

In the Privy Council

ON APPEAL FROM THE APPELLATE DIVISION OF THE
SUPREME COURT OF ONTARIO

BETWEEN:

WILLIAM ROBINS

AND

(Plaintiff) APPELLANT,

NATIONAL TRUST COMPANY, LIMITED, Executors of the estate of Edward Chandler Walker; Stephen A. Griggs, Executor of the estate of Mrs. Stephen Griggs; the Churchwardens of St. Mary's Church, Walkerville; The Board of Governors of the University of Toronto; The Board of Governors of St. Andrew's College, Toronto; The Trustees of Hotel Dieu, Windsor; The Churchwardens of All Saints' Church, Windsor; Stephen A. Griggs; National Trust Company, Limited, Administrators of the estate of Franklin Hiram Walker; Harrington E. Walker, Hiram H. Walker, F. Caldwell Walker and National Trust Company, Limited, Executors of the estate of James Harrington Walker; Edward Chandler Farrington; Elizabeth Buhl; May Walker; Margaret Walker; Arthur H. Buhl and Detroit Trust Company, the last two named as Executors of the estate of Willis E. Buhl; Arthur H. Buhl; Lawrence D. Buhl; Elizabeth Buhl Sheldon; F. Caldwell Walker; Mary Margaret Small; Jennie Williams; Lucy Farrington; Board of Directors of the Detroit Art Museum; Edward Lothrop Warner; Edward Walker Elliott; Elizabeth Talmán Walker; Harrington E. Walker; Hiram H. Walker; Mrs. James Campbell; Susie Jenney; Alice Hoffe; Mary Griffin Walker; Lillie Brewster; Mary W. Cassell; Countess Ella Matuschka. (Defendants) RESPONDENTS.

Record of Proceedings

Fleming, Drake & Foster,
Windsor

Solicitors for Appellant.

Collyer-Bristow & Company,
4 Bedford Row, W.C.

London Agents for Appellant.

Blake, Lash, Anglin & Cassels,
Toronto

*Solicitors for Respondent
National Trust Co., Ltd.*

Blake & Redden,
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*London Agents for Respondent
National Trust Co., Ltd.*

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Toronto

*Solicitors for Respondents Mary Griffin
Walker, Elizabeth Brewster, Mary W.
Cassels.*

Freshfields, Leese & Munns,
31 Old Jewry, E.C. 2

*London Agents for Respondents Mary
Griffin Walker, Elizabeth Brewster,
Mary W. Cassels.*

IN THE PRIVY COUNCIL

ON APPEAL FROM THE APPELLATE DIVISION OF THE
SUPREME COURT OF ONTARIO

BETWEEN:

WILLIAM ROBINS,

(Plaintiff) APPELLANT,

AND

10 NATIONAL TRUST COMPANY LIMITED, Executors of the Estate
of Edward Chandler Walker; Stephen A. Griggs, Executor of the estate of
Mrs. Stephen Griggs; The Churchwardens of St. Mary's Church, Walker-
ville; The Board of Governors of the University of Toronto; The Board of
Governors of St. Andrew's College, Toronto; The Trustees of Hotel Dieu,
Windsor; The Churchwardens of All Saints' Church, Windsor; Stephen
A. Griggs; National Trust Company, Limited, Administrators of the estate
of Franklin Hiram Walker; Harrington E. Walker; Hiram H. Walker; F.
Caldwell Walker and National Trust Company Limited, Executors of the
Estate of James Harrington Walker; Edward Chandler Farrington;
Elizabeth Buhl; May Walker; Margaret Walker; Arthur H. Buhl and
20 Detroit Trust Company the last two named as Executors of the Estate of
Willis E. Buhl; Arthur H. Buhl; Lawrence D. Buhl; Elizabeth Buhl Shel-
don; F. Caldwell Walker; Mary Margaret Small; Jennie Williams; Lucy
Farrington; Board of Directors of the Detroit Art Museum; Edward
Lothrop Warner; Edward Walker Elliott; Elizabeth Talman Walker;
Harrington E. Walker; Hiram H. Walker; Mrs. James Campbell; Susie
Jenney; Alice Hoffe; Mary Griffin Walker; Lillie Brewster; Mary W.
Cassell; Countess Ella Matuschka:

(Defendants) RESPONDENTS.

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IN THE PRIVY COUNCIL
ON APPEAL FROM THE APPELLATE DIVISION OF THE
SUPREME COURT OF ONTARIO

RECORD
No. 1
Statement
of Case

BETWEEN:

WILLIAM ROBINS,

(Plaintiff) APPELLANT,

AND

NATIONAL TRUST COMPANY, LIMITED, Executors of the estate of Edward Chandler Walker; Stephen A. Griggs, Executor of the estate of Mrs. Stephen Griggs; the Churchwardens of St. Mary's Church, Walkerville; The Board of Governors of the University of Toronto; The Board of Governors of St. Andrew's College, Toronto; The Trustees of Hotel Dieu, Windsor; The Churchwardens of All Saints' Church, Windsor; Stephen A. Griggs; National Trust Company, Limited, Administrators of the estate of Franklin Hiram Walker; Harrington E. Walker, Hiram H. Walker, F. Caldwell Walker and National Trust Company, Limited, Executors of the estate of James Harrington Walker; Edward Chandler Farrington; Elizabeth Buhl; May Walker; Margaret Walker; Arthur H. Buhl and Detroit Trust Company, the last two named as Executors of the estate of Willis E. Buhl; Arthur H. Buhl; Lawrence D. Buhl; Elizabeth Buhl Sheldon; F. Caldwell Walker; Mary Margaret Small; Jennie Williams; Lucy Farrington; Board of Directors of the Detroit Art Museum; Edward Lothrop Warner; Edward Walker Elliott; Elizabeth Talman Walker; Harrington E. Walker; Hiram H. Walker; Mrs. James Campbell; Susie Jenney; Alice Hoffe; Mary Griffin Walker; Lillie Brewster; Mary W Cassell; Countess Ella Matuschka.

(Defendants) RESPONDENTS.

STATEMENT OF CASE

This is an appeal by the Plaintiff from the Judgment of the Appellate Division of the Supreme Court of Ontario, dated the 3rd of April, 1925, which dismissed, with costs, the appeal of the Plaintiff from the judgment pronounced by the Honourable Mr. Justice Mowat on the 23rd day of May, 1924.

The plaintiff claimed in this action a declaration that the Will of the late Edward Chandler Walker of Walkerville, in the County of Essex, in the Province of Ontario, dated the 27th February, 1914 was not the last Will and

RECORD
No. 1
Statement
of Case
—concluded

Testament of the Testator and that probate of same be annulled and that the previous Will dated the 27th December, 1901, made by the Testator, should be declared to be the Testator's true and last Will.

The judgment of the Honourable Mr. Justice Mowat dismissed the Plaintiff's action with costs including all costs which were reserved to be disposed of by the trial judge, and further directed that the costs of the Defendants the Trustees of Hotel Dieu, Windsor, be fixed at the sum of one hundred dollars, (\$100.00) and to be payable out of the estate of the late Edward Chandler Walker. The judgment of the Appellate Division upheld the judgment of the Honourable Mr. Justice Mowat and directed that the appeal be dismissed with costs. 10

IN THE SUPREME COURT OF ONTARIO

Writ issued the 23rd day of June, 1923.

BETWEEN:

WILLIAM ROBINS

PLAINTIFF,

AND

The NATIONAL TRUST COMPANY, LIMITED, et al, EXECUTORS,
DEFENDANTS.

RECORD

In the
Supreme
Court of
Ontario

No. 2
Statement
of Claim.
21st Sep-
tember, 1923.

AMENDED

10

STATEMENT OF CLAIM

1. The Plaintiff was for many years engaged in business in Canada but retired from active occupation on August 31st, 1912. In July, 1914, he left Canada to reside in London, England, where he still resides, and he did not revisit this country until November, 1922, having no business here since the first mentioned date except certain investments.

20 2. The Defendants, the National Trust Company, are an authorized Trust Company under the Provisions of the Companies' Act of the Province of Ontario, doing business in Canada and elsewhere with head office at the City of Toronto, in the Province of Ontario and were named as Executors and Trustees under an alleged will of the late E. Chandler Walker, late of the Town of Walkerville, in the Province of Ontario, Distiller.

3. The Plaintiff held the position of Secretary and General Manager of Hiram Walker & Sons, Limited, who carried on a very extensive distillery business, and was closely associated with what is known as the Walker interests included in which was the private interests of the late E. Chandler Walker and through which connection the Plaintiff became intimately acquainted and associated with the said E. Chandler Walker.

30 4. On or about the 21st day of December, 1901, the said late E. Chandler Walker did make his last will and testament whereby among other things he did give to the Plaintiff a legacy of one thousand shares of the capital stock of the said Company and in and by the said will did make the said Plaintiff one of the Executors and Trustees of the said will and further provided under Clause 30 thereof "The legacies given to the said Aikman and Robins are not attached to the office of Executor."

5. The Plaintiff alleges, as the fact is, that the said will of the 21st day of December, 1901, was the only true and last will of the said late E. Chandler Walker.

6. In or about the year 1904 the said late E. Chandler Walker showed

RECORD

In the
Supreme
Court of
Ontario

No. 2
Statement
of Claim.
21st Sep-
tember, 1923.
—continued

very decided signs of physical and mental deterioration and the same condition continued and became more acute as time went on and for several years prior to his death he was incapable of understanding and of making a will.

7. The said E. Chandler Walker died on or about the month of March, 1915.

8. After the death of the said late E. Chandler Walker, the Defendants brought into the Surrogate Court of the County of Essex, a document which purported to be the last will and testament of the said E. Chandler Walker, bearing date on or about the 27th day of February, 1914, and upon representations that the said document was the last will and testament of the said E. Chandler Walker, were granted Probate of the same by the Surrogate Court of the County of Essex. 10

9. The Plaintiff alleges as is the fact that the said E. Chandler Walker at the time of the making of the said alleged last will was incapable of making a will and that the same was not his will and the same was procured through undue influence.

10. The Plaintiff alleges as is the fact that the said late E. Chandler Walker at the time of the making of the said alleged will was not of sufficient testamentary capacity to understand the contents thereof and that the execution thereof was not made in accordance with the provisions of the Wills Act. 20

The Plaintiff further claims:

(1) That the said alleged last will dated the 27th day of February, 1914, may be declared to be not the last will and testament of the late E. Chandler Walker.

(2) That Probate of the same may be annulled.

(3) That the will dated the 21st day of December, 1901, may be declared to be the true and last will and testament of the said late E. Chandler Walker.

(4) That Probate may be granted by this Honourable Court to the Plaintiff as the surviving Executor and Trustee of the said will of the 21st day of December, 1901. 30

5. Such further and other relief as to this Honourable Court may seem proper.

The Plaintiff proposes that this action be tried at the Town of Sandwich, in the County of Essex.

Delivered this 21st day of September, 1923.

By Fleming, Drake & Foster, of the City of Windsor, in the County of Essex, Solicitors for the Plaintiff.

STATEMENT OF DEFENCE

1. Except as hereinafter stated, the defendant does not admit any of the allegations in the Statement of Claim contained. 40

2. In particular, the defendant denies (a) that the only true and last will of Edward Chandler Walker was made on the 21st day of December, 1901, and (b) that the late Edward Chandler Walker was for several years prior to his

No. 3
Statement
of Defence,
8th October,
1923.

death incapable of understanding and of making a will, and (c) that the late Edward Chandler Walker at the time of the making of his last will dated the 27th day of February, 1914, was incapable of making a will, and (d) that the said last will dated the 27th day of February, 1914, is not the will of the said Edward Chandler Walker and (e) that the said last will dated the 27th day of February, 1914, was procured through undue influence and (f) that the late Edward Chandler Walker at the time of the making of the said will of the 27th day of February, 1914, was not of sufficient testamentary capacity to understand the contents thereof, and (g) that the execution of the said will dated the 27th day of February, 1914, was not made in accordance with the provisions of the Wills Act.

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3. The Defendant alleges, as the fact is, that the late Edward Chandler Walker made certain codicils to the will referred to in the Statement of Claim as having been made on or about the 21st day of December, 1901.

4. The defendants further allege, as the fact is, that on or about the 27th day of February, 1914, the said late Edward Chandler Walker duly made and published his true and last will and testament whereby he revoked all former wills and writings testamentary made by him and whereof he appointed the defendant sole executor and trustee.

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5. The late Edward Chandler Walker died on or about the 11th day of March, 1915, and thereafter and on the 16th day of September, 1915, Probate of the said last will and testament of the late Edward Chandler Walker bearing date on or about the 27th day of February, 1914, was duly granted to the defendant by the Surrogate Court of the County of Essex being the proper Court in that behalf.

6. Since the said grant of Probate on the 16th day of September, 1915, the defendant has duly administered the estate of the late Edward Chandler Walker in accordance with his said last will and testament and carried out the provisions of his said last will and testament. The defendant has in the course of such administration, amongst other things, paid and satisfied all the legacies and bequests made by said last will and testament in so far as they were capable of being paid and satisfied.

30

7. The plaintiff was aware at the time of its execution and thereafter of the will made by the late Edward Chandler Walker in the year 1901 and was similarly aware that the plaintiff had been named as an executor therein. The plaintiff knew of the death of the said late Edward Chandler Walker almost immediately after it occurred. The plaintiff, however, with such knowledge stood by for eight years more or less after the death of the said late Edward Chandler Walker and permitted probate of the last will and testament of said late Edward Chandler Walker dated the 27th February, 1914, to be granted to the defendant and permitted the estate of the said Edward Chandler Walker to be administered by the defendant under his last will dated February 27th, 1914, and under said probate thereof, and permitted the various legacies and bequests under said last will and testament to be paid and satisfied as far as they were capable of being paid and satisfied.

40

8. The plaintiff is estopped from now bringing this action and from now

RECORD

In the
Supreme
Court of
Ontario

No. 3
Statement
of Defence,
8th October,
1923.

-continued

RECORD

*In the
Supreme
Court of
Ontario*

No. 3
Statement
of Defence,
8th October,
1923.
-continued

making the allegations which he seeks to make in this action and from obtaining the relief which he claims in this action.

9. By reason of the laches and delay of the plaintiff, the plaintiff is not entitled to bring or succeed in or obtain the relief claimed in this action.

10. The defendant submits that this action should be dismissed with costs. Delivered this 8th day of October, 1923, by Blake, Lash, Anglin & Cassels, of 25 King Street West, Toronto, Solicitors for the defendant.

JOINDER OF ISSUE

No. 4
Joinder of
Issue.
9th October,
1923.

The Plaintiff joins issue with the Defendant upon its Statement of Defence delivered herein.

Delivered this 9th day of October, 1923, by Fleming, Drake & Foster, of the City of Windsor, in the County of Essex, Solicitors for the Plaintiff.

ORDER ADDING PARTIES DEFENDANTS

No. 5
Order
adding
Parties
Defendants.
20th November,
1923.

The Honourable Mr. Justice Orde Tuesday the 20th day of November,
In Chambers 1923.

Upon the application of the Plaintiff for directions in presence of Counsel for the Defendants and upon hearing read the Affidavit of Oscar Ernest Fleming; filed, the Pleadings in the action, the Order of the Local Judge for the County of Essex, dated the 15th day of October, 1923, the Order of the Master in Chambers dated the 17th day of October, 1923, the Will of Edward Chandler Walker, dated the 27th day of February, 1914, and his previous will dated the 21st day of December, 1901.

1. It is ordered that the trial of this action be and the same is hereby postponed until the Plaintiff is at issue with all parties including those hereby added, and that the Notice of Trial given for the 26th day of November, 1923, be and the same is hereby set aside.

2. And it is further ordered that the dates for the return of the Commissions issued, pursuant to the said Orders of the 15th day of October, 1923, and the 17th day of October, 1923, be and the same are hereby extended until one month from the date on which the Plaintiff is at issue with all parties including those hereby added and the Plaintiff shall serve notice forthwith of being so at issue upon all the said parties who appear.

3. And it is further ordered that all beneficiaries under the last will and testament of Edward Chandler Walker dated the 27th day of February, 1914, be and they are hereby added as parties Defendants in this action, save and except those mentioned in paragraph "6" hereof, and Mrs. Ephraim S. Williams

4. And it is further ordered that the plaintiff be at liberty to issue a concurrent writ of Summons for service out of jurisdiction, on the Defendants following, namely;

- Edward Chandler Farrington:
 who resides at the City of Buffalo, in the State of New York;
 Mrs. T. D. Buhl:
 Mrs. Franklin H. Walker:
 Mrs. J. Harrington Walker:
 Arthur H. Buhl and Detroit Trust Company, Executors:
 Willis E. Buhl Estate:
 Arthur H. Buhl:
 Lawrence D. Buhl:
 10 Elizabeth B. Sheldon:
 F. Caldwell Walker:
 Mary Margaret Small:
 Jennie Williams:
 Mrs. Harvey Farrington:
 Board of Directors, Detroit Art Museum:
 Edward Lothrop Warner:
 Edward Walker Elliott:
 Elizabeth Talman Walker:
 Harrington E. Walker:
 20 Hiram H. Walker:
 who reside at the City of Detroit, in the State of Michigan:
 Mrs. James Campbell:
 who resides in the City of Lyons, in the State of New York:
 Mrs. Susie Jenney:
 who resides in the City of Troy, in the State of New York:
 Mademoiselle Alice Hoffe:
 who resides at the City of Paris, France:
 Mary Griffin Walker:
 Mrs. A. W. Brewster:
 30 Mary W. Cassell:
 who reside at the City of Washington, in the District of Columbia:
 Countess Ella Matuschka:
 who resides at Schloss Bechau in Silesia, Germany:

5. And it is further ordered that service of notice of the said Writ of Summons and of this order upon the Defendants named in the next preceding paragraph hereof, at their respective places of residence aforesaid, or at such other place or places as said Defendants may be found, shall be good and sufficient service of the said Writ upon the said Defendants:

6. And it is further ordered that the daughters of Mrs. James Campbell, 40 the Children of Mrs. Ephraim S. Williams, and the two daughters of Mrs. Susie Jenney, beneficiaries under the said will of the said Edward Chandler Walker, dated the 27th day of February, 1914, shall be deemed by virtue of the provisions of Consolidated Rule 74 to be sufficiently represented by the Defendant the National Trust Company, Limited.

7. And it is further ordered that service of a copy of this order and of notice of the said Writ of Summons by sending the same by pre-paid and registered post letter addressed to the Defendant Countess Ella Matuschka, at

RECORD

In the
 Supreme
 Court of
 Ontario

No. 5
 Order
 adding
 Parties
 Defendants.
 20th November,
 1923.
 —continued

RECORD

In the
Supreme
Court of
Ontario

No. 5
Order
adding
Parties
Defendants.
20th Novem-
ber, 1923.
-continued

Schloss Bechau in Silesia, Germany, and by delivered copy of this order and notice of the said writ to the Detroit Trust Co. at the City of Detroit, Michigan, shall be good and sufficient service of the Writ upon the said Defendant.

8. And it is further ordered that service of a copy of this order and of notice of the said Writ of Summons by sending the same by pre-paid and registered post letter, addressed to the Defendant, Mademoiselle Alice Hoffe, 74 Rue du Faubourg St. Honore, Paris, France, shall be good and sufficient service of the Writ upon the said Defendant.

9. And it is further ordered that the Writ of Summons, Pleadings, record and other proceedings in this action be amended by adding as parties Defendants, the parties hereby added. 10.

10. And it is further ordered that the time for appearance to the said Writ, by the said Mademoiselle Alice Hoffe, who resides at the City of Paris, France, and Countess Ella Matuschka, who resides at Schloss Bechau in Silesia, Germany, be within forty days after service thereof.

11. And it is further ordered that the time for appearance to the said Writ by such of the other added Defendants as reside in the United States of America be within twenty days after service thereof.

12. And it is further ordered that the costs of this application be reserved to be disposed of by the trial Judge. 20
Dec. 12/1923

Entered S.C.O. B#5
Folio 64 Dec. 12/23
"H.C." I.R.E.

(Sgd.) Henry Clay,
Local Registrar E.

STATEMENT OF DEFENCE

of the Trustees of Hotel Dieu, Windsor

No. 6
Statement
of Defence
of Trustees
of Hotel
Dieu.
9th January,
1924.

1. These Defendants state and the fact is that under the Will of Edward Chandler Walker dated the 27th day of February, 1914, and referred to in the Plaintiff's Statement of Claim, a legacy was left to them in the amount of Ten Thousand Dollars (\$10,000.00). 30

2. These Defendants further state that under the Will of the said Edward Chandler Walker dated the 21st day of December, 1901, and referred to in the Plaintiff's statement of Claim they were named as legatees in the amount of Ten Thousand Dollars (\$10,000.00).

3. These Defendants submit their rights to this Honourable Court.

Delivered at the City of Windsor in the County of Essex this 9th day of January, A.D. 1924, by McTague, Clark & Cumming, Solicitors, LaBelle Building, Windsor, Ontario, Solicitors for the Defendants, The Trustees of Hotel Dieu, Windsor, Ontario.

STATEMENT OF DEFENCE

of the Defendant

RECORD

*In the
Supreme
Court of
Ontario*No. 7
Statement of
Defence of
Governors
of St.
Andrew's
College.
15th Janu-
ary, 1924.

The Board of Governors of St. Andrew's College, Toronto.

1. The Defendant, the Board of Governors of St. Andrew's College, Toronto, denies the allegations contained in the Statement of Claim of the Plaintiff herein, and puts him to the proof thereof.

2. That on or about the eleventh day of March, 1915, Edward Chandler Walker, the Testator mentioned in the Writ of Summons and Pleadings herein, departed this life, having first duly made and published a document purporting to be his Last Will and Testament, which said Will was duly proved in the Surrogate Court of the County of Essex on or about the 16th day of September, A.D. 1915, by the National Trust Company, Limited, Executors therein named, and Letters Probate of the said Will were duly granted to the said the National Trust Company, Limited, by the said Surrogate Court.

3. That the said Defendant, the Board of Governors of St. Andrew's College, Toronto, was furnished with a certified copy of the said last Will and Testament of the said Edward Chandler Walker, deceased, having attached thereto a certified copy of the said Letters Probate.

4. That said Will contains, among others, the following bequest: —
20 “(d) To the Board of Governors of St. Andrew's College, Toronto, for the purposes of the College, the sum of (\$10,000.00) Ten Thousand Dollars;

5. That the said The National Trust Co., Ltd., as Executors of the said Last Will and Testament of the said Edward Chandler Walker, deceased, paid the full amount of the Legacy to the Board of Governors of St. Andrew's College, Toronto, on the 13th day of November, 1915.

6. That the said Defendant, The Board of Governors of St. Andrew's College, Toronto, did, at the time of the payment of the said legacy to it, believe, and does now believe that it, the said Board, was justly and lawfully entitled to receive the said legacy and to give a good and valid Discharge to the said Executors for the payment thereof.

7. The said Will having been duly and regularly proved and said legacy paid and received in good faith, the plaintiff's Claim as against the Board of Governors of St. Andrew's College, Toronto, for a return or account of said legacy, is barred by Section “50” of the Trustee Act. R.S.O. (1914), Chapter “121” and by the Provisions of the Statute of Limitations, being Chapter “75” of the R.S.O (1914) in any event of the cause.

The Defendant, The Board of Governors of St. Andrew's College, Toronto, Therefore Claims:

40 (1) That this Action be dismissed as against it with Costs.

Delivered this Fifteenth day of January, 1924, by Smith & Roberts, of No. 12 Richmond St. East, Toronto. Solicitors for the Defendant, the Board of Governors of St. Andrew's College, Toronto.

RECORD

STATEMENT OF DEFENCE

In the
Supreme
Court of
Ontario

No. 8
Statement of
Defence of
Governors
of Uni-
versity of
Toronto.
19th Janu-
ary, 1924.

Of the Governors of the University of Toronto.

The said Defendants the Governors of the University of Toronto have appeared to the Writ herein and submit the questions arising under this litigation to this Honourable Court to be dealt with as this Court may direct.

Delivered this 19th day of January, 1924, by Kerr, Davidson, Paterson & McFarland, 807 Excelsior Life Bldg., Toronto. Solicitors for the Defendants, The Governors of the University of Toronto.

STATEMENT OF DEFENCE

Of the Defendant, Mary Griffin Walker

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No. 9
Statement of
Defence of
Mary Griffin
Walker,
16th Janu-
ary, 1924.

1. The Defendant, Mary Griffin Walker is the lawful widow of Edward Chandler Walker, late of the Town of Walkerville, in the County of Essex, deceased, who died on or about the eleventh day of March, 1915.

2. The said Edward Chandler Walker duly made his last will and testament dated 27th February, 1914, whereof he appointed the National Trust Company, Limited, the sole executors and which last will and testament was duly proved in the Surrogate Court of the County of Essex, the proper Court in that behalf and Letters Probate thereof were on the 16th September, 1914, granted by the said Surrogate Court to the Defendant, The National Trust Company, Limited.

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3. Upon the grant of probate of the said will, the said Defendant, The National Trust Company, Limited, proceeded with the administration of the estate of the said Edward Chandler Walker and has duly administered the said estate.

4. By his said last will and testament the said Edward Chandler Walker revoked all wills and writings testamentary by him at any time heretofore made and thereby revoked the will previously made by him and dated the 21st December, 1901, referred to in the amended Statement of Claim.

5. At the date of the said revoked will of 21st December, 1901, the Plaintiff was one of the directors of Hiram Walker & Sons, Limited, referred to in the amended Statement of Claim, and was intimately associated in business with the said Edward Chandler Walker, but subsequent thereto and before the execution of his said last will and testament of 27th February, 1914, the Plaintiff had ceased to be a director of Hiram Walker & Sons, Limited, and the intimate association between the Plaintiff and the said Edward Chandler Walker, deceased, had terminated.

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6. Insofar as the allegations in the Plaintiff's Statement of claim are in conflict with the facts herein set forth, this Defendant denies all such allegations and puts the Plaintiff to the proof thereof.

7. This defendant particularly denies the allegation in the 9th paragraph of the Statement of Claim that the said Edward Chandler Walker, at the time of the making of his last will and testament of 27th February, 1914, was in-

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capable of making a will and that the same was not his will and was procured by undue influence.

8. This Defendant also denies the allegation in the 10th paragraph of the Statement of Claim that at the time of the making of his said last will and testament of 27th February, 1914, the said Edward Chandler Walker was not of sufficient testamentary capacity to understand the contents thereof and that the execution thereof was not made in accordance with the provisions of the Wills Act.

9. This Defendant submits that in any event this Court has not jurisdiction to grant the relief claimed by the third and fourth paragraphs in the Plaintiff's claim for relief, whereby he claims:

(3) That the will dated the 21st day of December, 1901, may be declared to be the true and last will and testament of the said late E. Chandler Walker; and

(4) That Probate may be granted by this Honourable Court to the Plaintiff as the surviving executor and trustee of the said will of the 21st day of December, 1901.

10. This Defendant claims that this action be dismissed as against her with costs.

Delivered this 16th day of January, 1924, by Saunders, Kingsmill, Mills & Price, of 85 Richmond St. West, Toronto. Solicitors for the Defendant, Mary Griffin Walker.

STATEMENT OF DEFENCE

of

Elizabeth Brewster (named in the Statement of Claim as Lillie Brewster)

and

Mary W. Cassels (named in the Statement of Claim as Mary W. Cassell)

1. By the Last Will and Testament of the above-named Edward Chandler Walker dated 27th February, 1914, the Defendant Elizabeth Brewster (in the said will described as "Mrs. Andre W. Brewster of Washington, D.C., sister of my wife") was given a bequest of Pere Marquette Bonds of the par value of Twenty Thousand Dollars; and the Defendant, Mary W. Cassels (in the said will described as "my niece Mary W. Brewster") was given a bequest of Pere Marquette bonds of the par value of Ten Thousand Dollars.

2. The Defendants, the National Trust Company, Limited, who were appointed executors, duly proved the said Will and took upon them the administration of the said estate and in due course of said administration assigned and transferred to these Defendants the said bonds so bequeathed to them in satisfaction of the said bequests, and obtained releases and discharges from these Defendants in respect of all their claims against the defendants, the National Trust Company, Limited, and against the estate of the said Edward Chandler Walker.

RECORD

In the
Supreme
Court of
Ontario

No. 9
Statement of
Defence of
Mary Griffin
Walker,
16th Janu-
ary, 1924.
-continued

No. 10
Statement of
Defence of
Elizabeth
Brewster
and Mary
W. Cassels,
4th Febru-
ary, 1924.

RECORD

*In the
Supreme
Court of
Ontario*

No. 10
Statement of
Defence of
Elizabeth
Brewster
and Mary
W. Cassels,
4th Febru-
ary, 1924.
—continued

3. These defendants submit that they received the said bonds, the subject of the said respective bequests, in good faith and without notice or knowledge of any irregularity or defect in the said Will or any want of testamentary capacity in the said Edward C. Walker at the date thereof.

4. These defendants deny that there was any irregularity or defect in the said Will or any want of testamentary capacity in the said Edward C. Walker at the date of the making of the said will.

5. These Defendants say that in any event the Plaintiff is estopped by his acquiescence, delay and laches from bringing this action or from attacking or impugning the validity of the said Will or the bequests to these Defendants 10 or their right to receive the property bequeathed to them.

6. These Defendants submit that in any event this Court has not jurisdiction to grant the relief claimed by the third and fourth paragraphs of the Plaintiff's claim for relief whereby the Plaintiff claims that the Court may declare an alleged prior will of the said Edward C. Walker dated 21st December, 1901, to be his true last Will and Testament and that probate thereof may be granted by this Court.

7. These Defendants claim that this action may be dismissed as against them with costs.

Delivered this fourth day of February, 1924, by Saunders, Kingsmill, Mills 20 & Price of 85 Richmond Street West, Toronto, solicitors for the Defendants, Elizabeth Brewster and Mary W. Cassels.

JOINDER OF ISSUE

No. 11
Joinder of
Issue.
6th Febru-
ary, 1924.

The Plaintiff joins issue with the Defendants, Lillie Brewster (Elizabeth Brewster) and Mary W. Cassell, (Mary W. Cassels) upon their Statement of Defence delivered herein.

Delivered this 6th day of February, 1924, by Fleming, Drake & Foster, of the City of Windsor, in the County of Essex, Solicitors for the Plaintiff.

IN THE SUPREME COURT OF ONTARIO
(High Court Division)

BEFORE THE HONOURABLE MR. JUSTICE MOWAT

BETWEEN:

WILLIAM ROBINS

PLAINTIFF,

AND

NATIONAL TRUST COMPANY, LIMITED, ET AL,

DEFENDANTS.

RECORD

In the
Supreme
Court of
Ontario

No. 12
Proceedings
at Trial,
14th May,
1924.

10 Trial at Sandwich, Ontario, commencing May 14, 1924, without a Jury
COUNSEL:

D. L. McCARTHY, K.C.,
O. E. FLEMING, K.C., and
A. H. FOSTER,

For the Plaintiff.

GLYN OSLER, K.C.,
J. H. RODD, K.C., and
H. C. WALKER.

For National Trust Co., Limited.

I. F. HELLMUTH, K.C., and
D. W. SAUNDERS, K.C.

For Mrs. Mary Griffin Walker, Mrs.
Lillie Brewster, and Mrs. Mary W.
Cassell.

20 C. P. McTAGUE

For Hotel Dieu.

MR. McCARTHY: I do not know which of the defendants are represented.

HIS LORDSHIP: Who represents the National Trust Co?

MR. OSLER: I appear for the National Trust Company, together with J.
H. Rodd, K.C., and Mr. Harold Walker.

MR. HELLMUTH: I appear with my learned friend Mr. Saunders for Mrs.
Mary Griffin Walker, Mrs. Lillie Brewster, and Mrs. Mary W. Cassell.

HIS LORDSHIP: I see there is a Countess among the defendants.

MR. McCARTHY: I do not think she is represented, she is the only daugh-
ter of the late Mr. Frank Walker.

30 MR. McTAGUE: I represent the Hotel Dieu.

HIS LORDSHIP: Is there anyone here who can make an announcement
whether the other defendants are represented or not represented?

MR. OSLER: Hiram H. Walker and Harrington E. Walker are officially
represented by The National Trust Co.

HIS LORDSHIP: And the rest of the defendants?

MR. OSLER: I take it that the rest are taking the same position.

MR. McTAGUE: I represent the Trustees of the Hotel Dieu and am merely

RECORD

In the
Supreme
Court of
Ontario

No. 12
Proceedings
at Trial,
14th May,
1924.
—continued

down at the opening of the Court, leaving the case in the hands of the Court, because we have the same legacy under either will.

HIS LORDSHIP: You have not much to fight about.

MR. McTAGUE: Not much to fight about, unless intestacy is established.

HIS LORDSHIP: Will it be necessary to call the other parties in open court, can counsel tell me?

MR. OSLER: I should not think so, as far as I am concerned.

HIS LORDSHIP: I should not like to proceed without calling them, because somebody might appear afterwards and say they had had no opportunity.

MR. OSLER: Most of them have not pleaded, or entered an appearance. 10

HIS LORDSHIP: Is judgment signed against them?

MR. OSLER: They just let the defence stand.

HIS LORDSHIP: I suppose so, but I must be careful. Crier, take all the names, except those mentioned, and call them three times both in and out of the court room.

MR. FLEMING: I might state all the defendants have been served.

HIS LORDSHIP: Served with what?

MR. FLEMING: With the order made by Mr. Justice Orde. They are on file. There are only five defendants who have appeared and put in a defence.

HIS LORDSHIP: The National Trust Company, Mary Griffin Walker, Mrs. 20
Brewster, and Mary W. Cassell.

MR. FLEMING: In one group. The Hotel Dieu is another; St. Andrew's College is another, and Toronto University another. They have all been served with notice of trial, and the admission of service is filed.

MR. McCARTHY: Now is the time to file it.

HIS LORDSHIP: You are ready to go on without calling these parties?

MR. McCARTHY: I might refer to the Order of Mr. Justice Orde, and I will file it, together with Notice of Trial. It is an application for directions, made on the 20th of November, 1923. And on the application his Lordship made certain orders in regard to commission evidence. 30

"3. AND IT IS FURTHER ORDERED that all beneficiaries under the last will and testament of Edward Chandler Walker dated the 27th day of February, 1914, be and they are hereby added as parties Defendants in this action, save and except those mentioned in paragraph "6" hereof, and Mrs. Ephraim S. Williams."

And the plaintiff was to issue a Writ of Summons on the following defendants:
Edward Chandler Farrington, who resides at the City of Buffalo, in the State of New York.

Mrs. T. D. Buhl; Mrs. Franklin H. Walker; Mrs. J. Harrington Walker; Arthur H. Buhl and Detroit Trust Company, Executors of Willis E. Buhl Estate; Arthur H. Buhl; Lawrence D. Buhl; Elizabeth B. Sheldon; F. Caldwell Walker; Mary Margaret Small, Jennie Williams; Mrs. Harvey Farrington; Board of Directors Detroit Art Museum; Edward Lothrop Warner; Edward Walker Elliott; Elizabeth Talman Walker; Harrington E. Walker; and Hiram H. Walker; who reside at the City of Detroit, in the State of Michigan. 40

Mrs. James Campbell, who resides in the City of Lyons, in the State of New York.

Mrs. Susie Jenney, who resides in the City of Troy, in the State of New York.

Mademoiselle Alice Hoffe, who resides at the City of Paris, France.

Mary Griffin Walker; Mrs. A. W. Brewster; and Mary W. Cassell; who reside at the City of Washington, in the District of Columbia.

Countess Ella Matuschka, who resides at Schloss Bechau in Silesia, Germany.

And the time for entering an Appearance has been fixed. I suppose I should properly prove service of the Writ?

10 HIS LORDSHIP: I will take the post-office certificate of registration.

MR. MCCARTHY: The Pleadings have been noted closed in certain cases. I have Notice of Trial, with admission of service, by the solicitors for the Trustees of Hotel Dieu. They are represented anyway by Mr. McTague. Also admission by Mr. Saunders' firm for the parties he and Mr. Hellmuth represent. Admission by C. P. Smith for St. Andrew's College. Admission by Blake, Lash & Cassels for the National Trust Company. And affidavit of service on Mr. Paterson for the University of Toronto.

20 Reporter's note: Mr. McCarthy states that Mr. Fleming's affidavit of the 20th of March, 1924, certifies to the thirty-one defendants having been served with Notice of Trial. The reporter is unable to get this affidavit of Mr. Fleming's.

HIS LORDSHIP: It is so formal I think I will get Mr. Foster and Mr. Walker to confer during the lunch hour and see that there is admission of service in each case.

MR. MCCARTHY: I will postpone the filing of this document until such time as they get these things straightened out.

HIS LORDSHIP: I have not read the pleadings.

30 MR. OSLER: May I mention a matter before my learned friend opens? A commission was sent to London, Eng., to take the evidence of certain witnesses, and our London agents have telegraphed us on the 1st of May to say that the commission had been executed and was dispatched by next mail to New York.

HIS LORDSHIP: Have you got that?

MR. OSLER: Not yet.

HIS LORDSHIP: Will it be here before this trial is over? It will take several days?

MR. OSLER: I suppose so. I just mention it in advance in case there is delay in the mail.

MR. MCCARTHY: I understand they were forwarded on the "Majestic," and it docked yesterday.

40 HIS LORDSHIP: I understand it is an action for a declaration that the Will of the late E. C. Walker, admitted to Probate, is not the true Will of E. C. Walker, owing to undue influence, and so on, the usual cases; and for a declaration that a previous Will is the Will?

MR. MCCARTHY: Yes, my lord.

HIS LORDSHIP: The onus is upon you to set aside the Probate.

MR. MCCARTHY: Yes.

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MR. OSLER: May I state there is some question, in our opinions, as to whether anything else can be at issue except the Will of 1914, admitted to Probate. In other words, these proceedings did not originate in the Surrogate Court, and I take it, in these circumstances, your lordship is not in a position to deal with the Will of 1901, the previous Will.

HIS LORDSHIP: It is merely negative?

MR. OSLER: Precisely. It is not necessary to argue that at the moment.

HIS LORDSHIP: You reserve that.

MR. MCCARTHY: In the event of our succeeding in having your lordship annul the Probate, and set aside the Will, it follows we will have to go through the ordinary form of being admitted to probate, in respect of the first Will. That, in short, is the issue. 10

In the first place, I ask my learned friend to produce the Will of 1901.

HIS LORDSHIP: Who have custody of the Will of 1901?

MR. MCCARTHY: I presume the National Trust Company; I understand they are the executors under both Wills. And it is for the court to determine, I presume, but I have no doubt the Trust Company will give such assistance as they can in determining the true and proper Will.

HIS LORDSHIP: If they are the executors under the second Will, they ought to have it. I suppose they have it? 20

MR. MCCARTHY: I put in Notice to Produce and admit Admission of Service, by my friend Mr. Osler's firm, asking for the production of the Will of Mr. E. C. Walker, of the 14th of February, 1914, and the original Will of November 21st, 1901. I understand there were two codicils.

MR. OSLER: I have the Will of 1901. I have the second codicil dated the blank day of November 1913. Nobody has been able to find the first codicil. And I have a copy of the third codicil; nobody has been able to find an executed copy of the third codicil; this is an unexecuted copy.

MR. MCCARTHY: I will put in the Notice to Produce, as Exhibit No. 1.

EXHIBIT NO. 1 Filed by Notice to produce documents. 30
Plaintiff

The Will dated 21st December, 1901, will be Ex. No. 2.

EXHIBIT NO. 2 Filed by Will dated Dec. 21, 1901.
Plaintiff

The codicil dated the blank day of November, 1913, will be Ex. No. 3, in which E. C. Walker revokes the appointment of his brothers Franklin Hiram Walker, J. Harrington Walker, and William Aikman, and William Robins, as executors and trustees, and appoints the National Trust Company.

EXHIBIT NO. 3 Filed by Codicil dated blank day of November,
Plaintiff 1913. 40

My friend hands me an unsigned document which is said to be the third codicil, and it is not signed. I just put it in for what it is worth.

EXHIBIT NO. 4 Filed by Codicil unsigned.
Plaintiff

EXHIBIT NO 5 Filed by Probate of E. C. Walker's will, dated
Plaintiff 27th Feb., 1914.

MR. McCARTHY: I am going to take the evidence a little out of order because of certain medical men who are very anxious to get away. I will ask your lordship to let me call them now.

HIS LORDSHIP: It is a reasonable thing to let the doctors get away.

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DR. CHARLES W. HOARE, Sworn. Examined by MR. McCARTHY:

Q.—Dr. Hoare, you are a medical practitioner residing and carrying on business where? A.—Walkerville.

Q.—How long have you been in active practice? A.—Thirty-six years.

Q.—Did you attend the late E. C. Walker in his life-time? A.—Yes.

10 Q.—Over what period did your attendance cover? A.—January 1891 to July 1907.

HIS LORDSHIP: What does that mean with respect to attendance, was he a delicate man?

MR. McCARTHY: Can you offer evidence as to your attendance between 1891 and 1907? If I might suggest, say up to 1900: what was the nature of your attendance, or treatment which you gave him between the years 1891 and 1900? A.—The early part of my attendance was for transient ailments, probably for the first two or three years; and then there was some infective conditions arose which required fairly constant treatment up till 1900.

20 Q.—What you call “infective condition,” when did that arise? A.—My attendance for that specific infection occurred in 1893.

Q.—Between 1891 and 1893 you describe the attendance as for transient ailments? A.—Yes.

Q.—Was Mr. Walker a strong or delicate man? A.—I did not consider him to be a robust man.

Q.—And the nature of the ailments during the period from 1891 to 1893 were just as any man might have? A.—Yes, any man.

30 Q.—And have you any idea of the number of visits during that first period from 1891 to 1893? A.—I can only talk of it in the way of charges, which were most for visits; I think something like forty odd.

Q.—Forty odd, in the first two years? A.—Yes.

Q.—Then you spoke of infective conditions in 1893. What effect had that on his general health? A.—It had an effect in the way of inducing a self-centering about his physical condition. He was very apprehensive of his ailments, and that was one of the things that was most pronounced, concurrently with this

MR. HELLMUTH: I cannot hear very well.

40 HIS LORDSHIP: Try to get in the way of speaking as if you were speaking to someone at the other end of the room, as if you were making a speech. doctor.

THE WITNESS: My attendance from 1893 to 1900 was for various ailments, infective conditions such as attacks of bronchitis, catarrhal conditions, and of late years intestinal disturbances, and very largely of nervous manifestations which came from his being self-centered.

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MR. McCARTHY: Were these catarrhal troubles, and intestinal troubles, the result of infection? A.—I wouldn't say so; only such as might arise from climatic and other sources.

HIS LORDSHIP: Doctor, as to the infectious diseases you spoke of, and those you do not think belong to that, do you wish to make a division between them? Would the infectious diseases form part of the case? Are they something private you do not wish to tell, and should not tell if not necessary? A.—Yes.

Q.—Do the best you can.

MR. McCARTHY: I am hampered in that way. Of course we say that 10 the subsequent results were the result of infection.

HIS LORDSHIP: Can that be avoided in any way?

MR. McCARTHY: I should like to avoid it if I can; I am very doubtful of being able to in view of what subsequently followed.

HIS LORDSHIP: It is painful for me to have to go into a man's private history, as to private diseases; it is painful for everybody. If it has to be done, it has to be done.

MR. McCARTHY: May we speak of it as "infection?"

HIS LORDSHIP: Perhaps so; leave it at that in the meantime.

MR. McCARTHY: From 1893 on you treated him for the results of infec- 20 tion which he had contracted? A.—Yes.

Q.—What I wanted to ask you was whether these intestinal and catarrhal troubles were the result of the infection which had been contracted? A.—I did not consider so, I thought they were concurrent.

Q.—What result, if any, was there, or what consequences followed as a result of the infection? A.—About 1900 there were manifestations of infection in connection with the nervous system, which became progressively worse until about 1905.

Q.—Yes? When you say they became "progressively worse," what were the symptoms? A.—The recurrences developed and became worse. And there 30 were manifestations in the nervous system in a way which eventually culminated in attacks of aphasia. This went on with greater frequency and severity until the termination of my attendance.

Q.—Will you just explain to his lordship what these attacks of aphasia were? A.—Interference with the speech, difficulty in articulation, and a mixing up of words, saying certain words when there were others should have been used.

Q.—How long would these attacks last? A.—Sometimes they would last for 24 hours, and the severest I think probably was 48 hours.

Q.—With what frequency would they recur? A.—Not frequent, I should 40 think there might have been attacks approximately ten to twelve attacks in two or three years.

Q.—Ten to twelve attacks in what years? A.—1905 to 1907.

Q.—Then do I understand from you that these attacks of aphasia did not begin until 1905? A.—I think the first attack was about 1905.

Q.—Well then, going back between 1900 and 1905, what, if any, were the

manifestations of the infection which he had contracted? A.—Showing themselves in the nervous system in the way of numbness in the face, hands, legs—those were the principal ones.

Q.—How long would this numbness last? A.—Sometimes from a few hours to a day.

Q.—What effect would it have on him while the numbness lasted? A.—Produce a very apprehensive condition as to what the outcome would be, and an inability to carry on his usual life.

10 Q.—And what was his physical condition during that period? A.—His physical condition was; although a man well developed and of good physique, he was not robust.

Q.—What have you to say of his mental condition?

HIS LORDSHIP: During what period?

MR. MCCARTHY: The same period, from 1900 to 1905.

A.—His mental condition from 1900 to 1905: there was not much change to be noticed in his mental condition.

20 Q.—Coming to the period from 1905 to 1907 when the attacks of aphasia commenced, how did that affect his physical condition? A.—It didn't seem to impair his motility, by way of his getting around, only during the times of the attacks, when he was generally confined to the house, but apart from that it did not seem to interfere with his ability to walk around, and so on.

HIS LORDSHIP: Do you know in what year he was born, about?

MR. HELLMUTH: He was, I understand, 64 at the time of his death.

MR. MCCARTHY: He was born in 1851.

Q.—Doctor, what effect did the attacks of aphasia have on his physical condition? A.—During the interval I did not see any particular effect, he was able still to go to his business.

30 Q.—While the attack of aphasia lasted, what was the effect of the aphasia on his physical condition? A.—Well, I can only say this, when he was confined to the house he could walk around the room. There was not any particular interference except the dizziness. There was dizziness at the time of the attacks of aphasia.

Q.—What was the effect on his mental condition during the attack? A.—I would say there was a good deal of confusion of the mental condition.

Q.—What do you mean exactly by that? A.—That he would not be clear as to either what he was saying or how it was said.

40 Q.—He would not be clear as to either what he was saying or how it was said? A.—You must realize, sir, that this is a long time ago, and the facts of this case, although implanted very strongly on my mind, because it was an unusual case, yet it is one of the things you can't be absolutely definite in connection with.

Q.—I appreciate that. Now, his condition between 1905 and 1907, when you ceased your attendance, did he show improvement? A.—No, it looked to me as though there was a slightly progressive degeneration of the mental faculties and nervous system as well.

Q.—A slightly progressive degeneration of the mental faculties and nerv-

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ous system as well? A.—Yes, in other words, I felt that these attacks had left an imprint of a degenerative type.

Q.—Going back to the infection he had contracted some years before; what do you say as to what bearing, if any, that had on his condition between 1905 and 1907? A.—I considered it was responsible for it.

Q.—That is, the arteriosclerosis? A.—Yes, arteriosclerosis.

Q.—And degeneracy of the mental and nervous system? A.—Yes.

Q.—Is that what you would expect to find in a case of that kind? A.—
Yes.

Q.—It is typical of that infection? A.—Yes.

Q.—Was there any particular incident you remember in 1905 in connection with his condition? A.—Yes, I think that probably up to that time, up to 1905, he had the worst manifestations of any interference with his nervous condition of any change I had seen.

Q.—Would you describe those to his lordship? A.—It was aphasia.

HIS LORDSHIP: I have taken down this note; that he was not particular as to what he would say or do. Now, that is an important statement. I do not know what it means. Do you mean that he would not hesitate to call a man what he thought he was, or that he would do unexpected things, not done in his class of society, or what? A.—He would try to describe his symptoms and
would mix up the words. 20

Q.—He was not particular as to what he would say or do, is what I have taken down. That has a bearing on the mental condition? A.—I don't think I made the statement that he was not particular what he did; I do not think there was ever anything at any time that I could say he did that was unbecoming.

MR. MCCARTHY: Up to 1905, you said something about worse conditions? A.—I think the aphasic attacks began in 1905, and, among other things a change of scene and air, and so on, was advised, and he went to Muskoka.

Q.—On whose advice was that? A.—I think it was mine, after a con- 30
sultation with Mrs. Walker and himself.

Q.—By the way, his lordship will probably want to know—I understand he was married in 1896, or thereabouts? A.—Thereabouts.

HIS LORDSHIP: To Mrs. Mary Griffin Walker.

MR. MCCARTHY: To Mrs. Mary Griffin Walker.

Q.—You say on your advice to them, and after consultation with Mrs. Walker, he went to Muskoka in 1905? A.—Yes. I might just say they formerly went away, they would take trips abroad, trips to New York, Washington, and other places. I understood they were away quite frequently, but at this particular time Muskoka was selected because it was in the hot weather, and, as far as I can recollect, that was the object of his going to Muskoka. 40

HIS LORDSHIP: Do you know if they lived in a private house or in a hotel? A.—I am not prepared to say. I would say, in a casual way, it was not their own house because they were only there a short time.

