as paid men in time-book). I had no doubt but what I paid the men single time and had to pay them double time afterwards to make it up.

"Q. On the 4th June that was paid for on the basis of 10 hours to the men, was it not? A. Yes, sir.

"Q. And your sheet to the City is charged at 20 hours? A. Yes.

"Q. You see with three men there you raised 30 hours to 60 hours? A. Yes.

"Q. W. S. Lynd, the machinist, is paid at the rate of 25 cents an hour and he is billed to the City at 35 cents an hour? A. Yes.

"Q. Lawson is paid 40 cents an hour and the City is billed at 50 cents an hour, that is right? A. Yes. . . . There is one man on there, I might say on the East Toronto Intake, who is paid the year round, whether he works or not, W. McNair."

Mr. S. Thompson, who was also superintendent of East Toronto work for a time, stated:

"Q. Was McDonald foreman on the East Toronto? A. Yes, just foreman.

"Q. You were just paying him 30 cents an hour? A. I do not know, I think it was 40.

"Q. In May it was 25 cents for the two weeks ending the 25th May and for the two weeks ending the 9th June, 25 cents; two weeks ending the 22nd June, 30 cents; two weeks ending the 6th July, 30 cents; two weeks ending the 30th July, 30 cents; for the two weeks ending the 3rd August, 30 cents, and the 17th August 30 cents? A. Yes.

"Q. And you had no other foreman there except McDonald? A. McDonald was the only foreman."

Mr. McDonald's time was charged at the rate of 50 cents an hour to the City, while 30 cents an hour was being paid to him by the contractors.

Mr. Wm. McNair, who was said by Mr. Richardson to be paid the year round, whether he worked or not, was examined and stated that he was 67 years of age, and an uncle of Mr. Cumming and had been working for the firm for four years. He was at the East Toronto Intake helping in the preparation of the plant.

The contractors' time-book allowed him 20 cents an hour. He worked in connection with the East Toronto Intake for several days in June; he was not working there during July. In August he was charged the City as engineer of the scow equipment at 22½ cents an hour, on the 9th, 10th, 11th and 12th August. He said he was shifted from there to the blacksmith shop. He was charged to the City as working there on the 14th, 15th and 16th August, although there was no work there and the weather was good. He was not working on the diving outfit on those days.

Although he was charged to the City as attending to the diving outfit it appears from his own evidence that he was working on the outfall sewer.

He said: "I was working with Mr. Glenison part of August, and up to Labor Day in September, on what they call the clam shell scow." He said that just after Labor Day he was sent to St. Michael's Hospital, and was in the hospital from the 12th September to the 25th, suffering from ulcers in his leg. In September and October there was nothing done at the Intake and he stated he did not receive any pay in September or October. He said that Mr. Cumming really pensions him, that he received no stated wages.

Referring to the coal account he said that they only burned coal on the scow equipment when they were working; that they had used about five sacks a day or a ton when working. He also said the diving scow was used on the outfall sewer as well when they needed it, that being the same scow that

they used on the East Toronto Intake; that John Thompson took charge of it on the outfall sewer.

Mr. Durham, who worked for the City in connection with the East Toronto Intake repairs, stated that he did not remember seeing McNair on the outfit at all, that he only saw him at the blacksmith shop; that he knew the scow; it would use about five to six bags of coal a day; half a ton of coal, not any more when working all day; that he was an engineer and understood the amount that such equipment would use.

Mr. Richardson in his evidence was asked:

"Q. You knew while you were charging up old man McNair that he was not there on the work? A. I believe there was part of the time he was not there, I do not remember how much."

With reference to the account to the City for coal charged at the East Toronto Intake amounting to \$235, Mr. Rice, the bookkeeper, was asked as to the entries in the ledger:

"Q. Is that a true return of the coal? A. No, I could not say it was because there was coal taken from our other work at different times; I may not have a full record. I do not know that it will be shown as a matter of record. We know approximately what heat the plant will require a day when running, and it was charged, if I remember rightly, on that basis, because there was coal taken from our other work and taken before we discovered it; so that we could not keep an accurate account of it. . . . We would charge so much for it when it was in operation and so much for it when it would be lying idle.

"Q. What was your basic charge, how many tons a day or weeks or months, whatever it is? A. I could not give the details of it; I would get that information from either Richardson or Cumming, the price to be charged."

