

**CIHM
Microfiche
Series
(Monographs)**

**ICMH
Collection de
microfiches
(monographies)**



Canadian Institute for Historical Microreproductions / Institut canadien de microreproductions historiques

© 1996

Technical and Bibliographic Notes / Notes techniques et bibliographiques

The Institute has attempted to obtain the best original copy available for filming. Features of this copy which may be bibliographically unique, which may alter any of the images in the reproduction, or which may significantly change the usual method of filming, are checked below.

L'Institut a microfilmé le meilleur exemplaire qu'il lui a été possible de se procurer. Les détails de cet exemplaire qui sont peut-être uniques du point de vue bibliographique, qui peuvent modifier une image reproduite, ou qui peuvent exiger une modification dans la méthode normale de filmage sont indiqués ci-dessous.

Coloured covers/
Couverture de couleur

Covers damaged/
Couverture endommagée

Covers restored and/or laminated/
Couverture restaurée et/ou pelliculée

Cover title missing/
Le titre de couverture manque

Coloured maps/
Cartes géographiques en couleur

Coloured ink (i.e. other than blue or black)/
Encre de couleur (i.e. autre que bleue ou noire)

Coloured plates and/or illustrations/
Planches et/ou illustrations en couleur

Bound with other material/
Relié avec d'autres documents

Tight binding may cause shadows or distortion along interior margin/
La reliure serrée peut causer de l'ombre ou de la distorsion le long de la marge intérieure

Blank leaves added during restoration may appear within the text. Whenever possible, these have been omitted from filming/
Il se peut que certaines pages blanches ajoutées lors d'une restauration apparaissent dans le texte, mais, lorsque cela était possible, ces pages n'ont pas été filmées.

Coloured pages/
Pages de couleur

Pages damaged/
Pages endommagées

Pages restored and/or laminated/
Pages restaurées et/ou pelliculées

Pages discoloured, stained or foxed/
Pages décolorées, tachetées ou piquées

Pages detached/
Pages détachées

Showthrough/
Transparence

Quality of print varies/
Qualité inégale de l'impression

Continuous pagination/
Pagination continue

Includes index(es)/
Comprend un (des) index

Title on header taken from: /
Le titre de l'en-tête provient

Title page of issue/
Page de titre de la livraison

Caption of issue/
Titre de départ de la livraison

Masthead/
Générique (périodiques) de la livraison

Additional comments: /
Commentaires supplémentaires:

There are some creases in the middle of the pages.

This item is filmed at the reduction ratio checked below /
Ce document est filmé au taux de réduction indiqué ci-dessous.

10x	14x	18x	22x	26x	30x
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
12x	16x	20x	24x	28x	32x

The copy filmed here has been reproduced thanks to the generosity of:

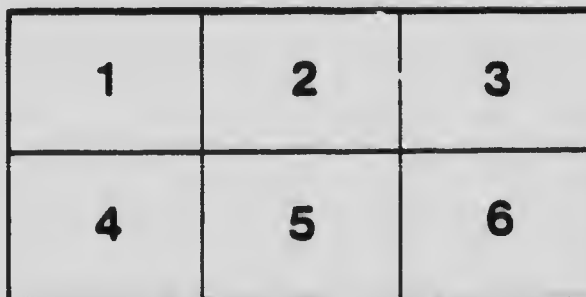
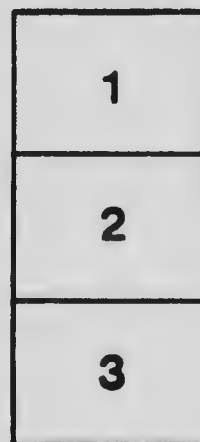
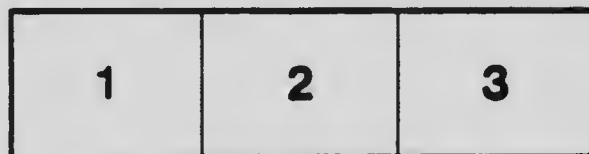
Metropolitan Toronto Reference Library

The images appearing here are the best quality possible considering the condition and legibility of the original copy and in keeping with the filming contract specifications.

Original copies in printed paper covers are filmed beginning with the front cover and ending on the last page with a printed or illustrated impression, or the back cover when appropriate. All other original copies are filmed beginning on the first page with a printed or illustrated impression, and ending on the last page with a printed or illustrated impression.

The last recorded frame on each microfiche shell contains the symbol \rightarrow (meaning "CONTINUED"), or the symbol ∇ (meaning "END"), whichever applies.

Maps, plates, charts, etc., may be filmed at different reduction ratios. Those too large to be entirely included in one exposure are filmed beginning in the upper left hand corner, left to right and top to bottom, as many frames as required. The following diagrams illustrate the method:



L'exemplaire filmé fut reproduit grâce à la générosité de:

Bibliothèque de référence de la communauté urbaine de Toronto

Les images suivantes ont été reproduites avec le plus grand soin, compte tenu de la condition et de la netteté de l'exemplaire filmé, et en conformité avec les conditions du contrat de filmage.

Les exemplaires originaux dont la couverture en papier est imprimée sont filmés en commençant par le premier plat et en terminant soit par la dernière page qui comporte une empreinte d'impression ou d'illustration, soit par le second plat, selon le cas. Tous les autres exemplaires originaux sont filmés en commençant par la première page qui comporte une empreinte d'impression ou d'illustration et en terminant par la dernière page qui comporte une telle empreinte.

Un des symboles suivants apparaîtra sur la dernière image de chaque microfiche, selon le cas: le symbole \rightarrow signifie "A SUIVRE", le symbole ∇ signifie "FIN".

Les cartes, planches, tableaux, etc., peuvent être filmés à des taux de réduction différents. Lorsque le document est trop grand pour être reproduit en un seul cliché, il est filmé à partir de l'angle supérieur gauche, de gauche à droite, et de haut en bas, en prenant le nombre d'images nécessaire. Les diagrammes suivants illustrent la méthode.

333.16

K11

The
Kakabeka Case

Legislators of Ontario should read these authentic extracts from the Legislative History of this Case before passing judgment upon the application of E. S. Jenison to revoke the solemn enactments of the Parliament of Ontario.

333.16.K11

SUMMARY

These extracts from the legislative proceedings and Arbitrator's hearings prove :

1. That the Kakabeka Co. owned "THE FAR-FAMED KAKABEKA FALLS," so called in Fanning's Report, when Jenison first visited them, and that Company still owns these Falls.

2. That Jenison, in 1897, was given the right to expropriate this valuable waterfall, altho' Mr. Garrow characterized his Bill thus:

"No more outrageous Bill was ever presented to this Committee: it is a bill to take from John Brown his farm because "John Smith wants it."

3. That the Committee expressly protected the Kakabeka Co. by requiring (through the agent of Barwick, Counsel for Jenison) that Jenison should not interfere with the power of the Falls, and that Jenison should "NOT DRAIN FROM THE ORIGINAL CHANNEL OF THE STREAM GOING OVER THE FALLS THE AMOUNT THAT ON THE AVERAGE GOES OVER THERE." (Statement of Chairman Gibson).

4. That before the Arbitrator, Jenison testified that he had measured the stream in a careless way, and found that 2,000 cubic feet per minute was the minimum flow; that subsequently he published a statement and used it in his attempts to raise money, showing that his lowest measurements of this river made the lowest flow 32,000 cubic feet per minute.

5. That the Arbitrator misconstrued the Act, and disregarding the highest scientific evidence as to the AVERAGE flow of 56,860 cubic feet per minute, intended by the legislation to be the measure of the fall, doubled Jenison's ridiculous measurement of 2,000 cubic feet, and awarded 4,000 cubic as the LOWEST flow and the quantity to be provided for the power at the falls:

4,000 cubic feet awarded under 110 ft. head yields 666 H. P.

