

In the Privy Council

No. **74** of 1938.

ON APPEAL FROM THE COURT OF KING'S BENCH FOR
THE PROVINCE OF QUEBEC (APPEAL SIDE)

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BETWEEN

ROBERT OLIVER SWEEZEY,

(Plaintiff-in-Warranty in the Superior Court and
Respondent in the Court of King's Bench)

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APPELLANT,

and

BEAUHARNOIS POWER CORPORATION LIMITED,

(Defendant-in-Warranty in the Superior Court and
Appellant in the Court of King's Bench)

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RESPONDENT.

CASE FOR THE APPELLANT

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1. This is an appeal from a majority judgment of the Court of King's Bench (Appeal Side) of the Province of Quebec, dated 9th June 1936, maintaining an appeal by the Respondent and annulling a judgment of the Superior Court, dated 15th January 1935, which had condemned the Respondent to acquit and indemnify the Appellant in respect of a condemnation against him, by the same judgment, in favour of Clifford Sifton et al. for \$53,972.61 with interest and costs.

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(Sifton v
Swezey
pp. 98-101

p. 97

2. This condemnation against the Appellant, in favour of Clifford Sifton et al., was annulled by the same judgment of

pp. 98-101

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(Sweezy v
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p. 27

the Court of King's Bench, but was restored by the Privy Council, by Decree dated 24th February 1938, on an appeal by Clifford Sifton et al.

p. 2

3. Clifford Sifton et al., as executors of the late Winfield Sifton, claimed the money from the Appellant under an agreement between the Appellant and the late Winfield Sifton, entered into in 1927. The Appellant denied liability and called on the Respondent to intervene and acquit and indemnify him on the ground that the Appellant had been acting for a syndicate whose obligations had been assumed by the Respondent. The Appellant's liability to the Sifton executors has been established by the Decree of the Privy Council above mentioned and he is now seeking to have restored his judgment against the Respondent. 10

p. 1

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p. 153

p. 158

4. Early in 1927 the Appellant formed the Beauharnois Syndicate, and acquired all the shares of Beauharnois Light, Heat & Power Company Limited, incorporated under Quebec Statute, 2 Edward VII, C.72 (1902) together with certain water rights held by the Robert family, with the object of developing hydro-electric power from a series of rapids in the St. Lawrence River between Lake St. Francis and Lake St. Louis in the Province of Quebec, some twenty to thirty miles above Montreal. 20

p. 135

p. 153

Ex. P.W.1

pp. 135-153

5. The syndicate was formed under two agreements between the Appellant and Marquette Investment Corporation, dated 12th May 1927. By the first agreement the Appellant transferred all his shares in the Beauharnois Light, Heat & Power Company Limited, and other rights, to the Marquette Company which was to act as the trustee and depositary for the syndicate. 30

Ex. P.W. 2

pp. 153-173

6. The second agreement set out the constitution of the syndicate and the rights and duties of its members and provided for a board of five managers (including the Appellant and having three as a quorum) to carry on the syndicate's business. The syndicate's by-laws were set out in an annexed schedule and provided, *inter alia*, for meetings of the members and of the managers respectively. As it turned out, no minutes were kept of any of the meetings, except those held at the beginning and just before the end of its existence. 40

p. 55, l. 23

7. The managers of the syndicate were protected in their duties by two clauses in the latter agreement as follows:

Ex. P.W.2

p. 161

"7. ... (f) Every Syndicate Manager and his heirs, executors, administrators and estate and effects respect-

10 ively, shall be indemnified and saved harmless out of the funds of the Syndicate from and against all costs, charges and expenses whatsoever which such Syndicate Manager sustains or incurs in or about any action, suit or proceeding which is brought, commenced or prosecuted against him for or in respect of any act, deed, matter or thing whatsoever, made, done or permitted by him in or about the execution of the duties of his office; and also from and against all other costs, charges and expenses which he sustains or incurs in or about or in relation to the affairs thereof, except such costs, charges or expenses as are occasioned by his own wilful neglect or default.