The ledger showed a charge of \$175.50 for coal as against \$235 charged to the City. He said that was their cost at the yard, and no charge in that for the delivery of coal; that it cost 75 cents a ton for delivery.

Mr. Richardson said the plant would use a ton of coal a day of ten hours when it was working.

The superintendent was charged to the City at the rate of \$2 an hour in connection with this work.

It was shown in evidence that Mr. Robertson, the partner of the firm, was superintending their work on the outfall sewer contract, that when Mr. Thompson left that work for the Intake repairs, Mr. Robertson acted as superintendent at the East Toronto Intake, and his time was charged to the City at the rate of \$2 an hour. Mr. Robertson appeared to have been

receiving \$1,800 from the firm as a nominal salary, the same as Mr. Miller and Mr. Cumming.

Mr. Cumming was asked:

"Q. At any rate you did not proceed on the basis of \$1,800 a year in charging the City with the time? A. I do not know how you arrive at that superintendence at East Toronto; I just simply told our time clerk to charge what I thought was a fair percentage or a fair amount for the superintendence on that work and the total amount we have charged for the five months of work is \$259.

"Q. You charge that by the hour, don't you, when he is working? A. By the hour at the same basis as we had arranged with the City Engineers for \$2 an hour for superintendence.

"Q. That is not done having regard to his salary? A. No connection whatever. Part of that is Mr. Robertson's."

The accounts rendered from time to time in connection with this work amounted to \$5,573.05, made up as follows:

Labor	\$1,471 34
Material	772 16
Plant	2,400 75
	<hr/>
	4,644 25
Plus 20 per cent.	928 80
	<hr/>
	\$5,573 05

In going over these accounts as above set out it was admitted that they padded their pay sheets to a very large extent. They deliberately rendered to the City Engineer sheets setting forth the time of men and the use of plant when the same were not at work on the repairs in question.

From the evidence produced before me I find that the amount overcharged for labor is \$392.73, material \$59.50, and plant \$1,191.80, making a total of \$1,644.03, which being deducted from the amount of their accounts rendered at \$4,644.25, leaving a balance of \$3,000.22. Counsel for the City contends that the 20 per cent. profit does not apply to the rental of the plant, that the rental of the plant contains the profit of the contractors for such plant. The plant rental amounts to \$1,208.95, as revised. If the percentage on that sum be not allowed, the commission of 20 per cent. on the balance of the account as revised will be \$358.25, making the total receivable by the contractors, \$3,358.47. If 20 per cent. on the plant is allowed this will be increased by the sum of \$241.79, or a total of \$3,600.26 as against the amount of \$5,573.05 received by them from the City, or an overpayment of \$2,214.58 in the case where no percentage on the plant is

allowed, and an overpayment of \$1,972.79 where it is allowed on that account.

(3) MATERIALS AND PLANT BELONGING TO THE CITY NOT RETURNED.

The evidence showed that there was a large amount of material charged to the City by the contractors in connection with their work, the greater portion of which was lost or destroyed, and no trace of it can be found. On derrick scow No. 1 there appears to have been the following material belonging to the City at the time the contract was cancelled, namely, 8 triple blocks, \$315.18; 2,500 feet of steel cable, \$212.80. This material was taken off the scow by Messrs. Roger Miller & Sons, and has since been used by them on their own work. They have also taken all the concrete mixing plant, the only part of it owned by the contractors being the mixer. The value of the parts of the concrete mixing plant owned by the City is stated to be at least \$2,800.

Referring to about 6,500 feet of lumber, 14 by 14, and 12 by 12 pine, and 12 by 12 hemlock, Mr. Richardson stated that that sounded like stuff put on No. 1 scow used in rigging it up to raise the pipes, and that if it was, that it was on the scow yet.

The hullidings on No. 2 derrick scow and No. 3 pile driver were constructed entirely at the City's expense, and as they have been retained by the contractors they should be charged with same. The estimated values being: No. 2 derrick scow, \$275, No. 3 pile driver \$90.

Mr. Thompson swore that there were a large number of fittings used on the three scows, Numbers 1, 2 and 3, such as T's and valves and connections and the timber and the cost of hulliding the houses.