MR. MCCARTHY: During the time they were there, did you receive any communications from Mrs. Walker in regard to his health? A.—Yes.

Q.—What happened to those communications? A.—I destroyed those communications about 3 years ago.

Q.—Did you afterwards go to Muskoka to see him? A.—No. I was asked to go by Mrs. Walker.

MR. OSLER: My lord, we should not have to investigate statements made by hearsay. Mrs. Walker may have communicated to him, but it is not evidence against my client.

HIS LORDSHIP: You can protect yourself there.

MR. MCCARTHY: It would be against Mrs. Walker, who is represented.

10 MR. OSLER: Your lordship will appreciate the fact that we should not be affected by something said by some beneficiary. If one beneficiary can make a statement, no matter how serious, it should not lie in his or her mouth to speak for another beneficiary.

HIS LORDSHIP: You must keep that line of testimony as against the defendant Mrs. Walker.

MR. MCCARTHY: My friend acts for the National Trust Company who will represent the trustee under whichever Will your lordship determines.

20 MR. OSLER: I do not want to take unnecessary objections, but may it be understood during the trial that if your lordship rules what may have passed between the witness and Mrs. Walker is evidence against her, it is received subject to the objection that it is not evidence against the executors or any other beneficiary?

HIS LORDSHIP: It is perfectly clear.

MR. MCCARTHY: I understand my learned friend represents other beneficiaries as well.

MR. OSLER: I shall not take any further objections.

HIS LORDSHIP: You need not.

30 MR. MCCARTHY: What was the occasion of Mrs. Walker writing to you? A.—Mr. Walker's condition was not as good as when they left, and she became alarmed and wrote to me to ask me if I could go to Muskoka. Before arrangements were completed I received a telegram that it was not necessary to go.

Q.—Did you receive any word of any other physician being called in? A.—Yes.

HIS LORDSHIP: How does that come in? He received word from whom?

MR. MCCARTHY: From Mrs. Walker.

MR. OSLER: My learned friend should hardly lead.

HIS LORDSHIP: It was a bit leading.

40 MR. MCCARTHY: Who was it from whom you received word? A.—Dr. Cavan of Toronto.

Q.—He told you himself? A.—Yes.

MR. HELLMUTH: Surely what Dr. Cavan said is not evidence?

HIS LORDSHIP: I believe what Dr. Cavan said.

MR. MCCARTHY: I want to find out who the doctor was. You say you received a communication from Dr. Cavan? A.—Yes.

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Q.—Which Dr. Cavan? A.—I am under the impression it was Dr. W. P. Cavan.

Q.—I do not want you to say what he said to you, but did he in his letter give his diagnosis of the case, and his treatment? A.—Yes.

Q.—Then, upon his return from Muskoka, did you see Mr. Walker at all? A.—Yes.

Q.—What was the occasion of your being called in from time to time? A.—Apart from the nervous manifestations, such as I have described, there were other tendencies which would arise, such as might arise in connection with the catarrhal conditions I have spoken of. There were some intestinal disturbances, and attacks of bronchitis, which he had from time to time, culminating once in mild pneumonia. That practically covers it. 10

Q.—Were you, on any occasion, ever called to his office to attend him, that you remember? A.—Yes.

Q.—Tell his lordship what occasion that was?

HIS LORDSHIP: And the year?

A.—Approximately it would be 1905, in which he had an attack of aphasia, or some nervous manifestation which was of that type, when I saw him.

MR. MCCARTHY: Just describe, as near as you can, what his condition was when you were called in, and what you found? A.—That he was unable to talk in a connected way, mixing up his words. Mostly the conversations that took place were always in connection practically with his own condition, and with the symptoms; and at this particular time there was a very distinct failure, practically a collapse of the arterial system, and the heart's action was not good. 20

Q.—What effect would that have on the mental condition? A.—I think all these attacks had some influence on the mental condition, that there was a gradual failure.

Q.—When you discontinued your attendance, how would you describe his condition? When you cut off your professional association with him, how would you describe his condition? A.—As compared with 1900? 30

Q.—Yes? A.—I would feel he was not in as good mental condition, that there were degenerative changes going on, both, I would say, mental and physical.

Q.—What treatment did you give him, doctor? A.—The treatment that would be given for the various ailments that might arise, covering the concurrent disease of bronchitis, and so on. I suppose you refer particularly to the one specific treatment?

Q.—Yes? A.—I think that covers the question of the specific treatment.

Q.—That is the technical treatment? A.—Yes. 40

MR. MCCARTHY: I do not know whether that is sufficient for your lordship or not?

HIS LORDSHIP: It is not.

MR. MCCARTHY: You will have to go a little further than that? A.—The basis of the treatment would be mercury and iodine.

HIS LORDSHIP: I think that is enough.

MR. McCARTHY: That is what is commonly known to the medical profession as specific treatment for infection? A.—Yes.

Q.—The other treatment would be? A.—Whatever it must be from time to time.

Q.—Can you give me any idea of how often you attended him from 1905 on? A.—Yes, I made a synopsis of my charges.

Q.—Have you got that from year to year? A.—I have it from 1891 to 1896.

MR. McCARTHY: I do not think I will go as far back as that?

10 HIS LORDSHIP: Oh, no.

MR. McCARTHY: Give it to me from 1900? A.—Apparently in 1899 the attendance increased, because from that year there were these figures:

Year	No. of Charges.
1898	63
1899	111
1900	114
1901	158
1902	145
1903	117
20 1904	142
1905	138
1906	63
1907	46

There were a total of 1317 charges during my whole attendance.

HIS LORDSHIP: You would not make a charge unless you made a visit? A.—Sometimes there were office consultations.

EXHIBIT NO. 6 Filed by Number of Dr. Hoare's charges.
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30 MR. McCARTHY: During the period from 1905 until 1907 were Mr. and Mrs. Walker away very much? A.—I think in 1906 they were away, I cannot be clear as to that, I don't remember. I do know distinctly that in 1905 they were away, and they were frequently away. I hardly think there was a year but what they would be away sometime during the year.

Q.—Did you, during your time, ever have occasion to consult with any specialists on Mr. Walker's behalf? A.—Yes.

Q.—Who was that? A.—Early in my attendance Dr. Gallie of Detroit was his medical attendant, and, later on, in 1903, I had occasion on more than one occasion to have a consultation with Dr. Gallie.

40 Q.—What was he doctoring him for? A.—He had seen him previous to my attendance for specific infection.

Q.—You had conferences with Dr. Gallie during the early period? A.—Yes.

Q.—Did you have any conference with any other specialist? A.—Yes, Dr. Johnston of Detroit.

Q.—In connection with what? A.—On several different occasions; those were particularly in connection with his nervous manifestations.

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Q.—Is Dr. Johnston a nerve specialist? A.—Yes, Dr. Johnston was devoting his attention to diseases of the nervous system.

Q.—Anybody else? A.—Dr. Hamilton, of New York.

Q.—What is his speciality? A.—He was a neurologist.

Q.—Is he a man of standing? A.—Yes.

HIS LORDSHIP: Is he living, as far as you know? A.—No, I think he is not living. Allan McLean Hamilton.

MR. MCCARTHY: A man of standing? A.—Yes, he was connected with some of the large universities, I understand, in New York, or the vicinity of New York, lecturing on nervous diseases.

Q.—Now, do you know Dr. Shurly of Detroit? A.—Yes.

Q.—Is he a man of standing? A.—I presume you mean the present Dr. Shurly?

Q.—Yes? A.—Yes.

Q.—Have you read his evidence in this case? A.—Yes.

HIS LORDSHIP: Read his evidence?

MR. MCCARTHY: Yes, his evidence has been taken on commission.

Q.—Taking the condition—he attended Mr. Walker later—in which Dr. Shurly describes Mr. Walker, as he found him at that time, to what extent does it coincide with the condition you left him in when you ceased your professional connection? A.—I would feel it was the logical outcome of the physical condition as I knew it when I last attended him.

Q.—When you use the expression “self-centered,” what does that imply? A.—I am using it perhaps instead of the term “neurasthenia.” He was very apprehensive of his physical condition, and would dwell on it a great deal.

There is one point perhaps I have omitted in talking about his physical condition, that is, he was very apprehensive of the condition of his heart. He would have some, what seemed to be functional disturbances which would distress him very much, he was always dwelling on his own case.

Q.—Did you know Mr. Walker socially as well as professionally? A.— 30 Yes.

Q.—What type of man was he? A.—I do not just understand you.

HIS LORDSHIP: If he was a friend of this doctor, it is enough for me; if you leave it at that.

MR. MCCARTHY: I am quite content.

HIS LORDSHIP: I suppose that is quite enough for anybody up above.

CROSS-EXAMINED BY MR. HELLMUTH:

Q.—Dr. Hoare, from 1907 you did not attend Mr. Walker any more? A.—July, 1907.

Q.—That is to say, after July 1907 you ceased any further professional visits upon Mr. Walker, is that right? A.—That is right.

Q.—And from that time on you had no professional opportunity of seeing him? A.—That is right.

Q.—And did you run across him in any other way, between 1907 and the time of his death in 1914? A.—Occasionally.

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Q.—To speak to? A.—I would say up to 1909 I had opportunities of seeing him occasionally.

Q.—Of speaking to him? A.—Yes.

Q.—And from 1909 until 1914-1915, indeed to the time of his death, in those six years did you see him at all? A.—I didn't see him at all.

Q.—So we can take it, from 1909 to 1915, there was no opportunity you had of seeing him? A.—No.

Q.—Then was Mr. Walker, during the time that you visited him, suffering from prolapse of the bowel? A.—In the earlier periods of my attendance he was suffering from some hemorrhoidal condition.

Q.—I did not ask you that, but I was asking you during any portion of the time you were visiting him was he suffering from prolapse of the bowel? A.—Up to 1907 I do not think that there was.

Q.—Was there some intestinal disturbance which was causing him a great deal of difficulty, not to say pain, during the time that you were attending him? A.—No, his intestinal disturbance was largely due to some digestive disturbance.

Q.—Was there any stage during that time that the intestinal trouble had not been located or diagnosed? A.—During my attendance the intestinal condition was diagnosed as digestive, with a hemorrhoidal condition.

Q.—That is, a diagnosis by yourself, doctor? A.—Yes.

Q.—What I am asking you is this: Was there any stage during that time that there might be some mistake about that diagnosis, and there might be something else rather than what you diagnosed? I mean that doctors do sometimes make mistakes? A.—There was no discussion, that I remember of, that there was anything else except the possibility of it being due to the infection.

Q.—Prolapsus of the bowels would not be a necessary corollary in any way of infection? It is not what you would look for from the infection, as I understand it? A.—I do not think he had prolapse of the bowel during my attendance.

Q.—You would not put that down to the infection? A.—I think that is one of the things that is given as a reason for prolapse of the bowel.

Q.—You think that is one of the reasons? A.—I not only think so, I have read it.

Q.—So there was no prolapse of the bowel, at all events, during your time? A.—No.

Q.—And during that period of your visits was Mr. Walker attending to his ordinary business? A.—Yes, when he was in his usual state of health.

Q.—When he was in his usual state of health he was going down to the office and attending to the business? A.—Yes.

Q.—Do you know anything at all of Mr. Walker's hobbies? Do you know if he was a picture lover, and picture buyer in a very large way? A.—Yes.

Q.—He would pay many thousands of dollars, and himself select the pictures? A.—I haven't any idea of the amount of money, or whether it ran into the thousands; I do know he was a lover of pictures.

Q.—And that he was, or thought he was, at all events, somewhat of a con-

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noisseur of pictures? A.—He would not express himself in that way, that was not his disposition.

Q.—He would not say that he was? A.—He would not try to give you the impression either.

Q.—He would not give you the impression that he himself knew a good picture, he would not give you that impression? A.—He had a lot of pictures which I presume were good pictures.

Q.—And which he himself had selected? A.—I presume so.

Q.—In his character he was a man of diffidence? He was not a boaster in any way? A.—Quite so. 10

Q.—A reticent man? A.—Yes.

Q.—Somewhat sphinx-like, from the time you first knew him? Not a mixer at all? Is that right? A.—I presume you mean that he was not—by using the term “mixer”—going out mixing with people? No, he was reticent.

Q.—And he was a reserved man? A.—Reserved disposition.

HIS LORDSHIP: “Mixer” is a new idiom, or word, in the English language. I take it to be a man who is jovial with all classes of people, not so much as going out and mixing with his own people, or his own class of people. That is what you understand to be a “mixer?” A.—That is what I inferred.

HIS LORDSHIP: They say a successful politician is a mixer. 20

MR. HELLMUTH: I accept your lordship's greater knowledge of the word “mixer” than I am concerned.

Q.—At all events, we are agreed about this, that the late Mr. Walker was a reticent man? A.—Yes.

Q.—A reserved man? A.—Yes.

Q.—Have you ever heard the expression “sphinx” used? A.—No.

Q.—And there were very few people with whom he indulged in conversation, as far as you noticed? A.—It would all depend upon under what conditions they were meeting. What I mean is, he was not a man who was obtrusive at all, in his own house he would enter into conversation with anybody who 30 might be there.

Q.—May I put it this way, that at all times he was a man of few words, he was not a man of many words? A.—Quite so.

Q.—Were you in attendance upon any other members of the family, as well as Mr. Walker himself? A.—Yes.

Q.—Some of these visits would apply to other members of the family? A.—No.

Q.—None? A.—No.

Q.—These visits are all in reference to Mr. Walker? A.—These visits or charges are all in reference to Mr. Walker; I might have seen some other 40 people at the same time.

Q.—I appreciate that. Now, during your time of attendance there was no manifestation of any delusions by Mr. Walker? He did not think he was being abused by someone? A.—No.

Q.—Nothing of that kind? A.—No.

Q.—No delusions at all. Was he a quiet man, or an excitable man? A.—Generally a quiet man.

Q.—Not a very emotional man by any outward manifestations? A.—No, the only thing with regard to that was what I considered “self-centered.”

Q.—But, apparently, according to you, doctor, he thought a good deal, or considered a great deal about himself? A.—Yes.

Q.—And he was a man who was fond, or apparently devoted a considerable portion of his time to travel; is that not so? A.—Yes, well, I wouldn't say that; but they were away a good deal. I think I would be safe in saying they were away from home practically every year after the first of March, or every two years, at any rate.

10 Q.—And for some considerable time, I mean, running into months? A.—They would go abroad, and be away for a few months at a time.

Q.—And when he came back would he tell you he had been in Paris, or London, or some place where he picked up a few pictures, and that sort of thing? A.—No, we very seldom discussed anything but his own health, that is the point he was more concerned about.

Q.—Are you at all interested in pictures, and art, yourself? A.—I am only interested from the standpoint of the pleasure they give you by looking at them. I am not a judge of a good picture, I do not consider.

20 Q.—You would not say you discussed with Mr. Walker the merits of the respective pictures from the standpoint of the artist who had painted them? A.—No.

Q.—He was a man of rather careful habit about his personal appearance, and his dress, was he not? A.—Yes.

Q.—A man who dressed exceptionally well? A.—But in a quiet way.

HIS LORDSHIP: Not obtrusive? A.—No.

MR. HELLMUTH: A man who had the best he could get, from a monetary standpoint, but though he had the best of raiment he was quietly dressed? A.—Yes.

30 HIS LORDSHIP: They say the best dressed man is the man you notice nothing about? A.—He was a man who was not ostentatious in any sense of the word.

MR. HELLMUTH: Was he a man with a beard, or clean-shaven? A.—Clean shaven.

Q.—And always scrupulously shaved? A.—Yes.

Q.—All the time you saw him? A.—Yes.

Q.—And very neat in his appearance, and the manner in which he appeared? A.—Yes, I would say so.

Q.—Did you ever have any meals in the house? Did you ever dine or lunch there? A.—Yes.

40 Q.—When Mr. Walker was present? A.—Yes.

Q.—And even then he was not much of a conversationalist, was he? A.—I think yes, I think that he entered into all the conversation that was going on at the table at that time.

Q.—Did he take a very prominent part in the conversation? A.—I must say that he did.

Q.—You think he did? A.—Yes.

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Q.—You think he took a prominent part? A.—Yes.

Q.—More than the others who were there? A.—Not more than the others, but joining in.

Q.—And what would his conversation be about, as you have recollection?

A.—I cannot be very definite because I am only referring to one incident particularly that I remember, when I was at dinner in their house, and that was sometime in October 1905.

Q.—At dinner in their house in October 1905; was it a big or small dinner? A.—Just a small party.

Q.—And on that occasion you remember him taking some considerable part in the conversation? A.—Joining in the conversation the same as the others. 10

Q.—Is that the only recollection you have? A.—That is the only recollection I have.

Q.—Did you ever dine there after 1905? A.—I don't think so.

Q.—Mr. Walker, during all the years you knew him, was a man who was not brusque or rude in his manner; he was a polite man? A.—Yes, very considerate.

Q.—Considerate of other people? A.—Yes.

Q.—And of their feelings? A.—Yes.

Q.—And, in that respect, was there any change that you saw? A.—No, I can't say that there was. 20

HIS LORDSHIP: Was he athletic? Did he play golf, or tennis, or anything? A.—I would say he was not athletic. I would say he was the reverse. He walked in a very deliberate manner; that was probably the most athletics he did. He might have attempted to play golf a little, but it was not because he felt like it.

HIS LORDSHIP: Social, not athletic.

MR. HELLMUTH: Now doctor, you spoke one time of some numbness, I think is the expression you used, of the face, hands, and legs; was that on one side or both? A.—Sometimes it would be on one side, I think at times it was general. 30

Q.—So, it was sometimes on one side, and sometimes general. About how often, and when did you notice this numbness? A.—Well, I can only say it was on a number of occasions.

Q.—Can you give me any idea of what years? A.—I should say it was from 1905, perhaps 1904-05, possibly 1903—I am sure it was in 1903.

Q.—I am sorry, I do not like you to say "possibly," because everything is possible. It may have been in 1890? A.—No, I am able to fix those things somewhat. 40

Q.—You said "possibly." I do not like you to use the expression "possibly," if you say "probably," that is a different thing. Anything is possible? A.—I will say "probable."

Q.—Probably as early as 1903? A.—Yes, and I think somewhat earlier than that.

Q.—You think somewhat earlier than 1903 you noticed this numbness?
A.—Yes, I say towards 1900, or 1903, or 1904.

Q.—You noticed that numbness?

HIS LORDSHIP: I think I should interrupt to say he said the numbness was between 1905 and 1907.

MR. HELLMUTH: Yes, we got back further.

MR. MCCARTHY: I think not. The first period was numbness, and the second period aphasia.

Q.—Is that right, doctor? A.—Yes, that is right, because the consultation with Dr. Hamilton in New York was previous to 1905, and the consultation with Dr. Johnston was previous to 1905.

HIS LORDSHIP: Yes, I had not put in a comma.

MR. HELLMUTH: Prior to 1903 was the numbness. Was it severe prior to 1903? A.—Yes, severe enough that he would send for me.

Q.—Because his hands or his legs were numb? A.—Numb, yes.

Q.—Did that continue down to 1907? A.—Yes.

Q.—In what year, or about what year, was it most pronounced? A.—I think in 1905 it was most pronounced.

Q.—So may we say in 1907 it was not as marked? A.—I am not prepared to say that.

Q.—Why do you say it was worse in 1905? A.—Because that is the definite year set by the year that he was in Muskoka.

Q.—You still think that the most severe attack was in 1905? A.—Of numbness, yes.

Q.—I am speaking of numbness purely? A.—Yes.

Q.—Then you don't think that he had as severe attacks of numbness in 1906 and 1907 as the one that took place in 1905? A.—I can't say that.

Q.—You can't say that? A.—No. I mean it is too long ago to go back and recall detail of that type, I would not pretend for a single minute to try to be accurate in that way, unless I could fix it by some specific date, like 1905, which I have a very distinct recollection of.

Q.—Tell me if anybody was present at the time of these occurrences that you speak of, of aphasia, who was present outside of yourself when any of these attacks, which you have termed "aphasia" took place? A.—Mrs. Walker was present during some of them.

Q.—Anybody else? A.—Not as far as I can recollect, there would be no person else but the servants.

Q.—Who was in the office at the time you went to the office? A.—Mr. Robins was there.

Q.—Mr. Robins was present? A.—Yes.

Q.—At what time? A.—When he had what I considered one of the severest attacks of aphasia.

Q.—What year was that? A.—I think it was in 1906.

Q.—Now, outside of Mr. Robins, who was present? A.—I do not remember that there was any person—I don't remember that there was any person else present.

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Q.—You don't remember anyone who was present in the house except Mrs. Walker?

MR. MCCARTHY: And the servants.

MR. HELLMUTH: He said "might have been," he didn't say there were any servants there.

THE WITNESS: In all probability there would be.

Q.—I do not want that.

HIS LORDSHIP: It is really not satisfactory evidence.

THE WITNESS: I cannot say, I wouldn't commence to try to fix things of that sort. 10

MR. HELLMUTH: You cannot call to mind that anybody in the house was ever present when any of these attacks of aphasia took place, except Mrs. Walker? A.—Yes.

Q.—Is that right? A.—That is right.

Q.—These attacks of aphasia were in no sense permanent, there was complete and entire recovery from them? Is not that so? A.—Yes.

Q.—So that Mr. Walker would be entirely free from anything approaching aphasia for long, long periods, and then there would be another recurrent attack. Is that the situation? A.—I would not say long, long periods. I am unable to fix the time. 20

Q.—I thought you said they were not frequent? A.—They were not frequent. That does not mean long, long periods.

Q.—Let us say months. Would there have been months in which there would be no recurrence of this aphasia? A.—I think I have said between 1905 and the termination of my attendance there may have been a dozen.

Q.—Ten or twelve? A.—Ten or twelve. I have no way of fixing those any more than that.

Q.—That includes from 1905 to 1907? A.—Yes.

Q.—So that it is really more than 2 years; 2½ years, as you did not leave until July? A.—Quite true. 30

HIS LORDSHIP: My note is this: "Were not frequent. Ten to twelve between 1905 and 1907."

MR. HELLMUTH: He did not leave until July 1907.

Q.—So in that period, 2½ years, there were ten or twelve of these attacks. Now, outside of the attack in the office, when you have told us Mr. Robins was present, and the attacks in the house, when you say Mrs. Walker was present, who else was present when these ten or twelve attacks took place? A.—I am unable to say.

Q.—Was Mr. Walker, to your knowledge, during all that time, from 1905 to 1907, when he was not physically unable to attend, at his office transacting business, as far as you know? A.—As far as I know, he was at his office transacting business, except during these attacks, or periods of disability. 40

Q.—What disability do you speak of? When he was suffering from certain physical ailments? A.—Yes.

Q.—Was there considerable physical disability at the time of these attacks of aphasia? A.—Yes.

Q.—So that either the physical disability preceded or followed the aphasia, which was it? A.—Well, I would be called in during the attack, and I would not probably see him—I may not have seen him the day before, or the day after the attack.

Q.—When you were called in you found him suffering from considerable disability physically, as well as from aphasia? A.—A certain amount of weakness.

Q.—Pain, as far as you can remember? A.—Not generally pain, although there were periods when there were attacks of pain.

10 HIS LORDSHIP: Where? A.—In the head.

MR. HELLMUTH: Did you make any tests to ascertain whether the infection that you have spoken of had been eliminated; that is to say, whether the traces of it, from your examination or test, showed that it had been eliminated? A.—I am afraid your question is leading up to a point that those things were not known at that time, were not in use at that time.

Q.—Were there no tests up to 1907 to ascertain whether evidence of the infection had passed away, tests of the blood? A.—Yes, sir.

Q.—Were there no such . . . ? A.—The test we use today . . .

Q.—I want to ask you

20 MR. MCCARTHY: Let him answer.

MR. HELLMUTH: I am asking

HIS LORDSHIP: He interrupted Mr. Hellmuth, and crossed the line of thought. I think Mr. Hellmuth has the right to go on with that line he was asking; if there had been a test such as you are speaking about.

THE WITNESS: Up to the time to the end of my attendance, which was in 1907, there had been no test made.

MR. HELLMUTH: I want to ask you: Was there no way of making any test, apart from the more modern test, at the year you speak of, 1907? Had physicians no method of testing whether that infection had disappeared from the system, before 1907? A.—No.

30 Q.—There was no way? A.—No.

HIS LORDSHIP: There are two questions there. Is that embarrassing to you? A.—I am following the line of that question, first of all, were any tests made, and, in the first place, as far as I know, there were no tests that were available at that time.

Q.—At present known to science? A.—Yes, at that time.

MR. HELLMUTH: I understood you to say you made no tests, and there were no known tests? A.—There were no known tests at that time.

Q.—Of course, you are familiar with the present modern test? A.—Yes.

40 Q.—That would show whether or not the poison, or whatever you like to call it, had been eliminated? A.—Yes.

Q.—That is supposed to be a conclusive test nowadays, is it not? A.—Practically so.

Q.—We are only dealing with practical matters? A.—There are exceptions. I want to be definite in that way—there are exceptions when a negative test would not be definite.

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Q.—At all events, so far as Mr. Walker is concerned, you cannot say whether that infection had or had not been eliminated when you left him in 1907? A.—I would say it had not been eliminated.

Q.—I say you cannot say it with any decisiveness? A.—Only from the clinical appearance.

Q.—Would you say it could not have been eliminated afterwards? I am asking you now for your opinion as a professional man? A.—I say that the damage had been done.

Q.—I did not ask you that at all; you know I did not ask you that. I asked you

MR. MCCARTHY: It is a perfectly fair answer to the question. 10

HIS LORDSHIP: Now.

MR. HELLMUTH: Can you say, as a medical man, that that could not have been eliminated from the system? A.—I would say it couldn't have been.

Q.—And therefore, no test could have shown elimination? A.—At the time I last saw him.

Q.—Oh, no, at a later date? I am asking you that because we passed that.

HIS LORDSHIP: He is past the personal idea; and is asking you the general question as a medical man? A.—Perhaps I might ask to have the question 20 repeated?

HIS LORDSHIP: He wants your opinion as to modern tests.

MR. HELLMUTH: I will put it so there can be no mistake. I want to know whether, in your opinion, as a medical man, the latter tests, within the period when you were there, could have shown the elimination altogether of the effects of that poison or infection? A.—I want to, first of all, get your question clearly in my mind. I have said there was infection present when my attendance was discontinued, judging from the clinical appearance. I gather you want to know, as a medical man, could that infection have been eliminated later on?

Q.—Yes? A.—No. 30

Q.—And therefore, the Wassermann test could not have shown, at a later date, elimination? A.—A negative Wassermann test at a later date would not have been a positive conclusion.

Q.—But could there have been a negative result? A.—Could there have been a negative result from the Wassermann test? Yes, there could have been a negative Wassermann test later on which would not be conclusive that the infection had been eliminated.

Q.—Then the Wassermann test, in your opinion, is not a conclusive test? A.—A positive Wassermann test is conclusive.

Q.—The negative Wassermann test is not conclusive? A.—No. 40

Q.—If it is taken, not one test but a number of them, from time to time, and the results are negative, you still think that is not a conclusive test? A.—From clinical experience I cannot give you an answer, but from my readings of authors, it is the case.

Q.—As a doctor, apart from what you have read,—from your own experience, you cannot answer whether a series of Wassermann tests showing nega-

tive results could not be taken as a sufficiently conclusive result that the poison had gone? A.—No, because I would sooner deal with clinical appearances, and clinical conditions.

Q.—You say from your own experience you cannot tell me that? A.—I am afraid your question and my answer are really at cross-purposes. I want to make it plain that the negative Wassermann's test, or a series of Wassermann's tests negative, would not absolutely mean that any poison, for which you were using that test, had been eliminated.

Q.—Is that your own experience, or only from what you have seen or read?

10 A.—It has been a limited experience necessarily, but it has been my experience.

Q.—If you got a series of negative results from the Wassermann's test, would you expect to find clinical evidence of the existence of the infection? A.—Yes, I have had cases in which that has been the case.

Q.—Would you expect it, I am asking you? A.—I can only speak from my own experience.

Q.—You put no confidence whatever in a series of Wassermann's tests showing a negative result, according to your evidence? A.—I would not draw an absolute conclusion.

20 Q.—I did not ask you that. You would not say that the probabilities—let me put it that way—were that the poison or infection had been eliminated, from a series of negative results from the Wassermann's test? That would not be your evidence? A.—Yes, I would feel, if you had a series of Wassermann's tests negative, the conclusion would be the poison had been eliminated, but if you had clinical evidence of something going on, you would not be guided by the Wassermann's tests.

Q.—But if you had no clinical evidence that it was going on, you would not then have any doubt about accepting the Wassermann's test? A.—I certainly would accept the Wassermann's test if there was no clinical evidence.

30 Q.—You had no clinical evidence that the infection was existing, and being there, after 1907? A.—Why, no, certainly not.

Q.—So you are not in a position to say, after 1907, it was not eliminated? A.—I haven't, certainly; most decidedly so.

Q.—Did Mr. Walker leave his residence in July, 1907, when you ceased your attendance? Did he leave Walkerville? A.—Oh, no, he was still living in Walkerville.

Q.—I was going to ask you, doctor, how it was you did not attend him again? A.—I can give you my reason, because my business connection with him was settled.

40 Q.—It was not because you declined to attend him? A.—Oh, no. But I think, as you have asked me the question, I might justify the answer.

Q.—If you want to volunteer anything, I have no objection? A.—I can only volunteer to explain that Mrs. Walker wanted to dictate very largely what his treatment should be, which didn't meet with either his approval or mine. And Mr. Walker asked me to inform Mrs. Walker what the condition was; which I did.

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Q.—And only Mrs. Walker, of course? A.—And only Mrs. Walker. And I think that was the reason my attendance was terminated.

Q.—Because you informed her of the reason? A.—Yes.

MR. MCCARTHY: Of the condition of her husband.

MR. HELLMUTH: A great many, or several, people have suffered from aphasia and made complete recoveries; is not that so? A.—Yes.

Q.—About the arteriosclerosis of an unspecific character; a great many people have suffered from—almost everybody has suffered from arteriosclerosis if they live to any age, is not that so? A.—Yes.

Q.—It is one of the things that Anno Domini brings? A.—Yes. 10

MR. OSLER: What is his answer?

MR. HELLMUTH: Anno Domini brings arteriosclerosis? A.—Yes.

Q.—Mr. Walker was a man of what age do you say, when you attended him?

MR. MCCARTHY: He was born in 1851.

A.—He was between 40 and 55.

MR. HELLMUTH: During the whole time of your attendance? A.—Yes.

Q.—By the way, during the time of your attendance was Mr. Walker accustomed to do any horseback riding? A.—Yes.

Q.—Was that in the earlier years? A.—That was in the earlier years, and it was a matter of being advised he should do it to get the exercise and diversion. 20

Q.—What actual tests or examinations did you make, doctor, of Mr. Walker, and about when? A.—I didn't just get that.

Q.—What tests or examinations of Mr. Walker, of his various organs, did you make, what were they, and when? A.—I have made examinations of his whole physical condition.

Q.—Just tell me what those tests were? A.—Examinations of the excretions, such as urine, microscopical, and otherwise. That was done definitely. And stethoscopic examinations of the heart and lungs were made on numerous occasions. Reflexes, and the ordinary symptoms, or tests, of nervous disturbances, such as the condition of the eyes, and so on. 30

Q.—Well now, what were the stethoscopic examinations; and what did they reveal? A.—As far as the lungs were concerned it revealed a certain amount of bronchitis.

Q.—When? A.—I think that was fairly constant.

Q.—Have you got any notes of these examinations? A.—No, I haven't.

Q.—You didn't keep any? A.—I didn't keep any.

Q.—Did you make any? A.—No.

Q.—You made no notes of any of these examinations? A.—No. 40

Q.—At any time? A.—At any time.

Q.—As to the reflex tests, what were they? A.—They were negative.

Q.—What about the eye tests? A.—They were negative.

Q.—The urine? You examined the urine? A.—Yes, I am under the impression it was negative, I cannot be positive about that.

Q.—What about the hearing? A.—I think his hearing was good.

Q.—Well now, can you tell me of any specific or individual time and what took place when this aphasia occurred? Just tell me what he said, or didn't say, or how he said it? A.—I cannot do that. I have just that general picture of the case in which there was a case in which he mixed up his words, saying words that he intended to say something else.

Q.—Can you give me any particular sentence? A.—No, I wouldn't pretend.

Q.—Or a word that he had mixed up? A.—No, I wouldn't pretend to do that for a minute. It would be alluding to his condition, that is the way the conversation always took place.

Q.—Alluding to his own condition, do you mean he mixed the medical terms? A.—No, I mean he would mix his words when trying to say something of his own condition.

Q.—Can you call to mind one single instance in the ten or twelve attacks that you spoke of, from 1905 to the middle of 1907, what the difficulty was? What the statement was when he mixed his words? A.—No, only to say, in a general way, it was in connection with his own condition at that time.

Q.—Can you tell me what he said about his own condition that showed he was mixed up? A.—My recollection is, without being able to cite the words, where he wanted to use an expression of a certain character he would use something else which was entirely different.

Q.—Can you tell me what that was? A.—I wouldn't pretend to try to remember that, it is a matter of 19 years ago.

Q.—Was there anything else in regard to this aphasia, beyond what you have told me, that he mixed words? Was there any other sign, or symptom, beyond that? A.—My recollection is there was a confusion of ideas.

Q.—Tell me what you mean by "confusion of ideas?" A.—That he would not express himself.

Q.—That is the same thing that you have told me of, that he mixed his words? A.—Exactly, it seemed to be a want of co-ordination of ideas.

Q.—In what way? A.—I can't answer that, for the simple reason that I had no idea they were going to be required. If I had known, I might have been able to do it, but after this length of time I would not pretend to; I don't think you would believe me if I said so.

Q.—I am asking you quite fairly? A.—I say I don't recollect.

Q.—I do not think you quite appreciate what I am asking you now. You say that what he did, although you cannot give me the occasion, or manner, or matter, was that he used wrong words to describe, as I understand it, his own ailments or trouble. Now, outside of his doing that, is there anything else that you can tell me, any other symptom? A.—No, I don't think there is.

HIS LORDSHIP: An eminent Oxonian, Professor William Spooner, whose intellectual capacity no one will dispute, had a strange habit of transposing the initial letters of words—hence "Spoonerisms." Once in lecturing beyond his allotted hour to the ladies of St. Margaret's College, he thought it fit to apologize to the weary benches, but unconsciously said "beery wenches."

Is that the kind of thing Mr. Walker did? A.—No.

MR. HELLMUTH: Were you in attendance upon any other member of the

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family, the Walker family, at that time, besides E. C. Walker? A.—Just what time do you refer to? Any time? Yes, I have already said that.

Q.—I am speaking of outside the family of E. C. Walker and his wife, the household? Were you attending any of the other Mr. Walkers? A.—Yes, I think I have prescribed for Mr. J. Harrington Walker, and on one or two occasions for Mr. F. H. Walker.

Q.—Were you attending Mr. Robins and his family? A.—Yes.

Q.—And did you remain as their physician after 1907? A.—Oh, yes, for Mr. Robins. I cannot say anything about the other two.

Q.—Can you explain why in 1906, and again, perhaps not so much, but until half of 1907, your visits became so much less frequent? A.—Only, I think, because Mrs. Walker was dictating as to what his treatment should be, and discouraged anything in the way of medical attention as much as possible. 10

Q.—Was it that Mrs. Walker did not think he was getting any benefit from the medical attendance? Quite wrongly, no doubt. Was that her attitude? A.—I think she was concerned; It was not him.

Q.—I did not ask you that.

MR. MCCARTHY: You did.

HIS LORDSHIP: It is a fair question.

MR. HELLMUTH: Did Mrs. Walker intimate, in any way, that Mr. Walker was not getting any benefit from the medical attendance? A.—Yes. 20

Q.—And that was the occasion of the falling off in the number of visits? A.—I would ascribe it to that.

HIS LORDSHIP: I did not understand Mrs. Walker had testified. Do you mean to say she would cease to call you if she thought he needed you? A.—No. She dictated very largely as to when I should be called. That is my impression about the matter. And that was the reason he asked me to inform Mrs. Walker.

Q.—And after that you were not called in at all? A.—Practically, or very soon after that. 30

Q.—Do you think she was shocked at the revelation, or what was the matter? A.—She didn't seem so, as I recollect, she didn't seem shocked at all. I think there was a reason for that too.

MR. HELLMUTH: I do not know if you gave the date when the attack of aphasia in the office occurred? A.—I think I said it was in 1906, to the best of my recollection. I am fixing that in this way, that I know it was after the 1905 incident of Muskoka.

Q.—Doctor, can you, in any way, give an idea about what time in 1906? A.—No, I have no way of fixing it.

Q.—Can you tell whether it was summer or winter? A.—I am under the impression it was sometime in the early spring. I am only speaking in a general way, I cannot be definite. 40

Q.—Was it the morning or the afternoon? A.—I can't say.

RE-EXAMINED BY MR. MCCARTHY:

Q.—You told my friend about the arteriosclerosis; and my friend also asked how old a man Mr. Walker was, and whether the arteries do not harden as

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a man gets older? How old were Mr. Walker's arteries as compared with his actual age? A.—Well now, he was born in 1851, as I understand it, so he would be 49. I would say his arteries were those of a man of 70 when I saw him.

Q.—His arteries were as those of a man of 70? A.—That is only comparative. They were the arteries of an old man.

Q.—I do not know whether you said so to my friend or to me; was there any difficulty in articulation on account of the attacks of aphasia? A.—Yes.

10 Q.—My friend also asked the question as to whether many people did not have attacks of aphasia and recover. Does not anything depend on what causes the aphasia? A.—Yes.

Q.—What do you say, having in mind what you say was the cause in this case, as to people recovering? A.—I qualify that by saying there are many cases of aphasia due to arteriosclerosis which is of a non-specific character; but the recovery does not take place in the other.

Q.—You spoke about his being at his office between the attacks, and prosecuting business; do you know that of your own knowledge? A.—Well, I would see him going backward and forward to the office; that is all I would know.

20 Q.—Can you fix, in 1905, as near as possible, the date of the first attack of aphasia? A.—No, I cannot.

Q.—Was it before or after he went to Muskoka? A.—Before.

Q.—Do you remember how long before? A.—I don't remember.

Q.—Do you remember when he went to Muskoka? A.—It was in the hot weather.

HIS LORDSHIP: That was in 1905? A.—Yes, 1905.

30 MR. MCCARTHY: My friend also asked you in regard to what he called complete and entire recovery from attacks of aphasia. Do, or do not, these attacks leave any permanent results? A.—I considered that they did. I think I have already answered that question by saying there seemed to be a slightly progressive degenerative condition.

HIS LORDSHIP: You say, in this case, they did? A.—May I say, in answer to the question, the attacks due to the condition that existed would leave their impress.

DR. PETER A. DEWAR, Sworn. Examined by MR. MCCARTHY:

Q.—Dr. Dewar, you are a medical practitioner? A.—Yes, sir.

Q.—Carrying on your practice in Walkerville? A.—In Windsor.

Q.—And have been for how many years? A.—Since 1896. I practised previous to that in Essex for 11 years.

40 Q.—You came to Windsor in 1896 and you have carried on a general practice, or do you specialize? A.—General practice.

Q.—And, at one period, you attended the late E. C. Walker, I believe? A.—I did.

Q.—And can you remember about when you were called in, doctor? A.—I have no very distinct date as to the time I was called first to see Mr. Walker. I had attended Mrs. Walker, and a number of the servants, previously.

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My attendance started somewhere about 1910 or 1911. My records are all destroyed up to 1915, not knowing this was coming on and I have no references. In 1910 or 1911, the date of my first attendance, it was for Mrs. Walker herself.

Q.—Would you tell his lordship how you came to attend Mr. Walker?

A.—I was asked by Mrs. Walker to see Mr. Walker when I was there. And I saw him at intervals up till 1913, when Dr. Shurly of Detroit took charge.

Q.—So you were called at intervals up to 1913, when Dr. Shurly of Detroit was called? A.—I think I was called to see Mr. Walker himself quite a lot in 1911, I am not positive about the date.

Q.—Is there anything that happened by which you can fix the date at all?

A.—No, there is none, more than I know it was during the years I have said.

Q.—I think you said you were called by Mrs. Walker? A.—Yes.

Q.—Were you told that Mr. Walker had been under treatment before that? A.—Yes.

Q.—Was there any reason given for the discontinuance of the medical attendant? A.—Mrs. Walker had spoken to me and said they had been abroad, or at least had consulted Dr. Hamilton of New York, and various other doctors, I can't remember who, and she came to the question of Dr. Hoare, who was more convenient and had been their physician, and it seemed to have centered on the fact that Dr. Hoare had told her what he really considered was the matter with Mr. Walker, and I considered she had disagreed with Dr. Hoare.

HIS LORDSHIP: As to the propriety of saying it? Because she had no medical knowledge? A.—No.

Q.—She disagreed, she thought he should not have said that? A.—Yes, she very strenuously objected to him giving treatment for that kind of a case.

MR. MCCARTHY: Her attitude was that he was not suffering from what Dr. Hoare thought he was, and that the treatment Dr. Hoare gave was not a proper treatment? A.—Yes.

Q.—During the time you saw him, where was he? A.—He was in his bed the first time I saw him.

Q.—Did you ever visit him in his office? A.—No, he was always at the house.

Q.—How frequently would you see him? A.—I saw him very infrequently. I would be sent for once in a while, sometimes in a hurry. Sometimes Mrs. Walker would send her car and ask me to leave the office and go to the house.

Q.—Sometimes Mrs. Walker would send the car for you and ask you to leave the office and go to the house. On the occasions you saw him was he in bed? A.—The first time.

Q.—On subsequent occasions did you see him up and about? A.—Yes, he was often up.

Q.—On the occasions of your visits was he able to get about by himself? A.—Yes, but he used a cane always, I don't think I ever saw him without a cane. He had a good deal of difficulty in his walking at that time.

Q.—Describe to his lordship what his condition was when you first saw

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him and where he was? A.—I was called the first time to see him in regard to this prolapse of the bowel, that he was suffering from. It was very severe, and of course he was in his bed then. I saw him at subsequent times when he was in his bed.

Q.—The first time you were called was for the prolapse of the bowel? A.—Yes.

Q.—He was in bed then, suffering? A.—Yes, some.

Q.—Did you make a diagnosis of the case at that time? A.—Well, I had known a good deal of the case before, and had consulted with others regarding
10 what stages he had gone through. I made a diagnosis, yes.

Q.—What diagnosis did you make at that time? A.—Well, that he was suffering from specific infection.

Q.—What, if any, relation had that with prolapse of the bowel? A.—That would be questionable. Prolapse of the bowel is not infrequently a consequence of the trouble I mentioned, but it is possible it would occur without, of course.

Q.—I cannot expect you to remember at this late date with exactness, but tell me generally what was the condition you treated him for, up to 1913? What were the symptoms? A.—What I treated him for was this condition of the
20 prolapse, and, in fact, through Mrs. Walker's suggestion, I got into communication with Dr. William Mayo of Rochester with regard to an operation. The question, however, was dropped, after a good deal of correspondence back and forth, and conversation, over that matter. Mrs. Walker, at that time, was quite willing to have Dr. Mayo come here in a special car, if necessary, to look after Mr. Walker; but Dr. Mayo declined.

Q.—What was his condition; take first, mentally? Did you ever see him with an attack of aphasia, such as Dr. Hoare spoke about? A.—Yes, I have seen him very mixed in his conversation.

Q.—Describe his mental condition.

30 HIS LORDSHIP: What year? A.—That I cannot fix definitely.

Q.—How long after you were called in in 1910 or 1911, or before that? A.—Upon my visits to him it was very confusing in that way.

Q.—After 1911? A.—I can only fix 1913 by the fact Dr. Shurly proceeded at that time.

Q.—It was between 1910 or 1911 and 1913 you attended him? A.—I attended the family, I cannot place the attendance.

MR. MCCARTHY: Can you describe his condition? A.—It would vary, some days he would be much brighter than others, some days he would talk
40 limitedly; he never kept up a conversation for any great length of time. On several occasions he would be confused, and would stop in the middle of a sentence, and generally any discussion of the condition that he would undertake would be taken up by Mrs. Walker and she would finish it, almost invariably.

Q.—I do not want to lead you, doctor, but can you enlarge on that at all, so his lordship will understand exactly what is meant? A.—There was that confusion of ideas which seems to have been prevalent. I saw him probably at his worst times. And there was difficulty in regard to motion, in the way of movement, a good deal.

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Q.—Locomotion? A.—Yes. I do not remember ever having seen him go along without a cane, or support, at any time I saw him.

Q.—I am speaking more as to the mental condition. Enlarge upon the confusion of ideas, or difficulty in articulation, describe that to his lordship? A.—Any more than he would sometimes start a sentence and not finish it.

Q.—He would start a sentence and not be able to finish it? A.—Yes, apparently.

Q.—Would he finish it later all right? A.—Sometimes he would start a sentence with very slow articulation, and finish it in a measured way, and would hesitate about getting it out. He might get through with the sentence. 10

Q.—Did you get the previous history from Dr. Hoare at all? A.—Yes.

Q.—These attacks of aphasia that you saw; how often did they occur, and how long did they last? A.—I remember the last time I saw him was in 1913, he had some difficulty in that way, a good deal of difficulty in his speech.

Q.—How long would those attacks last? A.—I had no means of following that up. I was called at Mrs. Walker's instigation, and when I got there would see him once, and perhaps not see him again for months.

Q.—What treatment did you give him? A.—I didn't give him any specific treatment because Mrs. Walker was very strenuously objecting to anything of that kind. Also, during the time I was seeing him, he had seen other doctors, Dr. Hamilton of New York, and doctors in Washington, and I believe he had seen, the last time I saw him, he had been to see a doctor in Paris. So the matter, as far as specific treatment was concerned, was removed from my hands altogether. 20

Q.—Did you know if he was undergoing treatment at that time, or taking any drugs? A.—He was not doing much in the way of taking drugs because Mrs. Walker strenuously objected to him getting drugs.

Q.—What did your treatment consist of? What could you do for him when you went there? A.—It was doctoring the condition of prolapse I spoke of. 30

HIS LORDSHIP: I should like to know—it has been stated by Dr. Hoare that Mr. Walker told him to tell Mrs. Walker of this specific trouble—did he discuss this specific trouble with you when Mrs. Walker was present? A.—She was nearly always present; he made only a passing reference to it on one occasion.

Q.—Did he protest against her interference against there being further treatment for this trouble? A.—No, he was very mild about the matter.

Q.—I think I shall go further, Mr. McCarthy, and ask: Was she dominating him? A.—That is a pretty strong word: I think she managed the case.

MR. MCCARTHY: Following up his lordship's suggestion; you say she managed the case. What was his condition mentally, as compared with her's? A.—He was very apathetic. 40

Q.—Did that improve, or get worse, while he was under your observation? A.—I think it was worse at the last—the last time I saw him.

Q.—Did you ever see him at intervals at all when he was able to discuss

anything with you for any length of time? A.—Yes, on two or three occasions he talked over matters that were quite intelligent.

Q.—For any length of time? A.—Not long, of course, when I saw him his whole idea was his trouble.

Q.—He was what is commonly called “hipped” on himself? A.—Yes.

Q.—What is called neurasthenia or hypochondriasis? A.—He was self-centered, as Dr. Hoare said. That would describe it. It was a magnifying of his symptoms that way.

10 Q.—During the periods in which you saw him, when not suffering from any of the troubles that you state, I think on two or three occasions, would he be in a position to take a document, such as this Will of 1914—what do you say as to the possibility of his being able to concentrate on that?

MR. OSLER: I object.

HIS LORDSHIP: It is a long way off.

MR. RODD: You have all the papers there.

MR. MCCARTHY: Shall I detach them?

MR. RODD: No, state which paper.

HIS LORDSHIP: When did Dr. Dewar cease his attendance?

THE WITNESS: In November, 1913, I think.

20 MR. MCCARTHY: I ask the doctor to look at the Will of 1914.

HIS LORDSHIP: I think that is close enough.

MR. MCCARTHY: I ask you whether you think he would be able to concentrate sufficiently to understand?

MR. OSLER: I object to that. That is surely not a proper kind of question; that is for your lordship to decide.

HIS LORDSHIP: That is so, but you know how these expert, scientific witnesses have got into the way lately of giving these definite opinions. How else can it be done? Do you say that a judge is able to determine these things without help from scientists?

30 MR. OSLER: No, my lord, I submit the scientist should tell your lordship the facts of his actual observation of the conversation he has had, and so on.

HIS LORDSHIP: Can he not follow it up by giving his opinion?

MR. OSLER: I submit not, as to whether a particular document shows any capacity.

HIS LORDSHIP: Documents differ. If he had given instructions for a Will, and the Will had been produced to him and he had not read it over but was told it was exactly what he had said; a less degree of intelligence might be required to do that than to consider all the items in a Will.

40 MR. OSLER: That may be so; your lordship will have to form your opinion as to that. My objection goes still further than that even. If it were not attackable on the broader ground upon which I have put it, then I should say my learned friend has not produced from this witness evidence that qualifies him as an expert, because he has only seen the testator when he was in the course of attacks from which he was suffering.

MR. MCCARTHY: That is not so.

MR. OSLER: On two or three occasions when he spoke to him.