20 “9. The Board of Syndicate Managers may borrow money for and incur liabilities on behalf of the Syndicate upon such terms and conditions as they deem expedient, provided however that no loans may be effected nor other liabilities incurred except upon the condition assented to by the creditors of such loans or other liabilities that neither the Syndicate Managers nor any other members of the Syndicate shall be personally liable for the repayment of such loans or liabilities, and that the creditors of such loans or liabilities shall be entitled to look only to the assets of the Syndicate, or the proceeds thereof, for repayment. Nothing herein contained, however, shall be construed so as to prevent any member of the Syndicate who is willing to do so, from personally guaranteeing or rendering himself liable for the repayment of any loan or other liability of the Syndicate.”

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Ex. P.W.2
p. 162

40 8. The Appellant was one of the five managers of the Syndicate and two of them, Henry Newman and Hugh B. Griffith were partners or associates in his business. The other two managers were Robert W. Steele and W. H. Robert. The latter represented the interests of the original vendors of the properties and took no part in the management of the syndicate.

p. 36, l. 22
p. 160, l. 22
p. 173, l. 34
p. 54, l. 44
p. 55, l. 12

9. The enterprise included the construction of a ship canal near the Village of Beauharnois on the south bank of the river, for navigation between the two lakes and the diversion of waters from the St. Lawrence River, and it was necessary to obtain the approval of the Department of Public Works of the Government of Canada, under the Navigable Waters Protection Act, Revised Statutes, Canada, 1927, Chapter 140, which contained the following amongst other provisions:

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“4. No work shall be built or placed in, upon, over, under, through or across any navigable water unless the site thereof has been approved by the Governor in Council, nor unless such work is built, placed and maintained in accordance with plans and regulations approved or made by the Governor in Council.....

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“7. The local authority, company or person proposing to construct any work in navigable waters, for which no sufficient sanction otherwise exists, may deposit the plans thereof and a description of the proposed site with the Minister of Public Works, and a duplicate of each in the office of the registrar of deeds for the district, county or province in which such work is proposed to be constructed, and may apply to the Governor in Council for approval thereof....

20

“12. Parliament may, at any time, annul or vary any order of the Governor in Council made under this Part.

2. Any action of Parliament in that behalf shall not be deemed an infringement of the rights of the local authority, company or person concerned.”

p. 224, l. 43

p. 225, l. 9

p. 52, ll. 15-20

p. 52, l. 21

10. On the 17th March 1927, the Beauharnois Light, Heat & Power Company applied to the Governor General in Council for approval of the proposal, but the application was not pressed. 30
The Company made also an application to the Quebec Legislature for an amendment to its charter to enlarge its powers so that it might carry out the work. This application was not successful and during the months of June, July and August 1927, matters were at a standstill.

p. 53, l. 9

p. 53, ll. 11-16

p. 66, l. 13

11. Early in September 1927, Griffith, the Secretary and one of the managers of the syndicate called on the late Winfield Sifton at his residence in Ontario with a view to retaining him to assist in the application for approval of the plans. He bore a 40
letter of introduction from the Appellant (who had previously telephoned to Sifton) reading as follows:

“NEWMAN, SWEEZEY & COMPANY, LIMITED

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Investment Bankers
136 St. James Street

Montreal, 6th September, 1927. Ex. P-2

10 “W. B. Sifton, Esq.,
Mallorytown, Ont.

p. 173

“My dear Wynn —

20 “This introduces Hugh B. Griffith, who is the
Secretary of our Power Syndicate, and also a partner in
our firm. He is very familiar with all the details of the
Power proposition, and is calling on you in case there is
anything you might discuss to advantage at this time, and
also in case you are unable to come to Montreal.

“My own time is so occupied this week with a number
of things that I fear I will be unable to get up to Brock-
ville, and I would like very much to be acquainted with
whatever information may be of benefit to us in this matter.