32,000 cubic feet under 110 ft. head yields 5,325 H. P.

(Jenison's published statement.)

56,000 cubic feet under 110 ft. head yields 9,318 H. P.

(Actual average flow.)

130,000 cubic feet under 110 ft. head yields 21,645 H. P.

(Jenison's estimate of actual flow at time of arbitration.)

6. That the Arbitrator awarded as damages for taking from Kakabeka and giving to Jenison an AVERAGE power of 9,318 Horses, and a power which could by storage be made 21,645 H. P., THE SUM OF ONE

THOUSAND DOLLARS, leaving for the Company's use 666 H. P. which could never be profitably developed.

7. That with even these extraordinary and costless privileges, Jenison could not raise money for the work and that the Towns of Fort William and Port Arthur united to dispossess him of these unneeded privileges, and by sanction of the Legislature, Fort William agreed with the Kakabeka Co. to restore its original rights by causing any water used for power above the Falls to be returned to the river again above the Falls.

8. That Jenison opposed this restoration and put forth Mr. Wegg as the real owner of the Jenison rights, admitting his former unfairness to the Legislature.

9. That when Jenison's opposition failed to prevent the restoration of Kakabeka's rights, Wegg proposed to unite with Kakabeka in the development under the Fort William Act of 1902, and that Wegg with his Counsel and Financial Agent went to Fort William in 1903 and solicited a contract to be made with the Kakabeka Co. which both Wegg and the town agreed to support before the present Legislature, and this contract was made and is now in effect, and all rights of the Town of Fort William under the Act of 1902 are now vested, with Wegg's consent, in the Kakabeka Co. (See assignment from Town of Fort William to Kakabeka Co.)

10. That Wegg and Jenison are now asking this Legislature to violate this Agreement.

11. That Jenison by his own proof before the Arbitrator showed he had no power at Ecarte Rapids worth development, but that after the reference of his present bill to the Sub-committee of the Private Bills' Committee, namely on March 31st, 1904, he demanded from the Towns of Fort William and Port Arthur **THREE HUNDRED AND FIFTY THOUSAND DOLLARS IN CASH, OR TWO DOLLARS PER ANNUM PER HORSE POWER PERPETUAL ROYALTY** for this power, the only value to which, according to his own testimony, was in Kakabeka Falls, **FOR WHICH THE ARBITRATOR AWARDED TO THE KAKABEKA CO. AS DAMAGES THE SUM OF ONE THOUSAND DOLLARS:**



Extracts from Mr. Jenison's "Memorial."

The object of this Memorial is to make clear, as a matter of justice, the need of remedial legislation in behalf of Edward Spencer Jenison. Without this action by the Legislature, the Province of Ontario must be placed in the attitude of desiring to take from Mr. Jenison without compensation the results of eight years of useful toil, and many thousands of dollars of invested property.

(The only evidence offered was that Mr. Wegg had provided the cash expended, the most of which went to pay Mr. Jenison's salary at \$500 per month. Compare this statement with the following Extract from statement of Mr. Jenison's Counsel, made to Committee on Private Bills, May 27, 1903.)

MR. BARWICK: I will only say two or three words. Last year when Mr. Jenison appeared before the Committee he did not satisfy the Committee of the bona fides, and the Committee, not being satisfied of the bona fides, rescinded the powers which had been granted to him under two Acts before. Mr. Jenison was not fair with this Committee or he would have told the Committee last year, as the fact was, that he was not the owner of the proposal, that he was in the position of an employee, and represented Mr. Wegg of Chicago, a capitalist. After the Bill was rescinded Mr. Wegg came to Toronto and he has produced to the Attorney-General satisfactory proof of his bona fides in the proposal, and he has produced in addition to the Towns of Fort William and Port Arthur proofs of this, and proof that he is in a position to go on with the proposal and complete it. The Town of Port Arthur is represented here by the Mayor and three of the Aldermen of the town, and Fort William is represented here by its Mayor and three Aldermen. An arrangement has been made by which these municipalities are satisfied with Mr. Wegg's proposal—and I wish it to be understood this is Mr. Wegg's proposal, a man of means—the two municipalities are now satisfied of the bona fides of the proposal, and that it can be carried out. I hold in my hands the agreement in the amended clause of the Bill in which we have met the Towns of Port Arthur and Fort William on every point. The Mayors of the two towns are here, and I would like to hear a word from either one of them.

(Which of these statements is correct?)

**Extracts from Discussion before Private Bills
Committee in Jenison's Original Efforts
to Expropriate Kakabeka Falls**

PRIVATE BILLS COMMITTEE

TORONTO, March 19th, 1897.

In reference to an Act to enable EDWARD SPENCER JENISON to develop and improve a water privilege on the Kaministiquia River.

(The following extracts show that the intent of the Legislature in granting Jenison his original rights, was to preserve to the Kakabeka Co. its full right to the AVERAGE FLOW OF WATER over the Falls.)

THE CHAIRMAN (The present Attorney-General): I will explain to the Committee. (Showing colored plan). This is the natural course of the stream. This is the Kakabeka Falls. Mr. Jenison has purchased this land here, and he proposes making a dam somewhere up here, and having a huge reservoir of water up there, and running the channel down through here, dropping it down at whatever head he may have there; SUBJECT, HOWEVER, ALWAYS TO THE TERMS OF HIS AGREEMENT THAT HE SHALL NOT DIVERT FROM THE ORIGINAL CHANNEL OF THE STREAM GOING OVER THE FALLS THE AMOUNT THAT ON THE AVERAGE GOES OVER THERE.

MR. BARWICK (Counsel for Jenison): Not only shall he not decrease it, but, during the dry season, he shall double it. Subject to the terms of the agreement with the Government he has got to double the quantity of water running over the Falls that runs over in the dry season. He has to store up water above sufficient.

Will you allow me to supplement that by a few remarks to make it more plain. I only want to deal with the facts so that you will understand what happened. I do not wish to do more than explain it.

Mr. Jenison came to the Crown on April 20th, 1896, and he said: "Now, I have been going over this water power; I find the Falls—the Ecarte Falls—and rapids here, and I desire to develop my power, and take power from the Ecarte Falls, in which there is a fall of about 60 feet. In order to do that I wish to get power from the Crown to flood land. That fall of 60 feet is from the foot of the Rapids. At the Falls there is a fall

of 120 feet. He says: "I wish to be able to dam up certain lakes, Lake Shebandowan and Dog Lake. I wish to dam up those lakes in order that I may store back the water, and I wish to get rights from the Crown to do that."

NOW, THE CROWN SAID TO HIM: "MR. JENISON, YOU CAN DO THAT, BUT WE ARE NOT AGREEING TO ALLOW YOU TO INTERFERE WITH THE VIEW OF KAKABEKA FALLS NOR WITH THE POWER OR MANIPULATION OF THAT FALL."

Now, I wish to make it clearly and distinctly understood, and I hope it will be understood, that the Kakabeka Falls Company have their privileges down there still. They have their 120 feet of Falls. We do not wish to disturb that.

THE CHAIRMAN: They want to get more of a drop than that, but where are you to be hurt, if they double the amount of water that comes over Kakabeka Falls?

MR. CASSELS (Counsel for Kakabeka Co.): We are losing nine tenths of our power. How are we going to gauge the 4,000 per minute?

THE CHAIRMAN: That is a very easy thing for men accustomed to hydraulic work. There ought not to be any trouble at all about giving the average flow of water.

(The Arbitrator awarded judgment on the **LOWEST** flow not the **AVERAGE** flow.)