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HIS LORDSHIP: He had managed to get past the old cases about "once insane, always insane." I refer to Banks v. Goodfellow.

MR. OSLER: Up to the present time all this witness has been able to say is that he saw Mr. Walker infrequently during this period, on occasions when he was suffering from this trouble of which, at that time, he was suffering; and on two or three other occasions he was able to speak of things intelligibly.

HIS LORDSHIP: Yes, at times, and for short periods he would be quite intelligent.

MR. OSLER: This witness has not come within the ruling, by a long way, I submit, that would enable him to take a document and say, "I can express an opinion." 10

HIS LORDSHIP: You think it is too abrupt a change to omniscience?

MR. OSLER: That the jumping-off places are too wide apart.

HIS LORDSHIP: You have heard this conversation between counsel; do you say you are competent to express an opinion, as a medical man of experience, as to whether you can properly answer that question put to you by Mr. McCarthy? A.—I can only say that by my own feelings in the matter, of what I saw, my own experience.

Q.—Your feelings based on your experience? A.—Yes, and in regard to the condition in which I saw Mr. Walker. 20

Q.—Objection is made by counsel for the other side that the jumping-off places are too far apart, from what you have already said, to come to this; what do you say, I will leave it to you?

MR. MCCARTHY: May I say a word?

HIS LORDSHIP: Yes, you may.

MR. MCCARTHY: My friend Mr. Osler is objecting on behalf of the National Trust Company that he does not think the expert witness I tender has sufficient experience to enable him to express an opinion. Now that may be a good argument, when that time comes, but it seems a little presumptuous for him to get up and criticize a person brought here to give an opinion. 30

HIS LORDSHIP: Every counsel is presumptuous.

MR. MCCARTHY: At the proper time. It is not customary for counsel to get up when there is tendered either an electrical or medical expert, and say, "This man should not give an opinion, I do not think he is qualified."

HIS LORDSHIP: If you will ask your question based upon the evidence as to what his experience is.

MR. OSLER: My friend has to prove his case.

MR. MCCARTHY: I call this witness, who has attended Mr. Walker for a number of years, and has seen him a certain number of times. My friend may argue, if he wants to—and no doubt will bring other witnesses who have seen Mr. Walker during the same period, medical men—that this witness did not see sufficient of Mr. Walker to be able to express an opinion upon which your lordship should act; but he cannot shut me off at this stage. If the witness says, in answer to the question, he is prepared to give your lordship his opinion, it is for your lordship to say whether you will follow it or not. 40

HIS LORDSHIP: That is what I asked him.

MR. OSLER: May I put it this way? My friend cannot put any Tom, Dick or Harry in the box, and ask him to express an opinion.

MR. McCARTHY: Yes, he can. It has been held that a well digger can express an opinion.

MR. OSLER: On well digging, perhaps. He has to qualify his expert to show that he is competent to answer such a question. My objection is; first, such a question is not competent at all.

HIS LORDSHIP: When I asked him that question it was based upon conversation between counsel, which the witness could hear. Now there has been
10 some more informative talk as to whether you are competent to answer the question Mr. McCarthy asks you; what do you say? A.—I don't know. It is pretty hard for me to judge a thing like that.

Q.—You are not presumptuous? A.—No, I have no sides in this case.

HIS LORDSHIP: I think I will leave this until after lunch.

(Court adjourned at 12.50 p.m. until 2 p.m., Wednesday, May 14th, 1924).

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AFTERNOON SESSION

EXAMINATION OF DR. DEWAR resumed by MR. McCARTHY:

MR. McCARTHY: Will your lordship allow the doctor to sit down?

HIS LORDSHIP: Certainly.

20 MR. McCARTHY: We left off at the question as to whether the doctor felt he was competent to express an opinion as to whether Mr. Walker was capable of understanding the meaning of the will of 1914. What do you say as to that, Dr. Dewar? A.—Well, I have thought over the question since, and, not understanding it before, I gave an uncertain answer; I have the assurance that I am able to give that opinion.

Q.—Have you seen this Will of 1914? A.—Yes.

30 Q.—What do you say, from what you saw of Mr. Walker, whether he was capable? A.—Any time I saw Mr. Walker I would have no hesitation in saying I would not think he would be capable of making that Will himself. He would not instigate the thing or carry it through. He might understand a simple Will where it was put in very plain language to him and he was given plenty of time to think.

HIS LORDSHIP: That is in 1913? A.—Yes, 1913.

MR. McCARTHY: I do not know whether I asked you before as to his physical condition? A.—I think I answered you partly as regards that. I did not speak of the main condition, that was the arteriosclerosis.

Q.—Was he suffering from arteriosclerosis? A.—He was.

Q.—To what extent? A.—Well, the vessels were extremely hard, and pipe stem like, as they describe it, and non-compressible; very markedly so.

40 Q.—Do you know what age Mr. Walker was? A.—He was in his 60's. I cannot tell his exact age, any more than I have heard here.

Q.—What was the comparison between his age and the age of his arteries? A.—His arteries were very much older than he was, they would indicate arteries of a very old man.

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Q.—When did you cease to attend him? A.—In 1913 I think I was there for the last time.

Q.—Where was he then? A.—At home.

Q.—Did you say he was in bed? A.—In bed.

Q.—What was his condition at the time? A.—Well, as I said before, he was dull, he would carry on a very slight conversation. He did very little talking.

Q.—And as to his physical condition? A.—Well, not any change I could note from what I had seen when I saw him early in the season before.

Q.—During the intervals which you described, when he was more intelligent or when he was intelligent I think was the expression you used, were you able to carry on a connected conversation with him? A.—No, I never had an opportunity to do much of that. At most times he would answer rather incoherently, he often stopped in the middle of a sentence, and Mrs. Walker really carried on all the conversation. That was in the latter few visits.

Q.—Have you read Dr. Shurly's evidence taken on commission? A.—I did.

Q.—You heard Dr. Hoare's evidence today? A.—I did.

Q.—Taking those together, what do you say as to the conclusions which Dr. Shurly arrived at? A.—Well, of course, the conditions that Dr. Shurly described were very much more defined than those I saw.

Q.—What do you say as to the probability, or possibility, of the conditions which you saw reaching the stage which Dr. Shurly described? A.—Well, I think it was quite possible, in fact, rather logical.

HIS LORDSHIP: What you say is they were more defined, as described by Dr. Shurly? A.—Yes. You couldn't have progression backwards.

MR. MCCARTHY: Not backwards. Dr. Shurly describes the conditions as worse than you saw them? A.—Yes.

HIS LORDSHIP: You say they were no better when you saw him? A.—No, your lordship, I said that the last time I saw him in 1913 there was no change from the previous time I had seen him; I don't know how long before it was.

Q.—With reference to Dr. Shurly's opinion? A.—In reference to Dr. Shurly's opinion, of course, it was a much more advanced condition than I saw.

Q.—Dr. Shurly saw him in 1913? A.—Yes.

MR. MCCARTHY: Much more advanced.

Q.—You have heard what Dr. Hoare said, and you have heard what Dr. Shurly said; how does that coincide with your opinion as to the cause of the trouble? A.—It did coincide with my views.

Q.—Do you know Dr. Shurly? A.—I do.

Q.—Is he a man of standing, and reputation? A.—Yes, he has a very good standing in the city of Detroit.

Q.—Did you have any consultations with other medical men, Dr. Dewar? A.—No, I saw him only in cases of rather an emergency, and I went as I was sent for.

Q.—Just in cases of emergency when you were sent for. How many times,

if you can recollect, speaking from memory, would you see him? A.—I probably saw him dozens of times in that period. I often saw him at the house when I would go to see Mrs. Walker, and the others, any of the servants.

MR. OSLER: A dozen times in the whole period?

MR. MCCARTHY: A dozen times when he went to see him, but he would see him on other occasions when he went to see her.

MR. OSLER: In the whole period?

HIS LORDSHIP: 1911 to 1913? A.—I probably saw him a dozen times.

MR. MCCARTHY: Do you know whether he was being treated by anybody else in that period? A.—I think he was given very little treatment in that period, as far as I know.

Q.—Do you know whether he was abroad during that period or not? A.—Yes, he had been abroad during that period. I saw him in 1913 just shortly after he returned, and only saw him once then.

Q.—Taking your observation, and Dr. Hoare's evidence, and Dr. Shurly's evidence, what is your diagnosis of this case? A.—Well, I think it was a specific condition due to a specific trouble.

Q.—What do you say as to the symptoms you found being consistent, or inconsistent, with that theory? A.—They were consistent.

20 CROSS-EXAMINED By MR. HELLMUTH:

Q.—I understand, doctor, that during the period from 1911 to your last attendance in 1913, you were not called in to see Mr. Walker more than about a dozen times? A.—That is right; that is when I was directly called to see him; I saw him on other occasions.

Q.—You were called to see him as a patient some dozen times? A.—Yes.

Q.—You say when you were called it was in cases of emergency, that is, he was supposed to be suffering? A.—Yes.

Q.—So, on the occasions on which you saw him, it was at a time when he was more or less in physical discomfort, if not pain? A.—That is right.

30 Q.—And those occasions were mainly due to this prolapse of the bowel, or prolapsus? Is that right? A.—Most of the times, yes.

Q.—The bowel extruded? A.—That is right.

Q.—And that would cause considerable physical weakness? A.—Yes.

Q.—So that we may fairly say, as I think you said, that when you saw him, or were called to see him, it was when he was physically in the worst conditions? A.—Yes.

Q.—Is that right? A.—That is right. There was one exception to that, and that is some days I was called in to see him sort of incidentally when I was at the house.

40 Q.—With these exceptions, it was at the worst times? A.—Yes.

Q.—Were you at all, apart from your medical attendance, a personal friend of Mr. Walker's? A.—No, I didn't know Mr. Walker before. I knew him to see him, but not personally.

Q.—You knew him to see him, but not to speak to? A.—No.

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P. A. Dewar,
Cross-Ex-
amination,
14th May,
1924.

RECORD

*In the
Supreme
Court of
Ontario*

Plaintiff's
Evidence

No. 14
P. A. Dewar,
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amination,
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Q.—You were not a social visitor at the house? A.—That is right.

Q.—You did not attempt to discuss any of the hobbies with him, that he might have, or any of his business affairs? A.—No, only one evening I remember being called there very late, after the close of my office, as often happened, and he pointed to one or two pictures hanging on the wall and spoke about them. That was all.

Q.—One evening you remember his pointing to some pictures. Can you give any idea of about what time, or period, that would be during your attendance? A.—As near as I can fix it now—it is just a matter of trying to remember—I think it would be along about 1912 possibly, because I remember he came 10 down to the library that evening where I was waiting.

Q.—That was in the library? A.—Yes.

Q.—Did he say anything about the picture? A.—He spoke about the pictures.

Q.—You do not carry in memory what it was? A.—I did not know much about it.

Q.—Did he ask you to look at certain pictures? A.—Yes, he mentioned two in particular, I think.

Q.—Did he describe who they were by, and what they were of? A.—I think he mentioned 20

Q.—The painter's name? A.—The painter's name, and some things. I didn't know anything about it, and the matter dropped.

Q.—You do not suggest he was confused in that respect? A.—No, at times he would be quite clear.

Q.—And seeing him as you did, generally when he was at his worst, that is physically certainly at his worst, you were not meeting him when he was at his best? A.—No, only on those occasions.

Q.—And very few they were? A.—Yes.

Q.—And your visits were very infrequent? A.—Yes.

Q.—Months would go by without your being called in? A.—I can't re- 30 member exactly the length of time.

Q.—I think you used the expression "months?" A.—That is probably right.

Q.—So, as far as you know, months went by without any doctor being called in, because you knew of nobody else attending him, is that right? A.—That is right.

Q.—And the sole trouble that you were attending him for, as I understand it, was this bowel trouble, this prolapse? A.—Yes.

Q.—There was no other illness, while you were there, you were called to attend him for? A.—No, I can't recall any. He may have been suffering with 40 bowel trouble independent of the prolapse, not anything special.

Q.—Apart from that you know of nothing? A.—No.

Q.—Mrs. Walker was naturally somewhat anxious about him? A.—Yes.

Q.—And Mrs. Walker would carry on a good deal of the conversation? A.—Yes.

Q.—Would he ever interrupt her when she was talking? A.—No, it never

took on that form; he would undertake to explain his symptoms, or say something about it, and probably fail to express himself, and she would take it up.

Q.—He would have gone far enough for her to take it up? A.—Oh, yes.

Q.—He would have gone far enough for her to intelligently take up what he had said, and finish it? A.—Yes.

Q.—And give a start to the conversation? A.—Yes.

Q.—And then she took it up? She was fairly talkative? A.—Yes, I would say so.

10 Q.—Did he ever say anything in regard to her taking up a little more of your time than she should? A.—Yes.

Q.—What did he say about that? A.—On one occasion when I was there, I remember, whenever he was like himself at all he was very courteous, and thoughtful of others, and on this occasion I remember Mrs. Walker had called the gate-keeper—that is, it was one of the late visits, about ten o'clock at night, and Mr. Walker interfered on that occasion.

Q.—What did he say? A.—He said it was too bad to disturb the man, he thought he was tired, and it would do well enough to-morrow, and that sort of thing. And he carried on a little conversation about that.

20 Q.—That was on one of the late visits? A.—On one of the visits I made late at night.

Q.—He thought it was too bad? A.—Yes. That was one of the early visits.

Q.—Was he ever rude to you? A.—Never, always the opposite.

Q.—Always polite and courteous? A.—Yes.

Q.—And a man who was always more or less careful of his appearance? A.—Yes, always.

Q.—And neat when he was dressed? A.—Yes.

Q.—A polished gentleman, it would be fair to say? A.—That is what I would label him.

30 Q.—A reticent man? A.—Rather quiet, although I always found, at these times he was prepared to talk, that he was quite frank.

Q.—And would talk, as you say, on the couple of occasions you were there, and carried on a conversation of more than merely a few words? A.—Well, he didn't go much beyond that. I remember on one occasion he surprised me. He had seemed very confused that evening, and he noticed my car out in the courtyard, and he spoke of it,—it was a Ford coupe, and at the time when Ford was beginning to prosper unusually well—he talked about that and said he was so glad to see them succeed, and that sort of thing. He didn't go beyond that.

40 Q.—He expressed his pleasure at the success of the Ford company? A.—Yes.

Q.—You never, I suppose, discussed his own business affairs with him? A.—No.

Q.—In any shape or form, is that right? A.—Not at all.

Q.—You knew nothing, of course, in regard to any Will, or Wills, that he had made? A.—None whatever.

Q.—Subject to my learned friend's objection, Mr. Osler's, if I might be permitted to examine his opinion in regard to the Will?

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HIS LORDSHIP: Your friend Mr. Osler's objection?

MR. HELLMUTH: I joined in his objection.

Q.—If Mr. Walker, in 1901, had made a Will, and in that Will there had been a great many bequests and gifts, and that Will had been gone over with him in 1914, and certain suggestions, or perhaps alterations, had been made, do you say that, in your opinion, he could not understand the difference between the changes in the Will that he had beside him, or the clauses of the Will he had beside him, which he had previously made, and those proposed in the new Will? A.—Well, I cannot go so far as that because if these were taken up clause by clause and explained, I would think he might, in his good moments, have com- 10
prehended.

Q.—Then, did you ever discuss with him any general topics such as politics, or anything of that kind? A.—No, when I saw Mr. Walker it was always about his own personal trouble.

Q.—Of course, you were called in for that? A.—And there was little touched on otherwise than some such matters as I have spoken of.

Q.—He never, I understand, am I correct, displayed any delusions to you? A.—No, it was always mental confusion.

Q.—No delusions? A.—No.

Q.—No ideas that he was being persecuted, or poisoned? A.—No, I never 20
heard it.

Q.—No change, so far as you saw, in regard to his affection or regard for his wife? A.—No.

Q.—No expressions of great irritability? A.—No.

Q.—Nor anything in the way of mental excitement, or abnormal emotion? A.—No.

Q.—Nothing of that kind. What you say is there was at the times—and they were the worst times—you saw him, some confusion in the way of expressing himself? A.—Yes.

Q.—Or inability, as you thought, to completely express himself? A.—Yes. 30

Q.—Were you aware that at the time you were attending him he was going to his office? A.—He may have been, part of the time. I can't be sure of that. I don't think he was.

Q.—You don't know whether he was or not? A.—No.

Q.—Let me understand. You said that you saw him, the last time, I think you said, in November, 1913? A.—I fix that it was, because I know it was shortly after he returned from France.

Q.—Was it shortly after that that Dr. Shurly came? A.—Yes, very soon after.

Q.—And you ceased entirely? A.—I ceased entirely. I think I was there 40
once not knowing that Dr. Shurly was in attendance, and of course, when I knew, I did not go back any more. I was called that day to see the case without being informed that Dr. Shurly was there.

Q.—Did you make any tests? A.—Shortly after I first saw him I tried his reflexes, and, of course, listened to the heart, and examined the arteries. I knew of the history of the case.

Q.—I am asking whether you made any specific tests? A.—No, there were really no specific tests to be made.

Q.—You heard what Dr. Hoare said about the tests of the reflexes, the test being negative? A.—Yes.

Q.—Was that the result with you? A.—No, they were rather exaggerated when I saw him.

Q.—Did you make any test of the hearing or his eyes? A.—No, I made no test of the eyes. Of course, his hearing was apparently normal, or so near it would not be noticeable.

10 Q.—Did you make any test of the Wassermann's test? A.—No.

Q.—That was in vogue then? A.—It was just coming into vogue then.

Q.—In 1913? A.—Of course, in 1913 I didn't because I was called then under a misapprehension, I didn't know the other doctor was in attendance. I don't know how long before that I saw him.

Q.—Did you attend him in the early part of 1913? Because I understood from 1911 to November, 1913, it was in that period that you paid this dozen of visits when you were called? A.—Yes.

Q.—Did you attend him at all in the early winter of 1913? A.—I have no means of recalling it, I really don't know.

20 Q.—Was the November attendance the solitary attendance in that year, as far as you know? A.—As far as I can recall now.

Q.—That was the only time you attended in the whole year? A.—I cannot say for the early part of the year. I know about the one because of his coming from France shortly before.

Q.—You have no recollection whether you did, or did not, attend him in the early part of 1913? A.—I can't swear.

Q.—Am I right when I say to you you have no recollection? A.—No recollection?

30 Q.—Can you tell me whether you have any recollection as to whether you attended him in the latter part of 1912? A.—Those dates I cannot fix at all, only I know I gave that attendance along there somewhere in 1911, from 1911 to 1913. I have none of my records.

Q.—You practically, as I understand it, saw little or no change in his physical condition from the time you first attended him until the last time? A.—Yes, I did see changes, I thought they were for the worse all the time.

Q.—I thought you said there was little or no change. I have a note of that; little or no change in his physical condition? A.—Little or no change, in what time?

Q.—In the time you were attending him? A.—I didn't mean that.

40 MR. MCCARTHY: I don't think he said so.

MR. HELLMUTH: Were you attending any member of the family after 1913? A.—Yes, I attended, as late as 1920, Mrs. Walker, or some member of the family.

Q.—You were not attending him at all? A.—No.

HIS LORDSHIP: What date did Mr. Walker die?

MR. HELLMUTH: He died March 11th, 1915.

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HIS LORDSHIP: Can anybody tell me how much younger Mrs. Walker was than he?

MR. HELLMUTH: I think we can give you that afterwards.

Q.—Let me ask you this: You say the reflexes were exaggerated? A.—Yes.

Q.—Was it on one side more than the other? A.—I don't recall that, not now.

Q.—No memory of that? A.—I think had there been I would have remembered it. I just remember the reflexes at that time, that they were exaggerated. That was comparatively early.

Q.—You say that, if you did attend him in 1913, you didn't try the Wassermann's test? Why was that? A.—Well, for this reason, I didn't consider the case in my hands at all. They were visiting other physicians, like the doctor at Paris, I cannot recall his name, and Dr. Hamilton of New York, and different ones. I simply did not consider I was his attendant under those circumstances; I just met emergencies as they arose.

Q.—Tell me what you would say, if anything, those tests indicated, in regard to the knee or ankle? A.—They would indicate a condition of irritability of the nerves of the spinal cord.

HIS LORDSHIP: That is, the knee test? A.—Knee test.

MR. HELLMUTH: Any clonus of the knee? A.—Of the ankle. I tried the ordinary reflex tests.

Q.—Can you tell me, or do you know the reason of his using a cane, that you speak of, that he walked with? A.—He seemed very uncertain about his gait, the few times I saw him. I had not much chance to observe that except sometimes when he would come into the library, as I said before, and join in the conversation.

Q.—He would come into the library and join in the conversation? A.—He would come in and sit down.

Q.—Why say he joined in the conversation, if you didn't mean it? A.—He might have joined in the conversation, I can't say he didn't, he might, or might not have.

Q.—Why did you mention that he would join in the conversation, what did you mean by that? A.—I didn't mean that he always did join in the conversation.

Q.—Not always, but when he did come in he would join in the conversation. Was there anything at all, apart from his being reticent, somewhat, and a man of few words, was there anything at all extraordinary in the way he joined in the conversation, when he did join in? A.—Often it would be extraordinary because his conversation was not really to the point often, he would say something that didn't seem to have any bearing on what we were talking about.

Q.—Then he was not joining in the conversation. What do you mean? A.—That is splitting hairs.

Q.—Did he join in the conversation?

HIS LORDSHIP: You are now under the charge of splitting hairs, from the doctor.

THE WITNESS: I say it would be hard to tell when he really joined in the

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conversation. He would come into the library and not say a word, as happened sometimes, at other times he would come in, and the night I spoke of is one of the nights, and make a remark, such as the remark about the Ford car.

MR. HELLMUTH: You did not see him at his best; you were not called in when he was at his best? A.—No.

Q.—You were called in when he was at his worst? A.—Yes.

Q.—There were occasions, at his worst, when he would make such remarks as you say about the Ford people doing well, and he was quite glad they were doing it? A.—Yes, I was not called in to see him that night; so he was not at
10 his worst.

Q.—You didn't know how well he was at his very best? A.—No, I can't say.

Q.—You can't give any opinion as to how far, when he was not suffering physically, and was at his best, his mentality went? A.—Not any more than I would infer that a man who would get confused in his conversation . . .

Q.—Would always be confused? A.—More or less.

Q.—You think a man sometimes confused in his conversation would be always confused? A.—I think that would be the natural inference.

Q.—He was not always confused, according to you? A.—No, I know that,
20 but I say that a man who would be confused like that you wouldn't expect much from the conversation even at the best times; I wouldn't expect to.

Q.—Well, we get to this; there was no difference between his best and worst? A.—I did not say that.

Q.—Would there be a marked difference between his best and worst? A.—There might be.

Q.—There might be a marked difference between his best and worst? Was there any tremor in his hands? As far as you remember, or saw? A.—I don't remember that.

Q.—What did you see of his handwriting? A.—No, I didn't see it.

Q.—Would you expect him to write a clear, distinct, and definite hand and
30 signature? A.—He might at his good moments, at his good times.

Q.—He might in his good times? A.—Yes.

Q.—So his handwriting might be perfect in his good times? A.—Might
be.

Q.—Would show no deterioration from his earlier writing? A.—Yes, a man could be very far advanced and still write a good hand.

Q.—I am speaking of this particular gentleman, Mr. Walker? A.—Yes.

Q.—So that wouldn't surprise you at all? A.—No.

Q.—Would it surprise you if he was thoroughly capable during the period
40 of 1912, in the opinion of business men, to give due weight and consideration to an important business deal, would that surprise you? A.—As early as 1912?

Q.—As late as 1912, I prefer to put it? Late in 1912? A.—I can only answer that by saying this; under the conditions I saw him I wouldn't expect it.

Q.—Doctor, I am asking you would you be surprised, taking into account that you saw him at his worst, to learn that in the summer and autumn of 1912 he was, in the opinion of perhaps more than one capable business man, able to

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give due weight to a deal of a very important nature? A.—Yes, I would be surprised.

Q.—And that would lead you to think you had taken a somewhat extraordinary view, wouldn't it, if it is correct? A.—That I had taken somewhat?

Q.—Extraordinary view of the progress of this trouble? A.—Well it would show, if that were true, that I was wrong in my judgment.

Q.—You did not know, of course, at all to what extent he was being consulted in business matters? A.—No.

Q.—He was a man who took some time to make up his mind, as far as you saw, in regard to any matter: is that not so? A.—I think so, yes. 10

Q.—You would not say it was not a characteristic of him all his life? A.—Yes, I think he was a very deliberate, self-contained man.

Q.—He was always so; is that your impression? A.—It is my impression.

Q.—That he had started out as a deliberate, self-contained man, taking much longer to make up his mind, or come to a definite decision, than other men, I mean the average man; that would be right, would it doctor? A.—Yes.

Q.—As to whether his judgment, when he did make a decision, was better or worse than other men's, you wouldn't venture an opinion? A.—I cannot, only from what I saw at the time.

Q.—You cannot speak of later, but the earlier time, you wouldn't venture an opinion? A.—No. 20

Q.—And if, in the case I have put to you, he had shown a thorough appreciation of a somewhat complicated and difficult situation, you would think your diagnosis was rather out, wouldn't you, to put it that way? A.—If you mean diagnosis of the trouble, I would not think so.

Q.—But the diagnosis of the result, probably, of the trouble? A.—Yes, it would be out.

Q.—Then, of course, in 1914, according to your view, he would be further gone? A.—I would expect so, yes.

Q.—And if again, in 1914, he considered a deal, quite an important matter, in the opinion of other people, you wouldn't think that the trouble had progressed, as you have said? A.—No. 30

Q.—Is it not a fact that there is an arrested condition in cases of this trouble? A.—Oh, yes.

Q.—And that it does not uniformly progress in all cases? A.—The tendency is to progress, of course.

Q.—I am not disputing that, but I say, is it not a fact that it does not always progress, and that in some individuals it stops at a certain stage? A.—Under recent treatment I think that is true, since the time of the 606 treatment.

Q.—Would you say, or take the view, that if the Wassermann's test showed negative results, it would not mean that the trouble had been arrested, would you say that? A.—No, because the Wassermann's test is not an absolutely reliable test. It is when it is a positive reaction, it is a correct test. 40

Q.—If you had a series of negative results, a series of tests with negative results, would you not place any reliance upon that? A.—Well that Wassermann's test may be nullified in another way; if he was taking the iodine and mercury treatment it will often give no response at all, even in well defined cases.

Q.—Suppose he was not taking the iodine and mercury treatment—he was not taking it while you were there? A.—No.

Q.—He was not taking it from 1911 to 1913 as far as you knew? A.—Not as far as any treatment I gave him.

Q.—You know of no one else treating him in that way? A.—Yes, the doctor in Paris had treated him.

Q.—You didn't know what the other treatment had been? A.—No.

Q.—You didn't know of any treatment of iodine and mercury? A.—No.

10 Q.—Assuming there had not been any such treatment of mercury and iodine, and a series of Wassermann's tests had shown negative results, would you not place any reliance on that? A.—I wouldn't place very much, if clinical symptoms were present.

Q.—You don't know if clinical symptoms were present? A.—I think that his symptoms were of that character.

Q.—I am speaking of after 1913? A.—I don't know as to that.

Q.—Tell me if the clinical symptoms were present in November 1913, because you cannot say you saw him at all in 1913 except in November? A.—That is right. You want to know what the clinical symptoms were then?

20 Q.—In November 1913? A.—There was this impairment or difficulty of speech, especially at times.

Q.—I am just asking you—I think you only saw him once in 1913? A.—That is what I am telling you.

Q.—It could not be "at times"? A.—I was speaking for the whole.

Q.—I do not want that, doctor. In 1913—was the impairment at the one time you saw him in 1913, are you prepared to swear to that? A.—No, I am not.

Q.—We will eliminate that. In November 1913, when you saw him, there was no impairment of speech you can remember? A.—I don't remember on that special occasion.

30 Q.—You only saw him once in November, 1913, you told us, and it was because you went there? A.—Yes.

Q.—You can't say there was any impairment of speech then, so we will eliminate that. What else in the way of symptom did you see on that one occasion in 1913 when you saw him? A.—There was the difficulty of motion.

Q.—What difficulty? A.—The impairment of speech I had reference to, any confusion like I mentioned on former occasions was still a condition with him.

Q.—Tell me what took place on that 1913 visit? A.—In talking to him?

40 Q.—No, just tell me what occurred? A.—I do not quite apprehend what you mean.

Q.—First of all, were you sent for in November, 1913, I think you said you went voluntarily? A.—No, I didn't go voluntarily, I was sent for.

Q.—You were sent for in November 1913? A.—Yes.

Q.—What did you find when you got there, after you had been sent for? A.—I know it was in connection with the prolapse of the bowel.

Q.—You were sent for in November 1913 and found a prolapse of the bowel? A.—Yes.

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Q.—Where was he, in bed? A.—He was in bed, at that time.

Q.—Apparently suffering physical pain? A.—Discomfort.

Q.—Considerable discomfort? A.—Yes.

Q.—Did you speak to him when you went in? A.—I always did.

Q.—Did he answer you? A.—I don't remember his special answer to that occasion, but I remember that in talking about the case, he seemed to take little or no part in it. There was a man in attendance at the time.

Q.—There was a man in attendance, and Mr. Walker was in considerable discomfort? A.—Yes.

Q.—And you cannot remember anything he said? A.—No. 10

Q.—In November 1913? A.—No, I don't remember.

Q.—You can't remember anything he said? A.—No.

HIS LORDSHIP: I should like to know if there is any distinction between hernia, prolapse, or rupture? A.—Rupture and hernia are the same. It is protrusion of the bowel through the abdominal wall; the prolapse of the bowel had torn the wall of the bowel down completely, so the bowel came out in the open.

MR. HELLMUTH: That is, the bowel would protrude through the anus? A.—Yes.

Q.—It would come right down the rectum? A.—Yes. 20

Q.—So that would necessarily cause great discomfort? A.—Well, if it has existed for a long time it is a cause of discomfort, it is not pain.

Q.—Great discomfort? A.—That is right, at times it would.

Q.—I understand that is what you were called for on November 1913? A.—Yes.

Q.—You don't remember what date it was? A.—No.

Q.—And you say Mr. Walker practically didn't speak to you? As far as you can recollect? A.—As far as I can recollect, yes.

Q.—And did the male nurse speak to you? A.—Yes.

Q.—There was no talk that you can remember of by Mr. Walker on that occasion? A.—No. 30

Q.—Therefore, nothing to show confusion of mind or thought? A.—No more than he did not talk to me trying to explain his symptoms.

Q.—If a man doesn't talk to you, you do not say that implies confusion of thought? A.—It did, in this way, he would try to explain what was the matter with him.

Q.—You did not tell me he tried to explain on that occasion? A.—He talked to the man who was there, he would put in a word as to what the conditions were.

Q.—Then he did talk? A.—He didn't talk to me, I said.

Q.—Was he talking to the man? A.—Yes. He was explaining to him when he was trying to fix the bowel back in position. 40

HIS LORDSHIP: The treatment is to shove it back? A.—Yes, he was trying to explain about that.

MR. HELLMUTH: He didn't say anything to you. What did he say to the man that showed confusion of thought? A.—Only that he didn't seem to understand what he wanted.

Q.—What did he say he wanted, that caused you to think that? And what was it he didn't explain? I want to get what occurred, I want the fact, not abstract theory? A.—I don't know that now.

Q.—You don't remember it? A.—No, I don't remember it exactly.

Q.—You don't remember what it was? A.—I just remember the incident.

Q.—Then why do you say that what he did say to the man was not what he wanted to say? A.—Well, I gather from my recollection of it, the man, it was quite evident, might be saying something that was not akin to the subject at all.

10 Q.—Was he saying something that was not akin to the subject at all? A.—He didn't express it as he seemingly wanted to express it, he would just say a few words, and break off in it.

Q.—Let me understand. Did he say "I am going for a walk to-day?" A.—Oh, no, he would start in as if he was going to explain, then he seemingly became confused.

Q.—What was he going to explain? A.—I think it was evident he was trying to explain the position, and what he wanted done.

Q.—Was the male nurse just brought in, so he wouldn't know how to attend to this at that time, was he a new man? A.—The male nurse was, I think, 20 more or less a constant attendant.

Q.—Wouldn't the male nurse know what was to be done in a case of that kind, would he require any explanation? A.—Oh, yes. He might know, that wouldn't hinder anyone from trying to tell him; it wouldn't necessarily hinder any conversation on the part of Mr. Walker.

Q.—I must say I fail to understand what conversation, or what direction Mr. Walker could have usefully given the male nurse in regard to that matter? A.—None whatever, but a man suffering pain, trying to replace that, might naturally put in

Q.—An odd word or two, do you mean? A.—Yes.

30 Q.—And the more pain or discomfort he was suffering the less likely it would be that he would give any very definite direction? It would be, "You are hurting me," or something of that kind that he would say, would not it be? A.—Yes.

Q.—I want you to tell me what it was that he said which led you to think he was not just making some ejaculation or remark in reference to the pain he was suffering? A.—I don't remember that now.

Q.—Have you given me all the explanation you can of what took place in November 1913, to make you think he was either confused, or giving absurd directions? Have you given me everything that you can? I do not want you 40 to give it afterwards? A.—I have given you all I can under the circumstances; I cannot possibly remember the special conversation.

Q.—You don't remember the special circumstances? A.—No.

Q.—Who was the male nurse during 1912 when you were there? A.—I am not sure of that. I know there was a male nurse on previous occasions when I have been there, I do not know what those occasions were.

Q.—Is your recollection of the whole matter, so far as any details are concerned—may I use the expression "hazy?" A.—No, not in a general way.

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Q.—I am not speaking in a general way, when we get to details? A.—It is hazy as regards any specific conversation; naturally you wouldn't expect a man after 13 or 14 years to go into it.

Q.—There was never any striking bit of incoherent conversation that fixed itself in your mind? A.—You mean as regards the sentence he uttered? No.

Q.—In regard to the absurdity of the remarks he made? A.—No.

Q.—Or anything of that kind? A.—Not as to the character of them.

Q.—There was nothing so startling as to fix it in your memory? A.—No.

Q.—And does that apply not only to the words but to the subject matter of the words? That you cannot recall anything in regard to the subject matter, or the words themselves, that definitely fixes in your mind the conversation so that you can give us any detail of it? A.—No, I can't give you any specific conversation. 10

Q.—Were you ever in attendance at all when Dr. Shurly was there? A.—No.

Q.—Were you consulted by Dr. Shurly? A.—No. This one time I went was when Dr. Shurly was there, but I didn't know at the time he was there; but I was asked to see Mr. Walker in connection with this condition.

Q.—As to the prolapse? A.—Yes.

Q.—And was Dr. Shurly there then? A.—No. 20

Q.—You learned he had been there? A.—I learned that Dr. Shurly was there afterwards, and that he had subsequently attended the case. I had been called just for the emergency.

Q.—You continued to attend Mrs. Walker? A.—Not for a good while after; Dr. Shurly had taken care of her.

Q.—Did you see Mr. Walker at all after that? A.—No.

Q.—Not to the time of his death? A.—No.

 RE-EXAMINED BY MR. MCCARTHY:

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Q.—Now, according to your evidence to my friend Mr. Hellmuth, you divided your visits into occasions when you were called at times which you call "emergency visits," and other visits when you were called to attend some member of the family? A.—Yes. 30

Q.—I understand you to say that at the times when you were called on the emergency visits to see him, it was at a time—and my friend put the words into your mouth—when he was at his worst? Do you know whether it was his worst, or not?

MR. OSLER: My friend must not lead.

THE WITNESS: It was at his worst, I think.

HIS LORDSHIP: He is pointing out what the cross-examining counsel said.

MR. OSLER: Trying to get the reward of unrighteousness. 40

MR. MCCARTHY: When you saw him, when you were called in on other occasions, I mean for other members of the family, do you know whether you saw him at his best, or not? A.—No, I don't know that.

Q.—Did anybody remark to you, for instance, did Mrs. Walker ever say, "You are seeing Mr. Walker at his best?"

MR. OSLER: Surely that is a most improper question.

MR. MCCARTHY: The National Trust Company is anxious to keep out evidence in this case.

MR. OSLER: No, the National Trust Company is anxious that the evidence should be brought out. I do suggest that my friend should not lead the witness; and I also suggest it was an entirely improper and leading question to say did Mrs. Walker suggest such and such a thing. My friend knows that well.

MR. MCCARTHY: I do not consider that leading.

HIS LORDSHIP: Go on.

10 MR. MCCARTHY: I want to know about it. Was his condition ever spoken of to you when you called at other times, except on the occasions you called to see him?

MR. OSLER: Is my learned friend going to lead his witness.

HIS LORDSHIP: Oh, no, he must not lead his own witness. Mr. McCarthy asks the question in a direct way, without going around the corner to it.

MR. OSLER: I point out to your lordship that sometimes the direct way is contrary to the rule.

HIS LORDSHIP: I am not going to be very particular because this man has been examined often and will not be led into it.

20 MR. MCCARTHY: Your lordship is not a jury. If there is anything wrong with my question you will point it out.

HIS LORDSHIP: You should stick to the rules.

MR. MCCARTHY: You said on one occasion pictures were pointed out to you, I think it was in 1912; was that on the occasion of a visit to him or her? A.—That was on the occasion of a visit to her.

Q.—Under what circumstances did he come into the room? A.—I had been asked to come down to Mrs. Walker's during my office hours, and I had asked that it be put off, but she was rather insistent and sent her car down for me. I went down; I left my office, I asked them to excuse me, that I would be
30 back in a short time.

Q.—I am not concerned with why you left your office? A.—I am coming to the point. When I got there I had to wait a considerable time, they were at dinner, and Mrs. Walker came in first and stated her troubles to me, and Mr. Walker came in considerably later and sat down. And on that occasion he seemed much better. And she may have made the remark, I don't remember it.

Q.—He felt much better? A.—Yes.

Q.—Do you remember whether you noticed anything, as far as his physical condition was at that time? A.—No, I didn't examine him then. He seemed to be having some difficulty in his walking. I did not examine him.

40 HIS LORDSHIP: That difficulty in his walking might be due to apprehension of the trouble in his rectum? A.—Yes.

Q.—Men sometimes feel they are much worse than they really are? A.—He was, of course, at a disadvantage in that way.

MR. MCCARTHY: After you had finished your professional work with respect to Mrs. Walker, he called your attention to some pictures? A.—Yes.

Q.—Now, if you saw him at his best, would it be fair to say that the visit you have just referred to, at that time he was at the best you ever saw him? A.—Yes, he was at the best I ever saw him.

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Q.—What do you say then as to his being capable to make that Will referred to before? A.—Well, of course, at that time I didn't see enough of him, or follow up any conversation sufficiently to give judgment.

Q.—And you formed none at that time? A.—Yes.

Q.—If on the 1912 visit to Mrs. Walker, you have referred to, you saw him at his best, as far as you are concerned, on the other occasions when you saw him, when you were not visiting Mrs. Walker, was he as bright as on that occasion; or describe his condition? A.—Well, his condition was little changed; he did not often join in the conversation at all on visits that way. Sometimes I didn't see him.

Q.—I am speaking of the conditions when you went to see her, and you, either incidentally or purposely, saw him, or where he came into the room; I want you to describe his condition, as compared with the condition in which you saw him on the occasion when he talked of the pictures? A.—He was not so clear and bright in his conversation.

Q.—My friend asked if he was careful as to his appearance. During the times you visited him, was he dressed or undressed? A.—I saw him in his bedroom a number of times, and I have seen him with his gown on.

MR. OSLER: A little louder, if you please

A.—I often saw him in the bedroom, and with his gown on. At times I saw him dressed, of course it was always in the evening, and he was always very well dressed.

MR. MCCARTHY: Do you know whether he kept a valet or not? A.—He did latterly.

Q.—My friend said he had no delusions, or illusions; what was his mental condition in regard to himself? A.—Well that didn't alter much.

Q.—What was it? A.—He was, of course, as I have said before, self-centered. He was very much interested, naturally, when I saw him especially, in what was the matter with him. Naturally he had apprehensions about what certain things would mean, as, for instance, when his heart was beating very rapidly; or feeling there was something wrong

MR. OSLER: I am afraid I cannot hear.

A.—His condition then was that he was apprehensive about things that were wrong with him, anything that was wrong with him, and he was liable to talk about his own condition, or wanting to talk about his own condition.

MR. MCCARTHY: You said something about going to his office during the time you attended him. Did you ever see him go to the office? A.—I never saw him going to the office. I live far from his place.

Q.—You told my friend Mr. Hellmuth you knew Mr. Walker was being treated by Dr. Hamilton of New York, and by a doctor in Paris, whose name you have forgotten? A.—Yes, those two names were mentioned to me by Mrs. Walker.

Q.—Is Dr. Hamilton a man of standing? A.—Very much so, internationally.

Q.—What is his specialty? A.—Neurologist.

Q.—You also mentioned to my friend that Mr. Walker was very uncertain as to his gait. On what occasions did you notice that? A.—Those were at times when I was called to see him, particularly when he was in poor shape.

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Q.—Those were occasions when he was in bed, or did he get out of bed?
A.—He often had to get up on account of the trouble he had.

Q.—You told my friend Mr. Walker gave you the impression of a man who was very deliberate, and he took some time to make up his mind? A.—Yes.

Q.—Did you form any opinion as to whether he was a man who easily changed his mind, or not? A.—No, I hadn't any chance.

HIS LORDSHIP: You had no opinion? A.—No, I had no chance to judge that.

10 MR. McCARTHY: My friend said, if you were told Mr. Walker had negotiated a business transaction of an important nature, would you change your opinion, or express an opinion as to his ability to concentrate? Would you require, before forming an opinion, to know the nature of the business? A.—Well I understood the question as put to me was that he was able to transact business of an important character, and he was required to use good judgment, and my answer, I believe, was that I would be surprised.

Q.—That is, a transaction requiring good judgment, and of an important nature? A.—Yes. More or less of a prolonged mental effort.

20 Q.—You also told my friend there was a man in constant attendance during a certain period? A.—I haven't any recollection of that period at all except that the last number of visits I was there this man was in attendance.

Q.—Were there ever female nurses there too? A.—None during my time.

Q.—Then my friend asked you to relate, or account, anything that actually took place on the occasion of your last visit in November 1913—which you said you were unable to do—and perhaps that does not surprise one. What is the mental picture of that man that is left in your mind?

MR. HELLMUTH: I object to that.

MR. McCARTHY: It is in contrast to what my friend said.

MR. HELLMUTH: I object to this witness giving a mental picture.

30 HIS LORDSHIP: I suppose he can translate what the feelings were, the apprehension.

MR. McCARTHY: I will put it another way.

Q.—What is the opinion you formed of his condition, as the result of that last visit?

MR. HELLMUTH: That was given in chief, and I simply asked in cross-examination for the detail.

HIS LORDSHIP: I think so. It would be going into it again.

MR. McCARTHY: I do not think I asked him in regard to the last visit; I asked him generally speaking.

HIS LORDSHIP: It includes that.

40 MR. McCARTHY: I think not. The last visit is apparently important in my friend's mind, and I have no doubt he has some evidence in mind when asking that question.

HIS LORDSHIP: What was the opinion he formed of the mental condition?

MR. McCARTHY: On the last visit.

MR. HELLMUTH: It will be subject to objection?

MR. OSLER: And subject to my objection?

HIS LORDSHIP: Oh, yes.

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MR. McCARTHY: Will you answer the question? A.—I hardly know how to answer that question. I think, in just simply looking at the man, I would have

Q.—In view of everything that took place when you were there? A.—You mean in comparison?

Q.—No. If you did not form an opinion you will no doubt tell us. What I mean is, you saw the man; you said the male nurse was in attendance; you were called in a case of emergency; you said to my friend something about a conversation passing between Mr. Walker and the man servant; as a result of everything that took place before you that day, with your knowledge of the condition, were you able to form an opinion as to his mental and physical condition that day? A.—No more than I have expressed already, that there was that confusion.

HIS LORDSHIP: That has all been gone over.

Q.—What I should like to know is as to the expression, "self-centered." How is it relevant to this case? They say all men are anxious about themselves when they are ill; more so than women; in fact, a man patient is said to be a nuisance. Is there anything here that is more than pain, and apprehension of pain, making a cantankerous man—is that what you mean by "self-centered?" A.—No, he was not cantankerous at all. I can only express it by saying he was rather anxious; he talked about his condition as well as he could; he rather magnified the symptoms.

Q.—He was a sick man? A.—Yes. nothing characteristic about it.

HIS LORDSHIP: I think you better leave that out; it is not important; every man who is sick thinks he is the only man ever was sick.

MR. McCARTHY: I will put in the evidence of Dr. Burt R. Shurly, taken in Detroit, on the 7th of March, 1924. There was some discussion to begin with before taking the evidence.

MR. OSLER: I think it should be read. The view we took was that the evidence was taken more or less by a trick; there was not enough notice given that the Examination would be taken, and we were not quite prepared to cross-examine as we should have been.

MR. McCARTHY: We will read the Order.

HIS LORDSHIP: If they were at a disadvantage in not being able to cross-examine, that is enough.

MR. OSLER: I wish your lordship to appreciate the situation.

HIS LORDSHIP: Suppose I take your statement.

MR. McCARTHY: I do not want that statement to go unchallenged.

HIS LORDSHIP: He says he was not ready.

MR. McCARTHY: There was an Order issued on the 18th of January, upon the application of counsel on behalf of the National Trust Company, by the Master-in-Chambers at Toronto. (Mr. McCarthy reads the Order.)

MR. OSLER: My learned friend gave notice that he wanted to examine so and so, and, on the return of the commission, instead of examining the witnesses named, he produced Dr. Shurly. That is the burden of our complaint.

MR. McCARTHY: Where is that notice? It was an open commission.

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Shurly.
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on Commis-
sion

HIS LORDSHIP: A roving commission.

MR. FLEMING: They made application to examine specific witnesses; we said we wanted certain witnesses examined in Detroit. The commission was made an open commission. We got the appointment, and served notice of the appointment, with affidavit of service; and, on the day of the examination, we called in Dr. Shurly.

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HIS LORDSHIP: You sneaked in Dr. Shurly?

MR. FLEMING: No, my lord.

MR. RODD: That is what I said before the examination was proceeded
10 with: "We object to the examination of the doctor, because we have had no notice that the examination was going to be proceeded with today." Robinson's name is in the Order.

MR. MCCARTHY: It is not in the Order.

MR. RODD: Not in that Order.

MR. MCCARTHY: Nor any other Order.

EXHIBIT NO. 7: Filed by Examination of Dr. Burt R. Shurly,
Plaintiff: taken on commission. March 7th, 1924.

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(Mr. McCarthy reads Dr. Burt Shurly's evidence).

20 The deposition of Dr. Burt R. Shurly, taken on behalf of the plaintiff in the above entitled cause, before George Donaldson, a Notary Public in and for the County of Wayne, State of Michigan, at Office No. 702 Majestic Building, in the City of Detroit, Wayne County, Michigan, pursuant to notice and order hereto attached.

APPEARANCES:

For Plaintiff
For Defendant National Trust
Company, Limited,

O. E. FLEMING, K.C.
J. H. RODD, K.C.
DEAN LUCKING, ESQ.
HAROLD W. HANLON, ESQ.
D. W. SAUNDERS, ESQ.

30 For Defendants Mrs. E. C.
Walker, Lillie Brewster and
Mary W. Cassell

MR. RODD: We object to the examination of the doctor, because we have had no notice that the examination was going to be proceeded with today. We did have an intimation from the other side that they were going to examine a man named Robinson, a man whose name is in the Order, but no notice that the

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doctor would be examined, and therefore we are not prepared to go on with the examination today.

I do not like to put the doctor out by asking him to come back again, but I tried to avoid that by suggesting it to Mr. Fleming earlier on our appearance here, so that the matter might be arranged so as to save the doctor inconvenience. But, we are not prepared to go on today. If we had known that the doctor was going to be examined, we would have been prepared to complete it, so as not to trouble the parties again.

MR. FLEMING: I will prove the service of this appointment that you issued, Mr. Donaldson, the signatures of the different solicitors are on the back of it, Blake, Lash, Anglin and Cassells, Mr. Saunders' firm, Mr. Smith's firm and all of the solicitors who are entitled to notice; I will prove that by putting that in. This sets the hour of two o'clock, on the 7th day of March, 1924, at your office here in the City of Detroit, as the time and place for the examination viva voce of witnesses on behalf of all parties under the said commission. 10

Dr. Shurly is a witness in behalf of the plaintiff under that order, and I am ready to go ahead with his examination. I ask your directions.

MR. SAUNDER: On behalf of Mrs. Walker, and those whom I represent, I object to proceeding with the examination. I claim that it is not in accordance with the practice, where unnamed witnesses are to be examined, and, according to the order, that no examination should be had without the parties receiving notice of those who are to be submitted for examination. I made enquiries before I came up here, of the defendants' solicitors, to know who were to be examined, and they informed me that Mr. O'Leary and Mr. Robinson were the only ones. I certainly would not care to take part in the examination of an important medical witness now. 20

MR. FLEMING: Who do you refer to by the "Solicitors." You did not ask our firm.

MR. RODD: Blake and Company.

MR. SAUNDERS: I asked Blake and Company, and I was certainly speaking to Mr. West—I will not say that I discussed with him personally the witnesses that 30

MR. FLEMING: Blake & Company are not the same interest as ours and I am not responsible for what they say.