“With best regards, I am,

“Yours sincerely,

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“R. O. Sweezy”

12. As a result of that interview and of later conver- p. 66,
sations in Montreal with the Appellant, the late Winfield Sifton l. 26, l. 36
was engaged by the Appellant on behalf of the Syndicate on p. 66, l. 47
terms which were confirmed, some weeks later, by the following p. 67, l. 25
correspondence:

“NEWMAN, SWEEZEY & COMPANY, LIMITED

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Investment Bankers
136 St. James Street

Montreal, 15th Oct., 1927. Ex. P-4

“W. B. Sifton, Esq.,
Mallorytown, Ont.

p. 175

“Dear Sir —

“I apologize to you for the delay in writing you, as
I promised I would some time ago.

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“This letter is to confirm our conversation in which I agreed to pay you Five Thousand Dollars as a retaining fee, in connection with the St. Lawrence and Beauharnois Power situation, which amount has already been sent you.

“It is agreed between us that we pay you One Hundred Dollars a day and expenses (when employed away from your home) for such time as we may require your services as our work and efforts proceed. 10

“It is further agreed between us that when our plans have been passed and approved by Dominion Government with the aid of your counsel and efforts we shall pay you the sum of Fifty Thousand Dollars (\$50,000).

“Yours truly,
“R. O. Sweezey” 20

Assiniboine Lodge
Mallorytown.
Oct. 17/27.

“R. O. Sweezey, Esq.,
136 St. James St.,
Montreal.

Ex. P-5
p. 176

“Dear Bob,

“I beg to acknowledge your letter of Oct. 15th confirming arrangement between us, and agree and approve same as stated by you. 30

“I think your last paragraph is slightly ambiguous. It is of course understood that I shall use my best endeavours on your behalf, and I shall act subject to yr. instructions. Having done so, my understanding is that upon the plans being passed and approved by the Dominion Govt. the additional fee of \$50,000 shall become due and payable to me. I don't think it will be possible now or hereafter to produce evidence that such passing of plans will be due to the 'aid of counsel and efforts' from any particular person. I think therefore that it would clarify our understanding if this phrase were eliminated. 40

“Yrs. Tly.
“W. B. S.”

“Montreal, 19th Oct. 1927.

Record
(Sifton v
Sweezy

“W. B. Sifton, Esq.,
Mallorytown, Ont.

Ex. P-6

p. 177

“Dear Sir —

10 “I have your letter of October 17th, which for the purpose of clearer understanding I quote herewith:—

20 ‘It is, of course, understood that I shall use my best endeavours on your behalf, and shall act subject to your instructions. Having done so, my understanding is that upon the plans being passed and approved by the Dominion Government, the additional fee of \$50,000 shall become due and payable to me. I do not think it will be possible now, or hereafter to produce evidence that such passing of plans will be due to the aid of counsel and efforts from any particular person. I think therefore it would clarify our understanding if this phrase were eliminated.’

“I fully agree with your views as expressed in the above, and for this reason it clarifies my letter to you of the 15th instant.

“Yours faithfully,

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“R. O. Sweezy”

13. The other active managers of the syndicate were informed at once of the terms of Sifton’s retainer and none of them made any objection.

p. 68, l. 40
p. 69, ll. 19-33

40 14. Sifton’s communications with the syndicate were usually with Griffith who was the Secretary and Treasurer, but he was frequently in conference with the other managers and he attended some of their meetings.

p. 58, l. 17
p. 56, l. 17

15. In January 1928 the plans and the description of the proposed site were, as required by Section 7 of the Statute, submitted to the Department of Public Works of Canada with a formal application to the Governor General in Council for approval.

p. 76, l. 40

16. In March 1928, the Company obtained the necessary amendment to its charter and permission to expropriate and use

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lands required for the canal and power development (18 Geo. V (1928) Chapter 113 (Que.))

p. 56, l. 39
p. 59, l. 2

17. At this stage the Beauharnois Syndicate were in need of further moneys and entered into an agreement with a new syndicate, called the Beauharnois Power Syndicate, and the Marquette Investment Corporation, dated 4th April 1928, whereby the Beauharnois Power Syndicate acquired the rights and assumed the obligations of the Beauharnois Syndicate. The late Winfield Sifton was present at the execution of this agreement. 10