MR. PROCTOR (The Arbitrator):

I don't see, Mr. Gorham, what difference the highest flow makes; it is the lowest flow that we want to get at here. It is of no consequence; it is rather what is the lowest point at which the water was, and if we can get at that in any way, that is what is material.

Testimony E. S. J., p. 977, Oct. 11, 1897.

(The following comments by Mr. Garrow, member of the Committee, now Justice of the Court of Appeals, show the gross injustice done the Kakabeka Co. by the original Jenison legislation.)

MR. GARROW: I say at the beginning, and very emphatically, no more outrageous Bill was ever presented to this Committee. It is a Bill to take from John Brown his farm because John Smith wants it. Not in the interests of the public at all, but in the interests of John Smith. Because

Mr. Jenison is the man to get all the benefit here: not the public. It is not a public expropriation, it is a private expropriation, a thing unheard of, a thing without any previous precedent or principle.

The law provides for this:—Where a man has a quasi public right, viz.; a water privilege, he may go under the Act to a Judge and get the expropriation; but that is not this case. That was done, and the general law is not found effective, and now they want to come here and steal from this Company what really belongs to the Company. These people above here are trying to get what they have not got: what they cannot get by law they try to get by means of the bludgeon of this Committee: it is a perfectly unheard of thing.

I want to make it clear. How is the public interested in whether Mr. Jenison shall have this? The public interest is as safe with the one Company as the other. The public is not going to be protected. It is not on behalf of the public that Mr. Jenison comes here with his petition. It is in behalf of Mr. Jenison. That is the plain English of the matter. What is the use of blinking at it?

THE CHAIRMAN: Public interest does not come in in the way of protecting the public. It is affording the public the advantage of the creation of a large power.

MR. GARROW: How do we know that Mr. Jenison is going to develop it any more than the real owner of this water power?

(Chairman Gibson supported Jenison only because Kakabeka's rights were intended to be protected.)

THE CHAIRMAN: Then there is the further consideration, that the arrangement that has been made between the Government and Mr. Jenison contemplates the preservation of the Company's right, the Company on whose behalf, at least, you are arguing.

MR. GARROW: I am arguing in saving the rights of private property. That is all I am interested in.

THE CHAIRMAN: I am not suggesting that you are doing otherwise than what you think is your duty, but I am saying the side Mr. Cassels represents, so as to identify it. I want to identify the two interests. Their rights are being preserved.

MR. GARROW: Whose rights are being preserved by this Bill? The lower one, by taking away the discharge below the Falls of this water?

THE CHAIRMAN: They do not take it away.

MR. GARROW: The power is lost and discharged below the Falls.

THE CHAIRMAN: I don't know whether you understand it or not.

MR. GARROW: I understand the whole thing.

THE CHAIRMAN: I do not think this thing is self-evident either one way or the other.

MR. GARROW: Excuse me. If they take away from above the Kakabeka Falls a certain amount of water—

THE CHAIRMAN: They propose to create a large reservoir away above both these. They will create a steady supply, vastly more than at certain periods of the year come down that river, and out of that large reservoir **THEY PROPOSE TO ALLOW STILL TO COME FROM THE KAKABEKA FALLS THE AVERAGE AMOUNT OF WATER THAT GOES OVER THERE NOW.**

(The Arbitrator awarded judgment on the **LOWEST** flow, not the **AVERAGE** flow.)

MR. PROCTOR (The Arbitrator):

I don't see, Mr. Gorham, what difference the highest flow makes; it is the lowest flow that we want to get at here. It is of no consequence; it is rather what is the lowest point at which the water was, and if we can get at that in any way, that is what is material.

Testimony E. S. J., p. 277, Oct. 11, 1897.

MR. GARROW: They abstract that much power from the general power of the Falls. Whatever is discharged below the Falls does not go over, and is taken away from these people.

MR. GARROW: I do not want to discuss any technical question; I do not want to discuss any engineering question. It is quite plain to me if you abstract from the head of the stream a certain quantity of the water, and discharge it below the Rapids, that you have abstracted that much power out of that water. That is plain, as a general principle. Now, that is what is proposed to be done here. A stream 400 feet wide and half a mile long is the statement of fact. But, observe, I am not dealing with that at all. I am dealing with another and very much more important principle to my mind, and that is this, that these people have no right to invade their neighbor's private property, and take for a purely private purpose that which the law does not give them; that that ought to be the subject of contract like any other purchase or acquirement of private property. I do not care anything about the merits of this case. I am not dealing with the merits. I am dealing with the principle, and I urge that this Committee should not enter upon a system of spoliation such as we know is practised in some Legislatures; where all you have to do, if you find a wealthy corporation, is to go to the corporation and ask, and they

give down and buy out. We should not begin anything of that kind. We have always received credit for the high character of our Private Bill Legislation. I do not think it would be in the interests of the public at all, certainly not in the interests of public morality, that it should be communicated to the world that all you have to do is, when the general Act will not help you, to go and get what you want, using as a bludgeon this Private Bills Committee. He comes here and says, I cannot get from my neighbor what I want under the general law, but I want to get it at my price practically, whether the other man wants to sell it or not.

(Mr. Garrow again protests against the absolute iniquity of the grant of the original Jenison privileges.)

MR. GARROW: This thing depends upon a very simple principle. My sympathies are with those local men who want this power developed, but we do not want to invade a most sacred and important principle. You must not take the 10 "X" property and add it to Mr. Jenison's property. Such a thing has never been heard of; such a power has never been exercised by this Committee. I have never heard of such a thing as taking away the private property of A to give it to B because B says "I want to develop it." B will develop it for his own purposes and not as a public benefactor. The Private Bills Committee cannot act upon it, the House cannot act upon it, and I am satisfied that they will not act upon it. It does not matter whether these people have a water privilege or not. There is no such thing as eminent domain except there is a public right. I think Magna Charta states it as a first principle that you shall not take private property unless you pay for it except for public purposes. You are not to take private property against the will of a private owner. Such a thing as taking private property has never been heard of as a matter of principle. If there were any scheme by which this property could be developed I should be only too glad to help them on. The question might as well be put now.

(With the understanding that all of the rights of the Kababeka Co. as owner of the water power at Kababeka Falls should be preserved if sufficient power could not be developed at Ecarte Rapids, the Legislature of 1897 granted Jenison his rights as below expressed.)

Section 16 (Act of 1897)

Before the said Jenison shall be entitled to expropriate or take possession of any portion of said lot 10 X, **the Arbitrator shall determine whether sufficient horse power for the purpose of sup-**

plying electricity to the Towns of Fort William and Port Arthur and other purposes for which electric power will in his opinion be required, presently or within a reasonable period of time in the future, at or near the said Falls or the said Towns of Fort William and Port Arthur, or along the Kaministiquia River between said Towns and said Falls can be supplied by the said Jenison by the construction of Electric Works as aforesaid on the property owned by the said Jenison or which can be obtained by him at a reasonable price **AT OR NEAR ECARTE RAPIDS lying above said lot 10 X**, and so that the waters taken shall be returned to said river before it reaches said lot 10 X, and in case the Arbitrator determines that sufficient horse power can be obtained at or upon such last named locality, then the said Jenison shall not be entitled to exercise any rights of expropriation in regard to lot 10 X aforesaid.

Sect. 19.

In case the Arbitrator determines that the said Jenison should be authorized to expropriate any portion of lot 10 X, he shall also determine and fix by his award the minimum quantity of water which shall at all times flow over the Falls, so as to protect as far as practicable the rights of the said Company as owners of a water privilege on said river below that of said Jenison. And the said Jenison, his heirs and assigns, and all other parties interested, shall be bound by the determination and award of the said Arbitrator.