MR. SAUNDERS: Quite so.

MR. RODD: In our notice for the examination of Mr. O'Leary, we gave notice of the person we proposed to examine, and we have here proof of the service on the parties.

But we were not treated in that way by the other side, and therefore, we are not prepared. 40

MR. SAUNDERS: I do not want to say Mr. Fleming, positively, that Mr. West spoke about the witnesses to me—that I spoke to him about the witnesses, but my impression is that I did, and he said he did not know.

MR. FLEMING: He did not know, no.

The position I take, Mr. Commissioner, is that we are acting strictly within the order. We have not got the names of any witnesses. We can bring a dozen or one, just the same as on the trial and the other side are not entitled to notice or to the names of the parties to be examined.

I ask that you proceed with the examination.

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DR. BURT R. SHURLY was thereupon called as a witness on behalf of the plaintiff, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION

By MR. FLEMING:

Dr. Burt R.
Shurly.
Examina-
tion-in-
Chief.

1. Q.—Doctor, you are an active practitioner in the city of Detroit? A.—Yes, sir.

2. Q.—For how many years have you been practicing? A.—29 years.

3. Q.—Did you know the late E. Chandler Walker of Walkerville? A.—I did.

20 4. Q.—How long did you know him before his death? A.—Well, I had met him, of course, some years before I attended him, but I really had only known him since 1917, November, 1917, when I was first called there to take care of him.

5. Q.—I think your dates are a little mixed. He died in 1915, doctor. A.—1915, it might be then, 1915, November, 1915.

6. Q.—Oh, no, he was dead by that time.

MR. SAUNDERS: I make an objection there, that this is Mr. Fleming's own witness, and he is not entitled to lead him.

30 A.—(after referring to document): November, 1913; November 17, 1913, when I first went there.

MR. RODD: What date was that? A.—November 17, 1913. I would like to correct the date.

7. Q.—When there is an apparent error like that, it is not leading to call the attention of the witness to the fact that he has mistaken dates.

MR. SAUNDERS: I make the general objection.

8. Q.—Was that the first time you attended him? A.—Yes, according to my records. I believe it was the first time I attended him.

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9. Q.—By whom were you called? A.—By Mrs. E. C. Walker.

10. Q.—What condition did you find Mr. Walker in? A.—Well he had been away sometime before, and he was quite sick. He was in bed most of the time, and he had been having, I think, an attack of Grippe at that time. He was having great difficulty with his bowels and his urine. He had a male nurse most of the time in attendance.

11. Q.—Yes. A.—Off and on.

12. Q.—Did you diagnose his case at that time? A.—I really do not remember particularly, at this particular visit, I mean, what the acute trouble was, but he was suffering from a general senile debility.

13. Q.—What condition did you find his mind in? A.—Well, that varied from day to day.

14. Q.—Probably I had better ask you how frequently after that did you attend him. You might give us the dates in order? A.—November 17, 19, 21, 25 and 28; December 3, 13, 17, 23, 27, 30, 1913. Those are visits at Walker-ville, except one which is down as an office call, but which was for some other member of the family.

15. MR. RODD: Which was the office call? A.—December 23, 1913; some one might have stopped in to explain his condition, they sometimes did that.

January 2, 1914; January 4, 8, 16, 21 and 30, 1914; February 6, 10, 11, 12, 13, 14, 15, 16, 17, 20, 22, 27; March 6, 20; April 16; May 6, 8, 10, 11 and 20; June 7; July 3, 24, 30, 31; August 3, 5, 6, 8, 10, 11, 12, 14; September 24, 1914; October 6, 10, 18, 30; November 18, December 1; January 3, 1915; February 11, 1915.

16. MR. SAUNDERS: What date in January, doctor? A.—January 3rd.

17. MR. SAUNDERS: And February 11? A.—February 11. March 10, 1915, consultation at Washington. I got there about 15 minutes before he died of pneumonia.

18. Q.—Now, doctor, what was his progress after your first attendance, in reference to his health, physical and mental? A.—Well, he got better and worse. He had an attack of influenza along there in February, 1914, when I went there every day.

19. Q.—Yes. A.—He was very largely like a vegetable part of the time.

20. Q.—Well, in what way? A.—Well, he was slow in his thinking, and slow in his movements, in bed most of the time; bowels making him a great deal of trouble.

21. Q.—Would you explain that. Just what was the condition of his bowels? A.—Well, he would have involuntary movements, or great difficulty in moving them; they had to be moved with an enema; he had general sluggishness of the bowels, or lack of control; his urine gave him lots of trouble, from time to time.

22. Q.—What would that be occasioned by? A.—Well, that was all due to this general senile change that was going on.

23. Q.—Was it rapid? A.—I think it was rather slow; it had been going on for some time.

24. Q.—It had been going on for some years, would you say? A.—For some years.

25. Q.—Would you make an estimate? A.—I could not make any estimate because I had not seen him before 1913.

26. Q.—As a physician—I understood you knew him before that? A.—I had only just seen him as a

27. Q.—A citizen of Detroit? A.—A citizen of something.

28. Q.—Then this was a chronic trouble?

MR. RODD: A what? Q.—A chronic ailment or trouble?

10 MR. RODD: You had better let the doctor tell it. Q.—I am asking him?

MR. RODD: You know that you haven't any right to ask it in that form.

Q.—All right. A.—Well, he had this chronic condition of his bowels and bladder and difficulty in walking, and slowness of speech, and thinking, and really, Mrs. Walker had to do all the thinking and planning, and the arrangement of all of his affairs.

29. Q.—When you visited him I take it from your former answer to the question, you visited him at his home in Walkerville? A.—Yes, I made these calls at his home in Walkerville. He was very rarely out during this period, excepting out in the garden or something like that.

20 30. Q.—How long would you stay with him, doctor, at a visit? A.—Oh, maybe a half hour or an hour. My conversation with him was comparatively little, because Mrs. Walker did all of the conversation, she knew all of the condition, and his nurse, and he could not describe much about himself that was worth while.

31. Q.—Then, doctor, how did you consider him in February, when you attended him every day for awhile? A.—Well, I thought, he had this Grippe, and that took a great deal of strength, what little strength he had, it took a lot of his strength away, he was much worse from then on, as far as being able to do anything is concerned; he was in bed more.

30 32. Q.—Did they discuss business in your presence at all while you were there? A.—Very little.

33. Q.—With whom would that be? A.—Well, Mrs. Walker talked about his affairs somewhat, but very little. I think I talked with Mr. Frank Walker and Harrington Walker about him several times.

34. Q.—What did you say to them? A.—I cannot recall what I said to them.

MR. RODD: Is that competent?

MR. FLEMING: Yes.

MR. RODD: Upon what basis?

40 MR. FLEMING: On the ground, that we claim that Mr. J. Harrington Walker—I say this, and if you want it down, I will put it down, as the ground upon which I have a right to get this evidence in—that Mr. J. Harrington Walker and Mr. F. H. Walker influenced the making of the will. It is on that ground. I asked the witness what the conversation was.

MR. RODD: I object to it.

A.—I cannot remember the conversation. It is eight or nine or ten years ago, and I would not remember about it at all.

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35. Q.—Well, you did discuss it

A.—(Interrupting)—We discussed it in some sort of a way.

36. Q.—During February, 1913? A.—I do not remember exactly when it was. They were over at several of the visits that I made.

37. Q.—You mean, over at the residence? A.—Over at the residence, and we talked about his affairs somewhat.

38. Q.—Can you give us any particulars, of what the conversation was? A.—I cannot.

MR. SAUNDERS: This is very strongly objected to. He has already said he cannot remember it. 10

Q.—I have a right to ask him.

MR. SAUNDERS: This is your own witness, and you have no right to lead him in this way.

MR. FLEMING: Wait until I suggest something

MR. SAUNDERS: He is asking leading questions now with regard to a conversation which he says he does not remember.

MR. FLEMING: No, pardon me.

MR. SAUNDERS: That is what you have done.

39. Q.—(By Mr. Fleming, continuing): Doctor, have you any recollection of any particular incident or conversation with them? A.—I have not any definite thing in mind. 20

40. Q.—No. Now, then, these interviews, and their visits at the house when you were there would be in what month or at what time? A.—I cannot remember that.

41. Q.—Why were you so frequent in attendance on him in February 1913-1914? A.—He had the influenza, and so did Mrs. Walker. They were both in bed in the same room at that particular time as I recollect it.

42. Q.—Now, had you occasion to diagnose the reason for the long-standing troubles? A.—Well, I had not anything further than what I have told you. 30

43. Q.—What did you attribute them to? A.—There was a general senile decay going on, sclerosis of his tissues.

44. Q.—What would be the foundation of that? A.—I do not know what the original cause of it was. You are supposed to decay faster if you use up the machine faster in your early life. I do not know whether that rule always holds good.

45. MR. RODD: Burning the candle? A.—Yes.

46. Q.—There are some things which aggravate that

MR. RODD: Now, now, Mr. Fleming.

Q.— that bring it along more rapidly, are there not? A.—Oh, yes, 40 there are things.

MR. RODD: I object to that.

47. Q.—Have you anything in mind as a reason for that in this case? A.—No, I have no information.

MR. SAUNDERS: He said he did not discuss it? A.—I have no information about it.

MR. RODD: He is not content with one answer. He is trying to suggest another.

48. Q.—(By Mr. Fleming, continuing): Do you recollect the visit that you made on the 27th February, particularly, doctor? A.—No, I do not, particularly.

49. Q.—You do not remember what time of day that would be? A.—I cannot recollect it now; it is nine years or more ago, yes, 1914—why it is ten years ago. I do not recollect what time of day it was at all.

50. Q.—What was the usual time? A.—Well, usually they sent—unless
10 he was particularly ill, they sent a machine over after me at about six o'clock in the evening, and I went over there and generally had supper, had a conversation with the nurse and what I could with him and got a general description of his case from Mrs. E. C. Walker.

51. Q.—Did I understand you to say that you had supper with Mr. Walker? A.—He only came down to supper perhaps three or four times.

52. Q.—What time of the period? A.—I do not remember, early I think.

53. Q.—Do you know who the nurse was? A.—We had two nurses on duty. I think they were both Harper nurses, if I remember it.

54. MR. SAUNDERS: Both what? A.—Harper Hospital nurses; I may
20 be wrong. It may be that only one of them was.

55. Q.—Do you remember their names? A.—I really do not recollect their names. I might recollect them if I heard their names, but I have not seen them since to talk with them, that I remember.

56. Q.—For how long a period did he require the two nurses, during that time? A.—There were two nurses besides the male nurse.

57. Q.—Yes. A.—The male nurse was there practically most of the time. The two female nurses were there only during this influenza period.

58. Q.—Commencing at about what time, doctor? A.—Well, I cannot remember that for sure, except that I would suppose that it was during this
30 February attack.

59. Q.—Did he get over that attack? A.—Yes, he got over it, but it left him weaker and not quite so good,

60. Q.—About what time or date would you say that he got over the influenza attack? A.—Well, he never completely got over it; because, they took him to Washington against my advice and he developed pneumonia. Of course, this was some months later. He never completely recovered.

61. Q.—How would you describe his mental condition, say, in February, 1914? A.—Well, I think he was rather vague in his conversation, and interested in few things outside of himself, but very few, like the weather or some
40 of his pictures.

62. Q.—Doctor, I am going to produce to you a copy of what purports to be his last will, furnished us by the National Trust Company, and ask you to look at that. It contains twenty-one pages (handing document to the witness). I will put that in as an exhibit.

MR. SAUNDERS: That is the exhibit of the 27th of February, 1913?

63. Q.—The 27th of February. A.—When was this made?

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64. Q.—The 27th of February it is dated, 1913. A.—Well, of course, I would have to read it, but

65. Q.—1914, I beg your pardon. A.—Oh, I would not think that he was able to concentrate very heavily on this language and understand it very much. He depended greatly on his wife to interpret things for him.

66. Q.—How long did that continue during your attendance? A.—During all of my attendance, he was very dependent upon her for the interpretation of things. I would think that would be a little complicated for him (indicating document).

(The document in question was marked Exhibit No. 1).

MR. FLEMING: I think that is all just now, Dr. Shurly.

10

MR. OSLER: (During the course of the evidence.) I objected to putting the will in the hands of the witness and asking him to decide what your lordship has to decide. It is the same question I discussed with regard to Dr. Dewar.

MR. MCCARTHY: I understood my learned friend was taking his objections once and for all, and they all held good.

(Mr. Saunders reads the cross-examination of Dr. Shurly).

CROSS EXAMINATION

Dr. Burt R.
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BY MR. SAUNDERS:

67. Q.—Well, Dr. Shurly, your first attendance upon Mr. Walker pro- 20
fessionally was on November 17, 1913? A.—Yes, sir.

68. Q.—And before that you had only met him casually? A.—Yes.

69. Q.—You did not know anything about his physical condition? A.—
Except what was explained to me.

70. Q.—Explained to you? A.—I mean, Mrs. Walker told me about the
previous history of his case.

71. Q.—That was after A.—I had to rely on what somebody told
me.

72. Q.—Quite so? A.—For the history of his case.

73. Q.—That was after you were called in on the 17th of November, 30
1913? A.—Yes.

74. Q.—You knew that Mr. Walker had been away for some time before
that, and had only recently returned? A.—Well I made the statement that I
thought he had been away awhile before.

75. Q.—You say you think you were called in because he was suffering
from an attack of Grippe? A.—Not in November on the first call, no; the
first call was on account of his general condition being very poorly as they
express it.

76. Q.—What did you find his condition to be? A.—Well, he was in a
general state of senile decay, with his arteries in bad shape, and his kidneys and 40
bowels sluggish; he was feeble, comparatively speaking, in getting around and in
doing things, and in a general state of lowered vitality.

77. Q.—This was on the occasion when you first saw him? A.—Yes,
sir.

78. Q.—Now, did you take any tests at that time as to his urine and circu-
lation? A.—Those tests were all taken. I would have to refer to the records of
those.

79. Q.—Have you got those records here? A.—I have not got them with me.
80. Q.—You have no records at all? A.—Not with me, no.
81. Q.—What is the record from which you have been reading, to which you have been referring? A.—The visits, I have a record of those.
82. Q.—What was the occasion of making records of those visits if there was no reference to A.—(Interrupting)—Oh, we make a record of every visit.
- 10 83. Q.—That is, from a financial point of view, to make your charges?
A.—Yes, and for our record of the case. I have those laboratory reports over in my office, and his prescriptions from time to time.
84. Q.—But speaking now of the time on which you were first called in, I want to know what examinations you made at that time? A.—Well, we examined him as we do all patients, for information as to his condition, a general diagnosis of his condition.
85. Q.—Was that examination a physical examination? A.—Yes sir, a physical examination.
86. Q.—A physical examination? A.—Yes, sir.
- 20 87. Q.—Now, then, I understood you to answer Mr. Fleming that you
did not remember if you diagnosed the case at that time. That is how I have it down here? A.—Well, I did not remember a definite diagnosis of any particular one thing.
88. Q.—Let me understand what you mean by that, you do not remember . . . ? A.—Do you mean on this particular day, in November, 1913?
89. Q.—Yes? A.—When I came in?
90. Q.—Yes? A.—That one day?
91. Q.—Yes? A.—I did not make any definite diagnosis of his condition, which I never do, almost never, make a diagnosis on one visit. We have to have a case under observation. When I was a young doctor, I used to diagnose
30 them all on the first day, but I have learned not to do that now.
92. Q.—But you did not on this occasion? A.—No.
93. Q.—Now, you think that you were called in on the first occasion by reason of his being poorly in health, without having anything definite, any definite thing the matter with him, is that what I understood you to say? It was not an attack of Grippe, you say? A.—No, that was not the Grippe attack at all. Mrs. Walker was worried about him, and she had had some Canadian physician from time to time, and she felt she wanted a change, just like many people do, I presume, and she talked to me about him and said that he was poorly, and not so well, and she would like me to see what I could do
40 for him. That was the first visit. The Grippe attacks came in later, when I went over every day.
94. Q.—So that there was nothing definite at that time the matter with Mr. Walker that you discovered? A.—There was this general senile debility, and senility, from various arterial sclerotic changes that were going on in him.
95. Q.—When did you discover that? A.—Well, I discovered that immediately, that he had arteriosclerosis, by feeling his pulse.

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96. Q.—By feeling his pulse? A.—Yes.
97. Q.—Did you take his blood pressure? A.—Well we did that later.
98. Q.—You do not know what day? A.—I don't remember about that, but we did that later.
99. Q.—When was it that the bronchitis developed? A.—Well
100. Q.—Was it bronchitis or Grippe? A.—Yes, he had bronchitis several times; he had a bronchial cold, and he had, during the epidemic, influenza, when Mrs. Walker had it in February.
101. Q.—That was in February? A.—That was the time, as I remember it. 10
102. Q.—I see that you paid visits in February on the 6th, 10th, 11th, 12th, 13th, 14, 15, 16, 17, 20, 22 and 27th, twelve visits, and I see a number of them were on successive days. That was the time that you fix as
A.—(Interrupting)—That was the time during the influenza. We had two trained nurses and the male nurse on duty.
103. Q.—Mrs. Walker and he were both ill at that time? A.—Both ill and both in bed in the same room, in twin beds, in a large room, in the house over in Walkerville.
104. Q.—Who was the more ill of the two? A.—Well, I really don't know. 20
105. Q.—You were attending both of them? A.—They were both of them ill with influenza.
106. Q.—Yes. You cannot say, as between Mr. and Mrs. Walker, that any of these visits were paid on account of one or the other or both? A.—They were both sick at the same time.
107. Q.—They were both sick at the same time? A.—Yes.
108. Q.—And there was a nurse for each of them? A.—There was a night nurse and a day nurse.
109. Q.—There was a night and a day nurse? A.—Yes.
- MR. RODD: Not for each of them. 30
110. Q.—No, not for each? A.—No. They were in the same room.
111. Q.—There were two nurses, one on duty at night, and one on duty in the day time? A.—Yes.
112. Q.—You spoke of a male nurse, Dr. Shurly? A.—Yes.
113. Q.—Was that Mr. Walker's valet? A.—No. He had a regular nurse.
114. Q.—He had a regular nurse. Do you know his name? A.—I forget his name now.
115. Q.—Well, then I suppose I may take it that the time that they were most seriously affected with this influenza was at the time during which these 40 consecutive visits were paid, say from the 10th to the 22nd of February, there being visits on the 10th, 11th, 12th, 13th, 14th, 15th, 16th and 17th. Then I see there was an interval of three days, and then an interval of two days, and then an interval of five days. I suppose they were getting better toward the end of the month? A.—Yes, they usually got better and economical both, and called me on the phone.

116. Q.—So that at that time you did not A.—(Interrupting)—I do not know which it was that particular time.

117. Q.—You don't know . . . A.—(Interrupting)—It came in spasms.

118. Q.—You do not know the reason for your not being sent for? A.—I do not remember.

119. Q.—You cannot remember? A.—I do not remember which it was on that particular date.

120. Q.—But at all events, your record shows that toward the end of the month your visits were less frequent? A.—Yes.

10 121. Q.—So that it is fair to assume that they were getting better at that time? A.—Well, yes, although I often told them I would not come for two or three days, they would call me up on the telephone. Of course, I was very, very busy myself, and I certainly made no unnecessary calls.

122. Q.—I suppose on those occasions when you said you would not call for two or three days, unless they sent for you or telephoned A.—(Interrupting)—They would let me know how he was. We were both to blame for that.

123. Q.—Your idea was that they did not require attention unless there was something especially which required them to send for you. Do you answer
20 Yes? A.—I really do not know what the explanation was, and I would not answer that, because I do not remember. There were several reasons why the days were skipped there. They would let me know on the phone, and if they thought he was not very bad, they would say, "We will send for you in a couple of days" or something like that; and, of course, if I would not think he was so bad, I would not make a visit, but would let them call me on the phone. It got to be a very great burden, going over there, too, it may have been that; I would have to leave the office at 5 o'clock probably, and not get back until 9 or something like that.

124. Q.—Well, you would have done that if you thought the condition of
30 the patient was serious enough? A.—If it was necessary, we would try to give him all the service that was necessary at the same time.

125. Q.—So A.—He was quite sick for about a week there.

126. Q.—That is the only time you were in continuous attendance? A.—It was, and they were telephoning in between.

127. Q.—Then, as he got better, your visits, the frequency of your visits fell off? A.—Yes.

128. Q.—Then I see in March, you were only there on two occasions, the 6th and the 20th? A.—I presume that is correct.

40 129. Q.—In April once, on the 16th. Have you any record of what those attendances subsequently were for, in March and April? A.—I have not, except that we took a look at him, and I think they had a Canadian physician in on the case between, or even while I was going there; I think there was probably somebody who came in and looked him over, to see whether we thought alike, independently.

130. Q.—But you have no records to show what the occasion of these visits subsequently was? A.—Not without looking up my record.

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131. Q.—Have you the records? A.—I have the records and the prescriptions, the laboratory records and the examination records, but where they are just now—I can get some of them I know, but whether I can get all of them, or not, nine or ten or eleven years back, why, I would have to look.

132. Q.—You have not got them here anyway now? A.—I have not them with me, no.

133. Q.—You say that you were called in to a consultation at Washington, March 10, 1915, and arrived there only about 15 minutes before Mr. Walker's death? A.—Yes.

134. Q.—Which was from pneumonia. A.—That was from pneumonia. 10
I was called one afternoon. I left one noon and I got there in the morning about ten o'clock or something like that.

135. Q.—Well then, you had seen him only once professionally, within the previous month, on February 11, and once only in two months before, January 3rd? A.—Yes. I had given the opinion, I thought they ought not to take him away, so my services were not required after that much.

136. Q.—When was it that you gave that opinion, Dr. Shurly? A.—About a month or so previously, and they just took him without consulting me, or getting my advice whatever.

137. Q.—That would be on February 11? A.—No, that would be the last 20
visit in March, probably.

138. Q.—He died on the 10th of March? A.—I mean in February when did he die, March?

139. Q.—He died on the 10th of March I understand? A.—The 10th of March. I know they talked to me about his going away before he went. Now, he had not got very far along before he died, I don't know how long it was, about a week or something like that.

140. Q.—Your previous attendance apparently was the 11th of February, so that would be the occasion on which you advised them, wouldn't it? A.— 30
I can't remember, but it was along just before he went to Washington.

141. Q.—Sometime before he went to Washington? A.—Yes.

142. Q.—Well you say that during your attendance upon him from the 17th of November, 1913, his progress was intermittent; he got better and he got worse; I suppose some days he was feeling a good deal better than others? A.—Well, he never felt very good as near as I could see. He came down to dinner about three times during all of that period that I was there.

143. Q.—Did you always stay for dinner? A.—I did perhaps three-quarters of the time, perhaps seven-eighths of the time.

144. Q.—And only about three times you say, he came down to dinner? A.—I think that is all I saw him. The rest of the time he was in bed. 40

145. Q.—The rest of the time he was in bed? A.—Yes.

146. Q.—Are you correct in that, doctor, because I notice you said that he was rarely up, except to go out into the garden? A.—No, he was up and around on a number of occasions, and out in the garden, and he might have gotten out some place when I did not know about it, of course.

147. Q.—Why did you mention his being out in the garden? A.—Well, I

think he was out there one day when I came to see him, a warm day, when I saw him sometime along—of course, I may be wrong about that, but, let us see: I remember seeing him down walking with his cane in the rotunda where the fish were, and all of that—It perhaps was not a garden; it was the solarium part of their house.

148. Q.—Out in the open air, though? A.—In the solarium part. I would not say whether it was in the open air for sure.

149. Q.—You mean out near the front door? A.—I remember him walking around there. I do not believe I ever saw him out doors.

10 150. Q.—You think this was not out of doors? A.—It was in the solarium part, as I remember it, down near the dining room, it connects with the dining room.

151. Q.—Is that what you mean by saying that he was out in the garden? A.—If you are referring to the visits that I made that are down there (indicating document)?

152. Q.—Yes; you did not see him at any other time, doctor, except on these visits that you have told us about? A.—No, it might have been

153. Q.—So you do not mean to say whether you saw him in the garden or not? A.—I would not be sure of the garden.

20 154. Q.—Or how often—A.—(Interrupting): It was the solarium that I saw him in, I am quite sure; it was a warm place, and he had his cane; and I had a little talk with him and he brought me in and showed me some pictures, paintings that he was very fond of.

155. Q.—I see that you told Mr. Fleming that your visits were usually a half hour to an hour. Was that in the patient's room? A.—No, I wouldn't stay that long in the room probably; sometimes I might if there was something unusual, some unusual condition, but my conversation was with Mrs. Walker and this male nurse very largely, because he could not explain much about himself.

30 156. Q.—Well, now, you say that he could not explain so much about himself. Do you mean to say that he could or that he would not? A.—Well, he did not.

157. Q.—He did not. Do you know that Mr. Walker was a very reticent and reserved man, a very silent man? A.—Yes, I guess probably he was; I did not know about that, I didn't know him before.

158. Q.—You didn't know him before? A.—No.

159. Q.—So that you cannot say that there was anything unusual in his reticence and silence? A.—That I would not know.

40 160. Q.—No, you would not know. Then you say that after this attack of Grippe or influenza,—you said that it was influenza, I think? A.—Yes.

161. Q.—That was in February? A.—Yes.

162. Q.—That he got better of that, but that you noticed that he had—you did not think it left him as strong as he was before? A.—He was not quite so well, as I remember it.

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163. Q.—I understood you to say that that was a matter of strength, that he was not so strong? A.—In every way, I mean mentally, and in every way, he was not so good.

164. Q.—Mentally you say? A.—Well, he was slowed down in every way.

165. Q.—Why can you say or how can you say that he was slowed down mentally, you did not talk much with him? A.—Well I talked as much as I could with him, lots of times. He was very much like a vegetable, he would not know much about it. He would talk about the weather or something.

166. Q.—The weather and his pictures? A.—He did not talk about his 10 pictures, the last end of it.

167. Q.—When was it that he did talk about his pictures? A.—Well, that was along earlier, I think, before he had this Grippe.

168. Q.—You think that was before he had the Grippe? A.—Yes.

169. Q.—Mr. Fleming has produced a document to you, Dr. Shurly, said to be Mr. Walker's last will. You have not read it over? A.—No, sir.

170. Q.—Yet you undertake to express the opinion as to how far Mr. Walker could appreciate it? A.—Well, I have read one page of it, and I should think it would be too complicated for him, the first page.

171. Q.—Dr. Shurly, do you know the circumstances under which that 20 will was prepared? A.—I do not know the circumstances.

172. Q.—If you will just give me your attention for a moment; Assuming that Mr. Walker had made a very carefully prepared will, very much like this, before, which had been thoroughly discussed and considered, and executed, ten years previous, and then called in his solicitor and went over that will, made a few pencil memoranda in the margin, and occasionally pinned on a slip where changes were to be made in the will, and sent it to Mr. Walker for careful consideration, do you mean to say that Mr. Walker could not appreciate and understand and know all about the contents of that will? A.—I think his wife might know, but I do not think he would. 30

173. Q.—You do not think he would? A.—I think his wife would know all about it.

174. Q.—And if Mrs. Walker knew, she would explain it to him?

MR. FLEMING: I object to that. The doctor cannot assume that she would explain it to him.

Q.—I am not asking him to assume? A.—Well, I do not know what she did. She explained things to him about his business, I presume, because I used to hear her talking to him.

MR. SAUNDERS: That is all I have.

(Mr. Rodd reads further cross-examination of Dr. Shurly). 40

CROSS EXAMINATION

BY MR. RODD:

175. Q.—Tell me, doctor, you have made use of this expression, that when you called in November, he was suffering from general senile debility, and you

said that that varied from day to day? A.—Yes sir, his state of mind and the way

176. Q.—(Interrupting): Now, just a minute, let us get this one thing first. You have later weakened that, and I want to know whether that statement made by you in the beginning of your evidence was as you wanted it to be, general senile debility that varied from day to day? A.—His symptoms varied from day to day.

177. Q.—I do not care anything about symptoms. I am taking your own language, general senile debility which varied from day to day, is that correct? A.—In the kind of symptoms, yes.

178. Q.—The expression of symptoms, you say they varied? A.—Of course the symptoms varied.

179. Q.—Oh, the symptoms varied? A.—But the disease itself is there all the same.

180. Q.—If the symptoms varied, then the effect of the disease would vary? A.—Well

181. Q.—The effect of the disease upon him? A.—There is a very great difference in the individual in his reaction times.

20 182. Q.—I don't care anything about anything else, or about anyone else, I want to talk with you about this individual. Well, then, that general debility, you would define to be sclerosis, arteriosclerosis, some kidney trouble—what was the kidney trouble, by the way? A.—Well, he had trouble holding his water.

183. Q.—Would that be with the kidney or in his bladder? A.—It was in his bladder, and prostate gland.

184. Q.—That, of course, is not an unusual trouble in men of that age, I suppose? A.—Well it goes with senile decay.

185. Q.—Many people have it who have not senile decay, doctor, isn't that so? A.—Mighty few of them.

30 186. Q.—What about the prostate trouble? A.—Mighty few have prostate trouble that do not have it with age; it is an age proposition.

187. Q.—Does it accompany prostate trouble? A.—Senility?

188. Q.—Oh, no, no. You know exactly what I am talking about, the bladder trouble? A.—Accompany prostate trouble. Yes, sir, so-called.

189. Q.—If you gentlemen of your profession so call it; we will let it go at that. Then, the bowel trouble, what was the nature of that? A.—Well, he could not hold his bowels.

190. Q.—That was all, he could not retain A.—He had involuntary movements.

40 191. Q.—Anything more? A.—Constipation sometimes. He had to take cathartics all the time or use enemas, because the tissues had lost all their elasticity.

192. Q.—Well, then, was that the condition in November, or was that the condition that you found later on? A.—That was the condition from the first I saw him.

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193. Q.—Did that progress during the year that you were in attendance on him? A.—Yes, he got more of it.

194. Q.—What would you say as to his condition in that respect in April, 1913? You only saw him once during April? A.—I never saw him in April, 1913.

195. Q.—Well, then, 1914? A.—1914, I don't remember how he was, except that he never got over the grippe.

196. Q.—I did not speak of that now, doctor? A.—His general vitality was low.

197. Q.—I asked you, if you recall how he was, in respect of his bowel trouble on April 16, 1914? A.—No, I cannot now remember exactly how his bowels were on that day.

198. Q.—Nor indiscriminately A.—(Interrupting): Except that they never were all right.

199. Q.—Do you remember anything at all about his condition on April 16, or do you recollect it only because you find it in your books? A.—I do not recollect exactly, on that date, what condition he was in.

200. Q.—Do you remember anything about it, except that your book tells you that you were there? A.—I might remember if I would look up my records.

201. Q.—Do you now? A.—Right at this minute I do not remember April 16 any different from April 17.

202. Q.—Do you remember anything about it, doctor? A.—Except that he was never better on any day I saw him.

203. Q.—Now, please, doctor, do you remember anything particularly on this special visit on April 16? A.—Not without being reminded of it in some way.

204. Q.—The memoranda that you have looked at today, is that taken from your book or is it an original entry, that you were reading from? A.—Well, I looked at it as an original entry.

205. Q.—I mean A.—I made it as an original entry.

206. Q.—You don't mean the memorandum that you have with you A.—(Interrupting): This that I have here right now is not the original entry, but I looked at the original entry today.

207. Q.—Quite so. Now, in the original entry, did you make a memorandum as to what you gave him, what you prescribed for him? A.—In April?

208. Q.—At any date? A.—I gave him his prescriptions; I did not put it down right after this original date, though.

209. Q.—What I am trying to get at, doctor—perhaps you do not catch what I mean—did you enter in your book of account anything about the trouble you found with him on the particular occasion? A.—Oh, no. We have separate records for that.

210. Q.—That is what I wanted to know? A.—It was separate.

211. Q.—Well, that was the condition. Now do you remember generally what you prescribed for him in November, 1913? A.—No, I do not.

212. Q.—There was not much that you could do, I suppose, except to

strengthen him a bit. Is that all? Do you recollect what you prescribed apart from rest? A.—I gave him a number of prescriptions.

213. Q.—I am speaking now of November? A.—Eight or ten.

214. Q.—When you were there five times? A.—In that period.

215. Q.—What they were you do not know, is that it? Were they generally strengthening medicines? A.—We gave him calomel, iodine potassium, iodides, digestants, alteratives and quinine.

216. Q.—They were builders, I suppose, is that right? A.—And hypodermics.

10 217. Q.—Please answer the question, were they builders? A.—Some were and some were alteratives, they were not builders:

218. Q.—Some were builders? A.—And some were for his stomach and bowels, some were digestants.

219. Q.—Then we have pretty fairly well gone over this; March and April we needn't touch, because there were only three times that you were there in those months. Then in May, do you recall anything about the four or five attendances that you made in May, 1914, as to why you were called? A.—I do not remember why I was called without looking up the records.

20 220. Q.—Do you know whether it was Mr. or Mrs. Walker who was ill at that time? A.—I always saw him. I might see somebody else at the same time, but I never failed to see him.

221. Q.—When you were there A.—(Interrupting)—So it did not matter about that. I would always see him, and then if somebody else was sick, some servant or butler, or somebody else, I saw them.

222. Q.—Let us get this answer to my question first, do you know whether in May in that year, you were called for him, for her, or for some other member of the household? A.—I do not remember.

30 223. Q.—But they were all charged to Mr. Walker? A.—The charge was made the same whether I saw five people or one. It ought not to have been, but it was.

224. Q.—Now, let us see, you were only there once in June of 1914, and then in July you were there five times. I suppose the same thing would apply to those calls as you have stated about the May calls? A.—I always saw him, and then sometimes I saw somebody else.

225. Q.—We will get along faster, doctor, if you will confine yourself to my question? A.—I think I saw his nephew there in July once, he had appendicitis and was afterwards operated upon.

40 226. Q.—As to the other three times, have you any distinct recollection? A.—I saw Mrs. Brewster once, but I saw him. I saw him and then I would see Mrs. Brewster and take care of her.

227. Q.—Then in August, the following month, the next month, you went there eight times. Can you recollect why you were called upon those occasions? A.—In August?

228. Q.—Yes, 1914? A.—I do not remember exactly what that was except that

229. Q.—(Interrupting): Just let us get that answer, doctor, and then

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14th May,
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—continued

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you can make your explanation presently. Do you remember for whom you were called? A.—Always for Mr. Walker.

230. Q.—No, no, no. Do you remember for whom you were called? A.—I was always called for Mr. Walker, and then when I got there they would tell me whether the butler was sick, or Mrs. Brewster, or Mrs. Walker was feeling—was not feeling very well, or the second maid, or

231. Q.—(Interrupting): Will you swear, on August 3rd, 1914, as a matter of your recollection, that you were called for Mr. Walker? A.—I will not say that I was called at all.

232. Q.—Will you say that you went over to see Mr. Walker—you 10 wouldn't go without being called, I assume—you would not go there without being called, doctor, and charge for it? A.—It might have been Mrs. Brewster came into the office and said "You had better go over and see Mr. Walker."

233. Q.—Have you any recollection? A.—I don't know whether it was August 3rd that she did that, but she did that.

234. Q.—Once? A.—Once perhaps. Then Mrs. Walker stopped in the office, she said, "He is not doing very well now; you had better drop in and see him." I would not remember what date that was, the 3rd of August, the 17th or the 21st.

235. Q.—Now, then, doctor, I am asking you the plain question, as to 20 whether you have any recollection that you went over to see Mr. Walker on August 3rd, 1914, or to see somebody else? A.—I don't remember ever going there without seeing Mr. Walker.

236. Q.—Quite so, but you can tell me whether or not you were called? A.—I don't know whether they telephoned that somebody else was sick or not; I could not positively remember that, after 11 years.

237. Q.—You do not know whether somebody else being sick was the occasion of your going? A.—I cannot remember that at this present moment.

238. Q.—Then I suppose the same would apply to your visits in October, 1914, as far as your recollection goes, is that correct? A.—Without consult- 30 ing my prescriptions on those dates, then I would not know.

239. Q.—Surely, but so far as your recollection now goes, the explanation as to May would apply, is that right, yes or no? A.—Well, I would have to think it over a little.

240. Q.—We will give you time to think it over? A.—I would have to think it over to be certain about it.

241. Q.—I mean, have you any other explanation for October than you have for the visits in May and the visits in August? A.—He had two attacks of influenza

242. Q.—(Interrupting): Have you any other explanations? A.—That 40 is the explanation; I said there was another attack of influenza, and we saw him then.

243. Q.—When was that, have you any recollection? A.—He had a cold, bronchitis, a very mild bronchitis.

244. Q.—But, doctor, can't you tell me when that was. Have you any idea? A.—That was along in April, I think.

245. Q.—Along in April? A.—Yes, I think when I made the April visits, but I think he was all right in a few days.

246. Q.—April, 1914? April, 1914, doctor? That is the only April you have given us, I think? A.—When was it he died?

247. Q.—He died in March, 1915? A.—Yes, it was in the spring, that was April.

248. Q.—1914? A.—Yes.

249. Q.—You have used the expression senile decay, general senile decay, and general senile debility. I suppose you make this synonymous, do you? A.—
10 Yes, they are classes of senility; if you want a death certificate, you simply sign it "senility."

250. Q.—It is the senility upon which you lay the stress, is it? A.—Yes.

251. Q.—And that senility is what you say is caused by the sclerotic arteries? A.—Caused by a lot of different things.

252. Q.—A lot of different things? A.—Yes.

253. Q.—But it is a growing old then, is it, mental and physical failure, that is it, isn't it? A.—Yes, of course.

254. Q.—In effect . . . A.—(interrupting) : We do not all do it the
20 same way; with some of us it is the brain, some it is the heart, and with some it is in another place.

255. Q.—But different parts of the body, or what you call general, and I assume that you refer to the three things I have mentioned, the arteries, the kidneys and the bowels, and then to his mind. A.—Well, I would say his mind first.

256. Q.—You would say his mind first? A.—Yes.

257. Q.—As to his mind, the only things that you have told us about his mind are that he was sluggish, and did not say very much? A.—Well . . .

258. Q.—Now, now, doctor, that is the way that you put it, from my notes here. Do you want to change that—and slowness in speech? A.—Of course,
30 he wouldn't really know what you were talking about part of the time.

259. Q.—Now, is that true? A.—You know very well it is.

260. Q.—You were treating him from November . . . A.—After he had this Grippe . . .

261. Q.—Please just wait a minute? A.—Are you referring to November?

262. Q.—We have to make sure . . . A.—(Interrupting): Are you talking about November?

263. Q.—I am talking about . . . A.—Or April, or when are you talking about.

40 264. Q.—I am talking about the time you are talking about, doctor. You said that this man had general senile debility? A.—Yes. That is correct, in my opinion.

265. Q.—Whatever time that was, that is the time I am talking about. A.—That is when I first saw him, and from then on. He was quite worse after his Grippe.

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mission).
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266. Q.—Now, then, you have stated . . . A.—Which was in February.

267. Q.—Now, wait a minute, doctor, I am going to pin you down and get an answer if I can. You said that he—(to the reporter) Will you read that answer back there, about he wouldn't know what you were talking about.

(The answer was read by the reporter)

Q.—Upon what occasion do you recall that he was in such condition that he would not know what you were talking about, unless he was asleep? A.—Well, I remember discussing this case with his nurse, and his wife, in his presence

10

268. Q.—(Interrupting): When? A.—On many occasions, that is every talk we had with them

269. Q.—(Interrupting): Give us one or more. A.—Well, during this Grippe attack.

270. Q.—Yes. A.—That would be one example, and many times, in the conversation he was not considered in it, because he was just as far away, and dazed and vague, and not interested particularly, ready to accept a suggestion any minute, and unable to really control his own mental affairs at all.

271. Q.—When was this? A.—That was after he had this Grippe attack.

20

272. Q.—That was in February of 1914? Is that true, was that February? A.—Well, from the attack of this Grippe on, he certainly didn't know very much about what was going on, about himself.

273. Q.—Will you say that he never got better? A.—He never got much better.

274. Q.—He never got much better? A.—No.

275. Q.—So that probably he would be in about that same condition . . . A.—Well, it might have improved from day to day as I say

276. Q.—But did his condition improve; you were seeing him every day? A.—I have already said that it varied from day to day.

30

277. Q.—What about April, would he knowA.—Well, he was actually better on some days than others.

278. Q.—Would he know what you were talking about in April, say April 16, when you visited him? A.—Well, if you asked whether his bowels moved, his wife or the nurse would have to answer it.

279. Q.—Cannot I get an answer from you, doctor, please? A.—That is my answer.

280. Q.—Will you read the question?

(The question is read by the reporter).

A.—He might know some things and not others.

40

281. Q.—Matters of business? A.—The matter of intelligence, the acceptance of a statement, very slow, his mental processes were very slow.

282. Q.—Would he know what you were talking about in matters of business? A.—I never talked business to him.

283. Q.—But you know his mental condition, would he have understood you if he had? A.—No, I don't think he would.

284. Q.—You don't think he would; all right. Would he be in a position where he could carry out a deal of purchasing stocks, for example? A.—He would, with the assistance of his wife.

285. Q.—Apart from that, but assuming A.—(Interrupting): Without assistance, I do not think he would be able to do much of anything. Somebody must have helped him.

286. Q.—That is a conclusion, that somebody must have helped him; all right. You said that he talked about pictures. Do you recall what he said? A.—Well, he took me around, and took me to the room where there were pictures, and showed me two or three of them.

10 287. Q.—Discussed them? A.—His wife was with him. He would just point to them and say that this was something.

288. Q.—Do you remember what that was? A.—I think it was

289. Q.—(Interrupting): Would you think from your knowledge of this man, Doctor Shurly, that he could go into a shop and choose a picture, intelligently, and price it intelligently? A.—Not without help.

290. Q.—I say, assuming that he had no help? A.—Well, I wouldn't think that he could do it very intelligently, no.

20 291. Q.—Well, I am saying intelligently. Your view is that he could not do it intelligently. Allright. Do you think he would appreciate the price he was paying? A.—Well, it is possible that he might have some things hold over from his boyhood days, the appreciation of things and prices, from time to time.

292. Q.—Sort of sub-conscious recollection? A.—His wife did all his business for him, in the way of telling him

293. Q.—(Interrupting): But assuming that his wife was not there. A.—As far as I knew.

294. Q.—Assuming that his wife was not there, and he was acting alone? A.—I would think he might do it possibly on some awfully good day, that is, wander into some place and pick out something.

30 295. Q.—Wander by accident. Would you be surprised? A.—I would be very much surprised.

296. Q.—You would be very much surprised? A.—To know that he did anything like that unaided.

297. Q.—Now, you have sworn that his wife did all his business. Why do you say that, doctor? A.—Because, as far as I knew, with me, she did all his business, and in all the conversation about business, whenever anything was being ordered, she did it, and he was treated just like a child.

298. Q.—Yes, but A.—As far as thinking is concerned. It was all arranged for him by his wife.

40 299. Q.—What was arranged for him to your knowledge? A.—Practically everything.

300. Q.—Well, what. Tell us one thing? A.—Whether he would have something to eat, whether he would have his bowels moved or not; whether he would take some medicine, "I think this would be good for you," or "this would not be good for you." He would say nothing. He accepted it just like a vegetable accepts a little water.

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301. Q.—We will come to that vegetable part in a moment. I see you like the word, doctor. We will inquire into it. A.—His processes were mechanical, very largely, and machine-like.

302. Q.—And that condition extended from the time he was partly recovered from the Grippe, let us say, from February 1914, up to the day of his death, is that what you say? A.—No, it varied from time to time. I had some conversations with him that lasted maybe five minutes, which had to do with the weather, but nothing of any intelligence or of any importance.

303. Q.—Outside of that shadow of sunlight, if I may so put it, he was no different all the time, from February to his death, is that right? A.—No, 10 he had I have already stated at the beginning of this, the first question, that the condition varied from time to time, he had some good days when things lightened up for him quite a little bit, and then the next day there was a great lethargy, and his wife did all his business for him, all his thinking, and his nurse made all the movements for him, and his doctor made the rest of them.

304. Q.—Apparently the doctor didn't do very much, if what you say is true here. Upon those bright days, he would be in fair mental condition, is that right? A.—I would not say that he would be in fair mental condition.

305. Q.—What do you mean by brightening up? A.—Well, he would 20 cheer up a little bit and want to get up and move around.

306. Q.—Is that all you mean? A.—And get his clothes on.

307. Q.—Is that all you mean? A.—Get his cane and walk around a little.

308. Q.—Is that all you mean? A.—Go down to meals a few times, not enter into the conversation much at all with anybody, but be at the whole table of people

309. Q.—Is that all you mean? A.—Sitting around the table, and all the conversation would be by somebody else, besides him.

310. Q.—He was only down a couple of times when you were there? A. 30 —Three times.

311. Q.—Three times? A.—Yes, but when he did come down, the conversation was—he was apparently far away.

312. Q.—What do you mean by that—because he said nothing? A.—He said nothing. He did not enter into the spirit of things very much.

313. Q.—If he was as sick as you say he was, wouldn't that be natural? A.—I would not expect him to. I was not surprised at it.

314. Q.—Now, then, let us get at this vegetable term that you used, saying that he was like a vegetable? A.—Well, a vegetable is a living thing that 40 breathes and stays pretty much in the same place all the time and digests its food, after a fashion, and eliminates it, with the help of sunlight and fresh air.

315. Q.—Yes? A.—And it doesn't do very much thinking.

316? A.—It doesn't do any? A.—Oh, yes, there are sensitive plants, very sensitive at times.

317. Q.—Do they do any thinking? A.—There is the Venus fly-trap— not thinking, no.

318. Q.—It does no thinking? A.—It has very little of what we call intelligence.

319. Q.—Why do you say that Mr. Walker was like a vegetable? A.—In many respects he was like a vegetable. He did all those things, and he was like a vegetable.

320. Q.—Was that the limit of his capabilities? A.—No, he could go ahead of a vegetable. He could do many things that a vegetable couldn't do, in the way of talking.

10 321. Q.—We are all like vegetables to a certain extent, aren't we, doctor?
A.—Yes, a little.

322. Q.—We are all like vegetables to a certain extent? A.—We are, some of us.

323. Q.—Most of us? A.—I think there are more now than there used to be.

324. Q.—Yes, they are all queer, but me and thee, you know, doctor? A.—Yes.

325. Q.—And that is why you use the term "vegetable"? A.—Well, it expresses to me a person inanimate in their general ability to do very much, it states it in the simplest way.

20 326. Q.—Apart from his ability to think a little bit as you say, and talk a little bit, your classification of Mr. Walker, Mr. E. C. Walker, is that of a vegetable, is that right? A.—A vegetable, plus.

327. Q.—I have given him the plus, haven't I? A.—Yes, you have given him that.

328. Q.—The plus of thinking and talking a little bit? A.—A few things added to a vegetable.

329. Q.—Now, let us get this right, because it is going to the Judge in Sandwich. Is there anything else that you would add to that, any more pluses? A.—Well, he had elimination with help.

30 330. Q.—That is not a plus, a vegetable has that? A.—He was able to think with help. A vegetable never was able to.

331. Q.—But you have got that plus. Give me some other pluses that you have not mentioned? A.—He was able to move more than a vegetable.

332. Q.—The only two pluses you have got are motion and thinking, and both of those were limited. Any other plus elements? A.—Talking, conversation.

333. Q.—Talking is three? A.—A small amount, very limited.

334. Q.—A small amount, limited; that was inconsequential, I suppose?
A.—Quite limited.

40 335. Q.—Is there any other plus sign on the horizon; any other pluses, doctor? Now, I think the way you put it was, that he did not converse—he was vague in conversation, or his conversation was vague,—I do not know which way you put it, . . . A.—It was very difficult to talk any definite thing with him.

336. Q.—Did you ever try? A.—I tried, yes.

337. Q.—When did you try? A.—Well, in asking him about himself,

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what his condition was; his observation was not worth anything, his personal observation of his condition was worth very little. It was the difference between an intelligent person, who has good reactions, and one who has not, to a certain extent.

338. Q.—Well, you do not depend, except in a very general way, on what patients tell you? A.—Oh, no, we don't have to do that.

339. Q.—You seek most of your information from the nurse in attendance, don't you? A.—Well, we expect to get something out of their record, having been there 24 hours.

340. Q.—You expect to get your patient's condition for the preceding 10 period? A.—But you can get a lot of information from the patient.

341. Q.—You expect to get most of it from them? A.—No, we expect to get most of it from the patient, in lots of cases.

342. Q.—Asking him if his bowels moved? A.—The examination of the patient that I refer to, that is the most important thing we have, of course.

343. Q.—Did you ever physically examine Mr. Walker? A.—Well, I did, yes, in the beginning.

344. Q.—On your first attendance? A.—In the early part of my attendance and then later.

345. Q.—Did you ever—would that ever be more than an occasional 20 application of the stethoscope? A.—Yes.

346. Q.—Apart from your tests? A.—We went over him several times.

347. Q.—Going over him, what do you mean? A.—Well, we examined him

348. Q.—With the stethoscope? A.—His liver, his stomach, abdomen, the usual examination, and laboratory examinations.

349. Q.—I am talking about the physical examination now? A.—Yes, I went over him a number of times, as we do, for instance, to get his knee-jerk, and neurological reactions, and so forth.