Ex. P.W.3
pp. 184-187
p. 186, l. 46

18. The assumption by the new syndicate of all the former syndicate's obligations is set out in the following paragraph:

p. 185, l. 41

"3. The Purchaser hereby assumes and promises to pay; fulfill and carry out to the complete exoneration of the Vendor all the liabilities and obligations of the Vendor of whatsoever nature in existence at the date hereof." 20

p. 191,
ll. 25-39
p. 193,
ll. 29-41
p. 226,
ll. 13-15

19. Under Order-in-Council (Quebec) dated 27th April 1928, the Beauharnois Light, Heat and Power Company obtained from the Provincial Government an Emphyteutic Lease dated 23rd June 1928, whereby the Company acquired the rights of the Province to develop power by diverting 40,000 cubic feet of water per second through the canal on condition that the Dominion Government authorize the diversion within one year. The Company then began to press its application to the Dominion Government for the approval. 30

p. 38, l. 33
p. 14, l. 28
p. 54, l. 34
p. 42, l. 25

20. On 13th June 1928, Winfield Sifton died, having worked incessantly on the scheme from early in the previous September until his death. By that time he had done every thing that he was to do.

p. 70, ll. 20-45
p. 252, l. 23

21. After the death of Winfield Sifton, the Respondent engaged Senator Hayden, also of Ontario, and undertook to pay for his services and to pay also a contingent fee of \$50,000 conditional on the approval of the plans by the Governor in Council. This contingent fee was paid by the Respondent after the plans had been approved in 1929. 40

p. 196,
ll. 20-24
Ex. P-33
p. 190

22. In January 1929, a formal hearing on the application was held in the office of the Minister of Public Works of Canada and, on 8th March 1929, an Order-in-Council (P.C. 422) was passed approving the plans and site and the diversion of water, subject to certain conditions, one of which was as follows:

“(11) The Company shall not commence the construction of the works until detailed plans of construction and all necessary information respecting the said works have been submitted to and approved of by the Minister provided that such plans and information shall be submitted within one year.”

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(Sifton v
Sweeney
p. 203,
ll. 45-49

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23. The actual approval was expressed in the following terms:

“The Committee, on the recommendation of the Minister of Public Works, submit for Your Excellency’s approval, under Section 7, Chapter 140, Revised Statutes of Canada, 1927 — the Navigable Waters Protection Act — (subject to the foregoing conditions and to such additions, improvements, alterations, changes, substitutions, modifications or removals as may be ordered or required thereunder) the annexed plans of works, and the site thereof, according to the descriptions and plans attached, in booklet form, which works are proposed to be constructed by the Beauharnois Light, Heat and Power Company, with respect to the diversion of 40,000 cubic feet of water per second from Lake St. Francis to Lake St. Louis, in connection with a power canal to be built by the said Company along the St. Lawrence River between the two lakes mentioned; the said approval to take effect only after an agreement incorporating the conditions enumerated above and satisfactory to the Minister of Public Works of Canada has been executed between the Beauharnois Light, Heat and Power Company and His Majesty the King, as represented by the said Minister.’ ’

p. 208,
ll. 29-48

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24. The agreement was approved by Order-in-Council (P.C. 1081) dated 22nd June 1929, and was executed on 25th June 1929. The Beauharnois Light, Heat and Power Company began construction on 7th August 1929, and in September 1932 it began to generate electric power from the plant.

p. 209, l. 32
p. 46, l. 37
p. 47, l. 14
p. 47, l. 24

25. In the meantime, the Respondent Company had been incorporated on 17th September 1929, under the Companies Act of Canada, and entered into an agreement with the Beauharnois Power Syndicate and the Marquette Investment Corporation, dated 31st October 1929, to purchase all the Syndicate’s assets and to assume all its liabilities and obligations, on the fulfilment of certain conditions.

p. 234, l. 29
Ex. P.W.4
pp. 211-215

Record
(Sifton v
Sweeney

26. The obligation of the Respondent in this respect is set out in the following clauses:

p. 212, l. 42

p. 213, l. 1-3

“3. The consideration for the said sale shall be—

“ (b) the assumption by the Corporation of all the liabilities and obligations of the Syndicate (except its liabilities and obligations to its Members as such:....”