It was also sworn that there was about \$400 worth of new bolts at Spadina Avenue, and a number of small fittings running up into a considerable sum of money, and put into the contractors' scows used on the work. There were also 20 feet of 4-inch hose which had been used at East Toronto work, in the contractors' possession. In addition to the above, there were several hundred dollars' worth of the City's tools lost by the contractors while being used in connection with the work.

It was also sworn by Mr. Durham that the contractors received a syphon for use on their scow worth \$15 or \$20, also some shackles used by them in connection with the Duplicate Intake work. Mr. Durham says there were also two sets of blocks and tackle which had been ordered for the big derrick for putting guys on, that they were never used and were put away, but the contractors borrowed them and never returned them.

4. RECAPITULATION.

The following are the differences set forth in the foregoing clauses of the report between the amounts charged to the City by the contractors and the amounts which the City are chargeable with according to the conten-

tion of the Corporation Counsel. The differences amount to \$20,953.50 plus 20 per cent., \$4,190.70, making \$25,144.20. There are also two items, crushed stone and coal, taken by the contractors, and for which they are chargeable, amounting together to \$230.07. Percentage charged by contractors on cost of steel sheet piling, \$3,313.67; percentage charged by contractors on rental of tug "Russell" paid by City, \$830.03—\$4,143.70; making altogether a total in dispute of \$29,517.97.

DIFFERENCES ITEMIZED.

Clauses.	Item.	Amount.	Percentage.
1. (5a)	S. Thompson's salary.....	*\$3,342 00 Plus	\$ 608 40
(5c)	Timekeeper Richardson's salary.	713 70 "	142 74
(5d)	Gibson's salary.....	93 57 "	18 71
(7)	Rigging pile driver	427 88 "	85 58
(8)	Stone account.	75 73 "	15 14
(10)	Cement account.....	192 21 "	38 44
(13)	Cartage and horse hire.	148 35 "	29 67
(15)	Overhead expenses.....	*2,885 84 "	477 17
(16)	Harbour Brick Co., rent.....	180 00 "	36 00
(17)	Derrick No. 1, damage	\$4,000	
	Rent.....	40	
		4,040 00 "	608 00
(18)	Tug Fraser, rent and damage.....	*1,246 60 "	249 82
(19)	Personal expenses of R. Cumming	13 25 "	2 65
(22)	Waves on City Intake repairs.....	5,011 46 "	1,002 29
(23)	Material and plant.....	377 00 "	75 40
(24)	Clandeboys Cut accounts.	202 48 "	40 50
(25)	Raising Intake pipe at John Street....	859 40 "	171 89
2.	East Toronto Intake repairs	1,644 08 "	328 80
		\$20,953 50 "	\$4,190 70
	Adding percentage as shown.....	4,190 70	
	Total	\$25,144 20	
1. (11)	Crushed stone	92 82	
	Coal taken	137 25	
	Sheet piling percentage.. ..	*3,313 67	
	Tug Russell, percentage on rental	*830 03	
		\$29,515 97	

The items above marked with an asterisk amounting, with percentage, to \$12,513.03, are admittedly subject to adjustment between the City and the contractors, and if they are allowed to the contractors the difference will amount to \$17,002.94.



In the above items there is no deduction of percentage on plant rental, which percentage the Corporation Counsel contends the City is not liable for. It amounts to:

For Intake at Island.....	\$7,909 10
For East Toronto Intake.....	480 15
For lifting pipe at John Street.....	252 50
Making altogether	\$8,641 75

In addition to the above differences, the contractors are chargeable with the materials and plant supplied by the City and not returned, as set forth in clause 3 of this report.

5. SUMMARY OF ACCOUNTS RENDERED BY MILLER, CUMMING & ROBERTSON, AND AMOUNTS PAID TO THEM BY THE CITY.

The accounts rendered to the City by the contractors from the commencement of the work to the present time amount to as follows:

East Toronto Intake,	\$ 4,644 25 plus 20%	\$ 928 80.	\$5,573 05
Clandeboyne Cut accounts	1,520 56 plus	69 54.	1,590 10
" " "	13 71	13 71
Taking out Intake Pipe at John Street	1,867 95 plus 20%	378 59.	2,241 54
Intake repairs at Island,	102,917 80 plus 20%	20,583 55.	123,501 35
" Steel sheet piles		3,313 67
" (Tug Russell)		880 03
Total			137,063 45