Sect. 20.

In fixing the damages the Arbitrator shall do so upon the basis that the said Company has the right to use and carry the water over and across the strip of one chain in width along the banks of the river on the said lot No. 10 X, or that they are the owners of the water power or privilege on or connected with said lot No. 10 X subject to any encumbrances thereon.

(The Arbitrator awarded judgment on the LOWEST flow, not the AVERAGE flow.)

MR. PROCTOR (The Arbitrator):

I don't see, Mr. Gorham, what difference the highest flow makes; it is the lowest flow that we want to get at here. It is of no consequence; it is rather what is the lowest point at which the water was, and if we can get at that in any way, that is what is material.

Testimony E. S. J., p. 977, Oct. 11, 1897.

(After Jenison secured legislative authority to expropriate Kakabeka Falls power, he testified before the Arbitrator as to the flow of water over Kakabeka Falls, as follows:)

EDWARD SPENCER JENISON, SWORN, EXAMINED BY MR. McBRADY
(Counsel for Jenison):

Q. You are the Edward Spencer Jenison mentioned in Chapter 106 of the Statutes of this year? A. Yes, sir.

Q. And you are the Claimant in these proceedings? A. Yes, sir.

Q. What is the maximum-minimum, if I may use such a term, flow past Lot 19 in Concession 2 x, and any part of Lot 19, Concession 1, owned by you as it fronts on the river? A. The maximum-minimum as I know it was a little less than 2,000 feet, and I believe it has been less than that, but that is the lowest estimate I have been able to get.

Q. I wish to know your ground for believing that the river fell after that? A. Just the stories that had been told me, in addition to my knowledge.

MR. PROCTOR (The Arbitrator). You have got, Mr. McBrady, below 4,000 feet, and what is the use of drying up the river altogether?

CROSS-EXAMINED BY MR. GORHAM (Counsel for Kakabeka Co.):

Q. So that the only soundings you have reduced into shape that you considered of any value are the soundings you made at the head of Ecarte Rapids? A. Yes.

Q. You have that reduced into map form? A. Yes, it is put on cross-section paper.

Q. You will produce those? A. Yes.

Q. You took the velocity of the stream? A. Yes.

Q. Where? A. Right there, at the head of Ecarte Rapids.

Q. How did you take the velocity? A. By throwing a chip in and timing it.

Q. Where did you do that? A. Just above the falls and watched it coming over the verge.

Q. How far above the brink would you throw on the chip? A. Throw it out and watch it until it got by me, but I did not depend upon that for the measurement so much as I did on the weir tables; the bottom being

comparatively clear I simply considered it as a perfect weir and in that really gave credit to more flow than would have been produced, but the result of it was a little less than 2,000 feet. I do not remember just what they were, but a little less than 2,000 feet.

Q. You would stand, as I understand you, at the brink of the rapid or fall, and you would throw a chip up the stream a short distance, 20 or 30 feet? A. 15 or 20 feet.

Q. And then as it would float over the falls, where it struck the water until it reached the brink of the rapid you timed it? A. Yes.

Q. These soundings that I understood you to have made were made in December? A. I made soundings in December that perhaps were almost of a crude character, yet they were sufficiently accurate.

Q. The soundings that you are going to furnish me a plan of? A. Are soundings made the following summer.

Q. From the boat? A. Yes.

Q. From which was it that you made the calculation of the flow? A. The soundings in December.

Q. And you made them as you have described in that crude way with the pole? A. Yes, sir, and I think my knowledge of feet and inches is such that my calculation was near enough, so that the average wouldn't vary more than three or four hundred feet at the very possible extreme.

Q. And your measurements and calculations were approximately correct? A. That is right.

Q. You don't say that they were correct? A. I know that they were not strictly accurate, but, as I have said, they were approximately correct.

Q. Have you made any calculations from the soundings you made in July? A. Now, I don't just remember.

Q. Did you use them for the purpose of checking the other soundings? A. No, sir, the stream was eight or nine or ten feet higher than it was at the other time; it was high water then.

Q. You say that these calculations gave you a return of two thousand cubic feet past a fixed point per minute? A. Yes.

Q. How does the height of the water now, as you have seen it in the past few days, compare with the height of the water as you saw it in June of '96? A. It is six feet lower approximately now than it was in June.

Q. So the water was pretty high in June, '96? That is what it was then? A. Six feet higher than it is now.

Q. Just continuing that question, Mr. Jenison, have you made any estimate approximately of the flow or discharge of water in the river as it is now? A. I might as well answer you "no or yes." Approximately I have, but compared with the more active effort these gentlemen have made would put me at a disadvantage. I have called it approximately 130,000 feet.

MR. PROCTOR: That is passing over the Kakabeka Falls now? A. Yes, cubic feet per minute.

(Thus Jenison testified that his confessedly crude measurements showed but 2,000 cubic feet of water flowing down this river per minute, as a minimum, while at the time of giving his testimony he estimated the flow at 130,000 cubic feet per minute, at a time when, as he also states, the river was six feet below high water! But read the following official report put out by Jenison in his efforts to raise money, and judge which of his statements as to flow of water over this Falls is likely to be true.)

J. T. FANNING, Consulting Engineer,
Member American Society of Civil Engineers,
Kasota Block, 330 Hennepin Avenue,
Minneapolis, Minn.

(Extracts from Engineering Report of J. T. Fanning, Consulting Engineer for E. S. Jenison, and used by him in his effort to raise capital.)

Report on the Water Power of the Kaministiquia River, near Fort William and Port Arthur, in Ontario, by J. T. Fanning, Consulting Engineer.

MINNEAPOLIS, MINN., May 26th, 1903.

THE KAMINISTIQUIA RIVER WATER POWER

THE ANGLO-AMERICAN POWER COMPANY, LIMITED

GENTLEMEN,—I response to your request I have visited Fort William and Port Arthur, in Ontario, AND IN COMPANY WITH MR. COOPER AND MR. E. S. JENISON, CHIEF ENGINEER, HAVE VISITED THE

KAMINISTIQUIA RIVER AT ECARTE RAPIDS AND KAKABEKA FALLS, and the country between the rapids and the ports at the above named places, to examine the physical conditions favoring a water power development, and have the honor to report as follows :

THE KAKABEKA FALLS WATER POWER

LOCALITY—The Municipalities of Fort William and Fort Arthur are situated on the central north shore of Lake Superior and front on Thunder Bay, an excellent and safe harbor, capable of sheltering at one time the entire merchant marine of the Great Lakes.

These municipalities are located near together with only about four miles distance between their centres, and no commerce are recognised as one city, already a famed shipping point, and the strategic port for the eastern commerce of all the Canadian Northwest.

The proposed water powers to be herein described have for their object the facilitation at the port of the work of handling and transhipping the grain, ores and merchandise of this commerce and to perform varied milling and mechanical works, for all of which the physical conditions are found to be remarkably favorable for the delivery of a large amount of hydroelectric power at the port.

Referring to the general topography of the vicinity of the port, it is observed that the Town of Fort William is built upon the nearly level delta of the Kaministiquia River, and this delta has area sufficient to receive a city of size equal to the largest Canadian city.

The river has three outlets through this delta into Thunder Bay.

Northwesterly of the level lands and back of the towns the land rises in a distance of two miles to a general plateau at an altitude nearly three hundred feet above Lake Superior. **THE RIVER**—The Kaministiquia River approaches Fort William from a northwesterly direction across this plateau.