Ex. P.W.5

pp. 216-218

27. This agreement was confirmed by a later agreement between the same parties, dated 17th December 1929, in which the Respondent again assumed the obligations of the Beauharnois Power Syndicate by the following clause:

p. 217,
ll. 20-31

“3. As part consideration for the said sale and transfer the Corporation has paid to the Syndicate the sum of Four million seven hundred and fifty thousand dollars (\$4,750,000) the receipt whereof is hereby acknowledged, and as further consideration for the said sale and transfer the Corporation hereby assumes and undertakes to pay all of the liabilities and obligations of the Syndicate except its liabilities and obligations to its Members as such, and hereby undertakes to defray the expenses to an amount not exceeding Ten thousand dollars (\$10,000) of the winding up of the affairs of the Syndicate and the distribution of its assets among its Members.”

28. In 1930 the general elections were held in Canada and a change of Government followed. On 3rd August 1931, an Act of Parliament (21-22 Geo. V, Chapter 19) was passed, which came into force by Proclamation on 1st March 1932, annulling the two Orders-in-Council of 1929, but permitting the Company to divert the required amount of water subject to such terms and conditions as might be prescribed by Order-in-Council. The preamble and Section 1 of the Statute read as follows:

“WHEREAS it is provided by section twelve of Part I of the Navigable Waters Protection Act that Parliament may, at any time, annul or vary any Order of the Governor in Council under this part; and whereas grave doubts have arisen as to the validity of Order in Council P.C. 422, dated the eighth day of March 1929, as amended by Order in Council P.C. 1081, dated the twenty-second day of June, 1929, which purported to be made under the provi-

10 sions of the said Navigable Waters Protection Act, and also as to the validity of an Agreement based upon the terms and conditions of said amended Order in Council, made between the Beauharnois Light, Heat and Power Company, Limited and His Majesty the King, which was executed on the twenty-fifth day of June, 1929; and whereas in the opinion of Parliament the said Company has not complied with all the terms and conditions of the said amended Order in Council which are also embodied in said Agreement;

“Therefore His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, declares and enacts as follows:

20 “1. The Order in Council P.C. 422, dated the eighth day of March 1929, as amended by Order in Council P.C. 1081, dated the twenty-second day of June, 1929, and the Agreement between the Beauharnois Light Heat and Power Company, Limited, and His Majesty the King, dated the twenty-fifth day of June, 1929, are hereby annulled.”

29. Another Dominion statute of the same date, 3rd August 1931 (21-22 Geo. V, Chapter 20) which came into force immediately, referred (in Section 1) to “the canal now being constructed by the Beauharnois Light, Heat and Power Company, Limited, ...between Lake St. Francis and Lake St. Louis” and declared the canal and other appurtenant works to be “works for the general advantage of Canada”.

30. Winfield Sifton received, in his lifetime, the preliminary fee of \$5,000 from the Appellant and part of his *per diem* fees and expenses from the funds of the successive syndicates. The payment of \$5,000 was reimbursed to the Appellant out of the funds of the second syndicate and Sifton’s executors received the balance of his *per diem* fees and expenses from the funds of the second syndicate. Later, in 1930 and 1931, his widow received payments aggregating \$10,100 from the Respondent Company.

p. 58, l. 42 to
p. 59, l. 46

Ex. P-27

pp. 188-189

Ex. P.W.9

pp. 265-266

p. 60, ll. 30-48

31. The executors of Winfield Sifton did not know of the obligation in respect of the special fee or that the agreement had been set out in writing and they asked the Appellant to confirm the terms of his agreement.

p. 189, l. 40

Record
(Sifton v
Sweezy
Ex. P-9
p. 189,
ll. 32-47

32. On 14th July 1928, a month after Winfield Sifton's death, the Appellant wrote to Victor Sifton, one of the executors, as follows:

“R. O. SWEEZEY
(B.Sc, M.E.I.C.)