350. Q.—You did that occasionally, I assume? A.—We do that when 30 we think it is necessary.

351. Q.—Apparently you did not think it was necessary here, because you had come to the conclusion that it was general senile debility, and it progressed particularly after the "Flu"; that is about your condition of mind, isn't it? A.—Well, I thought he was pretty senile.

352. Q.—That was the condition of your mind with respect to him, that there was not any great future, and therefore he didn't need much physical examination? A.—Well

353. Q.—Does that express it? A.—We didn't feel that we needed to examine him every day.

354. Q.—No, nor every month probably, is that so? A.—Just occasion- 40 ally as we thought necessary.

355. Q.—Now, tell me this, doctor, if you will, supposing that in February, during the best of his moments in February, I had said to Mr. Walker, being his attorney, "You ought to leave Mr. A. \$5,000," do you think that he would have understood that? A.—Well, after he had asked you two or three

times he might know who it was, if it was somebody he knew well; he would get it very slowly; you might have to ask him several times.

356. Q.—Would you be surprised to know that during this period that you were in attendance on Mr. Walker, that Mr. Walker did considerable business alone? A.—Well, he might have done some.

357. Q.—No, no, but would you be surprised if that were so? A.—I would be surprised if he did a lot of business, yes.

358. Q.—Considerable business, run the thing himself without anybody's advice? A.—I would be very much surprised to hear that.

10 359. Q.—Yes, you would be very much surprised to hear that? A.—Yes.

360. Q.—Let us take one isolated example, I am not going to tell you what it was, but it required some thought, some concentration, some consideration of statements to him, and resulting in an eventual action, would he be capable of that in your opinion? A.—After he had the Grippe, I would not think that he was capable of very much of that.

361. Q.—Yes, a month after, two months after he had the Grippe, he was able to examine the proposition, consider it, talk about it intelligently, and act eventually? A.—I would expect somebody had coached him.

20 362. Q.—Assuming that nobody coached him, would you be surprised? A.—I would be surprised.

363. Q.—Would that alter your general view of the situation? A.—Well, I might think that he had a good day, when I did not see him.

364. Q.—So that there was a possibility of good days then? A.—He might have had some good days. That was part of my original statement.

365. Q.—That is what you meant by varying from day to day? A.—Yes, he had some good days, and some bad days, lots of bad days.

Q.—That is all.

MR. SAUNDERS: No further examination.

30 MR. FLEMING: No examination on redirect.

HIS LORDSHIP: Is Mrs. Brewster a sister?

MR. OSLER: A sister to Mrs. E. C. Walker.

CERTIFICATE

STATE OF MICHIGAN
COUNTY OF WAYNE

SS

40 Bertrand D. Connolly, being first duly sworn deposes and says that he is by occupation a court stenographer; that he reported in shorthand the testimony taken and proceedings had upon the taking of the deposition of Dr. Burt R. Shurly, in the above entitled cause, on Friday, March 7, 1924, at 2 o'clock p.m., before George Donaldson, Notary Public, in the City of Detroit, Michigan; that the foregoing transcript is a true and accurate transcript of his said shorthand

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notes so taken at said time and place, pursuant to an order made in this cause on the 18th day of January, 1924.

(Sgd.) *Bertrand D. Connolly.*

Subscribed and sworn to before me this 8th day of March, A.D., 1924.

(Sgd.) *George Donaldson.*

Notary Public, Wayne County, Mich. My commission expires July 1, 1925.

(Sgd.) *George Donaldson,*
Commr.

CERTIFICATE

STATE OF MICHIGAN
COUNTY OF WAYNE

SS

10

I hereby certify that the evidence attached hereto was duly taken before me at the City of Detroit, State of Michigan, on the 7th day of March, 1924, pursuant to appointment thereto issued by me, pursuant to an order issued in this cause bearing date the 18th day of January, 1924, in presence of counsel for the plaintiff and of the National Trust Company, Limited, Mrs. E. C. Walker, Lillie Brewster, Mary W. Cassell, defendants, no one appearing for the other parties.

(Sgd.) *George Donaldson,*
Commissioner.

20

Dated, this 8th day of March, 1924.

No. 16
P. Byrne.
Examina-
tion-in-
Chief.
14th May,
1924.

PATRICK BYRNE, Sworn. Examined by Mr. McCARTHY:

Q.—Where do you live, Mr. Byrne? A.—Walkerville, Windermere Road.

Q.—What were you doing in the years 1913 and 1914? A.—I was with

Mr. Walker as indoor man.

Q.—Which Mr. Walker? A.—Mr E. C.

Q.—You were indoor man with Mr. E. C. Walker? A.—Yes, sir.

Q.—How long were you there altogether? A.—About seven years.

Q.—Seven years before 1914? A.—From 1910 to 1917.

Q.—You remained with Mrs. Walker, did you, after Mr. Walker's death? 30

A.—Two years.

Q.—You were an indoor man servant? A.—Yes.

Q.—Any other man kept? A.—Yes, there were three.

Q.—Three indoor menservants? A.—Yes.

Q.—Who were they? A.—Charlie Snudden and Franklin Gilbert.

Q.—What position did you occupy in the household? A.—I was butler.

Q.—And what was Snudden? A.—Valet.

Q.—What was Gilbert? A.—He was a valet too.

Q.—Both Snudden and Gilbert were valets? A.—Yes, there were several changes of men.

40

- Q.—Were they both there at the same time, Snudden and Gilbert? A.—
No.
- Q.—They were there at different times? A.—Yes.
- Q.—Who was there first, when you first got there? A.—Snudden.
- Q.—When did Gilbert come? A.—He came in—well he was houseman first and we made a valet out of him.
- Q.—Of whom are you speaking? A.—Frank Gilbert.
- Q.—Did you, during the time you were with Mr. Walker, notice anything unusual in regard to his health? A.—Well, he was not so strong in the later
10 years.
- Q.—He was not so strong in the later years, what years are you referring to? A.—I came to him in 1910, he was fairly strong then, he got weak about 1912 and 1913.
- Q.—How did that weakness affect him? A.—Well, he got an illness in France, he got influenza when he came back.
- Q.—When did he go to France? A.—In 1913.
- Q.—You spoke about 1912? A.—Yes.
- Q.—Did you notice anything in 1912? A.—No, he was all right in 1912, I think.
- 20 Q.—Then he went away. Did you go with him? A.—No, I did not.
- Q.—Who went with him? A.—Frank Gilbert.
- Q.—You say when he came back from France he had an illness? A.—Yes, he was ill in France.
- Q.—You were not there, that is only what someone has told you? A.—When he came back he was pretty ill.
- Q.—How did it affect him? A.—He didn't take the same interest in anything, and he had to be taken more care of.
- Q.—How do you know that? A.—I was there.
- Q.—What did you see yourself? A.—I seen he didn't take the same interest in what he did before he went away.
- 30 Q.—He didn't take the same interest in what he had before he went away, interest in what? A.—Things he used to take an interest in.
- Q.—What things do you refer to? A.—He used to take a great interest in his pictures, and different things like that, and he hadn't the same interest when he came back.
- Q.—Do you remember what time of the year he got back? A.—I haven't got any dates of it; I think he got back about November 1913.
- Q.—Can you tell us any more about him than that? A.—I don't think I can tell you very much more about him.
- Q.—You were there up to the time of his death? A.—Yes, I was.
- 40 Q.—You spoke about his condition after he came back, I wish you could just tell us a little more why he didn't take any interest, or what interest he would take as compared with what interest he took when he came back? A.—I don't think his physical condition allowed him, he was very sick.
- Q.—By the way, how did you know he was sick? A.—I had to handle him.

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Q.—You didn't tell us about that. How did you have to handle him? A.—His valet had to lead him downstairs, he led him anywheres he wanted to go, and there was always a man with him.

Q.—Did you have any conversation with him during that time? A.—No, not much conversation.

Q.—Did you ever have occasion to help him? A.—Yes.

Q.—Tell us about that? A.—I didn't have as much occasion as the valet would, but when he would be down to dinner, or the like of that, I would have to help him up or help him down.

HIS LORDSHIP: Help him to sit down? A.—Yes.

MR. MCCARTHY: How would he get into the dining-room? A.—Somebody would help him downstairs if he was very bad, otherwise he would come down himself.

Q.—Did his condition fail? A.—Yes, some days he would be better, and some days he would be worse.

Q.—Did he come down to his meals regularly? A.—No, not after he came back from France.

Q.—Before he went away, did he come down regularly? A.—Yes, he was down pretty regular then.

Q.—I didn't get the answer? A.—He used to come down regular before he went away.

Q.—After he came back what change, if anything, was there? A.—He didn't come down so much then.

Q.—Can you give us some idea as to how often he would be down? A.—He might be down maybe twice a week, if he was feeling all right.

Q.—He might be down twice a week? A.—Yes.

Q.—Did you ever see him when he was upstairs, at all? A.—Yes.

Q.—Did you wait on him at all? A.—Not very often upstairs.

Q.—Did you wait on him downstairs? A.—Yes.

Q.—Where? Just in the dining-room? A.—Yes.

Q.—When you waited on him upstairs what was his condition then? A.—Sometimes he would be in bed, and sometimes we would lay a small table for him up there, sometimes he would eat his meals all right, and sometimes he wouldn't eat it.

Q.—Then did you notice anything about him after he came back? A.—Well, yes, I did, he didn't get around so well as he used to.

Q.—What do you mean by that? A.—He didn't used to come downstairs so often, and he used to go upstairs earlier in the evening, and he didn't come down to dinner.

Q.—You told us all about that. Is there anything else besides that? A.—He generally went to bed earlier in the evening, after he came back.

Q.—As far as going to bed earlier, and coming down to meals, you told us about that: is there anything else you noticed about him? A.—I don't remember. He was rather forgetful in his way, he forgot things.

Q.—What do you mean by that? A.—He would have to ask me a thing, he sometimes didn't know what I said to him just then, he would have to think and ask me again about it, or if you wanted him to come into the dining-room he wouldn't just come along when you would want him.

Q.—I cannot just follow what you mean by that exactly? A.—I mean, when you asked him to come, when you announced dinner, he wouldn't grasp what you meant.

Q.—What would you do on those occasions? A.—Mrs. Walker used to take him along.

Q.—Did you notice anything else about him? A.—No, I don't think very much else.

Q.—You never noticed anything else? You spoke just now about his being forgetful? A.—Yes.

10 Q.—Have you any other instances of that? A.—Well, no, I don't think I have.

Q.—You don't think you have. Did people come to see him at all? A.—Very seldom.

Q.—Do you remember any people coming? A.—No, not to see him. Sometimes, before he got that illness, he used to see the people that visited there, then he used not to see them after that very much.

Q.—You mean, after he got back from France? A.—Yes.

Q.—What people came to see him, if any? A.—Mrs. Walker's friends used to be there, dinner parties, and like that.

20 Q.—Could he attend those functions? A.—No, he never was down at them.

Q.—Did any people come to see him after his illness? A.—Except his brothers, who was there sometimes.

Q.—Which brothers? A.—Mr. Harry, and Mr. Frank.

Q.—They used to come? A.—Sometimes.

Q.—Do you recall any occasion when they came after he got back from France? A.—I haven't any dates.

Q.—I didn't ask you for dates, I said occasions? A.—No.

30 Q.—No instance of any kind? A.—They came there occasionally, I didn't keep any incidents when they did come.

Q.—Did you notice anything different in his habits at the dinner table? A.—Yes, he didn't seem to be able to help himself as he used to before he went away; he was kind of nervous. Sometimes he wouldn't be able to get the food up to his mouth.

Q.—What was done on those occasions? A.—Nothing particularly; he would generally go upstairs and I didn't know what was done after that.

HIS LORDSHIP: I do not remember the date of his return from France.

MR. MCCARTHY: November 1913. That is the date you gave us just now.

HIS LORDSHIP: That is the time Dr. Dewar attended him?

40 THE WITNESS: I didn't keep any dates.

Q.—When he came back from France? A.—I think not.

Q.—This man puts all Mr. Walker's troubles down to the time he returned from the visit to France, when was it?

MR. MCCARTHY: When did he come back from France, do you remember? A.—In November 1913, I think.

Q.—When did he go? A.—I am not sure of the date he went, I think he went early in 1913, or late in 1912, I wouldn't be sure about that.

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Q.—He came back in November? A.—Yes.

Q.—Is there anything else you noticed? A.—I can't recall anything else.

Q.—Now, what other members of the household were there there? A.—
only Mrs. Walker and Mr. Walker.

Q.—Any other servants besides you three? A.—Oh, yes, there was seven
or eight.

Q.—Do you remember who they were in 1913? A.—There was so many
changes I can't remember them.

Q.—Did you tell us of all the changes you noticed in Mr. Walker after he
came back from France? A.—Well pretty near all. 10

Q.—If there are any more, please tell me? A.—I don't think of any more,
as a general rule he didn't take any much interest in anything.

Q.—You have told us that. Is there anything else besides? A.—I don't
remember.

MR. HELLMUTH: I didn't hear a word.

HIS LORDSHIP: You didn't miss much.

MR. MCCARTHY: What part did Mrs. Walker play, after they came back
from France? A.—Oh, Mrs. Walker, she done all the business herself, Mr.
Walker didn't do any business much.

Q.—What business are you speaking of? A.—Regards the household busi- 20
ness, the servants, and everything like that.

Q.—Did Mr. Walker ever take any part in that? A.—I don't think so, not
in my time.

Q.—There was no change as far as that is concerned? A.—No.

Q.—Had Mr. Walker a nurse while you were there? A.—When he was
ill, yes, when he had influenza.

CROSS-EXAMINED BY MR. OSLER:

Q.—In 1913, after he came back from France, Mr. Byrne, he did go down
to the office at different times? A.—Yes. 30

Q.—He did go down to his office? A.—Yes.

Q.—Can you remember at this date how often he went down, or are you
unable to recall anything? A.—I can't remember.

Q.—But, on occasions, you know he did go down? A.—Yes.

Q.—After getting back from France? A.—Yes.

Q.—Did you know the men in the office who used to come up to do any busi-
ness with him, like McDougall, and Grigg? A.—Yes, I knew them.

Q.—They used to come up after he came back from France? A.—I think
I seen them a couple of times, but not very often.

Q.—I suppose your duties would be confined to letting them in, and letting 40
them out? A.—Not always.

Q.—You did sometimes, and sometimes the other servants would let them
in? A.—Yes.

Q.—You never stayed in the room while they were discussing anything
with Mr. Walker? A.—No.

Q.—Did his nephews ever come to see him? A.—Oh, yes.

Q.—Did you know Mr. Z. A. Lash, of Toronto? A.—No, I didn't know
him.

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Q.—Did you ever hear of him? A.—Yes, I heard of him.
 Q.—Do you remember hearing that he was visiting Mr. Walker? A.—
 Yes.

Q.—In February, 1914? A.—Yes.

Q.—Were you there at the time? A.—Yes.

Q.—Did you see somebody corresponding to Mr. Lash coming to the house
 about that time? A.—Yes, there was a man of that name came there.

Q.—Did he come to breakfast? A.—He was there to one or two meals, I
 don't know which they were now.

10 Q.—Did he go there on more than one occasion, or just one occasion? A.
 —I think he was there a couple of times, may be three times, I wouldn't be
 sure.

Q.—And you say he had meals there? A.—He had one or two meals.

Q.—Do you remember whether he went down with Mr. Walker to the
 office? A.—I don't think he did.

Q.—I am told he did go down to the office with Mr. Walker? A.—I don't
 remember him going down.

Q.—You mean, you simply don't remember that, or you don't remember
 what he did? A.—I remember he was there, I don't remember that Mr. Walker
 went with him.

20 Q.—Mr. or Mrs. Walker? A.—No.

Q.—I have not made myself clear to you.

HIS LORDSHIP: I have a note that a man named Lash came and had two
 meals.

MR. OSLER: He was there on two, or possibly three, occasions.

RE-EXAMINED BY MR. MCCARTHY:

Q.—You say you have no recollection of Mr. Walker going to the office?
 A.—Oh, yes, I have.

Q.—With Mr. Lash? A.—No, not with Mr. Lash I haven't

30 Q.—When did you hear of Mr. Lash coming up? You said you heard he
 was there? A.—Mr. Lash rang on the telephone, and said he was coming up.

Q.—Did you answer the telephone? A.—Yes.

Q.—Do you remember when that was? A.—I haven't the date of it.

Q.—Do you remember about when it was? A.—Yes, I think it would be
 1913 sometime.

Q.—You say that Mr. Lash, or a man who gave his name as Lash, called
 up on the telephone? A.—Yes.

Q.—From where? A.—From the office.

40 Q.—What happened after he telephoned? A.—Well, I generally put the
 telephone through to Mrs. Walker, and she took the message.

Q.—You put the telephone through to Mrs. Walker on this occasion? A.
 —Yes.

Q.—She took the message? A.—Yes.

Q.—Was it after, or before that Mr. Lash came up? A.—After that.

Q.—Did you let him in? A.—Yes, I think I did.

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Q.—How long was he there on that occasion? A.—He would be there about an hour, I think.

Q.—Do you know whether he saw Mr. Walker? A.—Yes, he saw Mr. Walker.

Q.—Where was he? A.—He was upstairs at the time, I think Mr. Walker went to the office after.

Q.—I thought you said just now you didn't know; that he didn't go to the office with Mr. Lash? A.—I didn't say that—I didn't say he didn't go.

Q.—I took you down as saying he didn't go with Mr. Lash? A.—I meant Mr. Walker was upstairs when Mr. Lash was there. 10

Q.—Mr. Walker was upstairs; in the bed-room? A.—In his own room.

Q.—When Mr. Lash was there? A.—Yes, sir.

Q.—Do you know whether Mr. Lash went upstairs or not? A.—I can't say.

Q.—Do you remember what time of day that was? A.—That would be about ten or eleven.

Q.—In the morning? A.—Yes.

Q.—Did you see Mr. Lash again that day at all? A.—He was in for either lunch or tea, I don't know which. He was there once after that.

Q.—On the same day? A.—Yes, I think so. 20

HIS LORDSHIP: What time did you have tea? A.—Generally about five.

MR. MCCARTHY: What happened when he came on the second occasion? A.—He had tea; I don't know how long he stayed after that.

Q.—Did you ever see him again, or hear of him again? A.—No, I didn't hear of him.

Q.—Can you fix what time of the month that was? A.—No, I don't think I can recollect.

Q.—How was Mr. Walker that time? A.—Well, he was not so well then.

Q.—He was not so well? A.—No.

Q.—Do you know what he was suffering from at all? A.—No, I don't 30 know.

Q.—My friend asked you whether the two men Griggs and McDougall came to the house; do you know them by sight? A.—Yes.

Q.—Did you see them come up at all after Mr. Walker got back from France? A.—I wouldn't be sure whether after or before.

Q.—You spoke about the nephews coming to see him? A.—Yes.

Q.—When was that, before or after the trip to France? A.—They used to come any time.

Q.—Do you remember them coming after? A.—Yes, they used to be there. 40

Q.—I think you said you heard of the brothers coming too? A.—Yes.

MR. MCCARTHY: Possibly we might call Mr. Robins now, and permit him to stand down when the witnesses come from Toronto to-morrow?

HIS LORDSHIP: That would be a convenient way.

MR. OSLER: I do not want the cross-examination of Mr. Robins to be interrupted.

WILLIAM ROBINS, Sworn. Examined by MR. McCARTHY:

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Q.—Mr. Robins, where do you live now? A.—When I am at home I live in London, England.

Q.—And, for some years, you lived in Canada? A.—Yes.

Q.—And were associated with the Hiram Walker Company for many years? A.—Yes.

HIS LORDSHIP: Say how long.

MR. McCARTHY: For how long? A.—A little over 24 years.

10 Q.—When did you first join the firm of Hiram Walker & Sons? A.—On the 8th day of May, 1888.

Q.—What was the nature of the business at that time? A.—At that time, practically all the Walker interests were in the partnership firm of Hiram Walker & Sons. They had numerous interests. I think there were one or two small incorporations, but nearly everything was Hiram Walker & Sons.

Q.—Who were the members of that firm? A.—Hiram Walker, and three sons: E. Chandler Walker, F. H. Walker, and J. H. Walker.

20 Q.—What were their ages? A.—I understood Hiram Walker, when I went there, was 72, and E. C. Walker just a few months younger than I, he would probably be approaching 37, and Mr. Frank Walker 2 years younger, and Mr. Harry Walker 10 years younger than Mr. Ed.

Q.—What was their largest industry at that time? A.—Their distillery was much the largest.

Q.—They had other interests which it is not necessary that we should go into now? A.—Numerous others.

Q.—What was your chief concern? A.—I was concerned with everything, until the distillery was incorporated.

Q.—When was the distillery incorporated? A.—It dated from the 1st of September, 1890.

30 Q.—And, up till that time, you say you were? A.—I had to do with everything, more or less, I think, all the Walker interests; and, after the incorporation, while it was understood my duties were principally in connection with the distilling business, for a good many years I had more or less to do with their other interests.

Q.—What were your relations with the Walker family, when you went there? A.—You don't mean business relations?

Q.—No.

HIS LORDSHIP: Personal, and social.

A.—They became very pleasant, very early, and for two years were positively delightful.

40 MR. McCARTHY: When you say that, that includes Hiram Walker? A.—Oh, yes, Hiram Walker. I was, in the slang of the day, his white-haired boy, for two years.

Q.—You spoke about the incorporation in 1890? A.—Yes.

Q.—How did that come about? A.—Well, it was on my recommendation.

Q.—Why? A.—Well, for the numerous advantages.

MR. OSLER: I did not object to a reasonable amount of preliminary infor-

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mation, but are we to go into the details of the financial history of the Walker industry?

HIS LORDSHIP: I do not know what is in Mr. McCarthy's mind; I cannot stop him until I see where it might lead to.

MR. MCCARTHY: If my learned friend wants to conduct my case, it will be convenient to me. I have not gone into any financial history. I ask Mr. Robins the reason for the incorporation.

THE WITNESS: The only reason was the convenience of a joint-stock company over a partnership.

Q.—And the incorporation took place in 1890, on your advice? A.—Yes. 10

Q.—After this became an incorporated company, what was your position? A.—I was called secretary, but the title I held meant nothing.

Q.—Who were the other officers? A.—Mr. Hiram Walker was president, in name; Mr. F. H. Walker was managing director, in name; Mr. J. H. Walker was treasurer, in name; and I was secretary, in name.

Q.—Did anything happen about that time in reference to the financial situation of the company? A.—Yes, after the application for charter had been filed, a financial crisis of a very serious character suddenly arose. The partnership was owing what, in those days, was a very large sum of money to the Bank of Montreal, and one morning 20

MR. OSLER: May I suggest that a detailed account of the financial difficulties of this concern should not be given; it is very confidential, and it is not relevant to this case, and it is not a proper subject to be discoursed.

HIS LORDSHIP: I think it might; I do not like to stop it without knowing what it is about. For example, suppose Mr. Robins came into the business when there was a financial crisis, and he averted that crisis, and, therefore, got a legacy?

MR. OSLER: What possible bearing has that on this case?

MR. MCCARTHY: I think it has a great deal of bearing.

HIS LORDSHIP: I do not know. I must leave it to Mr. McCarthy to run 30 the case properly.

MR. OSLER: I will put it this way: in 1901 a will was drawn in which a legacy was left to the witness.

HIS LORDSHIP: That is 11 years afterwards.

MR. OSLER: Surely a transaction which took place 11 years before the will of 1901 cannot be relevant to this case.

HIS LORDSHIP: I am only hazarding an opinion. I can quite see, if E. C. Walker felt under obligation to this secretary for averting a crisis, he might have been willing to give him a legacy. That would be a motive.

MR. OSLER: Yes, but I submit that a transaction which took place before 40 1901, cannot have anything to do with it.

HIS LORDSHIP: Gratitude is not so short lived as to evaporate in ten years, it sometimes lasts for a long time.

MR. OSLER: No doubt, very often; but the onus is on my learned friend to show, in matters of this kind which he seeks to introduce, that they are relevant.

MR. MCCARTHY: How can I establish the onus without giving evidence? This is my first experience of being checked up by counsel who has not seen my brief, and perhaps does not know the object of my question.

Q.—Now then, will you go on with the story, please? A.—Well, I think I had reached the point

MR. HELLMUTH: Your lordship understands I am taking the same objection.

HIS LORDSHIP: Yes, I understand your close friendship in the case.

MR. HELLMUTH: I want to say, however close the friendship of E. C. Walker might have been to Mr. Robins, however grateful he might have felt to Mr. Robins, and how much was left to Mr. Robins in the first will, has no bearing on the second will. That is not an issue on the pleadings.

10 MR. MCCARTHY: We do not plead the evidence.

Q.—Go on, Mr. Robins? A.—I had reached the point where I said that the firm was owing the Bank of Montreal what was, in those days, a very large sum of money, and, one morning, Mr. Anderson, the manager of the London branch of the Bank of Montreal, where the account was carried, appeared on the scene with a peremptory demand for payment of a very large portion of the indebtedness within 30 days.

HIS LORDSHIP: How much? A.—My recollection now is that it was somewhere about \$800,000.00. At all events, it was a sum we were utterly unable to pay.

20 MR. MCCARTHY: Yes. A.—Shall I go on with what happened?

Q.—Yes? A.—Mr. Frank Walker immediately went to Montreal, as I understood, to try to induce the Bank of Montreal to modify their attitude. He came back and reported he had been unsuccessful.

MR. OSLER: Surely.

MR. MCCARTHY: Never mind that. He did go to Montreal? A.—I understand that is what he did; I know what he reported when he came back, I heard him.

Q.—That is something Mr. Frank Walker reported after he came back? A.—Yes.

30 Q.—He made a report? A.—He made a report, and then he went to New York with the ostensible object of trying to raise money there by the Lake Erie & Detroit River Railway, a small railway which they had constructed between Walkerville and Kingsville.

Q.—You don't need to go into details? A.—He went to New York ostensibly with the object of trying to raise money, and came back again and reported he had been unsuccessful.

MR. OSLER: My friend knows perfectly well that the witness is not being checked early enough by my learned friend.

40 MR. MCCARTHY: I resent these remarks, they are entirely uncalled for. If you would keep a little more quiet, we will get on better.

MR. OSLER: I will keep as quiet as a mouse if my learned friend observes the rule. My friend is endeavouring to introduce mere heresay.

MR. MCCARTHY: That is absolutely an untruth.

MR. OSLER: I apologize for having made the suggestion.

HIS LORDSHIP: I do not like such harsh terms. Is that the last one? I think you replied in the right way, Mr. Osler. Mr. McCarthy, you must conduct the case properly.

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MR. OSLER: We cannot get into a quarrel in a case of this kind.

MR. MCCARTHY: I realize I do not know as much about the rules of evidence as my friend does, but I am trying to keep within them.

THE WITNESS: You don't want me to say what was reported?

Q.—That is hearsay. He came back and reported? A.—I will say nothing more than that.

Q.—I want you to give us the evidence; I cannot dictate what the evidence is to be.

HIS LORDSHIP: If you are checked up, you will know you have broken a rule of evidence? A.—It will be unintentional. 10

MR. MCCARTHY: The Walker estate in interested; I have no desire to go into it when it is unnecessary.

Q.—Do you, or not, know if Mr. Frank Walker was successful in raising money? A.—He was unsuccessful.

Q.—What, if anything, did you do in consequence? A.—I made certain suggestions. What did I do actively?

Q.—Exactly? A.—I went and got the money.

Q.—From whom did you get it? A.—From the Canadian Bank of Commerce.

Q.—With whom were your negotiations carried on? A.—With the late 20 President of the bank, then the General Manager, Sir Edmund Walker.

Q.—Anybody else? A.—I saw Mr. George A. Cox, just once, he was a director of the bank, and the coming president.

Q.—Anybody else? A.—Nobody else, excepting in bringing about the interview with Mr. Walker in Toronto.

Q.—Those are the only people you saw in connection with this transaction? A.—Yes.

Q.—What was the result of the negotiations in Toronto? A.—We got out of our difficulty.

HIS LORDSHIP: You got the money? A.—We got the money. 30

Q.—That is a comprehensive statement.

MR. MCCARTHY: The company was then incorporated? A.—No, it was not incorporated at the time, it was pending.

Q.—When was it incorporated? A.—Well, it dated as from the 1st of September.

Q.—Actually? A.—I can't tell you really.

Q.—Was there any connection with the incorporation of the company and the getting of the money? A.—Yes, Mr. Walker and Mr. Cox made it a condition that the incorporation should be completed.

Q.—And it was completed? A.—It was completed. 40

Q.—And since that time who have the Company's bankers been? A.— The Canadian Bank of Commerce, as I understand.

Q.—Up to the time you left? A.—Yes.

Q.—And the company's solicitors? A.—Blake, Lash . . . whatever it is now.

Q.—Was there any change in your relations, your social relations with the Walker family, after the incorporation? A.—With Mr. Hiram Walker.

Q.—What was the change? A.—I lost his friendship, and acquired his enmity.

Q.—Did he, at any time, tell you why? A.—No, nobody ever told me why.

Q.—Then, what about the other members of the company? A.—Our relations got even warmer, because I was going to leave in consequence of the old gentleman's attitude, and they asked me not to, and that brought us closer together.

Q.—Who was carrying on the active management of the distillery business? A.—You mean as executive?

10 Q.—Yes? A.—I was.

Q.—And were there any developments of the business during that time? A.—We built up a very large and lucrative foreign trade that we hadn't got before.

Q.—Anything else? A.—I must understand what you mean by "developments?" I do not want to wander.

Q.—It is not a question of wandering, it is a question of hearsay evidence you have been checked on? A.—There was that great development. I don't know what else you would consider "development." If I had a suggestion?

20 Q.—I cannot suggest? A.—As far as development of the business was concerned, there was an enlargement, or increase of the business. That is the only thing there was.

HIS LORDSHIP: There was the foreign extension? A.—Yes, and the Canadian business went on, and that varied from time to time.

Q.—That is rather vague. Do I understand you to say you ought to get credit for that? A.—Well, the Walkers gave it to me, my lord. I suggested it, and I devoted my spare time to it for years, in what should have been my leisure time.

MR. MCCARTHY: When was that trade financially developed? A.—To a profitable basis?

30 Q.—Yes? A.—I think the corner was turned in 1904.

Q.—At the incorporation, did you receive any shares yourself? A.—No, I was promised some but I didn't get them.

Q.—You were simply there on salary? A.—Yes.

Q.—Now, turning for a moment to E. C. Walker, what were your relations with him? A.—They were more than that of a brother, I was closer to him than any brother he had.

Q.—By the way, where did the other brothers live? A.—In Detroit.

Q.—Where did E. C. Walker live? A.—In Walkerville.

Q.—Where did you live? A.—In Walkerville.

40 Q.—He was married, I think, about 1896? A.—I think that was the year.

HIS LORDSHIP: I thought it was 1886? A.—No, 1896, I didn't know him in 1886.

MR. MCCARTHY: You came in 1888.

Q.—While he was a bachelor what were your relations with him? A.—Well, we were very close companions, I saw a great deal of him, I spent a great deal of time at what was called the "Cottage," where he lived, and

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I was always called in when he didn't feel very well, I spent many nights with him.

Q.—Was that often? A.—Yes, often.

Q.—You say you spent many nights with him? A.—I once spent three successive nights sitting at his bedside.

Q.—What sort of man was Mr. E. C. Walker? A.—A princely man.

Q.—Can you describe him in any other way? A.—He was a man of very fine instincts, a perfect gentleman by nature, most appreciative, kindly, and gentle. I never knew a finer man.

Q.—Then, he married I believe in 1896, and did your relations continue? 10
A.—Yes, except as a married man I didn't see nearly as much of him as when he was a bachelor.

Q.—But, up to the time you left? A.—I think our regard for each other increased steadily.

Q.—What sort of man was Mr. Walker, physically? A.—Never at all robust, he was more or less, I should have said, delicate from the first I knew of him, because that is what led to our seeing so much of each other.

Q.—What part did he take in the management of the distillery business? 20
A.—Only incidentally, principally talking things over with me, as his brothers did. He had no fixed duties, none of them had, in connection with the distillery, and they came and went as they pleased. When they were home, my actions were talked over, and, if he happened to be there, why, it would be talked over with him. He took more interest, however, in the waterworks, for instance, and the fire department. Those were owned by the concern.

Q.—Walkers, at that time, practically owned the town of Walkerville?
A.—Yes, and they had to finance all their own facilities.

Q.—Did you notice any change in the condition of Mr. Walker's health as the years went by? A.—His health, physically speaking, was very fluctuating. I should say this; he never got better. What I mean to say is; he 30 never was on the up-grade from the time I met him.

Q.—Was he a man who took any exercise? A.—No, not to my knowledge, except around the billiard-table.

Q.—Was this his habit? A.—He was very fond of a game of billiards, and was a very excellent player.

Q.—Something has been said about his love for pictures? A.—Yes, he was very fond of the best in pictures.

HIS LORDSHIP: Did he play the English game of billiards, or the carom-
ing game? A.—He could play either. He was very clever with the cue.

MR. MCCARTHY: Did you notice any change in him mentally, as the 40 years went by? A.—Yes, very great.

Q.—What was the change? A.—Well, he would be less lucid at times. He was a man of fine intellect, and he would be less lucid, he would be very slow.

HIS LORDSHIP: When did it begin? A.—I can't say when it began, I had no object in keeping dates. I can define it very clearly that sometime after 1900 I began to notice it. From time to time, he would be quite unable

to comprehend an ordinary subject for a short time, then it would clear up. I noticed that these periods were more frequently recurring, and they lasted longer; speaking generally, they were of longer duration when they came. And, in the early part of 1905 it really alarmed me, so much so, I consulted Dr. Hoare about it and asked him what it meant.

MR. McCARTHY: Had Mr. E. C. Walker ever confided to you as to what the cause of his debility was? A.—He had.

Q.—You say, in 1905, you became alarmed? A.—Yes.

10 Q.—And you consulted Dr. Hoare. What was there in Mr. Walker's condition that alarmed you? A.—Well, he would fall asleep while you were talking to him. I might have my eyes on a document and talking to him, and would look up and find him asleep.

Q.—Did it matter what time of the day it was? A.—No, these things were usually in the morning, and then he would ask me over and over again the same question, and he would break in—if I might give an illustration?

20 Q.—What do you mean by “break in”? A.—He would break in in this way, if I might give an illustration; I might be telling him something you had said—I would say “Mr. McCarthy had told me something.” And he would say, “Who did you say?” I would say, “Mr. McCarthy.” “What did he say?” “He said—so and so.” He would say, “Who is that you said?” That is the way it would be, and I naturally got alarmed.

HIS LORDSHIP: How about stopping here?

(Court adjourned at 5.30 p.m. Wednesday, May 14th, 1924, until Thursday, May 15th, 1924, at 10 a.m.)

Thursday, May 15th, 1924, 10 a.m.

MR. McCARTHY: Will your Lordship allow the present witness to stand down for the moment until we call two people who want to get back to Toronto?

HIS LORDSHIP: Yes.

30 MISS ISABELLA LAIDLAW, Sworn. Examined by MR. FLEMING: Q.—I understand, Miss Laidlaw, is in the hands of her physician, and is not very well. Can she be allowed to sit down? (HIS LORDSHIP: Oh, certainly.)

Q.—Miss Laidlaw, where do you reside? A.—In Toronto.

Q.—How long have you resided in Toronto? A.—All my life.

Q.—Did you know the late Mr. Z. A. Lash? A.—Yes.

Q.—Did you hold some position with him? A.—Yes.

Q.—What was that? A.—Stenographer.

40 Q.—From what time to what time? A.—I was there with Mr. Lash, with Blake, Lash & Cassels, from 1892 till 1901, and then I was away for about nine years, and after that I was in Mr. Lash's private office, from 1910 to 1916.

Q.—Where did he have his private office during your last time of service? A.—In the Bank of Commerce building, above the firm of Blake, Lash & Cassels. It was the vice-president's office of the Bank of Commerce.

Q.—That was on the flat above? A.—On the flat above, I think it was the first above, I think on the 5th floor.

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Q.—Were you the only one employed? A.—Yes, until a few months before I left my successor was in the office.

Q.—Were you his private stenographer? A.—Yes.

Q.—Then you did all his work from 1910 to 1915? A.—1916.

Q.—What time in 1916 did you leave his employ? A.—June.

Q.—There was someone else with you during how many months before you left? A.—I don't remember exactly; about three or four months.

Q.—So you were alone during the full year of 1915? A.—Yes.

Q.—By the way, what has become of your stenographic notes? A.—I destroyed all my note books before I left. I always kept them for a few months and then tore them up, I didn't leave any of my notes, I tore them all up in small pieces.

Q.—You tore up all the notes? A.—Yes.

Q.—Was that your practice? A.—That was always the way I did.

Q.—About how many months did you keep them? A.—I think I might have kept them 5 or 6 months, I am not quite sure. I kept them for reference, and then I tore them up.

Q.—Would you let me have a letter written by Mr. Lash in 1914, in January?

MR. OSLER: Here it is. 20

MR. FLEMING: This appears to be the original.

MR. OSLER: The original, I understand.

MR. FLEMING: It comes from your file?

MR. OSLER: I cannot tell you that. It is one of the documents we got when preparing for trial, which particular file it came from, I don't know.

HIS LORDSHIP: It is a letter from whom to whom?

MR. FLEMING: Addressed to E. C. Walker, Esquire, Walkerville, and signed by Z. A. Lash, per "B.L." And it appears to be the original.

HIS LORDSHIP: "B.L." is Miss Laidlaw?

MR. FLEMING: Yes. I think it is important we should know from what file this letter came. 30

HIS LORDSHIP: I do not suppose you can show that by asking counsel on the other side.

MR. OSLER: It came from the Walkerville office, we don't know which file.

MR. FLEMING: That is enough, it came from the Walkerville office.

Q.—Have you any recollection of the correspondence in connection with the preparation of the will of the late E. C. Walker in January and February of 1914? A.—I can't remember any particulars, I know there was a will written then, and possibly there were letters, I don't remember definitely, it is so long ago. 40

Q.—Did you write that will? (Produced.) A.—I think I did, yes.

Q.—If I produced the document to you would you be able to identify it? A.—I think I would.

Q.—(The will, Exhibit No. 5, is produced.) Just look that over. A.—Yes, I think that is my work, I am almost sure it is.

Q.—Typed by you? A.—Yes.

Q.—Now, whose dictation was that? A.—Well, I don't think it was all dictated, I think I must have copied part of it, and probably there were clauses dictated, I don't think it was all dictated to me.

Q.—Can you tell me what part was dictated? A.—No, I can't tell you that.

Q.—Well, it appears in this file there is a copy, and that is a copy you looked at, you think the copy is typed by you? A.—The one I just looked at, yes, I think that is my work, all of it.

Q.—What do you say about this one? This appears to be the original?
10 HIS LORDSHIP: So far as the writing is concerned, that is the will of 1901?

MR. FLEMING: 1914.

HIS LORDSHIP: I thought the will of 1914 was transcribed from the will of 1901, with certain extra clauses marked "dictated."

THE WITNESS: I think that is my work, too.

MR. FLEMING: It is the will that was proved in the Surrogate Court, dated the 27th of February, 1914, that is the will that is in issue. Now, the one in 1901 is the one that has the pencil memoranda on it.

HIS LORDSHIP: It was for that reason I did not quite understand the
20 question and the answer.

MR. FLEMING: I might explain it in this way; in this file there appears a copy of the will, and also the will, and not anything on the file to show it was a copy instead of the original.

HIS LORDSHIP: I see the point.

MR. FLEMING: Now, I am showing the witness the will which was signed by Mr. Walker? A.—Yes, that is my work, I am sure.

Q.—Just look through all the pages. (The witness looks through all the pages.) A.—Yes, I think that is all my work.

Q.—You think that is all your work? A.—Yes.

30 Q.—Under whose instructions did you prepare that will? A.—Mr. Z. A. Lash's.

Q.—That is, the late Mr. Z. A. Lash? A.—Yes.

Q.—And what material had you before you when you prepared it? A.— I think I must have had some former will, I don't think it was all dictated, I remember copying.

Q.—I am going to produce now to the witness Exhibit No. 2. Can you tell from this document if that is the document you refer to as having been the form? A.—I think it would be, I cannot be quite sure, but I think it would be that, as far as I can recollect.

40 Q.—Well, then, your recollection is, if I understand you correctly, that part of it was dictated to you? A.—Yes.

Q.—And part you copied from some other paper? A.—Yes.

Q.—And do you believe that that is the paper you copied from? In the preparation of the will of 1914? A.—I can't say definitely, it looks to me as if—yes, I think so, as far as I can say.

Q.—Now, can you tell me how much of the will of 1914 was prepared from dictation? A.—No, I cannot.

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Q.—Had you any other memorandums in connection with the preparation of the will other than the paper which is the will, Exhibit No. 2, and your stenographic notes? A.—I don't remember any, but there may have been written clauses that I copied, I don't know though, I can't remember.

Q.—Was there anybody else present when you had your instructions to prepare this will? A.—I don't remember anyone being present.

Q.—Did you take any instructions from any person else in reference to any part of the will? A.—No.

Q.—Do you recollect it being copied out in sections? A.—No, I don't remember.

Q.—This is a letter dated January 28th, 1914, on the letterhead of Blake, Lash, Anglin & Cassels, addressed to the late E. C. Walker, and signed by Z. A. Lash, and reads as follows:

10

(This is Exhibit No. 8.)

"Toronto, January 28th, 1914.

"E. C. Walker, Esq.,
Walkerville, Ont.

My dear Mr. Walker:—

I enclose the first part of your Will, containing the special clauses relating to the homestead and your wife's annuity &c. I have not completed the remaining clauses, which relate to the Pere Marquette bonds and to cash legacies and to the Brewery securities. There will be also technical clauses relating to the powers &c. of the Trustees, and the devise of the residue to your brothers. I have to go to Ottawa to-night, unexpectedly, but shall be back on Friday or Saturday. In order that my absence may not delay your consideration of the enclosed special clauses, I send them, and shall be glad to hear from you at your convenience. I have endeavored in drawing the clauses to use language which can be readily understood, leaving out technical expressions, and it seems unnecessary to enter into any explanations as to the meaning and effect of the clauses contained in the enclosed. If, however, you desire to discuss them with me or to make alterations which you cannot readily explain by letter, I shall go up and complete them with you in Walkerville.

20

30

I am,

Yours faithfully,

(Enc.)

Z. A. Lash."

Q.—This appears to be signed by Mr. Lash himself. Do you know Mr. Lash's signature? A.—Yes.

Q.—Is that Mr. Lash's signature? A.—Yes.

Exhibit No. 8: Filed by Plaintiff: Letter dated Jan. 28, 1914, from Mr. Z. A. Lash to Mr. E. C. Walker.

40

- Q.—Did you get a reply to that letter? A.—I don't remember.
- Q.—Where are the letters that Mr. Lash received about that time?
A.—I don't know.
- Q.—Who received this correspondence? A.—Well, he would receive it. I was not in Mr. Lash's office at the time of his death.
- Q.—No. No. A.—I don't know where the papers are.
- Q.—I understand you were in his office at the time this letter was written? A.—Yes.
- 10 Q.—And that you received the dictation for it? A.—Yes.
- Q.—He invites a reply. I am trying to get from you where that letter is, or where it should be found? A.—Any of Mr. Lash's papers, and any letters he gave to me, I put in the file, in Mr. E. C. Walker's file.
- Q.—There was a "Mr. E. C. Walker's" file, in Mr. Lash's office? A.—Yes.
- Q.—As far as you know, the answer to this letter would be, if there was one, in Mr. E. C. Walker's file? A.—Yes.
- Q.—What kind of file was that? A.—It was a pasteboard box, about this long, with a square end, and the name written across the end.
- 20 Q.—Where was that kept? A.—In a cabinet that Mr. Lash had for files, in his own room.
- Q.—Was that there when you left? A.—Yes.
- Q.—I produce now a letter on the letter-head of Blake, Lash, Anglin & Cassels, dated at Toronto, February 16th, 1914, addressed to E. C. Walker, and signed "Z. A. Lash, per B.L." Will you look at that letter? A.—Yes.
- Q.—That is your typing? A.—Yes.
- Q.—On instructions from the late Mr. Lash? A.—Yes.
- Q.—And you signed his name? A.—Yes.
- Q.—The letter reads as follows:

"Toronto, February 16th, 1914.

30 E. C. Walker, Esq.,
Walkerville, Ont.

Dear Mr. Walker:—

At last I have completed your Will, and now enclose it. If you find it correct, it should be signed in the presence of two witnesses, neither of whom should be anyone to whom you are leaving anything under the Will. The two witnesses should see you sign, and you should see them sign, and they should see each other sign; in other words, all three should be together during the whole process.

40 If after reading the Will you want to discuss any clauses of it with me, or want to add provisions, please let me know, and I shall endeavor to go up for the purpose. If, however, you find the Will, so far as it goes, all right, I suggest that you should sign it, so as to have it complete. Any additional provisions can be made by Codicil.

I suggest that the original Will be deposited with National Trust Com-

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pany, and if you will send it to me for that purpose I will have it given to them, to be kept in their safe. I enclose a copy, so that you may have it for reference at any time.

I have changed the legacy to the Toronto University, from the purposes of Convocation Hall to the purposes of Students' Residences, as Convocation Hall has been built, but Students' Residences are badly needed.

I have also changed the legacy for Upper Canada College to St. Andrew's College. Upper Canada College is going to move away from Toronto, and I am on the Board of Governors of St. Andrew's College and know that it is doing good work and is in need of any assistance which it can get.

I am,

Yours faithfully,

Z. A. Lash,
per B.L."

Exhibit No. 9: Filed by Plaintiff: Letter dated Feb. 16, 1914, from Mr. Z. A. Lash to Mr. E. C. Walker.

HIS' LORDSHIP: Is that "Dear Mr. Walker?"

MR. FLEMING: Yes, "Dear Mr. Walker."

Q.—Now, do you know of any other correspondence at that time in connection with this will? A.—No, I don't remember any more.

Q.—Do you recollect receiving a reply to that letter? A.—No.

Q.—If you had received it, where would it likely be? A.—In Mr. Walker's file.

Q.—In Mr. Lash's office? A.—Yes.

Q.—Did Mr. Lash go to Walkerville, to your knowledge? A.—He did sometimes, I don't know when.

Q.—You recollect the occasion of preparing this will? A.—Yes; I couldn't have said just when it was.

Q.—Around about that time, whenever that is? A.—Yes.

Q.—Have you any recollection of Mr. Lash going to Walkerville? A.—No, I can't say, I can't remember.

Q.—Now, for Mr. Lash's services, in connection with the preparation of the will, would he make a charge? A.—I don't know.

Q.—Had you nothing to do with keeping his books? A.—No, I didn't keep his books.

Q.—Who kept his books? A.—I think he probably would himself; I don't know who kept them.

HIS LORDSHIP: Did he keep a blotter, or book of first entry, which would be put into the firm's books, do you know that?

MR. FLEMING: What books and records had he in connection with his business? A.—He had no books that I know of in his private office upstairs; he might have had in the firm of Blake, Lash & Cassels.

Q.—Did you see any, at any time? A.—No.

Q.—Well, why do you suggest that he might have in the firm of Blake,

Lash & Cassels? A.—I think, as a partner in the firm, any bookkeeping he wanted done might be done down there. I didn't do any bookkeeping.

Q.—You did no bookkeeping? A.—No.

Q.—Did he keep a diary from day to day of his appointments? A.—I don't remember seeing one.

Q.—Did you have anything to do with keeping track of his appointments? A.—No.

Q.—Who had? A.—He just kept track of them himself, as far as I know.

10 Q.—Tell me just what your position with him was? A.—I was there as secretary; I took shorthand notes, and did copying, and a little banking, and post-office work; and when he was out I took a note of people who wanted to see him, who had called when he was out.

Q.—Did you make a record of those? A.—Nothing to keep; I would perhaps write the names on a little slip of paper and give it to him when he came in.

Q.—Had you a book for keeping a record of the appointments? A.—No.

Q.—Or visitors? A.—No.

Q.—Nothing of that sort? A.—No.

20 Q.—Have you any paper or document at all, except your notebooks, in which you took stenographic notes? A.—No, I have nothing but my notebooks.

Q.—Had you any books in your office? A.—No, nothing but the files.

Q.—Now, we have produced two letters. Have you any recollection of any other letters having been dictated to you, or sent out in connection with this will about that time? A.—I don't remember any. If I saw any I could probably identify them. I don't remember any.

30 Q.—Do you remember whether any of the Mr. Walkers were at Mr. Lash's office, during the instructions or preparation of this will? A.—No, I don't remember them being there.

Q.—Do you recollect any letters that Mr. Lash received, about this time, from any of the Mr. Walkers, in connection with the will? A.—No, I don't.

Q.—Were there other files in connection with the Walker interests, that Mr. Lash had? A.—Yes.

Q.—What were they? A.—Hiram Walker & Sons, Limited; and Walker Bros., I think there was one, and E. C. Walker. I don't remember any others but those.

Q.—Do you remember Mr. F. H. Walker? A.—Yes, I think there was one Mr. F. H. Walker.

40 Q.—And J. Harrington Walker? A.—I don't remember if there was a file for him—there was for F. H., I think, I wouldn't say certainly, but I think there may have been one for J. H. Walker too.

Q.—You know there was a J. H. Walker in connection with the business? A.—Yes, I know that is the name of one of the brothers.