At a point on the river about eighteen miles distant from the port are "Ecarte" Rapids. The Ecarte Rapids are formed by a ledge of trap rock of a durable character. About one mile below the fall at Ecarte Rapids is **THE MAGNIFICENT "KAKABEKA FALLS" WHERE THE RIVER MAKES A VERTICAL PLUNGE OF ONE HUNDRED AND TEN FEET.**

It is proposed to commence the water power development by the construction of a substantial low dam at the head of Ecarte Rapids which will divert the water of the river for power uses.

The river flow of Ecarte Rapids comes from 2,800 square miles of drainage area which is chiefly forest lands or muskeg swamps, except that the area contains some small lakes and three large lakes.

To the north of Ecarte Rapids are Dog Lake and Muskeg Lake, forming Dog River. To the west is Shebandowan Lake from which flows Matawin River.

Dog and Shebandowan Lakes have combined areas of about 50,000 acres, or 78 square miles. They are the lower lakes of this river system, and are available for storing and equalizing the flow of the river.

The rainfall on this 2,800 square miles area averages about 28 inches annually.

Eighteen per cent. of this rainfall or five inches of annual rain on this drainage area is equivalent to more than 1,000 cubic feet of water per second, or 60,000 cubic feet of water per minute, while the lake storage is favorable for regulation of the flow, or more than 25 per cent. of the annual rainfall.

MR. JENISON, CHIEF ENGINEER. STATES THAT HE HAS MADE A SERIES OF GAUGINGS OF THE FLOW OF THE KAMINISTIQUIA RIVER DURING THE SEASON OF THE WINTER LOW FLOW IN FEBRUARY, 1898, AND THIS IS AT THE TIME OF THE LOWEST FLOW OF THE YEAR.

THE GAUGINGS SHOWED A MINIMUM FLOW OF 32,000 CUBIC FEET PER MINUTE OR 533 $\frac{1}{3}$ CUBIC FEET PER SECOND, AND EXTREME LOW FLOW IS ASSUMED 500 CUBIC FEET PER SECOND. THE FLOW OF THE RIVER CAN BY AID OF THE LAKE STORAGE BE REGULATED TO A MINIMUM OF 1,000 CUBIC FEET PER SECOND. THE COMPANY IS REQUIRED TO WASTE FROM THEIR DAM 66 $\frac{2}{3}$ CUBIC FEET OF WATER PER SECOND TO FLOW DOWN THE RIVER.

POWER AT THE FALLS—The power house site, as proposed in this system of development, will be located ON THE LEFT BANK OF THE KAMINISTIQUIA RIVER A SHORT DISTANCE BELOW THE FAMED "KAKABEKA FALL" AND AT THE FOOT OF THE PENSTOCKS ABOVE DESCRIBED. THIS IS TERMED THE "KAKABEKA FALLS POWER." This power house will be about one and three-eighths miles distant by the canal from Ecarte Rapids and the net head of water for power from the canal will be 180 feet.

If the flow into this canal is regulated by aid of the lake storage to 1,000 cubic feet per second then this volume under 180 feet fall will give 16,326 net continuous hydraulic horse powers. This power, if used in such intermittent work as is anticipated at the port, might be available for at least 25,000 horse powers of intermittent ten-hour work by aid of careful regulation of the flow of the river from the storage, and this last should make available about 18,750 horse powers of electrical work delivered to the motors at the port.

(Signed) J. T. FANNING,

Consulting Engineer.

(The following testimony of a high class hydraulic engineer, given before the Arbitrator, shows how, with the assistance of a party of four engineers, the correct minimum flow over Kakabeka Falls was ascertained, and found to be 56,840 cubic feet per minute.)

JAMES WALTER RICKEY, SWORN, EXAMINED BY MR. GORHAM (Counsel for Kakabeka Co.):

Q. What is your Christian name, Mr. Rickey? A. James Walter.

Q. What are you by profession? A. Civil Engineer.

Q. Where did you begin your training? A. At Rennsaler Polytechnic at Troy, New York.

Q. You have served under whom? A. I have served under J. T. Fanning.

Q. Of where? A. Minneapolis.

Q. He is the author of that celebrated work on Hydraulics? A. He is, he has prepared a treatise on hydraulics and water supply of standard authority.

Q. I believe he has a national reputation? A. He has.

Q. What appliances have you used in your work? A. The Haskell-Ritchie current meter.

Q. What is the reputation of that meter? A. It is considered by those competent to judge that it is about the best instrument of that kind to measure the velocity of the current. The general reputation is that it is the best instrument there is.

Q. Do you know of any classes of work of a refined nature in which it is used? A. The instrument is used, as it was formerly intended, for the gauging of rivers—it is used by the United States Coast and Geodetic Survey.

Q. Anything else that it is used in connection with? A. It is used also by the Deep Water Commission. It is used by the United States Government in paying bonuses to their emisers, where they have to pay a bonus for each fraction of a knot in excess of a certain speed—they use this instrument for ascertaining that speed.

Q. Now, you have visited, I believe, the Kamimistiquia River in the neighborhood of Kakabeka Falls? A. I have.

Q. With whom? A. Mr. Wilde.

Q. What was your object in going out there? A. To gauge the river

Q. This Exhibit that I now put into your hands is what? A. That is the result of my computations of the observations made relative to that

stream. These appear on Exhibit 19. There are four sheets in that Exhibit.

Q. And that is your plotting of the velocity on both sections? A. This is the north section. The same remarks apply to Exhibit 20, 5 sheets—the plotting of the velocity on the south section.

WITNESS: Mr. Proctor, I think we could save time if I could briefly explain these. The start on sections north and south, Exhibit 17, show the location of the meter sub-sections.

ARBITRATOR: Where you took the measurements? A. Yes, sir. Having computed the mean velocity for the meter sub-section by dividing the area of the vertical velocity curve by the depth of the meter sub-section, we obtain the mean velocity for the meter subdischarge section.

MR. GORHAM: If you kindly summarize all these in results?

WITNESS: In my summary I show the date of the gaugings—I have numbered each one so that it can be referred to readily. I have shown the direction of the wind, whether or not there was any, and the direction. I have shown the surface elevation, because the discharge will vary with that. I have shown the discharge, and I have shown the average discharge for the north and for the south sections. For the north section I find the discharge to be 56,055 cubic feet per minute, for the south section 57,625 cubic feet per minute. The average of those two sections is 56,840 cubic feet per minute, which I have reported as the discharge of the stream above the rapids. Exhibit 21 is the average of all my meter observations as to velocity, and plotted those at their proper location on the respective cross sections of the stream.

Q. Were you present when Mr. Jenison gave his evidence showing how he had measured the flow of this stream? A. I was not.

Q. As Mr. Jenison gave his evidence he told us that he went out upon the ice at the crest of Ecarte Rapids; as he looked down over the ice he could see the bottom, excepting, I think, in one place. Along in the neighborhood of the shore and for some distance out to each side, it was, as he described it, pretty shallow. He measured the depth at very short distances apart throughout the whole length of his section. He then took his measurements obtained in that way and from every foot or two feet or whatever he chose of the section, he calculated his flow, or rather he obtained the flow from the weir tables. What have you to say or what criticism have you to make on that method of making a measurement of the flow of the Kaministiquia River? There is this feature that he speaks of the water as being extremely low.

WITNESS: Did I understand you to say that he considered this a weir?

ARBITRATOR: He took that means of ascertaining the flow and then applied the weir tables.

WITNESS: Oh, I see. As I explained a time ago, these tables were constructed on a standard weir, and you must have standard conditions to go into the weir tables. If you do not, you won't get any results at all, but unless it was something very much on the same plan as a weir having a sharp edge, you would get no results whatever. It would give a result which is about 240 per cent. low.

Q. What would give a result 240 per cent. low? A. Taking the depth on the bed of a stream that way and going into the weir tables with it.