136 St. James St.
Montreal, July 14/28.

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“Dear Victor

“You may wonder why I have not written as promised in regard to confirming my agreement with Win. The delay is due to my secretary's absence on her holidays and she has the private file well locked up. I am afraid now that I shall be leaving before she returns and there may be a further delay of some three weeks.

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“Yours sincerely

“R. O. Sweezy”

p. 187, l. 9

p. 351, 34

33. The Appellant had been connected with the later syndicate and with the Respondent Company, but severed his connection with the Respondent on the 19th November 1931. On that date the Board of Directors of the Respondent adopted the following resolution:

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Ex. D.W.1

p. 264

“The Secretary reported that no legal retainers had been paid subsequently to August 31st, 1931, and that the only retainer payable by the Company for which there was any contractual obligation was that of Lacoste & Lacoste at One thousand dollars (\$1,000) per annum up to October 1st, 1934.

“After discussion, on motion duly seconded, it was unanimously Resolved that the action of the officers in discontinuing the payment of retainers other than a retainer to Lacoste & Lacoste, be approved; that the services of Dr. A. Plante and Mr. G. H. Rioux be dispensed with from November 30th, 1931; that the allowance payable to Mrs. W. B. Sifton be discontinued from November 30th, 1931, and that the other matters referred to in the letters of Messrs. P. S. Ross & Sons be submitted to the Advisory Committee for report to the next meeting of this Board.”

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34. Early in 1932 Clifford Sifton, one of Winfield Sifton's executors, found the 1927 correspondence and made demand on Appellant for payment of \$50,000.

Record
(Sifton v
Sweezy)

p. 40, l. 12-22

p. 42, l. 12

35. On 11th June 1932, after further correspondence, there was an interview at Montreal between Clifford Sifton and the Appellant, when the Appellant was pressed again and, to secure an extension of time for payment, gave Clifford Sifton a letter reading as follows:

p. 42, l. 19

“June 11th, 1932.

Ex. P-8

“Mr. Clifford Sifton,
Executor Estate Winfield Sifton.

p. 272

p. 42, l. 46 to
p. 43, l. 20

“Dear Sir,—

20 “In consideration of the executors' undertaking not to press this matter for six months from today, I hereby acknowledge that I owed Winfield Sifton at his death, subject only to approval of Beauharnois plans at Ottawa, the sum of fifty thousand dollars, this being an undertaking I made in connection with Beauharnois Syndicate whose assets and liabilities were assumed by Beauharnois Power Corpn. Ltd.

“Yours truly,

“R. O. Sweezy”

30 36. In January 1934 the Sifton executors took action against the Appellant for their claim of \$50,000 and interest, and Appellant took the action in warranty, now in question, against the Respondent.

37. The two actions were tried together before Mr. Justice Mackinnon, who condemned the Appellant to pay the claim of the Sifton executors and condemned the Respondent to indemnify the Appellant.

p. 95, ll. 19-23

p. 97, ll. 12-21

40 38. The learned Trial Judge held the Appellant liable to the Sifton executors on the grounds that he had contracted for himself personally as well as for his syndicate and that the Company's plans had been approved by the Dominion Government, and also on the ground that the Appellant had admitted liability in his letter of 11th June 1932. He held the Respondent liable to the Appellant on the grounds that the Appellant's contract with Winfield Sifton had been made on behalf of the Beauharnois Syndicate; that all the managers of the Syndicate were aware of the contract; that Sifton's earnings were paid out of the syndicate's funds on the terms provided for in the contract; that the

p. 93, ll. 8-10

p. 95, ll. 25-27

p. 93, ll. 10-14

p. 93, l. 6-10

p. 95, l. 28 to

p. 96, l. 9

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(Sifton v
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Beauharnois Power Syndicate took over the rights and obligations of the Beauharnois Syndicate while Sifton was still alive and employed under the contract; and that the present Respondent had assumed all the Beauharnois Power Syndicate's obligations and liabilities including the liability to Sifton.