On these accounts the contractors have been paid as follows:

Island Intake repairs	\$95,950 00
Clandeboyne Cut, amount claimed by them and paid ...	1,603 81
East Toronto Intake repairs	5,573 05
	103,126 86
Balance	\$ 33,936 59

VI. ACCOUNTS PASSED BY THE CITY AUDITOR.

Mr. Sterling, the City Auditor, in his evidence stated:—"Our instructions, at the beginning of this Intake extension, from the Board of Control, were to accept all certificates of engineers on the accounts so as to cause no delay in passing the account. Before this examination took place I made up my mind I would have construction of the contract and go into it later on. We could not go into the books on every account that comes before us. We consulted with the engineers and Chairman of the Board. We thought the charges were excessive, and protested over and over again, but our instructions from the Board of Control were to pass all those accounts on

certificates of the engineers, and we did so. Our instructions were explicit. I think sometime in August, 1910, we got the order; nevertheless we checked the accounts as carefully as we could."

"Q. Did you ask the Engineering Department to go into these accounts that you thought were excessive? A. Yes, sir. They said the accounts would have to be paid, that is, I took it up with Mr. Fellowes and Mr. Rust and the Chairman.

"Q. That the accounts must be paid? A. Yes, I thought they were suspiciously large; I thought the pay-sheets were.

"Q. And notwithstanding that, you had to certify in accordance with the instructions? A. The Council told me—are they not properly certified, certified by the proper officer? They were; I could not run the Engineer's Department."

VII. EXAMINATION OF CITY'S DIVER, CHARLES MARGERISON.

Pursuant to the resolution of the 19th February, 1912, the City's diver was examined on the 9th May, 1912, and on the 14th and 21st November, 1912.

During his examination in May, 1912, he explained the condition in which the pipes were at that time, the manner in which the steel sheet piles were being placed by the contractors, that a number of them had been left out at that time; he also explained where scouring had taken place, and that whenever he made an inspection he reported results in writing to Mr. Allen, and these reports were absolutely correct. He was asked:

"Q. You tell me at present there is no part of the pipe in danger itself? A. None whatever."

In his examination in November, 1912, he stated that he was making daily reports of how the work was progressing; that on the 16th September, 1911, he had reported that the pipe had sagged from 16 to 18 inches, and that on the 26th September he made out a report again stating that the pipe had sagged 16 to 18 inches, but that Mr. Allen asked him to modify this report. Mr. Margerison said he, in consequence, changed the wording of the report, but did not misrepresent the facts.

Mr. Margerison also said that in January, 1912, Mr. Allen told him he need not report on the fact of his obtaining a scow from the Property Commissioner for use in putting sand bags around the pipe, but that he reported it all the same. He stated that his reports were not interfered with on any other occasion.

Upon being asked as to the condition the pipe was in up to date, he said: "The condition of the pipe is just the same as it was after the pipe had been hung up on the strap; it has not moved; it has not shifted in

any way." He added that concrete had been placed from the south end of pipe 8 right in to shore to some part of pipe 1, in some places the concrete being two-thirds of the way up the pipe and in other places half way up. One place there is no concrete, but a filling of gravel as a test to see if the gravel will answer the same purpose, and that around pipes 9 and 10 there has been a number of mattresses placed to stop the scour that was going on. Cribs have been put at the side of No. 9, on the west side, where he discovered the scour last March, and mattresses placed on top of the sheet piling. These mattresses were made out of brush tied together with bale wire and ordinary scaffold poles. He says he discovered, on the 14th of November, that about ten of these mattresses were missing after the storm of the 13th November; he found the pipes were all right and nothing wrong with them. The pipes south from No. 10 to the intake mouth are covered with sand. He inspected the mouth of the intake pipe regularly once a month; he inspected that last October and found it in good order and the concrete remaining solid. There is no scouring whatever under the pipes. He stated that sheet piling and the concrete inside of the piling prevented any scouring.

He referred to the storm of the 13th November as one of the severest of the season.

"Q. That tested the pipe pretty fully? A. There never will be any harm to that pipe now.

"Q. You are perfectly satisfied with the condition in which it is to-day and the manner in which it has withstood the storm? A. Yes, with the exception of the mattresses; I do not approve of the mattresses put on top of the sheet piling. . . . It does not arrest the lake bottom scour because they are above it."