Q.—How did you know that? A.—I think it is mentioned in the will, isn't it? I had seen it—I am sure I have seen it in documents some place, it seems quite familiar.

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Q.—Have you looked through these files of Mr. E. C. Walker's in Mr. Lash's cabinet, since you received a subpoena in this case? A.—Oh, no, I haven't seen them for 8 years.

Q.—Did you try to get an opportunity to search these files? A.—No, I didn't.

Q.—You did not ask the Blake, Lash & Cassels firm to allow you to do that? A.—No, I didn't.

Q.—Did you ask Mr. Miller Lash? A.—No, I asked nobody.

Q.—What about the National Trust, have you talked with them? A.—No, none whatever. 10

Q.—You have had no talk with anybody representing the National Trust Company? A.—Nobody.

Q.—Have you made any effort to get the productions we have asked for in your subpoena? You have your subpoena with you? A.—Yes.

Q.—Let me see it.

HIS LORDSHIP: I would be very much surprised if she did.

MR. FLEMING: You read the subpoena? A.—Yes.

Q.—And the productions we asked you for? A.—Yes.

HIS LORDSHIP: How does it read?

MR. FLEMING: The regular printed form: "All books, papers, letters, 20 copies of letters and other writings and documents in your custody, possession, or power, containing any entry, memorandum, or minute, relating to the matters in question, and particularly those hereinafter specified: any correspondence, notes, memorandums or instruments relating to the will in question in this action, or to the will made the 21st day of December, 1901, or relating to any codicil or codicils thereto. And you to produce your stenographic notes, and other notes and memoranda, while in the employ of the late Z. A. Lash, or Blake, Lash, Anglin & Cassels, during the period of December, 1913, and January and February, 1914, with reference to the will of the late Edward Chandler Walker. And your stenographic notes, and 30 other notes and memoranda from the period of March 1st to September 30th, 1915, with reference to the settlement made by the estate of the late Edward Chandler Walker with his widow Mary Griffin Walker." You read that? A.—Yes.

Q.—Have you made any effort to get any of those papers?

HIS LORDSHIP: She cannot be asked to produce what is not in her power or possession. If you want them, you have to write a courteous letter and ask her to ask the firm if they will permit her to make the search.

MR. FLEMING: I think, my Lord, having received the subpoena, she might show it to them and ask them to give her any assistance. It is entirely 40 with them whether they want to do it or not.

Q.—Do you remember any transaction in connection with the agreement arrived at between Mrs. E. C. Walker, and the Walker brothers? A.—No, I don't remember that at all.

Q.—Do you remember any correspondence in connection with that? A.—No.

(Letters dated June 18th, 1915, and July 12th, 1915, addressed to Geo.

H. D. Lee, Esq., Estates Manager, National Trust Company, and signed by Z. A. Lash, are produced by the counsel for National Trust Company.)

Q.—I produce to you a letter written, dated June 18th, 1915, do you recognize that letter? A.—Yes, I think I wrote that.

Q.—You think you typed that letter too? A.—I think I did.

Q.—Under instructions from whom? A.—Mr. Lash.

Q.—Whose signature is attached to that letter? A.—Mr. Lash's.

MR. OSLER: I object to the production of these letters on the ground they are not material to this issue.

10 HIS LORDSHIP: All right. Let me stop this for a moment; Exhibit No. 3 is the codicil of November, 1913; Mr. Clay (the registrar) says he has not got that.

MR. CLAY: It was produced at this trial; I never saw it before.

MR. FLEMING: It came from the possession of the solicitor on the other side.

HIS LORDSHIP: Exhibit No. 4 is the unsigned codicil?

MR. FLEMING: Exhibit No. 3 is the signed codicil, and Exhibit No. 4 the unsigned codicil.

20 Q.—This letter is dated June 18th, 1915, addressed to Geo. H. D. Lee, Esq., Estates Manager, National Trust Company:

“Toronto, June 18th, 1915.

“Geo. H. D. Lee, Esq.,
Estates Manager, National Trust Company,
22 King St. East, Toronto.

Dear Mr. Lee:—

re E. C. Walker Estate.

I have received word from Walkerville that they are now ready to have the application for Probate proceeded with. Kindly see that this is done.

30 Mr. F. H. Walker, and Mr. J. H. Walker desire to supplement Mrs. E. C. Walker's income under the Will, and will make an agreement to this effect, which will be filed with the Trust Company. They would like it noted in some way when the Probate is granted, so that any newspaper notice that may be made relating to the terms of the Will may embody a reference to this agreement.

Yours truly,

Z. A. Lash.”

40 Exhibit No. 10: Filed by Plaintiff: Letter dated June 18, 1915, from Z. A. Lash to Mr. Lee.

Exhibit No. 11: Filed by Plaintiff: Letter dated July 12, 1915, from Z. A. Lash to Mr. Lee.

RECORD

In the
Supreme
Court of
Ontario

Plaintiff's
Evidence

No. 18
Isabella
Laidlaw.

Examina-
tion-in-
Chief.
15th May,
1924.

—continued

"Toronto, July 12th, 1915.

RECORD

In the
Supreme
Court of
Ontario

Plaintiff's
Evidence

No. 18
Isabella
Laidlaw.
Examina-
tion-in-
Chief.
15th May,
1924.
-continued

Geo. H. D. Lee, Esq.,
Estate Manager, National Trust Co., Ltd.,
22 King St. East, Toronto.

Dear Mr. Lee:—

re E. C. Walker Estate.

I enclose copy of an agreement which Mr. F. H. Walker and Mr. J. H. Walker and Mrs. E. C. Walker will make, under which Mrs. Walker's income and interest in her husband's estate will be increased. The brothers and Mrs. Walker are desirous that when notice is taken in the press of the application for probate Mrs. Walker's interests should appear as they will be under the Will plus this agreement. 10

Will you kindly prepare and send me for approval such a memorandum as you would propose to give to the press. I suggest that the memorandum should contain the statement that very handsome provision has been made for Mrs. Walker, viz., she will get an income for life of \$75,000 per year, the right to occupy for life the homestead in Walkerville, and the absolute ownership of the furniture and contents of the house, which have been valued for probate purposes at \$. and that she also receives a cash legacy of \$200,000 and a sum sufficient to build a summer residence upon property in St. Andrews, N.B., which Mr. Walker bought for the purpose during his life. 20

Kindly let me have the memorandum as soon as you can.

Yours truly,

Z. A. Lash."

Q.—Do you recognize that?

MR. OSLER: That, again, is open to the same objection.

HIS LORDSHIP: Yes.

THE WITNESS: Yes, I think so.

MR. FLEMING:—You think you recognize that as being typed by you?

A.—Yes. 30

Q.—Under instructions from whom? A.—Mr. Z. A. Lash.

Q.—Whose signature is attached to that letter? A.—Mr. Lash's.

Q.—Now, do you recollect any letters in reply to those letters, received by Mr. Lash? A.—No, I don't remember.

MR. FLEMING: I would like the agreement referred to in that letter.

HIS LORDSHIP: I think it would be an advantage to discuss these things as we go along, unless it interferes with your conduct of the case, and I should like to ask a question or two about that; if you do not want to answer me, you need not, Mr. Fleming. Is the suggestion here, in regard to the increase in Mrs. Walker's income from \$25,000 a year to \$75,000, and other things, that it is a compact between them, because the residue had been increased to the brothers by the last will; that there was some agreement about it? 40

MR. FLEMING: Our contention is that the agreement was the result of a threat, by the widow, to contest this will on the same grounds we are now contesting it, and they settled with her.

HIS LORDSHIP: On the same grounds?

MR. FLEMING: That is our contention.

MR. OSLER: That is open to the same objection: there is no foundation for the suggestion that my learned friend makes. He should establish that before he puts this document in.

HIS LORDSHIP: That is what I mean; it was leaving it in the air.

MR. FLEMING: I did not expect my learned friend to admit it; or we wouldn't be here probably. I am producing the agreement dated the 19th day of July, 1915.

10 Q.—Do you recall the preparation of that agreement? A.—I believe I wrote that.

Q.—You believe you typed this document? A.—Yes.

Q.—At whose dictation? A.—Mr. Lash's.

MR. FLEMING: Mr. Osler, do you want to admit this?

MR. OSLER: As far as the signatures are concerned.

HIS LORDSHIP: They admit the signatures, without admitting the propriety.

Exhibit No. 12: Filed by Plaintiff: Agreement dated July 19th, 1915. Between F. H. Walker and J. H. Walker, of the first part; Mary Griffin Walker, of the second part; and National Trust Co., of the third part.

20 HIS LORDSHIP: There are no brothers living?

MR. FLEMING: No, it is only the third generation that is living.

HIS LORDSHIP: The property is in the hands of the third generation, Hiram Walker's grandsons.

MR. FLEMING: Do you remember any correspondence between either of the Mr. Walkers referred to in the agreement and Mr. Lash, or any person else in connection with the preparation of that agreement? A.—I don't remember any.

Q.—If there are such, they would be in that file? A.—Yes.

Q.—Copies of them? A.—Yes.

30 HIS LORDSHIP: Which file, Miss Laidlaw, labelled what? A.—E. C. Walker Estate, I think.

MR. FLEMING: Can you recollect Mr. Lash ever receiving a letter from the late Mr. E. C. Walker? A.—No, I don't remember of any.

CROSS-EXAMINED by MR. OSLER:

Q.—Miss Laidlaw, will you look at this document Exhibit No. 1. You will see on the first page some pencil notes? A.—Yes.

Q.—For instance, opposite paragraph No. 1, is "O.K." And opposite paragraph No. 2, is "O.K." and then some pencil changes? A.—Yes.

40 Q.—And then attached to page No. 2 is a group of three pages? A.—Yes.

Q.—On rough note-paper, with manuscript notes? A.—Yes.

Q.—And notations opposite other paragraphs of either "O.K." or "out." Opposite para. No. 10, is the word "dictated." And on page 6 is the word, "dictated." On pages 7, 8 and 9 the word, "out." On page No. 10, "out." On page No. 11 the word "out" repeated several times, with reference to different paragraphs. Opposite para. No. 17, the word "bonds." Opposite para. No. 18, "dictated." Opposite para. No. 19, "dictated." Opposite para.

RECORD

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Plaintiff's
Evidence

No. 18
Isabella
Laidlaw,
Examina-
tion-in-
Chief,
15th May,
1924.

—continued

No. 18
Isabella
Laidlaw,
Cross-Ex-
amination,
15th May,
1924.

RECORD

In the
Supreme
Court of
Ontario

Plaintiff's
Evidence

No. 18
Isabella
Laidlaw.
Cross-Ex-
amination,
15th May,
1924.
—continued

Isabella
Laidlaw.
Re-Exam-
ination,
15th May,
1924.

No. 20, the word "out." And the word "out" opposite part of para. 20 on page 14. Opposite para. No. 21, "out." Opposite para. No. 22, "out." On page No. 15, the words "bonds," "out" and "cash," noted several times opposite various paragraphs. On page 16, the word "out." On page 17, the word "out" several times. On page 18, the word "out" three times. On page 19, the word "out" twice, but after the "out" opposite para. 26 is query. And some pencil notes of changes in para. No. 27. On page 20 there is the word "out" in three places, and there are some pencil notes of changes. And then, at the foot of the whole document there are changes in the dating, noted in pencil. Now can you tell me in whose handwriting these notations are? 10
A.—Mr. Z. A. Lash's.

Q.—At the foot of the document, at the bottom of page No. 21, it says, "Revoked by new will executed in 1914," with monogram initials; do you know whose initials those are? A.—Mr. Lash's.

Q.—In whose handwriting is the words, "Revoked by new will executed in 1914?" A.—Mr. Z. A. Lash's.

RE-EXAMINED by MR. FLEMING:

Q.—Miss Laidlaw, you have gone over, with Mr. Osler, page by page, this will, with the interlineations in pencil; did you take those as your instructions in preparing the will of 1914? A.—I think so. 20

Q.—You would think those notes comprised your instructions in the re-drawing of the will of 1914? A.—Oh, yes.

Q.—There is no question about that? A.—Yes.

Q.—Do you remember any other instructions than what is contained in those memorandums? A.—I can't say, but I wouldn't think so.

Q.—When did you first go over the will with the pencil instructions? A.—I would think at the time the will of 1914 was drawn.

Q.—That is the first you saw of it, with the instructions, is that right? A.—I don't remember ever seeing it before.

Q.—Since the will of 1914 was prepared by you, have you ever seen this 30 will? A.—Not that I have any recollection of.

Q.—Do you know anything about this will, where it was found, or where it was kept? A.—If it was kept as a draft for the new will, it would be in Mr. E. C. Walker's file with any copy, or papers there were, if it was kept as a draft.

Q.—Where did it come from, when it was handed to you to prepare the will in 1914? A.—I don't know that.

Q.—Who gave it to you? A.—Mr. Lash.

Q.—Do you know from whose possession it came? A.—No. 40

MILLER LASH, Sworn. Examined by MR. FLEMING:

Q.—Mr. Lash, you live in Toronto? A.—Yes.

Q.—And are a member of the legal profession? A.—I am.

Q.—You are a member of the firm of Blake, Lash, Anglin & Cassels?

A.—Yes.

Q.—You are a son of the late Z. A. Lash? A.—Yes.

Q.—You are a director of Hiram Walker & Sons Limited? A.—Yes.

Q.—You are a director of the National Trust Company, Limited? A.—

Yes.

No. 19
Miller
Lash.
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tion-in-
Chief.
15th May,
1924.

Q.—Now you have been asked, by your subpoena, to produce certain papers. Have you those documents? A.—No. I wish to explain. Some months ago, I think early last Fall, I asked Mr. H. C. Walker of my firm, and Mr. A. F. Barr, of Toronto, who had been doing some clerical work for the executors of my father's estate ever since his death—

Q.—Who were the executors of your father's estate? A.—My two brothers, and myself.

10 Q.—You were one of them? A.—Yes. They were to make a thorough search among all the papers and files that were found, belonging to my father. And to get out from those files all the documents, letters, or anything at all relating to the Walker will matter. And they informed me they had done this, they had gone through them all. I personally didn't make the search. When I was subpoenaed a week or ten days ago I handed the subpoena over to my firm and asked them to see whether what was called for was to be found. I left the matter in that way. I have no documents myself. Everything that was found there is in the possession of my firm.

Q.—When did your father die? A.—In January, 1920.

Q.—And after his death who took possession of his papers and files?
A.—We did, his executors.

20 Q.—You were one of those. A.—I was one of them, yes.

Q.—He had a private office? A.—Yes.

Q.—As described by Miss Laidlaw? A.—Quite.

Q.—And he had files as described by her? A.—Yes.

Q.—What became of those files? A.—They were left in the room for some weeks, I don't remember how long exactly, and they were afterwards taken out to my house; part were taken, I think, for a time, down to Blake, Lash, Anglin & Cassels office, and subsequently were taken out to my house and put in the cellar, I don't remember when, I think two or three years ago perhaps.

30 Q.—Do you mean all the files? A.—Yes.

Q.—Have you searched those files in your cellar? A.—Not personally. I gave Mr. Walker, and Mr. Barr, access to the files, I told them where they were, and for them to search. There were a great many of them, all kinds of files and papers. They searched—I can only tell you what they told me—they searched through the whole thing.

Q.—Did your late father have a letter-book, a copy-book? A.—I don't think so, I don't remember seeing one; it was his habit, after he left active practice, to keep carbon copies of the letters only. He didn't use a letter-book for his own matters.

40 Q.—You heard the letters read this morning in reference to the preparation of the will? A.—Yes.

Q.—Now they both invite a reply from some person, don't they? Isn't that the way they appeal to you, as letters inviting an answer? A.—I don't know; they speak for themselves, I suppose.

Q.—Just read the letter of the 28th of January, 1914, Mr. Lash, and tell me if you don't think that would require a reply? A.—I should say it might, or might not, I don't know.

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Lash.
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tion-in-
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Lash.

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tion-in-

Chief.

15th May,

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-continued

Q.—Well, it sends parts of the will to be revised by the man who is going to make the will, asking him to look over it, and make comments. How would he get further instructions for further paragraphs, without a letter?

A.—I don't know.

Q.—You don't know? A.—I don't know. If he wished to write a letter, he would do so, or he might see him. I have no personal knowledge.

Q.—Where would that letter be, or where should it be, if there was one? A.—I have no doubt it would be in his files.

Q.—Now, had your father any books of account? A.—Personal books of account? 10

Q.—Yes. A.—I don't think so.

Q.—And charges in connection with the preparation of this will, where would they be made? A.—Well, for some time prior to this date, my father had practically retired from the practise of law, and while he was still a member of the firm, he was not actively engaged in the practise of law, and, from time to time, when he was dealing with any special matter of his own, he would render an account for that himself, and receive payment for it. But we found no books of account for these matters. I don't think he ever kept any books of account because they were just matters that came up from time to time and the firm of Blake, Lash & Cassels was not interested in them, or the proceeds. 20

Q.—The firm of Blake, Lash & Cassels were not interested in the earnings that he had, or fees? A.—No.

Q.—We will get to your position as executor. Will you say that he did all the work in connection with this will for nothing? A.—I don't know, I have no knowledge whatever.

Q.—Do you think he would do it as a matter of gratuity to these poor people who couldn't afford to pay for it?

HIS LORDSHIP: Who are the poor people?

MR. FLEMING: Well— 30

THE WITNESS: My father had a retainer from the Walkers, or the Walker Company, during his lifetime; I don't know whether that would be included.

Q.—What I want to get at is, I want to get some record of what he did in connection with the preparation of this will. You say he had no books? No instructions book, or docket, or diary? A.—We never kept a diary. It was his habit to keep a little looseleaf book in his pocket, for appointments, and things of that kind, and when these leaves became used up he destroyed them, and went on with the book. That is the only book of appointments I have seen him with, or known him to have. 40

Q.—You would say, as an executor of his estate, you have found no letters, other than the two letters produced here, to show what his appointments were in connection with the preparation of the will of 1914, or what he did? A.—No.

Q.—What about the settlement made under the agreement of July 19th, 1915? A.—I would say the same as to that; I know nothing about it.

Q.—That was a matter of his own personal concern? A.—Yes.

Q.—It was not a matter of the firm's, of which you are a member?
A.—Not that I remember. It is possible some member of the firm had something to do with it; I haven't had personally, and never heard of any one who had.

Q.—What about the records and files in connection with that period, have you searched for those? A.—Yes, all the files that were there.

Q.—You have not anything but what has been produced? A.—Quite.

MR. OSLER: So far as that particular transaction is concerned, there are some letters that have turned up this morning. As the result of a search,
10 some letters have been found. The file which has been handed to me contains some letters possibly relating to it, and possibly not.

HIS LORDSHIP: That can be postponed until after lunch. Generally, they are letters from whom to whom?

MR. OSLER: Letters from Mr. Lash to Mr. Harrington Walker.

HIS LORDSHIP: Look into those, and supplement the affidavit on production.

MR. OSLER: It is not a question of the affidavit on production; these have never been in the possession of us.

MR. MCCARTHY: Where do they come from?

20 MR. OSLER: I think probably they came from Mr. Lash's file. Some were sent up to Mr. Rodd at Windsor. I am not quite sure about that, I shall have to make enquiry.

MR. FLEMING: Did you produce these this morning?

THE WITNESS: No, I didn't bring anything this morning.

Q.—When did you get them?

MR. OSLER: They came this morning from Mr. H. C. Walker.

THE WITNESS: I haven't heard of these until Mr. Osler mentioned them now.

30 MR. FLEMING: I notice, Mr. Lash, that your father used the stationery of the firm of Blake, Lash & Cassels; why was that? A.—He had a supply of the stationery of the firm continuously, up to the time of his death, and he was still nominally a member of the firm, and his name was never taken off the letter-paper, and he had a supply which he used for a great deal of his correspondence.

Q.—Still he was not an active member? A.—He was not an active member, no, and he hadn't been for many years before.

Q.—Have you had your firm's accounts searched for the purpose of ascertaining whether there are any charges of the firm in connection with the preparation, first, of the will, and then, of the agreement? A.—No.

40 Q.—You made no effort? A.—No.

Q.—Don't you think that might have assisted us? A.—It didn't occur to me at all.

Q.—Now, when your father died, did you make any effort to get his valuable papers? A.—How do you mean?

Q.—From his files, his business associates, his clients' files? A.—They were kept available, and are still available.

Q.—You succeeded your father as director of Hiram Walker & Sons Limited? A.—Yes.

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Lash.
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tion-in-
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—continued

Q.—And really succeeded your father both as director, and as counsel for Hiram Walker & Sons Limited? A.—Yes.

Q.—Now, surely you must know something about—at least, it occurs to me, in the ordinary turn of things, you would be in touch with the situation yourself so as to know just where those files and papers are? A.—I have told you the papers were all in those files of my father's, and they were all searched, and, as far as I know, were all taken out. And these files have been kept available for papers that might be required, from time to time, in connection with the different matters my father was concerned in.

Q.—I produce to you Exhibit No. 2, do you know anything about that, where that was found when it was produced in this case? A.—No. I have told you I have never seen it. 10

Q.—Who would know? A.—I don't know. It might have been among the papers that were found in the search I have referred to.

Q.—By one of your partners? A.—I don't know personally. I have never seen them.

Q.—This is the first you have seen this will? A.—Yes, according to my knowledge I never saw it before.

Q.—You are personally, as a member of the firm of Blake, Lash & Cassels, looking after Hiram Walker & Sons' interests, as solicitor? A.—Only such things as I am asked to look after by them. 20

Q.—You succeeded to your father's position, practically? A.—Yes.

Q.—Walker Bros., too? There is Hiram Walker & Sons, Limited, the distillery, and E. C. Walker & Bros., the holding company. Do you know these two companies exist? A.—Oh, yes.

Q.—You represent them, too? A.—In a general way.

Q.—All the Walker interests? A.—In a general way.

Q.—The same as your father? A.—I should say very much the same.

Q.—Didn't you take over your father's file in connection with your clientele? A.—No, they are there with all the other files, and whenever reference to them is required they are there to be looked at. 30

Q.—What files do you produce in connection with the Walker matters, particularly in connection with the will of 1914, and the settlement of July, 1915? A.—Whatever documents have been found in the search, I would produce them. As executor they were in my custody.

Q.—Personally you have made no effort? A.—No, I have made no search. I was satisfied with the search that had been made, that I gave instructions to have made.

Q.—Have you those files now, of your father's? A.—Such of them as were not taken down to the office of Blake, Lash, Anglin & Cassels after that search are there. I don't know what was taken down and what was left. 40

Q.—Were the complete files taken down, or only part of them? A.—I don't know.

Q.—Where are the files that were taken down to Blake, Lash, Anglin & Cassels? A.—In the custody of the firm of Blake, Lash, Anglin & Cassels. Mr. Walker, one of the partners, is the one who made the search. We have not got anything separate as belonging to the estate in that sense at all, I mean, in connection with those files. Anything there was was turned over.

Q.—Now, did you authorize any person, and whom, to take the file of your late father's in connection with the late E. C. Walker's affairs? A.—All the Walker files, I authorized them to make search of all the Walker files, including any of the Walker companies files, which might be among my father's papers, or in the Walker files, so if they didn't happen to be put in one file they would be in another.

Q.—When was that? After the litigation? A.—I think in the early Fall, perhaps September, I think after the Writ was issued.

10 Q.—Whom did you authorize to do that for you? A.—Mr. H. C. Walker, and A. F. Barr of Toronto.

Q.—Members of your firm? A.—No, A. F. Barr of Toronto. He has done clerical work, and secretary's work, if I might call it so, for us in connection with my father's estate since he died, and still does. I authorized them.

Q.—What did you authorize them to do with them? A.—Take them down to Blake, Lash & Cassels.

Q.—And, as far as you know, they are still with your firm? A.—Yes.

20 Q.—You haven't seen them since? A.—No, I considered that was sufficient search, as far as I was concerned, I couldn't have done any more myself.

CROSS-EXAMINED by MR. OSLER:

Q.—These are all the papers, Mr. Lash, I understand Mr. Walker and Mr. Barr found?

MR. MCCARTHY: Did he say Yes or No?

MR. OSLER: Does this file contain papers dealing with any part of the transaction? A.—I don't know, I haven't read it.

Q.—I rather think, on looking through these papers, they do not relate. They came from our office. I am not ready to go on with the cross-examination of Mr. Lash.

30 MR. FLEMING: I would not like to close the examination of Mr. Lash.

HIS LORDSHIP: No, we will keep him here to-day.

EXAMINATION of WILLIAM ROBINS. Resumed by MR. MCCARTHY:

Q.—When court arose I was dealing with Mr. E. C. Walker's condition as described by this witness, if I remember rightly. When did you first notice any change in Mr. E. C. Walker's condition? A.—Mental condition?

Q.—Yes. A.—I can't fix the date, it was before 1905. I should think shortly after 1900.

40 Q.—What change did you observe? A.—Well, I observed that he was getting unreliable in his memory, and at times unable to understand things for a short period.

Q.—“Unable to understand things for a short period,” I don't just follow? A.—A passing phase.

Q.—“Understand things for a short period.” A.—There would be a short period in which he couldn't understand things, and that would pass away.

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Supreme
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Evidence

No. 19
Miller
Lash.

Examina-
tion-in-
Chief.
15th May,
1924.

—continued

Miller
Lash.
Cross-Ex-
amination,
15th May,
1924.

No. 20
William
Robins.
Examina-
tion-in-
Chief.
15th May,
1924.

—resumed

RECORD

*In the
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No. 20

William
Robins.
Examina-
tion-in-
Chief.
15th May,
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—continued

Q.—When you say a “short period,” do you mean momentarily, or hourly, or daily? A.—It is hard to say, it wouldn't be momentarily, it would be for some hours usually. I probably would leave him, or he would leave me, during that condition, and I wouldn't know how long it lasted.

Q.—Did that condition get better, or get worse? A.—It got worse.

Q.—To what extent? A.—Well, very gradually, but it was observable to me that these periods came with shorter intervals between, and lasted longer when they came.

Q.—What was his condition, as observed by you, when these conditions existed? A.—His mental condition? 10

Q.—Yes, as observed by you? A.—Well, inability to comprehend.

Q.—How was that communicated to you? A.—I would be talking to him about something, and I found he didn't grasp it.

Q.—You found he didn't grasp it. Up to 1900 had there been any large questions come before the directors, or any of them, in connection with the distillery business? A.—Oh, yes.

Q.—What one, please? A.—I should say that perhaps the most important was the question of the imitation of our goods in the United States.

Q.—Imitation of goods, or labels? A.—The goods were not imitated, 20 but the outward appearance, the bottles and labels.

Q.—When did that take place? A.—That imitation?

Q.—Yes. A.—That set in, I think, some time before 1894.

Q.—Let me go back again. The incorporation was in 1890? A.—1890.

Q.—In 1894 was the question of infringement of labels? A.—Sometimes it came very close to that; we got an injunction for an infringement in one case in Chicago; it was more of a colourable nature than an infringement.

Q.—For what period did that last? A.—Several years.

Q.—From 1894 until how long? A.—I am not sure it began in 1894, 30 but about then.

Q.—For how many years? A.—7 or 8.

Q.—How did that finally culminate? A.—It culminated in its practical disappearance, from a business point of view.

Q.—How? A.—Well, by a campaign of exposure which was carried on at my suggestion.

Q.—Was that done by legal proceedings? A.—No, we found that ineffectual, and that is why I turned to the other thing. I found injunctions were not any good.

Q.—Who carried on that campaign? A.—I did. 40

Q.—Did you, during that campaign, have occasion to consult the late E. C. Walker, or his brothers? A.—It was not a matter of consultation, it was more a matter of talking it over, and decide on what would be done, without any more consultation about it.

Q.—When it was decided what was to be done, who carried it out? A.—I did.

Q.—In discussing that matter with E. C. Walker at that time did you

observe anything in regard to his mentality different from that which existed years before? A.—Oh, no, his mentality was all right at that time.

Q.—Was that an important question? A.—Very.

Q.—In connection with the distillery company's affairs? A.—Very important.

Q.—Can you give us an idea of what it meant, in dollars and cents?

A.—It was a business that was just beginning to be very profitable.

Q.—What business? A.—The business in the United States. When these imitations made their appearance it began to cut down our sales; and that United States business gave hundreds of thousands a year profit ultimately.

Q.—What did this question you were discussing involve in dollars and cents? What was the infringement, or colourable imitations? A.—I can't tell you. It was destructive to the profits in the United States.

Q.—Which you discussed with them; the line of action was determined and the matter turned over to you to be carried out? A.—Yes.

Q.—With what result? A.—As to the infringement, or imitations?

Q.—As to getting rid of the difficulty? A.—We overcame it.

Q.—In how many years? A.—There were two—we started this campaign, as I call it, perhaps it is not a very good name, in the absence of Mr. F. H. Walker, and, as soon as he learned, he cabled protesting about it, and it was dropped for something over two years, during which time this menace to our trade in the United States made very great headway. Then we took it up again, when it was a harder proposition.

Q.—When you say "we," do you mean the directors?

A.—I mean the concern, when I say "we." Mr. F. H. Walker was induced to consent to our going on with it again, and my recollection is it took about four years to suppress these things.

Q.—During that period, would you have frequent conversations with Mr. E. C. Walker? A.—You mean talks with him?

Q.—Yes. A.—Oh, frequent, very frequent.

Q.—In connection with this campaign? A.—Yes, he was very much interested in it.

Q.—What was his condition mentally during that period? A.—For some years after we started it?

Q.—Yes. A.—I should say all right.

Q.—May I ask you as to when you first knew him, and at the period we are talking about, was he a clear-headed business man? A.—Very, a man of very sound judgment.

Q.—You have heard the description given of him by other witnesses, as to being more or less of a retiring disposition? A.—That is quite true, except with his intimates, with people with whom he was very intimate he could be just as jolly as anybody; but he was generally a retiring man.

Q.—Now, then, what was the next question of importance, or that concerned the distillery company, which you had to grapple with? A.—Big one?

Q.—Yes. A.—I should say the next one was the Food & Drug Act of the United States, commonly called the "Pure Food" law.

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Q.—Briefly stated, how did that affect you? A.—Dr. Wiley, the Chief Government Chemist in Washington, took an attitude which would have meant the driving of our product out of the United States.

Q.—About what time would that be? A.—I think I first went to Washington on that matter in December, 1906.

Q.—When did the difficulty first arise? A.—Well, that is when it arose.

Q.—In 1906? A.—The Act, I think, did not come into operation until the first of January, 1907. I am speaking from memory now. I received certain information, and I went to Washington with regard to it, and found that there was this attitude on the part of Dr. Wiley. I am perhaps a little bit ahead of my story. 10

Q.—You told me, a few minutes ago, that you first noticed a change in Mr. E. C. Walker's mental condition shortly after 1900. A.—I must be very careful about that. All I can fix is, I know for sometime before I spoke to Dr. Hoare in 1905—I noticed it for some time, it might have been only a couple of years.

Q.—Dr. Hoare told us about that. A.—I didn't speak to Dr. Hoare until he had become considerably worse.

Q.—What was his physical condition during that period? A.—Well, it was very variable; there were times when he was in a very delicate state of health, and there were other times when he was fairly well, physically, but never taking much exercise, or anything of that sort. 20

Q.—It was the mental condition that gave you alarm in regard to which you spoke to Dr. Hoare, and that was in 1905? A.—I know it was in 1905, it was before he went to Muskoka. I wrote a letter to J. H., in which I mentioned having spoken to Dr. Hoare about it.

Q.—Where is that letter? A.—I think I have produced it.

Q.—You only produced a copy. A.—Well, the original will be in my attache case.

HIS LORDSHIP: A letter to J. H. Walker; how could you have the original? A.—No, it is a letter from him to me. But I wrote to him: I think my copy has been put in. 30

MR. McCARTHY: So as not to delay matters, you say you wrote to Mr. Harry in connection with his brother's condition? A.—I mentioned his brother's condition, because I had occasion to write to Mr. Harry on a very serious matter, and I was apprehensive it would be disturbing to his brother, and I wrote with much reluctance. I said to him I had talked with Dr. Hoare and asked what the effect might be on Mr. Ed. Walker.

Q.—Was it a personal or business matter? A.—It was both, it affected business as well as myself. 40

HIS LORDSHIP: Are you referring to what has been called here "infection"? A.—No, sir.

Q.—You didn't know of that? A.—Oh, yes, I did; Mr. Walker told me.

MR. McCARTHY: What was it? A.—It was a question of whether I should send in my resignation, or not.

Q.—I was going to deal with those matters later, but perhaps it would be convenient to deal with them now. This was in 1905? A.—1905.

Q.—That was after you had become alarmed about E. C. Walker's condition? A.—Yes.

Q.—That was after, however, he went to Muskoka? A.—Yes.

Q.—It was at that time you contemplated resigning? A.—Yes, after he had gone to Muskoka.

Q.—It was on that account you wrote to Mr. Harry Walker? A.—Yes.

Q.—In connection with your proposed resignation, and also in regard to his brother's health? A.—Yes.

Q.—And you got a letter from him in reply? A.—Yes.

10 Q.—Have you got that letter there?

MR. OSLER: How can this be evidence?

HIS LORDSHIP: I do not know yet.

MR. OSLER: I offer my objection.

HIS LORDSHIP: He is apparently fixing the date by it.

MR. HELLMUTH: I submit a letter from Mr. Harry Walker to this witness cannot be evidence in regard to E. C. Walker's capacity.

HIS LORDSHIP: It is no doubt for the purpose of showing he did mention he noticed this change in his health. It is as to the history, dates, more than anything else.

20 MR. HELLMUTH: Yes, but if Harrington Walker were to say that his brother was in a very precarious condition, in the letter, that would be no evidence here.

HIS LORDSHIP: No, it would not.

MR. MCCARTHY: It would only be evidence of what his brother thought.

MR. HELLMUTH: No, it would not be evidence of what his brother thought.

HIS LORDSHIP: Suppose we hear what it is; I will reject it if it is wrong.

MR. HELLMUTH: I submit, my lord, it is not properly receivable at all.

30 MR. MCCARTHY: Wait until we find out if there is anything to worry about.

Q.—What was the condition of affairs, as far as you were concerned, in the business, at that time, Mr. Robins? A.—The condition was, I didn't think I could remain any longer.

Q.—Why? A.—Because of certain conduct on the part of Mr. F. H. Walker.

Q.—Conduct towards whom? A.—Well, toward me.

40 Q.—Perhaps that takes me into another branch of the subject which I did not mean to go into just now. Perhaps I will leave it for the present, too. Now, to continue with Mr. E. C. Walker, let us try to clean up the situation with regard to his health. Did you hear at all from anyone in connection with Mr. E. C. Walker's health when he was in Muskoka in 1905?

MR. OSLER: Surely, my lord, that goes beyond what should be received as evidence.

MR. MCCARTHY: Surely he can say whether he heard from anybody. My friend must not object to every question.

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Q.—Did you hear from anybody? A.—Yes, I received three letters from Mrs. Walker.

Q.—Have you got them there? A.—They are put in on her examination.

MR. OSLER: These letters are not evidence against us.

HIS LORDSHIP: I do not suppose that they are.

MR. MCCARTHY: When you say "us," whom do you mean?

MR. OSLER: Any defendant, other than Mrs. Walker.

MR. MCCARTHY: May be as against the National Trust Company, we don't know yet. 10

Q.—Are these the letters you refer to? A.—There is one, two, three.

HIS LORDSHIP: Are they dated?

THE WITNESS: I think one is not dated.

MR. MCCARTHY: One, I think, is dated August 2nd, and written from the "Royal Muskoka" hotel.

Q.—In 1905 you got these? A.—Yes.

Q.—The other one is dated July 29th, 1905, which reads as follows:

"July 29th, 1905.

Dear Mr. Robins:—

I telegraphed you this morning unknown to Mr. Walker. We heard 20 yesterday through one of the visitors in the house, a friend of Miss Phillips, that you and Gertrude were coming up for over Sunday. I was much pleased at the prospect and wired as I have been much worried over Mr. Walker's health and thought that I wanted to see you, or the Dr., or both of you. I do not wish to cause any alarm or unnecessary anxiety, but I do want to see either Dr. Hoare or you. Even if Dr. Hoare finds it possible to come at once, I may during the next few days ask you to come also. This you will kindly consider confidential. I know how easy it is to alarm the family. Dr. Hoare I know thinks I am nervous and unnecessarily anxious. It does not make me less nervous to keep things from me. I feel the re- 30 sponsibility and I feel that I can carry it providing I understand the situation, then I will have the courage to do what I think is right and not the uncertainty that comes from a lack of knowledge. I will know what to advise Mr. Walker to do and what to avoid. Mr. Lash advised me to have Dr. Cavan see Mr. Walker, this I did. He came last night. He thinks Mr. W. better off here than any place he could think of, and thinks the atmosphere here will do him great good. Mr. W. talks some of returning and may wish to next week. I hope, however, that Dr. H. will be able to get him to do whatever will be best. He is so gentle that he will be willing to do whatever we decide, I know. Our best love to you and Gertrude. If 40 you reply, put in an extra note that I can show Mr. W. A typewritten envelope, perhaps. Thanks for your prompt answer to my message. Love to Margaret, also very sincerely yours,

Mary E. G. Walker."

Q.—Did you get that telegram? A.—I think no doubt I did.

Q.—Have you got it? A.—No, I haven't found the telegram.

HIS LORDSHIP: Is Gertrude your wife? A.—No, my daughter.

MR. McCARTHY: You replied, did you? A.—Yes.

Q.—The next one is undated, and reads as follows:

“Royal Hotel, Muskoka.

“My dear Mr. Robins:—

Your letter came safely to me and I replied by telegram and letter at once to Dr. Hoare. I fear that I must have shown something more of my anxieties in my letter to him than I intended to. It is hard to keep every-
 10 thing to oneself, but I ought to be accustomed to that, I have had some experience in it. When I said in my telegram to him not to come on my account it was because I had previously wired him that I was very anxious. If I repeated it in my letter I perhaps did so after expressing my anxiety and yet feeling sure that I could get through without showing it to Mr. W. I am very sorry I caused him any worry as he has been always so kind and so very considerate, and I really think so very much of him. I do not think to express my appreciation to him of what he does for us perhaps, as I sort of take it for granted; he knows what both Mr. W. and I think of
 20 him, and it does not occur to me any more than it would to thank you more than casually when you do something for us. I hope I can explain it to him when I see him. But all this apart from the subject in hand. It was very good in you to write, and I have explained to Dr. Hoare that Mr. W. was quite himself when Dr. Cavan examined him, and that there were no symptoms apparent of any trouble. His conclusions were drawn from existing conditions, as they are now, and he was perfectly himself when Dr. C. questioned him, answered every question correctly. I was present all the time, with the exception of three minutes. He did not disturb Mr. Walker in the least, was gentle and cheerful and encouraging. Mr. W. liked him very much. I had frequently tried to get some more light on Mr. W's
 30 condition from Dr. H., and before coming away made an effort to get some information from Dr. Johnson and Dr. Jennings—In these I failed. I felt it necessary absolutely for me to better understand the situation. Now I can say I am easier in my mind. Now I do not dwell on it and will not. I am happy and thankful for every day we have, and beyond that I am hopeful. Thank you a thousand times dear Mr. Robins. If anything transpires to make me feel that I want some one, I will ask you to come. Mr. W. gains every day and now talks of returning. I am so afraid I cannot keep him beyond next week, but I am using every persuasion I can bring to mind. Ed. sends his love with mine to you and Gertrude and Margaret.

40

Very sincerely yours,

Mary E. G. Walker.

Please pardon the bad scrawl at the end of this, the mail is closing.”

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Q.—Do you know of Dr. Johnson and Dr. Jennings? A.—Yes, they are Detroit men.

HIS LORDSHIP: When did Dr. Hoare tell her?

MR. McCARTHY: In 1907. This was the end of 1905.

HIS LORDSHIP: When she says she is happy in her mind, that does not refer to the information given to her by Dr. Hoare?

MR. McCARTHY: I should not judge so.

HIS LORDSHIP: She is complaining that she has been kept in the dark. She says she has the courage to stand it, but must know, and I understand she does know, and is happier in her mind. 10

MR. McCARTHY: I would not think so. Read it, my lord.

HIS LORDSHIP: Anyway, she thinks she is.

MR. McCARTHY: Then the letter dated August 2nd:

“Royal Muskoka, Aug. 2nd.

“My dear Mr. Robins:—

“Thank you very much for your kind letter. I was glad to get it, and now am happy to say that Mr. Walker is still gaining each day in strength. If anything should turn up to make me anxious again and I feel that I must have some one, I will ask you to come. As it looks now I do not anticipate any trouble. I can assure that Mr. Walker was a very sick man for nearly three days, and now I look back and wonder how I got through alone with him. For five days now we have had a friend with us, some young ladies from Detroit near here and I have had one at a time now. It means diversion for us both. Will you please tell Dr. Hoare that Mr. W. is getting on nicely now and that I received his letter of yesterday, which I will acknowledge very soon. Thank you once more for your nice letter and we send our loves to you and Gertrude. 20

Very sincerely yours,

Mary E. G. Walker.”

.Exhibit No. 13: Filed by Plaintiff: Letter dated July 29, 1905, Letter undated, Letter dated Aug. 2nd, from Mrs. Walker to Mr. Robins. 30

Q.—You went to see Mr. E. C. Walker when he returned from Muskoka? A.—Yes.

Q.—Did you notice any change in him mentally or physically? A.—As between then and when he went away?

Q.—Yes. A.—I can't remember that.

Q.—It was after his return from Muskoka, I gather, that the question came up in connection with the Pure Food law in the United States? A.—Considerably after.

Q.—It was in the year 1906. Can you say whether Mr. E. C. Walker went away at all that year? A.—Yes, he did. 40

Q.—Have you anything to guide your mind on that? A.—Yes, a letter from Mrs. Walker while they were away.

Q.—Where from? A.—From the Hotel Royal, Dieppe, dated July 12th, 1906.

HIS LORDSHIP: I suppose, between the train and the boat? A.—No, I am inclined to think he summered there. Here is a letter of August 20th. I added the year (1906) from the Hyde Park Hotel, London.

MR. MCCARTHY: What letters have you from Mrs. Walker in 1906? A.—I have these two.

Q.—By the way, in that connection, did Mr. Walker himself ever write you? A.—Very, very seldom. He didn't like writing letters. He very seldom wrote me a letter of sufficient significance to keep.

Q.—Did you ever in your experience at the distillery, or with Walker Brothers, know him to dictate a letter? A.—He may have done it, I never knew him to do it.

HIS LORDSHIP: Of course, these letters were of no importance? A.—I only kept them because they were friendly, affectionate letters, that was my only object in keeping them.

MR. MCCARTHY: These were letters from Mrs. Walker? A.—Yes.

Q.—Written in July, 1906. I will put them in as one exhibit. I suppose they will be subject to the same objection as my friends have taken.

Q.—Do you remember what time Mr. Walker went away that year? A.—No, I don't.

Q.—Do you remember any business of importance that year before he went away? A.—Yes, his private business, I undertook to oppose the assessment on his new house, which we thought was very excessive.

Q.—In Walkerville? A.—Yes.

Q.—Did you have occasion to discuss the matter with him? A.—Yes, we discussed the question of its being too high, and we thought it was a hostile matter, as well as being too high.

Q.—Hostile? A.—Yes, there was a council in power we thought was rather unfriendly to the Walker interests.

Q.—We need not go into that. In your discussion with him in regard to the unfriendly council, or with regard to the assessment of the house, what do you say as to his mental condition at that time? A.—Oh, well, he thoroughly understood that matter.

Q.—That would be more or less early in the year? A.—In May or June, they generally went abroad about May.

Q.—Did the brothers divide the year going abroad? A.—No, they came and went as they pleased.

Q.—Was it customary always for one to be here? A.—No, often they were all away together.

Q.—On July 12th, 1906, Mrs. Walker writes as follows:

"Hotel Royal, Dieppe.
July 12th, 1906.

My dear Mr. Robins:—

Mr. Walker was very glad to get your letter and intended writing ere this, but we have begun golf most vigorously, not missing a day, and he does not find time. He gave me your views on the "assessment" to

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read. I am much struck with the force of your arguments and your clear reasoning, and said to him that I wanted to write. He has asked me to say that he was much pleased with the article, and quite approves of the appeal to the board of three County Judges. In my weak judgment the case is clear, and is another proof that you have missed your vocation, to our profit! to be sure, but what a splendid lawyer you would have made!

"You are kind indeed, as usual, to give it so much time and thought. It looks as if the poor assessors do not quite understand the meaning of the word appraise. The Act does not require them to determine the value of the land and house to us. What would it be worth to the City is the question, clear enough. Or, as the old Act said, what would it bring in case it had to be sold to pay our debts. I think they should feel indebted to you, Mr. Robins, for putting it to them in so clear a light. It seems to me that even the dullest of them must recognize that it is a question of market value. Mr. Walker is really very well, and has been ever since we left home, occasionally he has felt a little tired or had the feeling that he was going to have a little trouble, but we have dispelled it each time very promptly, and he has not yet had to stay in the house on account of the disturbance to his nerves he was having at home. I find distraction the best medicine, and have kept at it persistently. We are now playing golf, as I have said, going each afternoon at 2 o'clock to the top of the cliffs where the links are laid out. We drive up. (They must be from 100 to 150 ft. or more above the level here), and the different holes are down in the valleys, making it a case of going up and down and it is most interesting trying in some cases to drive from top of one hill over a gorge, or deep wide basin, to the hole well up on another hill. The climbing doesn't affect him and he plays the nine holes: Then we have tea and walk back to our hotel. It takes 40 minutes at a good pace to walk back. We get home at 5.30, or about that. He thinks that next week we can play more than 9 holes. Then he goes out every morning at 10 or 10.30, we take a little walk and sit on the beach watching the bathers. In Paris we got frightened with the heat, 3 dreadful days, and we came here at once and now I don't think he will want to move until we go to England. Aug. 1st we go to Brockenhurst, to the country, where Mr. Lund has secured rooms for us, and where we shall have golf and riding, until we sail for home. Mr. Walker joins me in warmest regards to Gertrude and you Mr. Robins. Tell her Mr. Walker was glad to get her letter. Remember us to Dr. King when you see him. My love to Gertrude and Margaret. If it were not midnight I would destroy this and try to send you a letter without so many blunders. The only time I seem to find for letters is after Mr. W. goes to bed.

Believe me most sincerely yours,

Mary E. G. Walker."

HIS LORDSHIP: It is interesting to know he could play nine holes. I think the doctor said he was never known to be athletic at all.

MR. MCCARTHY: On August 20th this letter was written from the Hyde Park Hotel, London? A.—Yes, that is the heading of the letter.

"Hyde Park Hotel,
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Dear Mr. Robins:—

We are all ready to sail to-morrow but go by a slow boat, and I do not want to lose any more time before telling you how much we appreciated your interest and your good work in the matter of assessments. I don't know when I have seen Mr. Walker as much pleased over anything, and I need not hesitate to speak of the pleasure it gave him to prove to the people that his interests are in the hands of one who can, and who will, safeguard them. It should be a lesson to some, and a caution to voters, it seems to me, that they should consider well the men they put into office. When we return, Mr. Robins, I have been wondering if you could arrange the afternoon office hour so that it would be a little more convenient for Mr. Walker. I have thought of speaking to Mr. Frank about it, but as I do not quite understand what is done in the afternoons and I have no desire to disturb either of Mr. Walker's brothers' arrangements, I thought that you could help me. I do not want to ask anything which they cannot do, as I might disturb them in that case. I hope to keep Mr. Walker away from the office as much as possible. I fear that I cannot do so entirely. The morning hour from 11 o'clock till noon is perfectly easy for him, but if he tries to get to the office by 2 o'clock it hurries him and often disturbs him. He takes almost always one hour, at the least three-quarters, for a meal, this means that he must rush away and hurry much more than he is accustomed to, to get to office. If it could be arranged that they could meet at 2.30 or 2.45, it would mean a good deal of comfort to Mr. W. I shall try to see that he spends not more than one hour to one hour and a half, at a time there. He is very well. I have never, since I have known him, seen him as well as he has been all summer, and I hope that we may be able to keep him so. Thank you again, very earnestly, for the warm interest you always take in our affairs. I am perfectly sure that this latest proof of it caused you much worry and annoyance. Our love to your dear girls, we shall be so happy to see you all again. With our kind regards, believe me,

Very sincerely yours,

Mary E. G. Walker.

Mr. W. does not know that I am asking for any change in office hours. I know perfectly well that he would not like me to do so.

On reading over this letter I notice that where I spoke of Mr. Walker's interests one might infer that I meant money interests. This is not altogether what I had in mind. I meant to say that he was glad to show that he had someone looking after his affairs whose knowledge of what was right and just was so keen that he was not to be trifled with."

Exhibit No. 14: Filed by Plaintiff: Letter dated July 12, 1906, from Dieppe. And letter dated Aug. 20th, from Hyde Park Hotel. From Mrs. Walker to Mr. Robins.

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Q.—Are those the only two letters of 1906? A.—Here is one of April 6th; I really believe it was 1905. It is from Kirkwood.

HIS LORDSHIP: Where is Kirkwood? A.—South Carolina. These are all in 1906.

MR. MCCARTHY: Do you remember him getting back in 1906? A.—Well, I can't say that I do.

Q.—Having reference to Mrs. Walker's request in regard to the alteration in the office hours, does that recall anything to your mind? A.—As to his coming back?