(The Kakabeka Co. have never been a stumbling block to obstruct this development; here is their offer to Jenison made by Counsel at the suggestion of the Committee, which was refused by Jenison. The Kakabeka Co. have always been ready to aid any bona fide offer to carry on this important public work.)

RE JENISON BILL.

.....
Toronto, March 22nd, 1897.

Referring to this Bill now before the Private Bills Committee, Mr. Jenison states that he cannot develop his privilege without securing a portion of the lands of the Kakabeka Falls Land & Electric Company.

On the other hand, if the portion of the land asked to be expropriated in the Bill is taken away from the Company, its property will be practically rendered valueless as a water privilege, while the Company are in a position to develop a water power of their own without trespassing upon Mr. Jenison's rights.

Under these circumstances my clients consider it would be an act of very great injustice were they compelled to part with valuable rights to their own detriment, and for the benefit of a private individual: at the same time they appreciate the desire of the residents of Port Arthur and Fort William to have the power at Kakabeka Falls developed at the earliest possible moment, and while claiming the inviolable rights of property and refusing to be a party to the principle of expropriation as laid down in the Bill, they are willing, should the Committee determine that the Bill should be passed, to agree to the following conditions: They will transfer all their property at Kakabeka Falls to Mr. Jenison at any time after the 1st of June, 1898, if in the meantime they have not begun the development

of their own power at that place, upon being reimbursed the amounts they have paid for the same, together with interest at 5 per cent. per annum from the time such amount. have been respectively paid, providing in case they have begun the necessary development before the date above mentioned, viz., 1st June, 1898, Mr. Jenison will agree to transfer all his property, rights and privileges on the Kaministiquia River to the Kakabeka Falls Land & Electric Company, Limited, upon being paid the amount he has paid for the same, together with the interest at 6 per cent. per annum from the time the amounts were respectively paid. In other words, the Company and Mr. Jenison are to buy or sell on exactly equal terms. If a joint agreement to the above effect is arrived at I would suggest that the amount to be paid by either party be determined upon by the Honourable The Chancellor of Ontario. This proposal is made without prejudice and with the object of meeting, as far as possible, the views of those who are anxious to hasten the development of the power at Kakabeka Falls.

(Signed) HENRY C. HAMILTON.

(Extract from testimony of Jenison before Arbitrator.)

Q. Did you make any efforts to purchase from the Kakabeka Falls Company? A. Not since the Act was passed.

Q. And consequently you don't know whether they would sell to you the land you want or not? A. Not since the Act was passed.

Q. The application that you made to them before the Act was passed was to purchase land extending through their land as shown upon Exhibit 5 by the dotted portion? A. If you are going to get at this, I didn't say anything about this little piece near the south line of 10 X.

Q. But you did apply for this strip? A. Yes.

MR. PROCTOR: Since the Act was passed? A. No.

Q. And they gave you to understand at that time that they wouldn't sell? A. Yes, what they said to me was that they had put \$50,000 in there, and wouldn't let it go until they got that out of it.

Q. They gave you to understand that they had expended \$50,000 in connection with their water power scheme at Kakabeka Falls? A. They said they had put \$50,000 into it and wouldn't sell unless they got that out.

(The Legislature, recognizing the gross injustice which allowed Jenison to divert water around Kakabeka Falls, in bestowing his rights on the Town of Fort William, compelled the town to protect the Kakabeka Company by the following agreement.)

AGREEMENT

M^ADE this 11th day of March, 1902, between the Corporation of the Town of Fort William, hereinafter called the Town of the First Part, and the Kakabeka Falls Land & Electric Company (Limited), hereinafter called the Company of the Second Part.

1. Witnesseth that the town agrees to return the water of the Kaministiquia River above the Kakabeka Falls so as to enable the Company to have the full advantage of the fall of the water of the said Falls.

2. The town and the Company will each pay one-half the costs of an incidental to the legislation the said town is now applying for.

3. The Company will pay two-thirds of any amount which may be awarded to Jenison for damages or otherwise for anything the town may do by virtue of said legislation. The amount to be paid by the Company not to exceed \$5,000, unless power is developed by the Company. If power is developed by the Company at any time, then the Company is to pay two-thirds of the said amount without limit.

4. If the town constructs storage works and the Company develops the power at Kakabeka Falls, then the Company will, if it receive benefits from the said storage works, pay two-thirds of the total expense the town shall be put to in respect to such storage works, including maintenance as well as the original cost. If the storage works be built and maintained by the Company, and the water so stored be of benefit to the town, then the town shall pay one-third of the cost of such construction and maintenance.

5. The town may, on terms to be agreed upon, transfer and assign to the Company its rights, properties, powers and privileges under the said legislation, subject to the liabilities therein imposed, and the Company may, on terms to be agreed upon, transfer all its rights, properties, powers and privileges to the town.

IN WITNESS WHEREOF the parties have signed.

THE CORPORATION OF THE TOWN OF FORT WILLIAM,
By H. L. Drayton, their Solicitor.

THE KAKABEKA FALLS LAND AND ELECTRIC COMPANY,
By Hy. C. Hamilton, their Solicitor. LIMITED.

WITNESS: J. F. IRVING.

(The Arbitrator decided that there was not at Ecarte Rapids power worth developing, and awarded damages to the Kakabeka Co. as follows, although Jenison now asks \$350,000 cash for power costing him \$1,000.)

IN THE MATTER OF AN ACT CHAPTERED ONE HUNDRED AND SIX, passed by the Legislature of the Province of Ontario in the year one thousand eight hundred and ninety-seven, entitled "An Act to enable EDWARD SPENCER JENISON to develop and improve a water privilege on the Kaministiquia River; and the Arbitration thereunder."

BETWEEN :

EDWARD SPENCER JENISON,

Claimant,

AND

THE KAKABEKA FALLS LAND AND ELECTRIC COMPANY, LIMITED,

Contestants.

.....

I FURTHER AWARD, ORDER AND DETERMINE that the said Claimant do pay to the Contestants, the owners of the said lands, or into the High Court of Justice for Ontario to their credit

for damage to the Contestants' water power, and compensation for the costs of this Arbitration, a further sum of one thousand dollars, making in all the sum of one thousand three hundred and ninety dollars in full compensation for the lands so taken and the injury or damage caused by the severance thereof from the other lands of the Contestants, and for any damage to the water power or privilege of the Contestants on or connected with said Lot Ten X, and for the costs of this Arbitration.

I FURTHER AWARD, DETERMINE AND FIX the minimum quantity of water which the Claimant shall, at all times, permit to allow to flow down the channels of the said river, and over the said Kakabeka Falls, shall be four thousand cubic feet per minute.

(Sgd) JAMES A. PROCTOR,

Official Arbitrator.

(This is the assignment of its rights, under the act of 1902, made by the Town of Fort William to the Kakabeka Co. in 1902, at the request of Wegg, whose counsel, Mr. Phippen, and financial agent, Mr. Anderson, with Mr. Wegg, were present at the negotiations. Mr. Phippen, Wegg's counsel, draughted this very assignment.)

THIS INDENTURE made in duplicate this 11th day of September, 1903.

BETWEEN—

The Corporation of the Town of Fort William (Hereinafter called the "Town") of the First Part,

and

The Kababeka Falls Land and Electric Company, Limited, (Hereinafter called the "Company") of the Second Part.

WHEREAS under certain Acts of the Legislature of the Province of Ontario the Town has certain rights and privileges in and around certain water powers on the Kaministiquia River, principally around Kakabeka Falls and Ecarte Rapids, and certain rights respecting the development thereof.

AND whereas it is in the interest of the Town that the said power should be developed at as early a date as possible and the Company is willing to immediately take up the development thereof.