GENERAL FINDINGS.

I find from the evidence that the City engineers were directed by the Board of Control in February, 1911, to spare no expense in connection with the work of repairs, that as a result of such instruction accounts were passed from time to time without proper supervision, and contracts entered into on behalf of the City by the engineers without taking the necessary precaution to arrange for the cost to be charged the City for same, for example the hiring of Mr. Lesslie's pontoons; wages were not checked up closely on any of the contracts, as to time, until Mr. Vinen took charge of the accounts in November, 1911; in fact the methods followed in connection with the work showed the greatest carelessness on the part of the engineers, who were taken advantage of by those with whom they had dealings, and the interests of the City suffered in consequence. Had there been a business manager in charge the City would have been saved large sums of money which it is impossible now to recover.

MILLER, CUMMING & ROBERTSON'S DEALINGS WITH THE CITY.

When this firm was employed in connection with work on the Clandeboye Cut, and other work, they charged on one or two of their first accounts 15 per cent. on wages and material only, no percentage being charged on the rental of their plant. They, however, charged the City greater amounts for wages than they paid their men, and apparently charged for hours not worked. At that time there was no excuse to overcharge by reason of loss in connection with their other works. After entering upon the Intake repairs at East Toronto and at the Island, they padded their sheets intentionally for the purpose of obtaining money from the City without the knowledge of those whose duty it was to protect the City's interests. When the facts were brought out by this investigation, Mr. Cumming, who was the active partner in the firm, claimed that he was entitled to do what he had done for the following reasons: Loss in connection with their outfall sewer contract, carrying the men through the winter without work, running a camp at a loss, overhead expenses, bonuses given to his men, insurance and interest on unpaid accounts by the City. As a matter of fact I find that the loss in connection with the outfall sewer contract is stated to be not more than 10 or 15 per cent. of the amount claimed by the contractors. Even if there was a loss, the contractors had no right to dishonestly increase the rates claimed to be paid by them to their men, to add hours not earned by the men and to add men who did not work, for the purpose of recovering such loss. As a matter of fact the men worked throughout the winter, and although Mr. Cumming at first agreed with his own solicitor to make an adjustment in connection with the overcharges on that account, he subsequently withdrew such offer. The bonuses, which he states as having given, were apparently given to Mr. Richardson and possibly Mr. Thompson. There is no evidence as to the amount of loss in connection with the camp which was carried on in connection with their outfall sewer contract. The evidence produced would indicate that there was a deliberate attempt by Mr. Cumming, assisted by the superintendent and timekeeper, in certifying to wages, and by the bookkeeper of the firm under Mr. Cumming's instructions, to obtain money from the City in a fraudulent manner, and the attempt would, in my opinion, have succeeded had not this investigation been ordered.

The evidence shows that Mr. Fellowes' attention was drawn to the overcharge of 20 hours by the contractors for the 22nd June, 1911 (Coronation Day) for their superintendent, timekeeper and men, although they did not work 10 hours during that day. Mr. Fellowes at that time said he would see such a thing would not occur again, but no action was apparently taken by him to ascertain the facts in relation to subsequent overcharges which were being made from week to week in connection with the wages, or to prevent same from being continued, although he was told by Mr. Cumming, as admitted by him, that the contractors were going to get all they could for their men. Mr. Fellowes stated that he was too busy in connection with his other work to look after the accounts, that he could not do so, and left it to those under him.

No instructions, however, were given by him to those who certified the accounts, to make full inquiry into same by examining the contractors' books.

He stated that his intention was, at the conclusion of the contract, to have an auditor go through the books. He was afraid if he raised any trouble with the contractors they would withdraw from the work, and it was of paramount importance to have the work done and have no trouble with them at that time.

In my opinion the contractors were bound by their contract to do the work, and had they refused to go on with it as Mr. Cumming on more than one occasion threatened, they would have made themselves liable for the damages the City would have suffered in consequence, and Mr. Fellowes should have compelled them to produce their books of account the moment he was informed that overcharges were being made.

I have the honor to forward herewith the evidence taken and the exhibits produced during the inquiry.

I have the honor to be, sir,

Your obedient servant,

JNO. WINCHESTER.

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