Q.—As to anything you did when he came back? A.—No. 10

Q.—We will pass on to 1907. That was the year, I think, when you say this pure-food trouble started in the States? A.—Yes.

Q.—That, of course, was, as you said, a very serious matter for the Walker interests? A.—Very.

Q.—That was an effort to turn their goods out of the United States? A.—Yes. That was very serious.

Q.—Were all the brothers home at that time? A.—No, because I have letters from Mr. Frank, to whom I wrote, saying what I had done in Washington, when he was in Europe.

Q.—Where was Mr. Harry Walker? A.—I can't be sure, he didn't often 20 go away in the winter, I think he was at home.

Q.—Where was Mr. E. C. Walker during that year? A.—My impression is, in the winter, when the thing began, he was at home.

Q.—This was a matter of very considerable importance to them, I presume? A.—My estimate was, it meant some millions of dollars.

Q.—Did you have occasion to discuss this question with Mr. E. C. Walker, or the means that should be taken by you to overcome the difficulty? A.—Well, no, I didn't have occasion to, but there was a good deal of discussion. There was one discussion as to what should be done about it, and it was handed over to me.

Q.—Who settled what should be done? A.—I think the three brothers 30 were all together then, and it was decided it should be handed over to me, with a free hand in every way, in fact, I made that condition.

Q.—I presume that compelled you to go to Washington to deal with the matter? A.—Well, I was frequently in New York.

Q.—Did you discuss the matter from time to time with Mr. E. C. Walker? A.—Yes, as a matter of interest to him.

Q.—I do not care about that, did you? A.—Yes.

Q.—What was his condition of mind at that time? A.—Well, I can't exactly fix the time, but when the matter became one of considerable detail for one to understand, had gone far enough, I never was able to get him to 40 comprehend the whole matter at one time, when I got to the end of it, he had forgotten the first part of it.

Q.—Did that happen more than once? A.—Yes, many times, he was constantly asking about it.

Q.—Was it a matter in which he took an interest? A.—Yes, he took a great interest, because it was, he said, a grave matter.

Q.—When was that matter settled? A.—I think it was finally ended in October, 1910, when the matter was finally disposed of before the Attorney-General.

Q.—It spread over three years? A.—More than three.

Q.—Did you continue the lone hand? A.—As far as Walkers were concerned, except that when I was away in Europe once, Mr. Frank Walker went down to New York and saw Mr. Choate, and unfortunately made mischief. He didn't help the matter at all.

Q.—When you were here you handled it entirely yourself? A.—Yes.

10 Q.—With what result in 1910? A.—Well, we succeeded entirely.

Q.—During the years 1907, 1908, 1909 and 1910, were you constantly talking to Mr. E. C. Walker in regard to it? A.—Oh, very, very frequently.

Q.—Was there any change, as far as you could see, in his mental condition? A.—Yes, I should say he was gradually getting worse.

Q.—How was that manifested to you? A.—If I were a doctor I could express it better.

Q.—I want you to express it as a layman? A.—My impression was, he was going down.

20 Q.—Tell us what there was to make you think that? A.—He more frequently fell asleep while we were talking, and more frequently was unable to comprehend, and he asked questions more frequently regarding things that had been just told to him. It became accentuated. That is all I can say.

Q.—During that period from 1907 until 1910, can you recollect whether Mr. E. C. Walker went away at all? A.—Oh, I know he did go away, yes.

Q.—Have you any letters from either he or Mrs. Walker during that period?

30 HIS LORDSHIP: Is that last answer in reference to 1910, when you say he was gradually going down, or what period do you refer to? A.—I should say all the time, it was a steady deterioration, I think.

MR. MCCARTHY: My question had relation to the years 1907-1910, because he was in constant conference with him.

THE WITNESS: My recollection is you put in eight of the letters. You have put in three, and two, I only see two more here. These go together.

Q.—What year? A.—April 6th. That is not the year he was at South Carolina, I am satisfied it was 1905.

Q.—I am not dealing with that now. A.—You asked had I any more letters.

40 Q.—Have you any letters from Mr. or Mrs. Walker during the years 1908, 1909, and 1910? A.—I cannot answer at the moment, for this reason, there is a letter missing, I think. I don't know the date of that.

Q.—I gave you all the letters attached to the commission just now. A.—I am speaking from recollection. We have only counted up to five.

Q.—Never mind. A.—I can't answer the question until I know whether there was another letter.

Q.—Well, I am sure I don't know.

HIS LORDSHIP: Where was the commission evidence taken? A.—In New York, my lord.

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MR. McCARTHY: Speaking from recollection, do you know whether Mr. and Mrs. Walker were abroad in 1907, 1908, 1909 and 1910? A.—I believe they were abroad in 1908, because I was abroad myself, and I think I saw them in Paris, I am not sure, but I think I did. Then I was abroad again in 1911.

Q.—Wait until we get there. That is the only year you can remember in that period, up till 1910, that you have any distinct recollection of? A.—About their being abroad?

Q.—Yes. A.—Yes, that is the only recollection.

Q.—By the way, when did you leave the business? A.—In August, 10 1912.

Q.—Were there any other questions of importance that arose after the settlement of the pure-food trouble in the United States, and before you left the business, that required consultation with E. C. Walker? A.—No, I should not say there were.

Q.—Did you have occasion to confer with him during 1911 at all? A.—Yes.

Q.—What was the nature of those conferences? A.—I can't tell you. He came into my room very often and chatted, and asked how this and that was going on, it was generally how the foreign trade was going. 20

Q.—What do you mean by foreign trade, American? A.—No, world-wide trade, other than the Canadian trade.

Q.—Did he take particular interest in that? A.—In the results of it. He never took any active interest.

Q.—What do you mean? A.—He was interested in how it was progressing.

Q.—Not how it was engineered? A.—No.

Q.—Just in the results? A.—That is all.

Q.—Was there any change in his condition that year that you noticed? A.—Well, I can't say. I had no object in keeping these things, as to dates. 30 I can only say this, I think, right up to the time I left the business, he was going down. That is all I can say.

Q.—Mentally, or mentally and physically? A.—More mentally.

Q.—Now, during the time you were in the business, besides the services you have referred to, that is in connection with the trade-mark troubles in the United States, and the pure-food law, and the earlier trouble in connection with the banking interests, and possibly the assessment question, did you ever have occasion to render any personal service to Mr. E. C. Walker? A.—Yes, I did.

Q.—Often, or not? A.—At one time, quite often. I wouldn't want to 40 put very much value on it, because it didn't turn out profitable, it was an enterprise he was engaged in, and he used to come to me a good deal about it, and I used to spend a good many evenings with him about it.

Q.—Anything else? A.—You mean purely a personal matter, or outside the distillery?

Q.—Outside the distillery? A.—Yes, in connection with the railway.

Q.—What railway? A.—Lake Erie & Detroit River Railway. Their own little railway.

Q.—What was his position in regard to that? A.—I think he was President.

Q.—Anything else? A.—Anything else that I did?

Q.—My question was, were there any services you rendered E. C. Walker, apart from the services you rendered in regard to the distillery?

A.—I cannot be sure; I don't quite know what you are referring to. Are you thinking of personal companionship?

Q.—I am not thinking of anything. A.—Let us understand each other. You have in your mind what I said about personal companionship?

10 Q.—No, I have nothing of the kind. A.—I do not want to repeat.

HIS LORDSHIP: Has this got to cross-examination?

MR. MCCARTHY: Oh, no. I will repeat the question.

Q.—Are there any services which you rendered E. C. Walker personally, apart from the services which you rendered to the distillery? A.—I think yesterday I mentioned the companionship, didn't I?

Q.—I don't know whether you put those under the head of services or not? A.—I think he did; I should not.

Q.—Anything else? A.—I don't recall.

20 Q.—During the time of your association with him, was there any variation of your relations with him, speaking from a social standpoint? A.—My friendly relations?

Q.—Yes. A.—The only variation was, I think they grew warmer.

Q.—Did he ever mention to you the fact that he was making a will? A.—Yes.

Q.—When? A.—I know it was about 1901; he told me he was making a new will, and he asked me whether I would be executor, I said I would if he wished me.

Q.—He told you he was making a new will, and he asked you if you would be an executor, and you said you would if he wanted you to? A.—Yes.

30 Q.—Was that the last time, and the only occasion, on which will was mentioned between you? A.—The only time he ever mentioned the subject.

Q.—Is there anything else in connection with your business or social relations with Mr. E. C. Walker that you want to state? A.—That I want to state? I don't know of anything.

Q.—We will take up your relations with Mr. J. Harrington Walker, whom, for short, we will call Mr. Harry Walker; what were your relations with him? A.—They were just the same as with his brother Ed.

Q.—Did you see him as frequently as you did the brother? A.—No, I didn't, because he lived in Detroit.

40 Q.—E. C. Walker lived in Walkerville, as you have told us? A.—Yes.

Q.—Were you a frequent visitor at the Detroit house? A.—No, I was not.

Q.—Where would you meet Mr. Harry Walker? A.—Well, before his second marriage, I met him at his own house.

Q.—Where was that? A.—In Detroit, and I spent seven week-ends when I came out first, he had recently lost his wife, and was feeling very lonely. I spent seven week-ends before my family came out. And we saw

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a good deal of him because he came to our house. After his second marriage I do not think the old friends saw quite as much of his house as they had before.

Q.—Did you meet him over at the office? A.—Yes.

Q.—Was he a regular attendant? A.—Yes, when home and well.

Q.—Did he suffer at all in health? A.—Yes, he did. He had been, I understood, quite delicate as a young man, I think he had had an injury to his back, which gave him a lot of trouble, resulting from a fall.

HIS LORDSHIP: He was 12 years younger. A.—No, sir, ten years younger than Mr. Ed. 10

MR. MCCARTHY: Any other troubles he had? A.—It was a trouble that gave him a lot of trouble. He had colds, and that sort of thing, like other people.

MR. OSLER: Does your Lordship think it has any possible bearing?

HIS LORDSHIP: I am getting rather tired.

MR. OSLER: Objections do not seem to have much effect on my learned friend.

MR. MCCARTHY: Not yours.

HIS LORDSHIP: We are all getting tired of all the ailments of a sick man. I am awfully tired of the sicknesses, but if it is part of the case I shall have to hear them. 20

MR. MCCARTHY: Afterwards, did your intimacy with Mr. Harry Walker continue? A.—Just the same as with Mr. Ed.

Q.—Was Mr. Harry Walker the same type of man as Mr. Ed.? A.—In a great many ways; he hadn't quite Mr. Ed. Walker's fine tastes, in a certain way, but he was a most amiable man.

Q.—Did they ever have occasion, either of them, to express their appreciation to you of what you had done? A.—They did it very often.

Q.—What were your relations with Mr. Frank Walker? A.—Very pleasant for the first 10 or 11 years, but never the same thing, not the same personal relation, but perfect as a business relation. 30

Q.—And continued so throughout? A.—No, then there was a change.

Q.—When? A.—I can't fix the time exactly.

Q.—I don't want it exact. A.—It was not far from 1900, I think.

Q.—What was the nature of the change, and what was the change? A.—He one day lost his temper and was very rude to me.

Q.—Did that continue? A.—It was repeated from time to time. If it had been continuous I should not have been there. It was apologized for. But it did recur from time to time, and again apologized for.

Q.—What stand did the other brothers take in regard to that, that is, E. C. Walker, and Harry? A.—They always stood behind me on such occasions. I was going to leave, and they brought pressure to bear upon me, the pressure of our intimacy and affection, and they said Frank was sorry, and Frank would say he was sorry; and we went on again. 40

Q.—I don't want to go into details, but can you tell me how your relationship with Mr. Frank Walker continued from then on? A.—Between whiles he would be very nice, and then there would be another outburst.

Q.—What would take place? A.—I would say, "I am not going to stand this, I am going." And Ed. and Harry would ask me to be patient for a day or two, they knew Frank would be sorry, and then Frank, or one of them, would ask me to come in and see Frank, or Frank would come in to me, and say he was sorry.

Q.—How did the final break-up come? A.—Another of these annoyances on the part of Mr. Frank. Harry Walker had had a bad breakdown in Europe.

10 Q.—When I asked you about that you didn't tell me; when dealing with Harry Walker I asked if there were any other ailments, you said you didn't know. A.—I wouldn't call that an ailment.

Q.—My language is at fault. A.—I thought you meant casual.

Q.—I don't want to know about casual things. A.—He had that breakdown while I was in Europe in 1911. I was told that it was a stroke of paralysis. I saw him in bed.

20 Q.—We need not go into it. There was a breakdown. You say there was another offence by Mr. Frank Walker? A.—Yes, I thought the limit had been reached, and I called upon the two brothers, Mr. Ed. and Mr. Harry, to fulfil a pledge they had made to me years before that, if it came to a crisis they would tell Mr. Frank he had to retire from the Board.

Q.—Just go back and tell us what the pledge was that was made years ago, and when that pledge was made? A.—I think it was in 1908, I can't be sure. They gave me a solemn pledge.

Q.—Tell us what took place? A.—There was a situation—

Q.—You haven't told what the situation was in 1908, that led to the giving of the pledge. A.—If you would not be quite so impatient. There was a situation brought about by a repetition of this conduct on the part of Mr. Frank Walker, and I made a crisis of it, as a matter of fact.

30 Q.—That was in 1908? A.—I think so, I am nearly sure, I am not quite sure. We had a very serious discussion, Ed. and Harry Walker, and myself, about it. And Ed. Walker said, "Now, Frank intends to go out of the business at the end of this year, he said so." And he said, "I would rather it took that course, but, if one or the other has to go, it will be Frank, and not you." I said, "If Mr. Frank is going out in a few months, that is satisfactory to me." He didn't go out, he changed his mind, but things got better between him and me, he was rather nice, he was quite nice for quite a long time. And then I didn't want to hold the brothers to it, I thought a permanent improvement had set in. But that was the pledge they made, if it came to the point.

40 Q.—Let me interrupt you. You said the pledge was made on the assumption—they said Frank was going out, and they asked you to remain? A.—It was not put quite that way.

Q.—Let me get what the pledge was, I think it is important. A.—They said if it was a matter of one or the other going out, it would be Frank, and not myself, but they went on to say that Frank was intending to go out anyway, and that the matter could take that form, that he was going out voluntarily, and naturally he would like it better.

Q.—Where did the pledge come in? A.—If it came to the point that one of us had to go out, it should be Frank.

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Q.—See if I have you right.

MR. OSLER: I would rather my friend should not lead. My friend has asked the witness two or three times and now he is proposing, if I can anticipate, to put the question in a somewhat leading form.

HIS LORDSHIP: You cannot lead Mr. Robins.

MR. OSLER: My learned friend will not suffer if he is not allowed to try.

MR. MCCARTHY: I asked if I understood him correctly.

MR. OSLER: It has come to the point where the witness should not be asked in that way. 10

HIS LORDSHIP: Mr. Robins, don't you be led; you know what that means.

THE WITNESS: I do not want to be led.

MR. MCCARTHY: A crisis arose by reason of some conduct on the part of Mr. Frank, which you had taken exception to, and you appealed to the brothers, and the brothers said that Mr. Frank contemplated retiring shortly, and you said, well, if that is so, you would remain on? A.—It was not quite that way, I never appealed to the brothers. On every occasion of the offence, I said, "I am going to leave." They used their influence with me not to do so, to hold my mind in abeyance for a little while, until they saw what would happen. I did that several times, and finally I thought I had stood it long enough, that I was going anyway. 20

Q.—Was this in 1908? A.—Yes, if I am right about it, that is the time I am talking about, I thought I couldn't stand it any more. And then we had this very serious talk about it, and they pledged themselves. They said Frank was going out voluntarily, but if the situation was that one or the other had to go, then or any other time, it would be Frank and not myself.

Q.—Who made the pledge; and what was the pledge? A.—Both of them, they were there together.

Q.—Who spoke? A.—Both spoke.

Q.—That is what I am trying to get. A.—I said, "they," and that is plural. 30

Q.—They could not say it in chorus. Can you tell us what they said, or either of them? A.—In the words?

Q.—Yes. A.—No.

Q.—That takes me back to the final break. You referred to a pledge that had been made some years ago, and now you have said what that pledge is. Kindly take your mind back to the parting of the ways in 1912, and go on with the story from there. You had got to the point where you referred to a pledge the brothers had made? A.—Yes, I said I thought the time had come for them to redeem it, and they said they didn't feel equal to a rupture with their brother. They were both in very poor health at the time. 40

Q.—They said they didn't feel equal to a rupture with their brother, and the result was? A.—The result was I got out, or I left the business.

HIS LORDSHIP: In 1912? A.—In 1912, my Lord.

MR. MCCARTHY: After leaving the business was any reference made by either of the brothers to the former pledge? A.—Yes, we talked it over, they said how sorry they were. It was talked over a great deal, and they

expressed their regret, and said they didn't feel equal to it. I said, "I realize that."

Q.—You remained in Walkerville for how long? A.—It was my place of residence until the 7th day of March, 1914. I was away a good deal after I got out of the business.

Q.—I think you moved to England, where you now reside? A.—Yes.

HIS LORDSHIP: Did you originally come from England, Mr. Robins?

A.—Yes, my Lord.

MR. MCCARTHY: Let me go back to 1890, at the time of the incorporation, was there anything said by either the father, or the three sons, in refer-
10 tence to your position in the incorporation, either as shareholder or director?

A.—Yes, Mr. Hiram Walker came into my room and was talking about the incorporation, and said he was going to give me \$50,000 of shares. I was rather taken by surprise, and told him so. I said I didn't feel I had established a claim to that. He said, "We think otherwise, and that is only a beginning of what you will have." Well, I never got them.

Q.—Did the question of your salary come up for discussion at all as between you and the boys? A.—Yes, after Mr. Hiram Walker had ceased
20 to be my friend, as I mentioned in the box yesterday, there was a very strained situation between him and his sons.

Q.—When you say his "sons," do you mean all three? A.—All three. And I asked them to let me go, if it would ease matters. They said, no, it wouldn't do any good. Then I said, "Don't do anything that is going to annoy your father in regard to me as to my salary or anything else." I said to leave it just as it was, and it remained so for years.

Q.—Was anything said by the brothers at that time in reference to salary at all, when you allowed it to remain as it was? A.—No, they just acquiesced in that.

Q.—With what result? A.—With the result I went on for some years
30 without any increase, when I should have expected one otherwise.

(Court adjourned at 12.50 p.m. until 2.15 p.m.)

AFTERNOON SESSION—THURSDAY, MAY 15TH, 1924.

MR. OSLER: May it please your Lordship, would my learned friend complete the examination of Mr. Miller Lash and let him away. The file I have handed to my learned friend consists of all the documents Mr. Lash has been able to find.

MR. FLEMING: I will put in a letter, that is admitted, and then we will be through with Mr. Lash. It is a letter dated October 12th, 1923, a copy, from the office of the National Trust Company, and a similar letter was sent
40 out to each of the beneficiaries.

"COPY.

October 12th, 1923.

The Church Wardens,
St. Mary's Church, Walkerville, Ont.
C/o The Rector.

Dear Sir:

Re E. C. Walker Estate.

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Chief.

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-adjourned

No. 19a
Miller Lash.
(recalled)
Re-Exam-
ination.
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Plaintiff's
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No. 19a
Miller Lash.
(recalled)
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We beg to advise you that an action has been instituted in the Supreme Court of Ontario by William Robins against National Trust Company Limited as Executors of this Estate, by Writ issued the 23rd day of June, 1923, in which the plaintiff asks:

- (1) That the probated Will of the late Edward Chandler Walker, dated the 27th day of February, 1914, may be declared to be not the last Will and Testament of the late Edward Chandler Walker.
- (2) That probate of the same may be annulled.
- (3) That the Will dated the 21st day of December, 1901, may be declared to be the true and last Will and Testament of the said late Edward Chandler Walker. 10
- (4) That probate may be granted to the said William Robins as the surviving executor and trustee of the said Will of the 21st day of December, 1901.

The plaintiff proposes that the action be tried at the Town of Sandwich in the County of Essex.

Notice of the trial has been given for the sittings commencing at Sandwich on October 22nd, 1923.

We would point out that, should you desire so to do, you have the right to apply to the Court to be added as a party to the action. However, at the request of the representatives of the residuary beneficiaries we are defending the action and you will not be called upon to contribute to the costs of our defence. 20

Yours truly,

Estates Manager"

Exhibit No. 15: Filed by Plaintiff: Above letter dated October 12th, 1923.

MR. OSLER: That, of course, was before the plaintiff had applied for directions before Mr Justice Orde.

MILLER LASH, Re-called. Examined by MR. FLEMING: 30

Q.—Do you know anything about that letter going out, Mr. Lash? A.—I was simply informed it was, I had nothing to do with the preparation of it.

MR. FLEMING: With that statement, that is all.

EXAMINATION OF MR. ROBINS, Continued by MR. MCCARTHY:

Q.—I don't know, Mr. Robins, whether you made it quite clear why you acquiesced in the suggestion that your salary should remain the same? A.—I suggested it, and they acquiesced. So there might be nothing in connection with me which might annoy their father, or make trouble.

Q.—Then did you, at any time, become a shareholder in the Hiram Walker Company? A.—Yes, after Mr. Hiram Walker had withdrawn from the business. 40

Q.—To what extent? A.—\$25,000.

Q.—Just about when would that be? A.—I am not sure, it is on a memorandum, it is hard to remember dates exactly.

Q.—Do you remember when he withdrew? A.—About 1896, I should think.

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Q.—Did your holdings remain at that figure? A.—For a good many years.

Q.—When, if at all, were they altered? A.—I can't remember that year either, it was a good many years afterwards. I may say that \$25,000 was understood to be an increase of my salary back, a sort of equalization. Then I subsequently, a good many years afterwards, got the \$75,000.

Q.—Will you tell me the circumstances under which the first allotment of stock was made to you? A.—Well, it was represented to me as an equalization of my salary while it had remained at that—what we all agreed
10 was a low figure.

Q.—During the old man's connection with the business? A.—Yes.

Q.—At whose suggestion was that? A.—Their suggestion.

Q.—When you say "their," do you mean the three? A.—I seldom saw the three brothers together on a matter of that sort, one or the other would come to me and talk with me about it.

Q.—Do you remember who talked to you about this? A.—It was Mr. Ed.

Q.—Was he the president? A.—Yes, he succeeded his father.

Q.—What was the occasion of the further allotment? A.—That was
20 in recognition of what had been accomplished in the export business, profits, I should say, which reached a handsome sum.

Q.—That was a new venture, as far as the Walker Company was concerned? A.—Yes.

Q.—I will drop this just for a moment, until I come to the final settlement. Was there any other development of the Canadian business, for which you claim the responsibility? A.—The only development that was possible with the Canadian business was to increase the sale of the more profitable brands, which was very largely developed, but largely at my instance. That was very much more profitable than the younger brands of
30 whiskey.

Q.—How was that accomplished? A.—Well, it is rather difficult to say; more or less by advertising, in the way of entertainments, and making the name popular throughout the country, by supporting public objects, and wholesome sports, and that sort of thing, which we did quite extensively, and, in that way, popularized the name.

Q.—Did you receive any recognition for the services rendered in connection with the fight in regard to the attempt to infringe the trade-mark, or imitate it? A.—No, none whatever.

Q.—Did you receive any remuneration, or recognition, in reference to
40 your fight in regard to the pure-food laws, in the United States? A.—I received a watch and chain, and trinkets.

Q.—Were there any other special services rendered to the company? A.—I think the only other one I might mention was on my return from abroad in the autumn of 1911, I found that during my absence a change had been made at the instance of the Ontario Government in the size of the flasks, they had been slightly increased. After discussion and correspondence between the associated distillers and the department in Toronto. It meant considerable loss to the concern because the increase in the size of the

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flask was imperceptible and they couldn't raise the price, but it nevertheless amounted to a considerable item; my recollection is it amounted to \$27,000 or \$28,000 a year. I came to the conclusion a mistake had been made, and I went down to Toronto and took the matter up with Mr. Saunders, who was kind enough to agree with me, and the smaller flasks were resumed.

Q.—I don't know whether you mentioned the amount in dollars and cents? A.—My recollection is it meant at that time from \$27,000 to \$28,000 a year.

Q.—Will you tell me, as shortly as you can, the difficulties you had with Mr. Frank Walker, from the time they commenced, and the attitude which the other two brothers took in regard to it? A.—There were these recurrent offences, which were very unpleasant, and, as I said this morning, I invariably suggested I should go. I never asked for an apology. The brothers always prevailed upon me to wait a little while, and in the course of two or three days, an apology was forthcoming, and I always accepted it. 10

Q.—And that continued for how long? A.—Well, from the beginning, which I told you I could not exactly fix the date of, until the final rupture.

Q.—Now, then, you have prepared a statement, Mr. Robins, showing the yearly profits from the Canadian and export trade, from the time you entered the concern, up to the time you left? A.—Not from the time I entered the concern. 20

Q.—No, I beg your pardon, from the time of the incorporation? A.—Yes.

Q.—Look at that statement and tell me if it is correct? A.—Yes, that is correct.

Q.—What does that show, generally? I will put it in. A.—It is for a period of 22 years, and shows the Canadian profits to have been \$6,897,000. The export profits \$5,277,000. It shows that the Messrs. Walker drew, by way of salaries, in that period \$1,001,250. And I drew \$504,866 for the 22 years. 30

Q.—There are certain calculations at the foot, I don't know what they amount to, just explain those? A.—Well, the Walkers' remuneration on profits was $7 \frac{1}{3}$ per cent.; mine $3 \frac{2}{3}$ per cent. And the percentage of the Canadian profits only, because they were doing nothing for the export trade, was "Walkers' 11.9 per cent." If my salary was charged wholly against the export profit, which I created, it would be 9.57 per cent.

Exhibit No. 16: Filed by Plaintiff: Statement of Canadian Profits: Export profits: Walker salaries: Robins' remuneration.

Q.—Coming back to the end; just tell us the history of your withdrawal from the concern? A.—Well, after the thing had hung for several months, Mr. E. C. Walker, I might tell you, was abroad when the offence, I call it, which is as good as any other term, occurred; he didn't come back for some time; the only one of the brothers who was home was Harry; Mr. Frank Walker had gone abroad again before his brother Ed. came back, and was again home before his brother Ed. returned, and the matter was held up until Mr. Ed. should return. And after he got back I heard nothing for many weeks, and finally, on the 6th day of August, Mr. Harry Walker, having come back from Magnolia for a few days, came in and said they had decided 40

to let Frank have his way—that way being, he determined I was to go out.

Q.—Was that put in writing? A.—No, I never got anything in writing from them.

Q.—Did you receive no letters? A.—I thought you meant from the brothers. I received a letter dated the 14th of August, 1912, eight days after that announcement by Mr. Harry, and signed by Walker Sons.

Q.—Have you got that letter? A.—Not the original, I think it is in there.

HIS LORDSHIP: Walker Sons was a partnership? A.—Yes, my Lord.
10 I thought that would puzzle you a little. Walker Sons held all the shares, all but the qualifying shares, belonging to the company, and therefore were controllers of the distillery company.

MR. McCARTHY: That letter is signed by Walker Sons, what did they represent? A.—Walker Sons was a private partnership, and they held all but the qualifying shares, and as such holders were controllers of the company, and, therefore, they had made the only written agreement I ever had with the Walkers, which had run six years.

Q.—This is dated August 14th, 1912, and is headed, "Walker Sons, Lumber Dealers, and Manufacturers, Growers of Tobacco. Insurance."
20 And the letter reads as follows:

"Walkerville, Ontario, August 14, 1912.

Mr. William Robins,
Walkerville.

Dear Sir:—

Mr. Lash has reported to us the result of his conversation with you to-day, and you appear to have left us no alternative but to tell you formally what has already been intimated to you verbally that we do not intend to ask Hiram Walker & Sons, Limited, to renew the present engagement with you which will terminate the thirty-first of August instant.

30 In giving you this intimation we wish to express our regret that we are not to have the benefit of your further services, but under the present conditions it does not seem possible to renew your engagement.

Yours truly,

Walker Sons."

Exhibit No. 17: Filed by Plaintiff: Letter dated Aug. 14, 1912, from Walker Sons to Mr. Robins.

Q.—May I ask what was your agreement? A.—My agreement was for a commission in addition to my salary, commission on the profits.

Q.—Was that in writing? A.—Yes.

40 Q.—Where is that? A.—I am sure I can't tell you at the moment.

Q.—It had terminated during the twenty odd years you were there and had been renewed? A.—It was the only one I ever had.

Q.—How long had it to run, ordinarily? A.—It was to run for five years, and expired on the 31st of August, 1911, while I was still abroad. It

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was verbally renewed indefinitely with Mr. Frank Walker, and definitely as to the remuneration for the current year, for the one year, because both his brothers were abroad.

Q.—Was any commission ever paid under it? A.—Oh, yes, it is shown on that statement I put in there.

Q.—Now I find on the back of this letter a typewritten memorandum, what is that? A.—That is a memorandum I wrote on it when this letter first came under my observation, which was on the 8th day of April, 1913, although it was written on the 14th of August, 1912.

Q.—How do you account for the delay? A.—The only way I can account 10 for it is this—

Q.—Perhaps I had better ask, where did you find it? A.—I found it among a mass of papers that had been taken out to my house from my office. I was engaged in sorting them out, and destroying what were useless, and so on.

MR. OSLER: Surely the witness cannot read it.

HIS LORDSHIP: I do not see at present how it is evidence.

MR. MCCARTHY: I don't know how it is; I am met with that difficulty.

HIS LORDSHIP: This document shows that, and you cannot separate 20 the document.

THE WITNESS: It is simply a memorandum I put on myself.

MR. MCCARTHY: As to what? A.—That I had only then come across the letter.

Q.—I did not know there was any memorandum on the letter. A.—It is my own. It is not part of the letter.

Q.—I think it will be better to have a copy made and put it in without the memorandum. A.—I only put it there for my own satisfaction.

HIS LORDSHIP: It is perfectly understandable; he said if he had known he was being sacked, he wouldn't have let them off so easily.

MR. MCCARTHY: That was the only written agreement you had? A.— 30 The only one.

Q.—Have you any letters from either of the brothers expressing their regrets as to the difficulties that were occurring between you and their brother Frank? A.—At that time?

Q.—At any time? A.—Oh, yes, from Mr. Harry Walker in 1905.

Q.—Is this the one you refer to? A.—No, that is just a brief acknowledgement of my letter, and the other one is a full one.

MR. MCCARTHY: I tender these letters as indicating the attitude of the two brothers towards Mr. Robins.

HIS LORDSHIP: In other words, he was so ashamed of the cutting of 40 him off, in the new will, it can only be attributed to weakness of mind on the part of the testator.

MR. OSLER: I object to the suggestion that a letter dated in 1905 can have any such application to the will of 1914.

HIS LORDSHIP: I should not think so.

MR. MCCARTHY: It shows the esteem in which Mr. Robins was held.

HIS LORDSHIP: One of these codicils, I think the one that was signed,

I am not sure, says that circumstances have changed, and he cuts out a number of clauses from his will. (Reporter's note: It is Exhibit No. 4, the unsigned codicil referred to.) This will be something to off-set that, in a way, and I think I had better take it subject to objection. It is impossible to get to the bottom of it now.

MR. MCCARTHY: The first letter is from The Oceanside, Magnolia, Mass., and dated July 26th, 1905.

"My dear Mr. Robins:—

10 Your letter came early this morning and I wired you at once feeling sure you would be glad to have my opinion. I said I would write to-day and fully intended doing so, but we were away all day on a little trip around the cape and this evening some friends came in and I could not get away from them till late, so I must wait till I get to Boston tomorrow to answer your letter. You must know, I am sure, how sorry I was to hear how you have been treated. It is too late for me to go into detail now and I am too tired, but to-morrow I will write my views fully.

I am feeling very well, and having a most enjoyable trip, but this trouble does worry me, I have been fearing it for some time. If E. C. were only better it would be so much easier to handle, however, we must do something
20 for things cannot go on this way.

With my best regards to yourself and Gertrude, believe me always,
Yours sincerely,

J. H. W."

Q.—What had that letter reference to? A.—It is an acknowledgment of the letter I wrote him.

Q.—What did your letter you wrote have reference to? A.—My letter was the one in which I said I didn't see how I could avoid resigning.

Q.—By reason of what? A.—Frank Walker's conduct.

30 Exhibit No. 18: Filed by Plaintiff: Letter dated July 26, 05, from J. H. Walker to plaintiff.

"Hotel Touraine, Boston, July 28th, 1905.

My dear Mr. Robins:—

You see I did not write you yesterday, as I said I would. We were late in getting here and I had promised to go to the theatre with the boys in the evening, after that I was more ready for bed than writing, so I trust you will pardon me.

By no means must you resign, and it is only the Board that could ask you to. So don't let that worry you, if you should do anything of that kind it would make things all the harder for us. The trouble must be settled in
40 some other way.

I cannot understand for a moment why F. H. should tell Radford to make that entry, it is a question that we have never all been able to agree on, but I am perfectly satisfied that E. C. and I would never agree to dispose of it in that way. I am mighty glad that Radford is going to hold it over.

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However, had he made the entry as instructed, it would have created a grand row when we discovered it. There is no more reason why H. W. & S. should get this than the Iron Ox Stock that was promised Lund.

I cannot begin to tell you how deeply I feel for you. I realize fully what you have stood for a long time, on E. C.'s and my account, and now to feel that matters are even worse makes me very hot. If you cannot manage to get along till I return, or I should say till when I intend returning, I will go home at once, for I cannot bear to have you treated so. As I said before, if E. C. were only better, I feel sure everything would be settled in a very short time.

Regarding the Trinidad matter, don't you think that perhaps instead of falling in with our views, or wishes, had we decided on anything very different from yours, you had resigned as President, as was suggested in New York, it might have had a better effect? You, of course, have given the matter much thought, and probably you are right, but you remember, I am sure, the talk we had on this point at The Manhattan.

As to the amount due T. O. E. Co. by the Association, it would be absurd to guess at it, and F. H. ought to be ashamed of himself for suggesting it. I have no idea that we will now be able to get an accurate account, but I understood from Radford before I left that Rust was working on it, and whatever he sends us should be nearer the right amount than any guess any of us might make. As to the issuing of debentures, you know I never quite agreed with you, except regarding amount due W. S. and I see no reason why we should not let this stand until we can get amount due from Association, and in my opinion the charge for your time on the English trip might stand as well. As to Miss I think he did wrong in giving her an interview at his house, he should have told her that he could only discuss the matter at the office with you. And I feel the same about, he had no business to interview him alone, and he has no right whatever to blame you in any way for things that the men have done, or have not done. I am sure you and I have tried more than once to get the business of that office in better shape, and we have had E.C. with us every time.

I was greatly surprised to hear that confessed to his accounts not being correct. I imagine that 's are the same, for his charges are just as regular as the other's. You know we have never been able to see how any man could spend that amount in that way. It is certainly a question in my mind whether they should be kept on.

As to the Klondike matter. I think you did wrong in giving your cheque after what you said at the meeting, and the others understanding you would not, and I don't think F.H. had any right to give it for W.S. without first consulting E.C. or me. I don't know anything about the matter, but I can't see why he could not have waited till he could have heard from one of us, however, it is his usual way and until we come to some understanding I presume he will continue. I note what you say about the Corby sale—and am mighty sorry about it, but there is one thing, neither you nor I can ever be blamed for it.

You ask for combination of box, I fortunately have my memo with me.

It is 58.94.38. I don't know just where we will go from here, but we will leave tomorrow and will probably stop at Cohasset for over Sunday. I imagine we will get back to Manchester in about two weeks, but if you want to write me at any time send it on to my wife and ask her to forward it, for I let her know as often as I can when to send letters.

The next time you do write tell me something about Iron-Ox. Am quite anxious to know how it is going. It is now getting on to two o'clock, so I think I had better stop and get to bed.

10 With best regards, and hoping things are a little better than when you wrote, I remain,

Very sincerely yours,
J. Harrington Walker."

Exhibit No. 19: Filed by Plaintiff: Letter dated July 28th, 1905, from J. H. Walker to Plaintiff.

Q.—What was the entry referred to? A.—It was an entry I should have had to object to very much, it was in connection with an outside interest the Walkers and I had, and it was instructions he had no right to give whatever.

20 Q.—Was there anything else in this letter? A.—No, he was simply alluding to the difficulties I had told him about in my letter.

HIS LORDSHIP: It was four years after the date of the will he gave you \$100,000 par in the distillery company; he changed his will ten years later; when did you see a change of attitude towards you by E. C. Walker, if any? A.—Excuse me, my Lord, did you ask when did I see a change in attitude?

Q.—Yes, if any. A.—I never saw it, my Lord.

MR. MCCARTHY: During the time you were with the company, divide it into what periods you wish, what holidays did you ever get? A.—The first eleven years, I got five days.

30 HIS LORDSHIP: Couldn't you have taken five months, if you had wanted to? A.—I was a little bit too zealous for my own good. I am not blaming them for having so few holidays, I should not have submitted to that.

MR. MCCARTHY: He does not want to put it that way, as cutting him down.

Q.—But how many holidays did you take after that period? A.—Only occasionally until 1908, and then it got so every two or three years I could take decent holidays.

40 Q.—For the first eleven years you only took five days, you do not suggest you would not have got more if you had wanted them? A.—I didn't have to ask for them, I should have taken them if I wanted them.

HIS LORDSHIP: You would go for a holiday, and then tell them you were going to take a holiday? A.—My position was such I would not have had to ask.

MR. MCCARTHY: Are there any other letters in which the brothers expressed their appreciation of what you did, and regarding any unfortunate

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incident that may have happened? A.—I do not think I have any other letters about the subject, because they were generally matters of conversation.

Q.—You have told us already that Mr. E. C. Walker told you he was going to make a new will, and asked you to be an executor, to which you consented. When did you first learn of the 1914 will?

HIS LORDSHIP: Of course, you refer to the will of 1901, when you say Mr. Robins was asked to be an executor?

THE WITNES: Yes, sir.

MR. MCCARTHY: When did you know Mr. E. C. had made another will? A.—I knew that first from a newspaper cutting that was sent to me by some friend.

Q.—When? A.—Some months after his death.

Q.—Where were you at the time? A.—I was in England, that was during the war, of course. Then the next I heard about it was a letter.

Q.—May I ask what information you got on this occasion? A.—It was just a newspaper account of his bequests, what he had left to his wife,

HIS LORDSHIP: That is, as to being \$75,000.00 instead of \$25,000.00? A.—No, it did not say instead of anything.

Q.—It said \$75,000.00? A.—I think it did.

Q.—The newspaper accounts were to be modified? A.—My recollection is it said she would receive an annuity of \$75,000.00 a year, the use of the homestead, and \$200,000.00 in cash. I think reference was made to the St. Andrew's house, among other things, but I cannot say positively.

MR. MCCARTHY: What was the next you heard of it? A.—The next was a letter dated April, 1917, a little over two years after his death, from a friend of mine with whom I was in constant correspondence.

Q.—Yes. A.—Do you want me to go any further?

Q.—Anything that would affect you. A.—Nothing that would affect me, in reference to my interests, whatever.

Q.—What was the next you heard? A.—The next I heard was in April, 1922, Mrs. E. C. Walker was in London I was down at Worthing, and she got me on the telephone, telling me she was in London and would very much like to see me. I went to London for the purpose of seeing her. She then told me practically everything I had been told in the letter I referred to, but also—

MR. OSLER: That is not evidence as against me.

HIS LORDSHIP: Perhaps not. I do not know.

Q.—You were at Worthing and she telephoned to you from London? A.—Yes.

Q.—You went up to her? A.—I went up to her purposely.

MR. MCCARTHY: My friend says it is not evidence against him, on the ground of laches, I suppose it is.

HIS LORDSHIP: If he was lulled into the feeling that he was not affected, it might be so.

MR. MCCARTHY: They have pleaded laches.

HIS LORDSHIP: He would be wondering in 1922 why he didn't get \$100,000.00.

THE WITNESS: I didn't know anything about it.

MR. MCCARTHY: He didn't know he was left anything under the first will.

Q.—Will you go on and tell us what she told you? A.—She told me that when she learned of the contents of the will a few days after her husband's death, from Mr. Frank Walker, in her house, she said it was not her husband's true will, that he was not competent to make a will at that time, 10 that she wouldn't recognize the will and she would insist that the former will was the true will. She said that Mr. Walker said that under no circumstances must Mr. Robins be brought into the matter. She said that he threatened her, and she ordered him out of the house and never spoke to him again all his life. That is what she told me.

HIS LORDSHIP: That the will of 1901 was the true will? A.—She said he was not competent to make the will of 1914, or he didn't know what he was doing. And she also told me she charged him and his brother Harry with having procured the will for their own advantage. And she told me they made this settlement with her. And she said it was the influence of my name that helped her to get it. I did not quite understand what 20 she meant by that, I inferred she thought Mr. Frank Walker was so anxious I should not be in the matter.

MR. MCCARTHY: Had you at that time learned of the contents of the 1901 will? A.—Not a word until then, except as affecting her, which was in my friend's letter, there was nothing about anybody else.

Q.—When did you first learn of the contents of the 1901 will? A.—Oh, from her.

Q.—She told you you were mentioned? A.—Yes, that is the first I ever knew about the contents of the will.

Q.—Upon learning that, what did you do? A.—Well, the first thing 30 I did was to write a memorandum of what she told me, and attach my friend's letter, which I had kept, to it, and go off and see a lawyer. A very wise thing to do.

Q.—I agree about the lawyer part of it. You made a memorandum that day? A.—Yes, that very day.

Q.—Of what she had told you? A.—Yes.

Q.—Have you got that memorandum still? A.—Yes, that is it; there is a portion of my friend's letter attached.

HIS LORDSHIP: Read it, please. A.—April 14th, 1922—

MR. OSLER: My lord, that is not evidence against us.

HIS LORDSHIP: A memorandum taken at the time? It is some evidence 40 as to the laches part of it, if he only learned this thing, the whole fact must come out,

MR. OSLER: It is a question of when he learned it.

HIS LORDSHIP: We cannot take part of it.

MR. OSLER: It is evidence he knew about it then.

HIS LORDSHIP: It does not affect you, because Mrs. Walker said it.

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MR. HELLMUTH: I submit that any memorandum this gentleman may have written as to a conversation he had with Mrs. Walker cannot be given in evidence here. Any man might make a memorandum.

HIS LORDSHIP: No.

MR. HELLMUTH: It is not competent in any shape or form.

HIS LORDSHIP: Not as regards her rights.

MR. HELLMUTH: Nor as regards what the conversation was. He can't read what he wrote down at the time.

HIS LORDSHIP: It is rather late to object to the memorandum being read when you did not object to the other. 10

MR. OSLER: It is objected to.

HIS LORDSHIP: Very well, if you did, all right.

MR. MCCARTHY: You can use the memorandum to refresh your memory.

HIS LORDSHIP: I do not think he needs that.

THE WITNESS: I don't think I need it.

HIS LORDSHIP: Owing to the objection, the witness takes this memorandum back into his possession.

THE WITNESS: There is that memorandum on it. (Showing it to his Lordship.) 20

MR. MCCARTHY: On the Examination for Discovery they made it an Exhibit.

HIS LORDSHIP: I do not see why it should not go in now; well, maybe not.

MR. MCCARTHY: Mr. Robins has told us the contents of it.

THE WITNESS: I haven't told you all she said that coincided with this. His Lordship said to read it. I thought it would be read. I didn't allude to what I didn't put in my own memorandum, which agreed with what was in the letter. Do you see what I mean?

Q.—All I asked was to tell the conversation. A.—Another thing she told me was that Mr. Walker was very apprehensive that they were spending too much money, and it caused her a lot of worry. On the last occasion when leaving Walkerville for Washington, they were packed and ready for the train, and she absolutely refused to leave until she got from the office a statement of what his income was, which she had asked for and had been unable to obtain. And when she got it, it showed his income to be approximately \$400,000 a year. And when she showed it to him, or told him what it was, he said it couldn't be correct. I think that is about the only additional thing. 30

Q.—Did that question of his apprehension in regard to his—call it poverty—ever occur before? A.—Yes, she came to me about it. 40

HIS LORDSHIP: That could not be correct, because he was receiving no such sum. A.—She didn't say that, she said he said it couldn't be correct.

HIS LORDSHIP: That leaves it very uncertain. Is there any way to clear that up? Are we just to take what inference we can from it?

MR. MCCARTHY: Yes, my Lord.

Q.—Now I don't know whether we cleaned up the settlement end of

it; we got into that letter. A.—I don't think we cleaned up your last question.

Q.—I thought you had answered that. A.—I said she once came to me about it.

Q.—About what? A.—On the same subject. That her husband was saying they were spending too much money, and she was uncomfortable about it, and didn't know what to do. She said if they had to curtail they must get out of that house. I said, "Mrs. Walker, I can't express any opinion, except I don't believe you are spending anything like Mr. Walker's income. Will you tell me approximately what you are spending?" She said, "We are spending \$60,000 a year." I said, "Go away quite easy in your mind, that is only a small fraction of his income."

Q.—You told me that in this interview you learned of the contents of the will of 1901? A.—So far as I was concerned.

Q.—What did she tell you about it? A.—She said there was a legacy to me of 1,000 shares of distillery stock.

Q.—I think you said that was the first you ever heard of it? A.—The first I ever heard of it.

Q.—To go back for a minute. You had 1,000 shares of distillery stock?
20 A.—I had 1,000.

Q.—They had been given to you in consideration? A.—They were remuneration in lieu of cash.

HIS LORDSHIP: What was the par value per share? A.—\$100. That was \$100,000.00.

Q.—\$25,000 and \$75,000 make \$100,000.00? A.—Yes.

MR. MCCARTHY: How were these dealt with in the final settlement?
A.—I transferred them to the Walkers.

Q.—Why? A.—Because they had an agreement with everybody who held any shares, except themselves, that if they wanted to part with them the Walkers should have the first right to buy them, at a price to be agreed upon or fixed, but there was never any price fixed for my shares, because Mr. Lash wouldn't fix a price.

Q.—Who was Mr. Lash acting for? A.—He was acting for them. And that question of the value of my shares, what I was to get for them, plus some compensation for my summary dismissal, was discussed, and Mr. Lash refused to separate the two. I didn't know what his motive was; he simply did it, and the correspondence shows it. I said I didn't care what price he put on my shares, what I was thinking of was a sum, and if the shares were higher, why the compensation could be less, and vice versa. I transferred my shares as part of the settlement.

Q.—Was that settlement put in writing? A.—As between the Walkers and myself?

Q.—Yes. A.—No, except in the correspondence between Lash and myself.

HIS LORDSHIP: This was a family company? A.—Practically so.

Q.—There was no market value? A.—No, my lord, shares were never put on the market.

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Q.—I will ask this question, if there is no objection. At that time, what was the value of the shares? A.—Well, Mr. Frank Walker's valuation was \$300, that is the price he put on to Edmund Bristol a few months before, when Mr. Bristol approached him and said he had capitalists who would like to negotiate for the purchase of the business.

Q.—\$300 was fixed in your mind? A.—I would frankly say I would have been willing to sell for less, and advise them to sell for less.

Q.—If you succeed in this case, how much money would you get? A.—I do not know, I don't know what the profits are.

HIS LORDSHIP: Mr. E. C. Walker's will was proved at over \$4,000,000. 10

MR. FLEMING: \$4,167,000.

HIS LORDSHIP: I will ask a further question.

Q.—When the business was taken over and put in a limited company, after this \$800,000 had been negotiated for, what was the value of the shares then, is there anything to indicate that? A.—Yes, my lord; looking at it from the earning side, I don't quite know what one would put it at, but the assets of the distillery company at that time were \$1,000,000 less than the capital. The shares were issued 80 per cent. paid up. The company was incorporated for \$5,000,000, the assets were put in at \$4,000,000, but nearly \$2,000,000 of that was good-will. 20

Q.—That is, \$2,000,000 of money? A.—Yes.

CROSS-EXAMINED by MR. OSLER:

Q.—Your own view of the value of the shares, Mr. Robins, in 1912, was about \$200 a share? A.—I never said so.

Q.—Do you swear that? A.—If you ask me what it was—you put it that way, but I cannot assent to that.

Q.—Did you advise a sale at \$200 a share? In 1912? A.—No, I didn't.

Q.—Do you swear that? A.—Yes.

HIS LORDSHIP: Excuse me; when I asked that question I did not know what the answer would be; but if E. C. Walker thought it was an inconsiderable sum which he was giving to Mr. Robins, it might affect the case; he might be willing to give less than \$100,000, and might be shy at giving \$400,000. 30

MR. OSLER: You remember there were some negotiations in 1912? A.—Yes.

Q.—You said Mr. Frank Walker put a price of \$300 on the shares? A.—Yes.

Q.—Do you tell me that you did not advise selling at \$200 a share? A.—I did not, I had no opportunity to advise, I was not asked.

Q.—Did you express the view that if you were asked you would do so? 40 A.—I believe I did.

Q.—Was that true? A.—If I said so, it was true; anything I say is true.

Q.—Did you say so? A.—I believe I did; I have told you so.

Q.—Then, Mr. Robins, let us see where we begin. In 1888 you joined the firm? A.—Yes.

Q.—About 1890, or a couple of years later, you found that the late

Mr. Hiram Walker had become entirely dissatisfied with you? A.—I do not hear you very well. What do you say?