p. 101, ll. 31-42
p. 107, l. 45
p. 125, l. 41
p. 102, ll. 10-14
p. 126, ll. 8-12
p. 105, l. 1-11
p. 119, ll. 16-24

39. This judgment, in both the principal and warranty actions, was reversed by the Court of King's Bench. The only reason given by the majority judges, Hall and Bond JJ., for reversing the judgment in warranty against Beauharnois Power Corporation, was that it followed from the reversal of the judgment in the principal action. Tellier C.J. and Galipeault J. merely concurred. One of the reasons of Hall and Bond JJ. was that, even if the Government's approval was obtained in June 1929, the Appellant's liability had been terminated by the previous death of Winfield Sifton. 10

p. 126, ll. 22-25
pp. 126-127
p. 127, l. 46

40. St. Germain J., who dissented, approved of the reasons of the Trial Judge for the condemnation of the present Appellant and the present Respondent respectively. He held that the present Appellant was liable under the contract even apart from the admission in his letter of 11th June 1932, and that the present Respondent was liable to indemnify him. 20

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pp. 19-27
p. 25, ll. 18-26
p. 26, ll. 36-44
p. 27, ll. 14-16
ll. 14-16

41. The Lords of the Judicial Committee, in their judgment of 1st February 1938, restoring the original judgment against the Appellant, held him personally liable to the Sifton executors on the grounds that he had admitted liability by his letter of 11th June 1932, that the plans of the undertaking of Beauharnois Light, Heat and Power Company had been passed and approved by the Dominion Government within the meaning of the contract and that, accordingly, the additional fee of \$50,000 became due in June 1929. They did not take into consideration the judgment against the present Respondent, or the reversal thereof by the Court of King's Bench, because no appeal from that condemnation was before their Lordships. 30

The Appellant now submits that the present appeal from the Court of King's Bench should be allowed and the judgment of the learned Trial Judge in favour of the Appellant against the Respondent should be restored for the following among other 40

REASONS

- (1) Because the Appellant's liability to the Estate of the late Winfield Sifton for the special fee of \$50,000 has been established by their Lordships of the Judicial Committee;
- (2) Because the Respondent is bound by the facts established in the Judgment of the Privy Council;

- 10
- (3) Because the Appellant's liability for the special fee was not conditional on Winfield Sifton being alive when the approval of the plans should be obtained;
- (4) Because this liability was incurred by the Appellant on behalf of the Beauharnois Syndicate;
- (5) Because the Beauharnois Syndicate's managers were aware, from the beginning, of the Appellant's liability to Sifton;
- (6) Because the Beauharnois Syndicate, the Beauharnois Power Syndicate and the Respondent undertook successively to indemnify and protect the Appellant against this liability;
- 20
- (7) Because the two syndicates successively accepted the Appellant's obligations by making payments of the *per diem* fees and expenses to Sifton and to his executors;
- (8) Because the Respondent recognized the obligation of the special fee of \$50,000 by their payments to Winfield Sifton's widow;
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- (9) Because Winfield Sifton, at his death, had performed all the services required from him;
- (10) Because the judgments of the Trial Judge and St. Germain J. were right for the reasons stated therein.

J. W. WELDON

In the Privy Council

No. **74** of 1938

On appeal from the Court of King's
Bench for the Province of
Quebec (Appeal Side)

BETWEEN

Robert Oliver Swezey,

(Plaintiff-in-Warranty in the Superior Court
and Respondent in the Court of King's Bench)

APPELLANT,

and

**Beauharnois Power
Corporation Limited,**

(Defendant-in-Warranty in the Superior Court
and Appellant in the Court of King's Bench)

RESPONDENT.

CASE FOR THE APPELLANT

CHARLES RUSSELL & CO.,
37 Norfolk Street,
London, W.C. 2, England,
Solicitors for Appellant.