AND whereas under the provisions of an Act Respecting the Town of Fort William (2 Ed. VII, Cap. 49) the Town is authorized in terms to be agreed upon to transfer and assign to the Company its rights, properties, powers and privileges therein referred to.

Now, this Indenture Witnesseth, that in consideration of the premises and the sum of One Dollar, the Town hereby grants, assigns, transfers and sets over to the Company, its successors and assigns, all its rights, properties, powers and privileges under the said legislation, subject however to the liabilities therein imposed on the Town.

To have and to hold unto the Company, its successors and assigns, to and for their sole and only use forever.

AND the Town hereby covenants and agrees with the Company to execute such further assurances and transfers of the rights, properties, powers and privileges aforesaid as may be necessary.

IN WITNESS WHEREOF the corporate seal of the said Town as witnessed by the hands of its Mayor and Clerk

Signed, Sealed and delivered in
the presence of

{ Seal of the Corporation
of the Town of Fort
William, Ontario. }

JOSHUA DYKE,
Mayor

A. M. SAUGHTON,
Town Clerk.

(Following is Jenison's proposal of March 31, 1904, to sell to the Towns of Fort William and Port Arthur Kaka-beka property which he had acquired for \$1,000 for \$350,000!)

In case either or both of the Towns desire to undertake the power scheme the following suggestion is made for consideration:

The Town of Fort William, the Towns of Fort William and Port Arthur together, and finally the Town of Port Arthur, or either or both, associated with others, if they so elect in the order named shall for sixty days after the passage of the Act have the right to acquire all the lands, properties, franchises or privileges or powers in the District of Thunder Bay vested in Jenison and his associates either under this Act or in any other manner in any of the following methods, namely: First, by purchase at the sum of \$350,000, either in cash or five per cent. bonds with interest payable half-yearly extending over such a period of time as the purchaser may elect. Second, by lease in perpetuity subject to a clear royalty of \$2.00 per annum per horse power developed (1,000,000 gallons of water used as such to be equal to one annual horse power), provided that the royalty shall at no time be less than \$10,000 per annum payable quarterly. Third, by a payment of part cash or bonds and part royalty as may be determined between the parties.

The Towns of Fort William and Port Arthur, and either or both of them, as the case may be, may within the said sixty days from the passage of this Act submit by-laws to the ratepayers to decide upon the proposals that may be submitted to them and the course that they desire to pursue, and if any of the said proposals is approved by the ratepayers of either or both of the said Towns either alone or with associates, as the case may be, in the order named above, they are authorized to float the necessary bonds or debentures to acquire the properties, etc., if they elect to acquire them, and also to float the necessary bonds or debentures to carry out the work authorized by the said by-laws.

If neither the Town of Fort William or Port Arthur, or the combined Towns, elect under these enabling provisions to take over the enterprise within the said sixty days from the passage of this Act, or within such further time as may be agreed upon between said Towns, or either or both of them on the one hand and Jenison and his associates, or their assigns, may proceed as authorized by this Act.

Add such further clauses as are necessary to carry out the intention of this scheme.

Strike out sections 6, 7, 8, 12, 13, 14 and 15 of the amended Act.

(Counsel for Kakabeka Co. to Sub-committee, April, 12, 1904.)

MR. RIDDELL said:—

The position that we take in this matter is that we are desirous and think we have the right to the flow of water over Kakabeka Falls as it exists in a state of nature; in respect of this we are perfectly willing to have it determined by one or more hydraulic engineers of standing, and that they may be perfectly independent they may be appointed by the Lieutenant-Governor in Council, or WE ARE WILLING TO TAKE MR. JENISON'S STATEMENT TO HIS CONSULTING ENGINEER AND TAKE A MINIMUM OF 32,000 CUBIC FEET PER MINUTE. WE ARE ALSO WILLING IN CASE MR. JENISON OR ANY OTHER PERSON SHALL BUILD STORAGE WORKS TO PAY THEIR PROPORTION OF THE ORIGINAL COST AND MAINTENANCE OF SUCH STORAGE WORKS TO BE DETERMINED EITHER BY ARBITRATION OR BY HYDRAULIC ENGINEERS, OR BY ANY OTHER REASONABLE METHOD TO BE SUGGESTED, OR we will make the same agreement as is contained in section 4 of Schedule "C," being the agreement between the Town of Fort William and the Kakabeka Falls Land & Electric Company, Limited, made in 1902, and printed in Mr. Jenison's pamphlet on page 39; we also, as the whole matter is at large, will return with interest from the date of the payment all the money paid by Mr. Jenison under Mr. Proctor's award, and upon that being done of course the land expropriated becomes vested in us. We are not insisting upon any method of determining the amount of water coming over the Falls, and we are willing to have that determined by any proper tribunal which is competent so to do.

The above we conceive to be our ordinary rights; if however Mr. Jenison and his associates prefer to buy us out and out I shall be prepared in the morning, after having had opportunity of consulting my clients, to state the amount which we will be prepared to accept.

As regards the amount of water that the Kakabeka Falls Company is considered entitled to, I am not, as I have said, wedded to any method of finding that out, any reasonable method I am content to accept.

The report of Mr. Jenison to his engineer speaks for itself. It is not the fact that any storage scheme is necessary for the development of a water power, and we are prepared to develop our water power at Kakabeka Falls without any storage scheme at all, but at the same time we are willing to pay any person who frames a storage scheme any reasonable proportion of the cost thereof which we ought to pay.

It is not the fact that there is any necessity for any delay by this means, and it is not the fact that a water power cannot be developed at each of the places. There is no reason why a water power cannot be developed at Kakabeka Falls as well as at Ecarte Rapids.

(Jenison's Counsel at hearing before Sub-committee, April 12, 1904.)

Mr. Dewart, on behalf of Mr. Jenison, takes the position that under the Act of 1897 the Arbitrator has awarded the sum that in his judgment was payable to Kakabeka Falls Company upon the basis of their being the owner of the water power at the Falls, and that sum having been paid by Mr. Jenison, he has acquired all the rights of the Kakabeka Falls Company in respect of any power or water privilege at the Falls. THE SAME ARBITRATOR, UPON THE EVIDENCE OF EXPERTS, FIXED THE FLOW OVER THE FALLS AT 4,000 CUBIC FEET PER MINUTE, AND THERE WAS, THEREFORE, NO REASON FOR A NEW REFEREE TO DETERMINE THE AMOUNT OF WATER PASSING OVER THE FALLS.

Mr. Riddell's reference to the minimum flow of 32,000 cubic feet per minute relates, as his report clearly shows, only to the flow in a particular year, 1898, and is in no sense intended or to be understood as being a criterion of either the average flow of water, or the minimum flow, or the average minimum.

(Counsel for Fort William before Sub-committee, April 12, 1904, said:)

MR. DRAYTON: The desire of the Town of Fort William is that power should be developed at the earliest possible moment, they are indifferent by whom. The Legislature of 1902 thought development possible both at Ecarte Rapids and Kakabeka Falls, the preliminary work done by the Town and the estimates obtained show that this is commercially impossible. The whole of the water in order to arrive at any useful result must be utilized at one point, and it was to enable this being done that during the past year an assignment was made by the Town to the Kakabeka Falls Company of all their rights under the legislation of 1902. The Town hopes that the legislation of this year will be final and that flotation may not be delayed by reference or arbitration but that the Committee will now finally deal with the matter and deal with it in such a way as to render the flotation feasible by whatever Company the Committee chooses to entrust the privilege to. With this end in view it is important that there should be no large fixed capital charges on the undertaking resulting in the necessary increase of cost of power to the people of the district.

(The Kakabeka Co. made the following offer in response to the Sub-committee's suggestion):

TORONTO, April 13th, 1904.

J. R. BARBER, ESQ.,
Chairman.

SIR,—Responding to a suggestion of your Committee, that a proposal should be made by the Kakabeka Company to Mr. E. S. Jenison for the sale of its water power at Kakabeka Falls, this company protests that it has no desire to dispose of its water power, but is desirous of developing its water power under the terms of its contract with the Town of Fort William, and the authority to do so which is now vested in the Kakabeka Company by the statutes of Ontario. However, if the Committee be of the opinion that the financial ability or engineering skill of Mr. Jenison makes it preferable that this important hydraulic development should be given over to his charge, the Kakabeka Company respectfully submits the following proposal. In considering this proposal the Committee are respectfully reminded that Mr. Jenison originally possessed no water power on the Kaministiquia River until the expropriation of Kakabeka Falls. He claims to be the owner of Ecarte Rapids, and applied to this Legislature for permission to use the lands of the Kakabeka Company using as his justification the claim that Ecarte Rapids alone did not afford a water power worth development. Mr. Jenison's original legislation required him to prove to the satisfaction of the Arbitrator that Ecarte Rapids did not afford a water power worth developing without the use of Kakabeka Falls, and the furnishing of this proof by Mr. Jenison before the Arbitrator secured for him his original right to expropriate Kakabeka Falls damages for which were assessed by the Arbitrator at ONE THOUSAND DOLLARS.

Owing to Mr. Jenison's neglect to perform the work of development, the Legislature of 1902 deprived Mr. Jenison of these rights, but in response to his recent application the Private Bills Committee of this Legislature have indicated their purpose to restore these rights. After the adoption by the Committee of the bill of Mr. Jenison's bill, which indicated the purpose of the Committee to terminate the rights of the Kakabeka Company, Mr. Jenison made an offer to the Towns of Fort William and Port Arthur, a copy of which is enclosed, the purport of which is that he would transfer the rights which he might again acquire the only value in which, as he testified before the Arbitrator, was the right to use Kakabeka Falls, for the sum of THREE HUNDRED AND FIFTY THOUSAND DOLLARS in cash, or TWO DOLLARS per annum per horse power as perpetual royalty.

PROPOSAL.

The Kakabeka Company agrees to sell to the Towns of Fort William and Port Arthur, or to E. S. Jenison, all its real estate and water power privileges on the Kaministiquia River for the sum of THREE HUNDRED AND FIFTY THOUSAND DOLLARS in cash, or a royalty of TWO DOLLARS per annum per horse power.

OR

The Kakabeka Company will sell its said real estate and water power privileges for such sum in cash or in perpetual royalty at TWO DOLLARS per annum per horse power as may be found to be the commercial value of the same by a commission of three engineers of experience in hydraulic engineering, to be appointed by the Lieutenant-Governor in Council.

OR

The Kakabeka Company will retain its title and ownership to said real estate and water power, and allow said Jenison the privilege of diverting water from the Kaministiquia River from above Kakabeka Falls and discharge the same below Kakabeka Falls, provided there shall constantly be reserved for the use of Kakabeka Falls the average flow of water, which shall be found to annually flow over Kakabeka Falls in the natural state of the river, to be determined by a commission of engineers as above described.

In lieu of such commission the Kakabeka Company will accept as the determined volume of water which is to be allowed to flow over Kakabeka Falls, a volume equal to thirty-two thousand cubic feet per minute, which is the least flow ever found on Kakabeka Falls by Mr. Jenison in his surveys according to his public statement in the Engineering Reports circulated by him.

Respectfully submitted,

Counsel.

SUMMARY

These extracts from the legislative proceedings and Arbitrator's hearings prove :

1. That the Kakabeka Co. owned "THE FAR-FAMED KAKABEKA FALLS," so called in Fanning's Report, when Jenison first visited them, and that Company still owns these Falls.

2. That Jenison, in 1897, was given the right to expropriate this valuable waterfall, altho' Mr. Garrow characterized his Bill thus :

"No more outrageous Bill was ever presented to this Committee; it is a bill to take from John Brown his farm because John Smith wants it."

3. That the Committee expressly protected the Kakabeka Co. by requiring (see statement of Barwiek, Counsel for Jenison) that Jenison should not interfere with the power of the Falls, and that Jenison should "NOT DIVERT FROM THE ORIGINAL CHANNEL OF THE STREAM GOING OVER THE FALLS THE AMOUNT THAT ON THE AVERAGE GOES OVER THERE." (Statement of Chairman Gibson).

4. That before the Arbitrator, Jenison testified that he had measured the stream in a careless way, and found that 2,000 cubic feet per minute was the minimum flow; that subsequently he published a statement and used it in his attempts to raise money, showing that his lowest measurements of this river made the lowest flow 32,000 cubic feet per minute.

5. That the Arbitrator misconstrued the Act, and disregarding the highest scientific evidence as to the AVERAGE flow of 56,860 cubic feet per minute, intended by the legislation to be the measure of the fall, doubled Jenison's ridiculous measurement of 2,000 cubic feet, and awarded 4,000 cubic as the LOWEST flow and the quantity to be provided for the power at the falls :

4,000 cubic feet awarded under 110 ft. head yields 666 H. P.

32,000 cubic feet under 110 ft. head yields 5,325 H. P.

(Jenison's published statement.)

56,000 cubic feet under 110 ft. head yields 9,318 H. P.

(Actual average flow.)

130,000 cubic feet under 110 ft. head yields 21,645 H. P.

(Jenison's estimate of actual flow at time of arbitration.)

6. That the Arbitrator awarded as damages for taking from Kakabeka and giving to Jenison an AVERAGE power of 9,318 Horses, and a power which could by storage be made 21,645 H. P., THE SUM OF ONE

THOUSAND DOLLARS, leaving for the Company's use 666 H. P. which could never be profitably developed.

7. That with even these extraordinary and costless privileges, Jenison could not raise money for the work and that the Towns of Fort William and Port Arthur united to dispossess him of these unused privileges, and by sanction of the Legislature, Fort William agreed with the Kakabeka Co. to restore its original rights by causing any water used for power above the Falls to be returned to the river again above the Falls.

8. That Jenison opposed this restoration and put forth Mr. Wegg as the real owner of the Jenison rights, admitting his former unfairness to the Legislature.

9. That when Jenison's opposition failed to prevent the restoration of Kakabeka's rights, Wegg proposed to unite with Kakabeka in the development under the Fort William Act of 1902, and that Wegg with his Counsel and Financial Agent went to Fort William in 1903 and solicited a contract to be made with the Kakabeka Co. which both Wegg and the town agreed to support before the present Legislature, and this contract was made and is now in effect, and all rights of the Town of Fort William under the Act of 1902 are now vested, with Wegg's consent, in the Kakabeka Co. (See assignment from Town of Fort William to Kakabeka Co.)

10. That Wegg and Jenison are now asking this Legislature to violate this Agreement.

11. That Jenison by his own proof before the Arbitrator showed he had no power at Ecarte Rapids worth development, but that after the reference of his present bill to the Sub-committee of the Private Bills' Committee, namely on March 31st, 1904, he demanded from the Towns of Fort William and Port Arthur **THREE HUNDRED AND FIFTY THOUSAND DOLLARS IN CASH, OR TWO DOLLARS PER ANNUM PER HORSE POWER PERPETUAL ROYALTY** for this power, the only value to which, according to his own testimony, was in Kakabeka Falls, **FOR WHICH THE ARBITRATOR AWARDED TO THE KAKABEKA CO. AS DAMAGES THE SUM OF ONE THOUSAND DOLLARS!**