Q.—I say that in about 1890 you found that Mr. Hiram Walker had become dissatisfied with you? A.—I didn't find anything of the kind.

Q.—What did you find? A.—I found that he was no longer my friend, and what that meant, I did not know; I do not know to-day.

Q.—You had no idea what occasioned that decision? A.—I could only imagine it was something connected with the change of the bank account, which he had himself approved of in advance.

10 Q.—Never mind if it was one cause, or a dozen causes, the fact was there? A.—What fact?

Q.—The fact that he was dissatisfied with you. A.—I can't tell you; the fact he was no longer my friend was the only fact I knew; whether he was dissatisfied, or not, I did not know.

Q.—You say you joined his firm two years before? A.—Yes.

Q.—He then showed enmity toward you? A.—No, he didn't.

Q.—I thought you said, in your examination-in-chief, that he showed enmity. A.—I said, in the examination-in-chief, that he never said an unfriendly word, but I suffered from offences which I was able to trace to
20 his inspiration.

Q.—I do not suggest he said anything to you, but, as I understood your evidence, you said he showed enmity? A.—Well, my evidence is there.

Q.—What do you say, did he show enmity or not? A.—No, he didn't show enmity direct.

Q.—We will leave it there, if you are satisfied.

In 1900, or thereabouts, you had a quarrel with F. H. Walker? A.—Sometime around there. No, it was not a quarrel, I never had a quarrel with him.

Q.—I beg your pardon, I did not consult your dignity; Mr. F. H. Walker
30 committed an offence against you? A.—Yes, that is right.

Q.—Mr. F. H. Walker committed other offences against you? A.—Yes.

Q.—You do not admit there was any fault on your side? A.—I do not say anything about that, there may have been; I did not insult him, he insulted me.

Q.—Do you admit there was any fault on your side? A.—I do not think there was, I am not conscious of any.

Q.—He committed these offences against you at sundry times, until 1912? A.—Yes.

Q.—And on each occasion you met him, not by appealing to be re-
40 tained, or to have things adjusted, but by threatening to resign? A.—I did not threaten to resign, and I said nothing to him about it, I simply went quietly to my room with my mind made up to resign, and invariably one or both of the brothers came to me, because they were always present when these things occurred, and then I told them I was going to resign.

Q.—We will put it your own way, you met Frank Walker's offences by indicating to the brothers your intention to resign? A.—Yes.

Q.—On each occasion? A.—On each occasion, that is right.

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Q.—And, in 1912, you again threatened to resign? A.—Well, it was put a little differently that time. I said I thought the time had come when there must be an end of it.

Q.—Did you, or did you not, threaten to resign in 1912? A.—No, I didn't.

Q.—You didn't threaten to resign in 1912? A.—No.

Q.—But you did insist upon their forcing Frank Walker out? A.—No, I didn't. If you will ask the question, I will answer, I do not want you to put things in my mouth.

Q.—Did you, or did you not, tell them they must dismiss, or get rid of, 10
Mr. Frank Walker? A.—I made no such suggestion.

Q.—None whatever? A.—None whatever.

Q.—What did you say then? A.—Well, I have told you once; as near as I can remember, my language was that I thought the time had arrived when that sort of thing must cease.

Q.—Is that all? A.—Oh, no, it was not all.

Q.—Didn't you say that either one had to go? A.—I did not.

Q.—Didn't you suggest that either one had to go? A.—I did not.

Q.—What did you do? A.—I said I thought the time had come when that should cease; and I left that to their interpretation. 20

Q.—What did you intend them to understand by that? A.—I intended them to understand one of two things; that either I must be reasonably guaranteed there would not be a recurrence of that sort of thing, or else one or other would have to get out.

Q.—Did you intend to intimate to them that they must put Frank Walker out of the business? A.—I did not.

Q.—Did you expect that they should do so? A.—Expect in what way?

Q.—Expect them to put Frank Walker out of the business? A.—Well now, the word "expect" is not so definite as you may think, to my mind. Do you mean to say that was my anticipation, that is what I thought their 30
decision would be?

Q.—I mean, if I can, to get a fair and frank answer to my question.
A.—You will get it.

Q.—Will you give it to me? A.—I do not understand how you use the word "expect." If you will, tell me. Do you mean to say I was looking to them for that? Is that the interpretation I must put upon the word "expect"? Or what I had in my own mind, as to anticipating what they would decide?

Q.—Mr. Robins, I will give you one further chance to answer the question. A.—I am under the protection of his lordship. 40

Q.—You do not want to answer? A.—I do want to answer and I want to answer understandingly, and you know it, Mr. Osler.

Q.—Will you answer? A.—I will answer when I know what the question is.

Q.—Will you answer the question as I have put it? A.—Not unless you say what you mean by "expect."

Q.—I will read question No. 143, and the answer, where you led me into

the use of this very equivocal word. This is taken from your Examination for Discovery, taken on November 3rd, 1923.

"Q. 143.—And unless they over-ruled Frank, you were not going to stay? A.—Yes, I expected them to put him out of the business, as they promised me they would."

You unfortunately used that unfortunate word yourself, Mr. Robins? A.—I used it in my understanding of it, not in yours.

Q.—We will leave it there for a minute. A.—I will answer it the same way again, if your question is the same again.

10 MR. OSLER: I ask your lordship to direct the witness to refrain from these answers.

HIS LORDSHIP: I will do nothing of the kind, it is a first-class battle of wits between you; I am enjoying it, and I am not going to interfere.

MR. OSLER: We will go on then.

Q.—Well, then, Mr. Robins, the result was that they did not put Mr. Frank Walker out of the business? A.—No doubt about that.

Q.—And you demanded that they should pay you a substantial sum in lieu of notice? A.—I did.

20 Q.—I think you asked for \$400,000. A.—Not in lieu of notice, I didn't, that included my shares.

Q.—As a matter of fact, that was just a starting point, and you came down to \$300,000. A.—Starting point! I thought that was too little.

Q.—You thought \$400,000 was too little? A.—I thought it was a great deal too little.

Q.—But, at all events, after considerable negotiation, you got \$300,000? A.—Yes.

Q.—For these shares, a thousand of them, which were of the same issue as those which you told me a moment ago you would have advised selling at \$200 a share? A.—Quite.

30 Q.—If you had been asked? A.—Quite.

Q.—So you got \$100,000. A.—I didn't.

Q.—And during the whole of this period you had been drawing very substantial salaries? A.—I was offered more several times.

Q.—You were, in fact, drawing a substantial salary? A.—All from the point of view.

Q.—For the last five years I think your remuneration was an average of \$34,000 a year? A.—Something like that.

Q.—A little more, rather than a little less? A.—I can't tell, that is near enough.

40 Q.—And you had received 1,000 shares which were considered as part of the bargain between you? A.—I received 1,000 shares, but I paid for them.

Q.—In cash? A.—No, I took them in lieu of cash; I would have preferred the cash.

Q.—You took them for services rendered the company? A.—Yes, and they asked me, when I got the \$75,000, they suggested they would prefer if I would take it in shares. I would rather have had the money.

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Q.—And these services were, in fact, paid for by your salary? A.—Yes, I paid myself out of the business I created, and left them several millions to the good.

Q.—You say you paid yourself; you do not even give them credit for having paid your salary. A.—They didn't pay it, I paid it.

Q.—You paid it. Did you just take these shares without their consent? A.—That is nonsense; you know I don't mean that.

Q.—I hope you do not mean it, Mr. Robins. Let us use plain English; they gave you these shares without any consideration other than services rendered? A.—Very good consideration—services. 10

Q.—They gave you these shares without any consideration other than services already rendered? A.—Do you call that a question? It is an assertion.

HIS LORDSHIP: It is an assertion, with an interrogation at the end. A.—I did not think it was an interrogation. These shares were given to me for services.

MR. OSLER: Q.—And without any consideration other than services? A.—You don't generally give services, and other consideration too.

Q.—I was not asking you that; I asked you if, in this case, you did give anything other than services? A.—No, I didn't. 20

Q.—That would have come a little better a little earlier. I do not understand that Mr. E. C. Walker, or any of the Walker brothers, ever promised to leave you anything by will? A.—No, I didn't say so.

Q.—I do not understand that you claim any legal obligation to pay for any of these services you have referred to? A.—I have set up no such claim.

Q.—And the time that you devoted to the rendering of the services that you have told my learned friend about was time during which you were employed by them on salary and commission, and during which time you got these 1,000 shares? A.—At least fifty per cent. of it was my time, my own time, I did not have to put in. 30

Q.—Fifty per cent. was your own time? A.—At least fifty per cent.

Q.—Were you not under obligation to devote your time to the business? A.—Reasonable time.

Q.—Were all your ventures successful? A.—My private ventures?

Q.—No, your ventures for the Walker company? A.—I never had any ventures other than that. I went in with the Walkers on certain ventures, and lost some money with them.

Q.—Do you remember encouraging the going on with the Iron Ox Company? A.—That was Mr. Harry's own proposition, he bought it in his own name from Haskell of Bridgeport, Conn., and I went in with the 40 Walkers.

Q.—Did you encourage them to go on with it? A.—I did not, I said not to spend so much money, and they spent it in spite of me.

Q.—Do you remember writing to Mr. Harry Walker on the 16th of January, 1905, and saying: "So far I am delighted with the Iron Ox start here, it looks to me like a go." And you say you spent a whole afternoon

discussing the subject, until 6:30. A.—I don't remember, if you have it there no doubt I wrote it.

HIS LORDSHIP: Is Iron Ox a medicine? A.—It was, sir.

MR. OSLER: A proprietary medicine.

Q.—Do you remember writing to Mr. Harry Walker on the 22nd March, 1905, and saying, "I am much relieved re Iron Ox. I am much alive to the situation here . . . before long your previous outlays on this stock will be coming back." That letter was written from London, in 1905. A.—That is probably so.

10 Q.—Will you go any further than to say it is probably so? A.—If I saw the letter I could say definitely. If you say that is a letter of mine, I have no doubt it is so, but I would not say definitely until I do see it.

Q.—Do you say you did, or did not, encourage Mr. Harry? A.—I still say that the whole venture was against my advice, but there was a period when we thought it was coming out successfully, and that is the period when I wrote those letters.

Q.—You know they made very heavy losses on it? A.—I do know it, and I made some losses too.

20 Q.—Your loss was kept down to the original investment? A.—Probably.

Q.—You didn't put any more money in? A.—No, I couldn't afford it.

HIS LORDSHIP: I allowed a great deal of latitude in the examination-in-chief of this witness because I did not know where counsel was leading to, and it would be a pity to exclude something which might even remotely affect the case. If there was a feeling of gratitude on the part of E. C. Walker to Mr. Robins and Mr. Walker suddenly changed his mind, it might have some bearing on the case, but I must really decline to go further into the business of J. Harrington Walker; I do not see how it is possible to connect it with this case, as to whether this is a good will or not.

30 MR. OSLER: I quite agree with that. I do not wish to leave on the record Mr. Robins' statement as to the extraordinary obligation of these people toward him, without offering some explanation to account for it.

HIS LORDSHIP: If it was E. C. Walker; but it is J. Harrington Walker.

MR. OSLER: E. C. was interested in this Iron Ox Investment.

HIS LORDSHIP: He says they were.

THE WITNESS: Yes, all three brothers.

MR. OSLER: You know E. C. Walker was interested in it? A.—Yes, all three brothers.

40 HIS LORDSHIP: Is the evidence directed towards showing there was resentment on the part of E. C. Walker against this gentleman because of the loss?

MR. OSLER: I am not suggesting that.

HIS LORDSHIP: I fail to see what the evidence is for.

MR. OSLER: I wish to show there were pros and cons with respect to the Iron Ox.

HIS LORDSHIP: If this case goes to appeal, and this evidence appeared,

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that court would say, "What on earth did you let that evidence in for." I wish to avoid that criticism. Keep me scathless as much as you can.

MR. OSLER: I will endeavor to do that.

Q.—Let me go to the question of foreign trade, for which you take so much credit, Mr. Robins; that includes, as I understand, the United States trade? A.—It was the principal part of it.

Q.—Did you tell Mr. McCarthy seriously that you were the author of the foreign trade? A.—I did, and I tell you the same thing.

Q.—They had been engaged in that trade before you went there. A.—No, I haven't said that. 10

Q.—Let us have the fine distinction. A.—I will tell you to what extent they engaged in it; naturally there was a little consumption of the Walker whiskey in Detroit where the Walkers lived, and a little went to Chicago, where there was a large Canadian colony. That was about the extent of it, it was not worth a snap of the fingers, and they were making no effort; it was not worth anything, it was simply incidental.

Q.—Just a little casual trade of a stationary quantity? A.—The books will show for themselves, it was nothing, it was not worth while.

Q.—It was not growing? A.—Not that I could see; it would have taken a long time to grow to anything worth while, there was no effort being made to stimulate it. 20

Q.—But the business was there? A.—No, it was not.

Q.—You say it was not? A.—No, it was not.

Q.—Did you know it was up to 2,500 odd gallons in 1888? A.—I am willing to admit that with all it implies.

Q.—And that it had more than doubled in the last couple of years before that? A.—Yes, it would take a long time doubling at 2,500 gallons.

Q.—Yet you say there was none of it before you went there? A.—I did not say there was none of it, I said there was some.

Q.—Did you tell Mr. McCarthy there was some? A.—I don't know that I bothered to tell Mr. McCarthy. 30

Q.—I think you used the expression, "I created it." A.—No, I am not that kind of man.

Q.—I was mistaken in saying that was your expression. I ask you if that was your expression? A.—I did not say I did that.

Q.—It is down, A.—I didn't use that expression.

HIS LORDSHIP: I do not remember him saying, "I did it."

MR. OSLER: Yes, he said, "I created it."

THE WITNESS: You must use the personal pronoun sometimes.

HIS LORDSHIP: That is all very far from the main question I have to try. 40

MR. OSLER: Mr. Robins, coming down to 1912, when you had a quarrel—I beg your pardon, when Mr. Frank Walker committed his offence—you took that up by correspondence pretty actively? A.—With whom?

Q.—With Mr. Harrington Walker? A.—I took it up?

Q.—Yes. A.—I didn't take it up any more than he did.

Q.—You didn't take it up any more than he did? A.—We corresponded about it.

Q.—You were writing them very freely about your merits, and your service in connection with the business? A.—I dare say.

Q.—You have produced to me a file of correspondence, including some letters my learned friend Mr. Fleming will give to you. I would like to read some of them. Some of them, I think, are on the letter file from Mr. Lash.

MR. McCARTHY: What are these letters?

10 MR. OSLER: Some letters Mr. Robins has produced.

Q.—You told me a little while ago that everything you said is correct. A.—Was intended to be correct, that is all I can tell you.

Q.—I suppose the same thing applies to these letters? A.—Yes.

Q.—The first letter I find in my brief is a letter dated June 4, 1912, from you to Mr. Z. A. Lash? A.—Yes.

MR. McCARTHY: We have never had an opportunity of seeing those letters; my friend has copies.

MR. OSLER: Mr. Robins has them on the file that he gave me.

MR. McCARTHY: I object. My friend has copies of the letters, of 20 which the originals are produced for the first time, in his brief, I have none.

HIS LORDSHIP: You may need time to consider them.

MR. OSLER: My learned friend asked Mr. Lash to produce them to-day and he produced them.

MR. McCARTHY: We could not get them in any other way.

MR. OSLER: Of course you could not get them in any other way.

MR. McCARTHY: What about production?

HIS LORDSHIP: I understand that the letters were produced by Mr. Lash in the box.

MR. OSLER: No, Mr. Lash was subpoenaed to produce them, he had a 30 search made, and produced them.

MR. McCARTHY: That is not my recollection.

HIS LORDSHIP: I understand they suddenly appeared this morning.

MR. OSLER: No, I did not make myself clear, I said that Mr. Lash had produced a file of correspondence, and another file had been handed to me which I had not an opportunity of seeing before, and I did not want Mr. Lash to say that the file he produced was all he had, if it turned out there was another one, and the file was not put in.

MR. McCARTHY: If that is so, had they not better go in as exhibits?

MR. OSLER: I am afraid we shall have to read most of them.

40 HIS LORDSHIP: Attach them together and make one exhibit.

MR. OSLER: This letter from you to Mr. Z. A. Lash is dated June 4, 1912, and reads as follows:

“Walkerville, June 4th, 1912.

Confidential.

My dear Lash:— . .

I reported our interview to Mr. Harry, who left on Friday last for his seaside place. He had been hoping to meet Mr. Ed. in New York or Boston,

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but the latter came west too soon; so Mr. Harry proposes to run back here shortly. I told him that the two of them ought to make up their minds definitely what their attitude will be, and if it should not be in accord with Mr. F's, and any difficulty should arise, you would be willing to be called in as the adviser of all concerned."

That, I take it, referred to the trouble you had with Mr. Frank? A.—Yes.

Q.—"Ever since President Taft and Attorney-General Wickersham decided the question, 'What is Whiskey?'—"

HIS LORDSHIP: That is American politics.

MR. OSLER: Unless my learned friend wants it, I can omit that refer- 10
ence.

MR. MCCARTHY: We cannot get these letters otherwise. Mr. Lash produced them, and I want an opportunity before this witness leaves the box to see the files.

HIS LORDSHIP: Oh, yes.

MR. MCCARTHY: I want to see any letter I have not got; I do not know which ones I have and which I have not.

MR. OSLER: After some reference to other matters, apparently Mr. Frank Walker had disagreed with you as to the conduct in connection with the pure-food law fight? 20

A.—He did at times, and then again we would join opinions, his brothers and myself.

Q.—You say to Mr. Lash: "By the way, after I left you last Wednesday, a possible explanation occurred to me for Mr. F's course, which had puzzled me greatly in view of what he said when he asked whether I would be content to allow the old arrangement to stand for the present year. I wondered whether it could be that when he got so bad-tempered on the other side about our telegrams, he held me responsible; and you will remember his expressing himself somewhat in that way in the letter to you which you opened in bed while I was with you and read aloud. On my return I threw out this suggestion to Mr. Harry, who admitted that Mr. F. did put the blame on me, though he could not say that this accounted for the other thing." 30

Apparently Mr. Frank did consider you had adopted wrong tactics? A.—Yes, and Mr. Lash wrote him and told him I had nothing to do with it, at least, Lash wrote me to the effect he had done it.

Q.—On the 6th of June, one of the letters you produce is a letter from Mr. Harrington Walker, from Magnolia:

"Magnolia, June 6th, 1912.

My dear Robins:—

Yours of May 31st with enclosures came on Monday, and on Tuesday 40
I received your letter of June 2nd. It is not necessary for me to make any comments on the first two as I am sure you know how I feel about them. It is hard for me to say just what you should do about Whitehead, but after giving the matter much thought it seems the only thing you can do is to tell them you understand we do not want to sell, then if they insist on seeing you tell them all you can do will be to hear what they have to say and report to us when we return.

I trust you will have an opportunity of talking with E. C., so that he will have a chance to think over the matter before I return. I will probably be there the 20th, and will leave the 23rd, then I will go back in July if necessary."

Did that again relate to the dispute with you? A.—It referred to it, I don't know whether I had referred to it or not.

Q.—He refers to it in that letter? A.—Yes.

Q.—He suggests you should take the opportunity of talking with E.C.? A.—Yes.

10 MR. OSLER: I understand that these letters I am reading are going in as one exhibit?

HIS LORDSHIP: It is a convenient thing to make them one exhibit, so they will all be together. It is getting awfully wide.

MR. OSLER: Yes, it is. I think we must deal with the question in 1912. On July 13th, you wrote to Mr. Lash: "I daresay you have wondered why you have not heard from me before this: but the fact is I have even now but little to tell. Mr. H. had hoped, when he went down to his summer place the first time, to meet the senior in New York upon his arrival from Europe;"

Q.—"Senior" would be E. C. Walker? A.—Yes.

20 Q.—"and he said that if they did not meet he would come back for a talk with him. That is what happened, and H. reported to me that the senior had not been spoken to in Europe on my matter and would take it up with the other when the latter got home;"

HIS LORDSHIP: I do not see how that comes in, what is your object in this?

MR. OSLER: My Lord, we come to a break, in 1912, between these people, and I want, among other things, to show the circumstances in connection with that.

30 HIS LORDSHIP: You say because of something that occurred in 1912 it might have affected E. C. Walker's mind towards this gentleman, and his associate in business?

MR. OSLER: I am merely meeting the case my learned friend has sought to make by showing that Mr. Robins had rendered valuable service for which the Walkers ought to be exceedingly grateful; I wish to show under what circumstances the change occurred.

HIS LORDSHIP: The change was in 1914.

MR. OSLER: The change occurred in 1912.

40 HIS LORDSHIP: The change was made in the new will which was drawn in 1914. That is a motive, and it may be while they cannot succeed on "undue influence", they may succeed on the other. You are now on the other question, the absence of undue influence. It is natural for him to alter his will because this gentleman had not been agreeable to him?

MR. OSLER: Exactly.

HIS LORDSHIP: Very well.

MR. OSLER: Then, on July 25th, 1912, Mr. Robins, you wrote again to Mr. Lash? A.—In answer to his.

Q.—"My dear Lash,

I thank you for yours of the 23rd, very much indeed. No, there is ob-

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viously nothing you can do at present: but it is a great comfort to me to be able to tell you what the situation is: and, if it does not radically change, I believe the time will soon come when our friends here will need the best advice they can get—for every day adds to my sense of injury, and if a crisis arrives I shall not be as amiable as I have sometimes been.

On the 16th I wrote to H. that 'although F. had been home some ten days, and in constant attendance at the office, not a word had been said to me on the vital question. He replied on the 21st, expressing much surprise, and stating that he had written F. on the subject two or three times. He said he did not consider me at all impatient, and suggested that I should speak to E. if things were still unsettled; he stated also that he knew the matter had been discussed between E. and F. 10

Nine days more have gone by, and still no word to me. I do not intend to speak just yet, but will see how much longer this indifference to my interests and to my just claims to consideration will last.

My reverses outside are what we must all be prepared for, and I am not taking them too much to heart, though they are serious enough at my age and just at this time."

Q.—What was it you were complaining of in that letter, Mr. Robins?

A.—That I was being kept in suspense month after month. 20

Q.—Kept in suspense by whom? A.—Well, by the Walkers.

Q.—By each of them? A.—By all of them.

Q.—By Mr. E. C. and Harrington? A.—Mr. Harrington was down at Magnolia, and expressed surprise the thing was in the situation it was.

Q.—Your injury was increased because E. C. kept you in suspense?

A.—Not E. C.; two of them were at home and I thought something should have been said to me.

HIS LORDSHIP: I note that Frank and E. C. had talked it over.

MR. OSLER: Did your injury arise from the fact they did not communicate with you? 30

HIS LORDSHIP: You said that to Mr. Lash? A.—Yes.

Q.—What do you say about that, because if you were making this complaint expressed in this very definite language, it may have offended E. C. and made him withdraw this legacy. A.—I think I can show something later showing that it did not offend him.

MR. OSLER: Let us go to the letter of the 6th August, 1912, to Mr. Lash.

"August 6th, 1912.

My dear Lash,

After complete silence in the meantime, H., who arrived on the scene yesterday unexpected by me, has just informed me that F. is to have his way. 40 I am not surprised, for the utter weakness of the other two for a considerable time past has been pitiable. They apparently do not feel it necessary to call in a mutual friend. I predict that a little later on they will regret not having done so.

I appreciate to the full your willingness to be that friend, and the sympathy which I believe I have from you. It is a very bitter awakening; but there are limits to what a man ought to pay to sentiment, and this acquies-

ence by E. and H. in what they have admitted to be gross injustice makes a vast difference to me."

A.—Quite so.

Q.—That was your communication to Mr. Lash? A.—Yes.

Q.—Was it not a case of the pitcher having gone too often to the well, and they were going to take you at your word and let you go? A.—I do not understand the proverb.

HIS LORDSHIP: It is a metaphor.

MR. OSLER: It is a metaphor; do you say you do not understand it?

10 A.—I do not understand it.

Q.—We will accept that as your answer to the question. On the 8th August, 1912, you wrote to Mr. Lash as follows:

"My dear Lash,

Although my friends apparently did not care enough about justice to me to avail themselves of your good offices, I learn that H. is going down to see you. I am not told just what for, but as the information was given to me by H. after I had asked to be told whether they desired to take over my stock, and, if so, at what price, I infer that you will be consulted on that: but whether or not it is purposed to ask your opinion on any other point, I
20 have no idea, though it seems to me rather unlikely that the conversation will not be pretty general."

You thought then, Mr. Robins, that the war was on? A.—I did not think the war was on.

Q.—"I have turned over in my mind long and carefully the question of saying anything more to you in anticipation of your meeting with H. I thought yesterday that I should have a day or two more to ponder over it, but I have just learned that H. goes down to-morrow to see you Saturday; so I have decided to lay some thoughts before you. I must ask you to be indulgent toward this letter. I got practically no sleep last night, and my
30 head troubled me so much this morning that the doctor made me stay in bed. I got up in the middle of the afternoon, but still with a bad head, and I am not in the best condition for writing.

Before proceeding with what is in my mind, I will just say that I greatly regret the reticence which has been characteristic of Mr. H.'s talk with me the past two days, and of the only allusion E. has made to the subject to me, namely, before F. returned from abroad. Previous to that, H. stated quite frankly that he entirely shared my view of the situation, and that he wished me to stay: Later he told me that E. was very much annoyed at the course F. had taken without consulting him, and agreed that it would be most un-
40 just to me.

But on Tuesday H. seemed to try to justify their letting F. have his way, by saying that the five years' agreement was my own suggestion, and that I had declared I would not remain unless safeguarded against indignities and a repetition of the shock I got a little while ago—meaning by the latter the opening incident of this episode. I replied that what he said was correct:

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but that I had never had any previous understanding for more than from year to year, and I thought the time had come when that was hardly fair: that there was nothing in the agreement to imply that it was to end our connection: that whatever might have been my own inclination, I thought he knew quite well that I would stay by them as long as they wanted me if it were possible; also, that he and E. had it in their power if so inclined to protect me against the things on F.'s part which have so often made me unhappy for several years. If H. really feels that their decision is justified, he has greatly changed; I believe that it is only a weak attempt to make the best of what he and E. know to be cruelly wrong but have not the courage to prevent." 10

HIS LORDSHIP: Suppose Mr. Lash had read that letter to E., what effect would it have had on E.'s mind? A.—I said the same thing to Ed. Walker myself.

MR. OSLER: The letter continues:

"Now to the other thing. Not in the least from any obtrusion on my part, but wholly of their (the W.'s) own doing, I have been regarded by our customers and the public far and wide as the force and influence in this business from the early days of my residence here. In spite of much urging from me, they refused for a very long time to speak for themselves at public meetings, or to address our numerous gatherings. In business matters they made it very plain on almost every occasion that they relied upon my judgment. It was common talk throughout the country, as I have been often told by numerous persons, and repeatedly by the late W. C. Matthews, that Robins was the 'whole thing' here. It has been very embarrassing to me to have these things said to my face, as it was only recently, when I told a caller that his proposition would have to be submitted to the W.'s. His answer, in a tone implying that I was trying to shelve the thing, was—'Everybody says that you settle everything here,' or words to that effect. 20

It has also been rather hard on me in some ways. Politically, it has resulted in my being bitterly attacked, in spite of my studious avoidance of personalities in political discussion, because the Walker money was supposed to be back of me. In one campaign, while I was abroad, the leading Grit 'spellbinder' of this vicinity alluded to a report that our employees were being coerced." 30

HIS LORDSHIP: Who is the leading Grit spellbinder? A.—That was Dr. Sampson. These letters are for the purpose of making statements to Mr. Lash to get him to intervene and do what is right and just.

MR. OSLER: I think I must take you through the incident.

HIS LORDSHIP: They are comparatively long letters.

MR. OSLER: They are long, but I do not see any escape. 40

HIS LORDSHIP: Did you write these letters with pen and ink, or did you dictate them? A.—I didn't do either, I used the typewriter.

Q.—You used the typewriter yourself? A.—Yes.

MR. OSLER: Mr. Robins, you go on in this letter to refer to what you have done for the credit of the Walkers, with reference to hospitals that have been built in Detroit, and you say, "There are hundreds, perhaps thousands,

of people in Canada and the United States, who would receive with incredulity the suggestion that the W's would willingly part with me.

Now, if I go from here with anything but the appearance of having retired altogether from business, the inference is bound to be unfavourable to me. Valuing my 1000 shares at anything like the figures of your letters on that subject, (which I have given to H.), I could not give my retirement that complexion. My opportunities for saving were very small until that five year agreement began: and since then I have had extraordinary demands upon my purse, and my recent losses pretty well wipe out what I had accumulated. I should be more than happy, to drop down very considerably from the scale of my living here, and to be free from the worries I have so undeservedly endured here; but the very least I could do with to meet the claims of blood which I have had for years, (and which are increasing), to keep up my insurance, (Premiums over \$5000 a year), and to live with sufficient comfort to justify my giving up business, would be \$400,000, inclusive of the value of my shares in this company.

If I cannot really retire, and avoid unfavourable inferences, I must, in justice to myself and my family, see that those inferences are effectually disposed of. That could only be done by revealing to the public what I have done here and how my retirement comes about. I should regret exceedingly to do it. I would infinitely rather get out on the pretext that I want to enjoy some leisure and devote some time to public questions, of which I am known to be fond.

I feel that I have the strongest possible moral claim to something more in the way of participation in the magnificent business I have created here than is represented by my shares. Those, while given to me, I always regarded as back pay."

Q.—Your Lordship will observe that in the letter Mr. Robins is a little more unguarded than in the witness box. A.—You must remember I was writing a private letter to a friend, and he did not misinterpret the word "given", and I regarded him as a friend, and so did the Walkers.

HIS LORDSHIP: You minimize their efforts in the business to nothing? A.—I would not say that.

Q.—Pretty nearly. A.—I did not intend to.

Q.—That you were "the whole works", to use that expression. A.—That would give offence.

MR. OSLER: The letter continues:

"The larger income I have had the past six years has every dollar been handsomely earned by the work of those years. If I had done nothing more than the Washington work, the whole thing would not be extravagant remuneration."

What did you mean by: "If the W's like to take this view it would relieve me of a painful necessity which I am sure will otherwise arise." A.—"Painful necessity", is what I have said there, but I must show the circumstances of my leaving.

Q.—And commence a newspaper campaign against them? A.—You can put your own interpretation, that was not my idea.

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Q.—What did you intend? A.—I intended that the public should know my reasons for getting out of that business.

Q.—Did you intend that should be done by newspaper propaganda?

A.—No, I did not intend it should be done by newspaper propaganda.

Q.—How did you propose to introduce it to the public? A.—There are other ways besides newspapers.

HIS LORDSHIP: Jolly few, unless you wire in a wholesale way.

MR. OSLER: What had you in mind? A.—I had publication in mind, but not the newspapers.

Q.—And the publication which you intimated would be of a very painful character to the Walkers? A.—Where do I intimate it? I said it would be painful to me. So it would. 10

Q.—Did you think it would be painful to the Walkers? A.—That was for them to say.

Q.—What did you think yourself? A.—I am not here to give my thoughts.

HIS LORDSHIP: I think so.

THE WITNESS: I thought it must necessarily be painful to them as well.

MR. OSLER: The letter continues:

“As to the value of the shares: F. made the price to Bristol \$300 a share, 20 refused to continue a negotiation looking to \$200 a share or better, raised a devil of a row with H. because he didn't at once refuse to consider anything below the former price: and, so far as I can discover, brings about my present situation because of my part in answering your letters to the best of my judgment and with H.'s full approval—for nothing in the least disagreeable between F. and me had, to my knowledge, transpired between that and his intimating to me unequivocally his desire that I should remain here indefinitely. I hardly see how he can decently, (after telling me since his return from Europe that he didn't want to sell even at 3 for 1), offer me less than that. But if you put my shares at \$200, the balance of the \$400,000 30 would represent only five months' foreign profits on the basis of last year, which was one of two lean years following the Pure Food trouble.”

Then you give the United States sales.

Q.—You had it in mind then that the foreign profits really belonged to you? A.—No, I didn't, excuse me.

Q.—“I think that \$200,000, in lieu of decent notice, (for I am practically dismissed like a chauffeur), would be a modest amount for the man who created, and has twice preserved; so fine a business, in addition to so attending to the business he found here that the chief proprietors have been able to come and go at their pleasure, one, two, or all at the same time: and I feel 40 very sure that if I am compelled to publish the facts in defense of my reputation, that will be the opinion of the general public.”

And the very reason for engaging you, Mr. Robins, was to enable these gentlemen to be relieved of the details of the business? A.—Details?

Q.—Yes, and the management of it. A.—Now you have the right word.

Q.—That was the very object of employing you? A.—Certainly.

Q.—That is what they had paid you for throughout all these years?

A.—We are not disputing that, are we?

Q.—I am asking you the question. A.—I suppose so, yes.

Q.—“If the appearance of voluntary retirement is desired, it will be necessary to provide for it at once, for it will be difficult for me to present an amicable front if I am to be allowed to go in the way the present signs indicate to me. And this is a place where things have a habit of leaking out. I have said nothing myself to anyone outside my own family, (whose discretion I can depend on), with the exception of one intimate and trust-worthy friend.

10 I hope I am not imposing upon you. In reality I am acting, as I think, in the best interest of E. and H. Bitterly as they have disappointed me in the hour of trial, I want to save them any trouble I can. They know as well as I do that practically every case of friction between F. and me has been because I have conscientiously pressed my views of what I believed to be for their own good. A man of less strong convictions could get along better with F., but he would, I think, have been much less valuable to all of them. And my arguing strongly for what I considered wise gave no ground for the insolence I have so often submitted to from him for the sake of the other two. In almost every instance the latter have told me that I was right, though they unfortunately failed to speak up during the discussions as they

20 might, most likely to the avoidance of the nasty finale.”

Q.—So you thought they should have supported you more strongly in their meetings? A.—I thought it would have been wiser if they had; I do not say supported me, but if they had spoken their minds more freely in these discussions; they left far too much to me; and I thought so.

Q.—It was always on the supposition that you were right, and Mr. Frank Walker, one of the owners of the business, was wrong? A.—No, not at all, but the trouble was that Mr. Frank Walker, in the discussions, would get impatient, and would not carry the discussions to a finish. That is all. I did not want anybody to side with me.

30 Q.—There is a postscript to this letter reading as follows: “You are at liberty to let H. know of this letter if you think it well, but upon the strict condition that he does not repeat it to the others without my leave. I should like to say a word or two to him first. But if you feel you can do as well by previously sounding H. as to how he would regard some recognition of what I am leaving behind, perhaps you will do so.”

Then on the 8th August, the same day.

HIS LORDSHIP: Still in 1912?

MR. OSLER: Yes, they go to 1914.

40 HIS LORDSHIP: It would take a man's vacation to read those letters. I do not think you need read any more, as far as I am concerned. Cannot you put them in without reading them? What is the good of reading those letters? I do not want to hear any more letters. It looks to me as if he created a situation which would have a bad effect on Edward Walker. He says he has something in reply.

MR. OSLER: Well, my Lord—

HIS LORDSHIP: What was made out was that poor E. C. Walker was a sort of doddering fellow, and on one of these letters Mr. Lash gave to him

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there is a postscript saying do not do so and so. That is only in one letter.

MR. OSLER: There are subsequent admissions and I think I must go on. I shall leave out what I can.

HIS LORDSHIP: It is all in a day's work with me, we will go on.

MR. OSLER: The next letter is the 8th August from the witness' daughter, I will not trouble reading it.

Then, on the 14th August, Mr. Robins, Mr. Lash came to Walkerville with a view to seeing whether anything could be done to remove the difficulty? A.—I can't tell you what he came for.

Q.—You say you cannot tell what he came for; what he did was to have an interview with all three brothers, which occupied the day up till about noon? A.—So he told me. 10

HIS LORDSHIP: While the letters are long, I must say they are very able. If he did not get Lash on his side, there is nothing really in them to hurt anyone except Frank.

MR. OSLER: Your Lordship will find out what took place later on.

Q.—Mr. Lash came and told you what, after the interview with the three brothers? A.—Mr. Lash came into my room about noon, and, after the usual salutations, he said words to this effect, that it was impossible that my relations with the concern should continue. 20

Q.—Did he suggest that you should be allowed something in lieu of notice? A.—No, he didn't.

Q.—He was about to do so when you told him you wouldn't even listen? A.—No, excuse me, if you will ask the question instead of saying what he did. Mr. Lash made me the suggestion that I should loaf about there for a year, as he put it, with my time free to make my future plans, and he said the concern would pay me some money, but he didn't name the sum of money, he said they would pay me some money, but I didn't want to hear what the sum was because if it had been a million dollars I wouldn't accept the proposition.

Q.—He was prepared to name a specific sum? A.—Yes. 30

Q.—And you wouldn't let him name it? A.—I heard enough and wouldn't let him state that part of the proposition, under any circumstances.

Q.—What next took place? A.—He tried to persuade me, he stayed until one o'clock, when he went to lunch, and he left me with the remark that he was sorry I could not take his advice. I told him I was very sorry also. I thought he was there then as a mutual friend, as he offered to come up as a mutual friend. I think he was not frank with me.

Q.—You think he was not with you? A.—I thought he was there as a mutual friend, he offered to come up as a mutual friend.

Q.—On the 15th August, 1912, you wrote to Mr. Lash: 40
"My dear Lash,

I have just had a talk with Mr. Harry which has affected me deeply, and, at his request, I repeat to you in effect what it was. I must, however, first allude to a possible misunderstanding on my part. When I first spoke about this difficulty to you in Toronto, I took you to say that you made it a rule never to act for one partner against the other, nor as between members of a group, when you had been the adviser of the partnership or such group, but that you had several times taken the part of a friendly mediator or balance

in times of trouble: and I noticed that you strictly refrained from expressing any opinion on the merits of our difficulty at the time. When I got back I repeated as faithfully as I could to Mr. Harry your own language on the foregoing, with your offer to come up to mediate here.

I yesterday supposed your attitude to be the same, and I still so regard it: but I find that Mr. Harry's impression of what I said after seeing you in Toronto was that you could not advise me because you had been the adviser of the Walkers: and he tells me that he and Mr. Frank now feel that it would not be right for them to decide a matter without your approval, which, of course, puts you rather in the light of their lawyer at this moment."

Q.—You knew Mr. Lash had been under a retainer? A.—From me and the Walkers together, I paid my share. He was as much under retainer to me as to the Walkers.

Q.—Did you give him your cheque? A.—No, and they didn't give him their cheque.

Q.—Whose cheque did he get? A.—He got the company's cheque in which I was a shareholder.

Q.—Was there any retainer from you? A.—Equally with the Walkers; I was a shareholder and paid my part of it.

Q.—"I write this, therefore, not to clear up anything in my own mind, but solely to avoid any possible omission from the Walkers' standpoint. I hesitated a little to write you when I saw that Mr. Harry's impression differed from my own: but he urged me to write, and I shall try to make the letter precisely what he would wish. I am sending a copy of it after him to Magnolia, for which place he leaves presently.

What I said to Mr. Harry was this—that I fully realize the condition of Mr. Ed. and himself, and do not in the least blame them for avoiding a rupture with Mr. Frank: but that I was deeply hurt that they did not put the thing to me upon those grounds, and recognize their moral obligation to protect me so far as possible from the avoidable consequences of a situation for which I cannot feel in any way to blame, and which to-day is an entire mystery to me—it being absolutely true that I know of no reason whatever for Mr. Frank's change of attitude toward me. I told Mr. Harry, as I told you, that my mind was firmly made up to one of two courses—to keep up the appearance of voluntary retirement in amity if I could really give up work: or to fight for my hand in defence of my reputation if compelled to continue in business.

I, however, assured him that I should be greatly grieved to be forced to the latter course, and of my anxiety that neither he nor Mr. Ed. should have unnecessary trouble of mind just now. I spoke of the two months' vacation to which I am entitled for this year, and for which my remuneration would, of course, go on. I expressed my willingness to take that vacation during September and October, in the meantime neither doing nor saying anything which might prevent an amicable separation at the end of that time if the means to bring it about should be found: in other words, simply to carry over until the end of October—"

A.—Finish that, please.

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Q.—“the conditions existing to-day so far as I am concerned, for I have done nothing to give rise to any suspicion of a rupture.

Mr. Harry saw Mr. Frank and returned to me with the report that they favor the suggestion subject to your approval.

I cannot close without trying again, as I tried, very imperfectly I fear, yesterday to express my deep sorrow that I could not see my way to accept your advice.”

Q.—Then on the 19th August you wrote to Mr. Lash again:

“My dear Lash:

Being, pending your reply to mine of the 15th, in doubt as to the exact 10
capacity in which you stand toward the W's, I should hardly feel at liberty
to write you now, but for the fact that E., with whom I had a talk Saturday
afternoon, and again just now for a few minutes on the eve of his going away,
still speaks of you as our mutual friend, and seems to wish that 'a way out'
could yet be found. He said he was sorry he had not more time now, and
he invited me to write him to St. Andrews if I could suggest any solution.
He has again assured me that nothing was further from his thoughts or
wishes than what has happened, and that I had lost none of his confidence:
and to my remark that I had been so deeply hurt that he and H. had not
talked over with me in the friendly spirit which had always prevailed be- 20
tween us the consequences to me of the course which they felt they could
not avoid, he replied that they perhaps ought to have done so, and he was
sorry that they had not. As you know, their aloofness and apparent indif-
ference to my painful position was what hurt me most and induced the frame
of mind in which you found me last week.”

HIS LORDSHIP: Was that one of his good days, when he said all that to you? A.—One of his good days as has been used by the doctors?

Q.—Was he in bed? A.—No.

Q.—With a valet? A.—He had a valet.

Q.—Was E. C. Walker doddering; he couldn't complete a sentence of a 30
conversation? The letter looks as if the man knew all about this. A.—He
knew all about the facts, and yet he made a most singular remark to me that
day, on the Saturday, only three days after Mr. Lash said he had been all
the morning with him, he said, “Nobody wants you to leave.” And this was
only three days after.

Q.—You are using a conversation with him to help you with Mr. Lash, yet you say he was a doddering man. A.—I would be sorry to say that.

Q.—It may not be your word. I have heard it used in regard to a man who is inconsequential, who mutters, and asks questions over again. A.— He did no muttering of words in my presence, there were times when he 40
didn't understand and that he didn't remember.

Q.—There were times when he did? A.—There were times when he did. And on that Saturday, he perfectly understood what the situation was, and talked it over with me quite intelligently, but, to my surprise, he said, “Nobody wants you to leave.” And only three days before Mr. Lash had come and said he had been all morning with the three brothers, and it was impossible that my connection should continue. I could not reconcile the two.

MR. OSLER: It is curious you didn't say that to Mr. Lash in this letter,

that Mr. Walker said, "Nobody wants you to leave." A.—It is not soon enough, the time had not arrived, this letter is before that; you will find I did tell Mr. Lash everything.

Q.—At all events, you had an interview with him that lasted quite a considerable time? A.—I told him in that letter.

Q.—You had quite a long interview with E. C. Walker? A.—I did.

Q.—And it was before you wrote this letter? A.—Yes.

Q.—At which you discussed the pros and cons of the whole situation? A.—Yes, that is practically right.

10 Q.—You were writing to him and asking him to take sides with you against his brother Frank? A.—I was doing nothing of the kind; I will not allow you to say that. You can take my letter to Mr. Walker that I wrote at his request, and see how I put it.

Q.—In the last part of the paragraph I just read, you say:

"As you know, their aloofness and apparent indifference to my painful position was what hurt me most and induced the frame of mind in which you found me last week."

A.—That is not discreditable to me.

HIS LORDSHIP: It is discrediting them.

20 MR. OSLER: The letter continues:

"Mr. H.'s talk with me on Thursday would indicate that he, too, would be glad if something could be done. I am persuaded that the only hope lies in these two:"

You mean Edward and Harry? A.—Yes.

Q.— "and there is time for them to communicate with each other if they so desire: indeed, I think they will be meeting before E. sails.

30 If you no longer consider yourself the 'mutual friend' and at liberty to act upon this without revealing to F. that I have written, I want you to regard it as not written at all, for I do not wish to render myself liable to misinterpretation in that quarter. I am sure I may ask this from you. I suppose that means that if you move at all it will have to be ostensibly a further effort on your part to bring about a settlement.

40 You expressed the opinion on Wednesday that a self-sacrificing attitude on my part would give Gertrude as well as myself the greatest satisfaction. I have told her everything, and her feelings are even stronger than my own have ever been—due, of course, to the fact that it is her Daddy who is hurt. She cares nothing about the result to herself of my vastly changed financial position, for she has for years said how much rather she would be living modestly if my mind were at rest. She regards the offer made to me as petty, and refuses to believe that it was your independent estimate of what would be fair. E. mentioned the figure to me, (\$20,000), and upon my suggesting that if you suggested it I assumed that you felt your limitations, he replied that he did not so understand."

You mean to say, Mr. Lash meant he was not able to make the offer as much as he thought was fair, by reason of the antagonism of his clients, the Walkers? A.—When Mr. Lash told me he had spent all morning with the three brothers, I supposed he had come to me with some definite sort of

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thing; and he didn't mention the sum, I wouldn't allow it, but I supposed he felt he had his limitation, because he just came from them.

Q.—They had limited him to a little less than what you thought was fair? A.—I did not state that at all.

Q.—Is that what you meant? A.—I can't tell just what I meant.

Q.—You don't know what you meant? A.—I can't tell what I had in mind.

Q.—At all events, Mr. Edward did tell you what they decided to offer you, and what Mr. Lash had been prepared to offer you, when you wouldn't let him mention the amount—\$20,000.00? A.—Yes, he told me. 10

HIS LORDSHIP: If you thought that Edward Walker only valued your services, on going out, at \$20,000, why did you complain? Why do you think he meant all along to give you \$100,000.00? A.—Well, because he did it, that is my only reason for thinking it.

Q.—This is the point I am getting at: this case is really to try the issue as to whether this was the will of E. C. Walker, whether he was competent to make it, and whether undue influence got him to make it. We branched off on the subject as to whether this would be a surprise, and such a surprise that his intention to give you \$100,000 of stock in the company, par value, would create that surprise; and now you say, in that letter, he was only 20 willing to give you \$20,000. A.—No, he didn't say that; I do not quite say that, I say he mentioned the figure.

MR. OSLER: The letter says that E. mentioned it. A.—“E”, is Edward. In this letter I say he mentions it. Mr. Ed. mentioned it. I was talking about my interview with him. That is the first I knew of it; I did not let Lash get that far. I expressed my opinion about that.

HIS LORDSHIP: Your daughter thought it was trivial? A.—Yes. Mr. Lash had appealed to me, he said the condition of E. C. Walker, and J. H. Walker, and particularly J. H.'s, because of two recent strokes of paralysis, and he said he thought I would feel better satisfied if I did make a sacrifice. 30 I had made sacrifices, I thought I had gone as far as I could afford to sacrifice for men who had millions.

MR. OSLER: You told Edward Walker you thought, when Mr. Lash was putting to you the conversation, he had felt his limitations? A.—I thought Mr. Lash had his limitations; they had spent three hours with him; and when he had the interview with me I thought he had his limitations.

Q.—You felt he had been limited by them so that he could not offer you as much as he thought fair himself? A.—I didn't think anything of the sort, I thought they had fixed a sum, and he had specific instructions, that is what I thought. And then when Ed. Walker told me that the sum was \$20,000, 40 I felt Lash couldn't offer me any more, and Lash ought to know it was a petty thing to come to me with a proposition of that sort.

HIS LORDSHIP: I want to know why you thought \$20,000 was not the limit of Edward Walker's bounty to you, when he told you so, and why he should persist in keeping to the will of 1901, in 1914, and not make a change? What is the answer to that? A.—My answer, your Lordship, is that he did it; he did not make the change when this settlement was made.

Q.—He did not make the change because you say he was not capable to make that will of 1914. What we are at now is with regard to the feeling that E. C. Walker had toward you; apparently it was only \$20,000. Why should he not make a change in his will. He had this conversation with you, which shows he was not the person I had the impression of this morning. A.—My Lord, in this interview he repeated his deep sorrow at my going, he said it would be unfortunate for the business.

Q.—They all say he was a decent kind of man. A.—And all this sort of thing. Now, mind you, there was nothing said as to what I was to be paid
10 for my shares. This was a proposition that I should remain for one year at \$20,000, and my time should be my own, to plan for my future. That is all that \$20,000 meant.

Q.—Is it? A.—That is all.

HIS LORDSHIP: What do you say to that, Mr. Osler?

Q.—I thought it was a settlement? A.—No.

Q.—All the letters are regarding a settlement.

MR. OSLER: This \$20,000 did not include the purchase of the stock, but it was a settlement of every claim the witness was making. He was saying, "I have a moral claim," and he was suggesting he had a legal claim, although
20 there was nothing to found it on.

HIS LORDSHIP: This case was built up on the idea that this gentleman's services were so great, and E. C. Walker appreciated them so, that there would be no change from the \$100,000 bequest in 1901, to Edward Walker's feelings in 1914. That is what I want to get at.

MR. OSLER: We are coming to that, and I will show you the break. A.—This \$20,000 was for one year, and nobody has any right to show that Ed. Walker's thoughts went beyond that year. Mr. Ed. Walker may have thought I would take up some other business, and that would give me an excellent opportunity to try it. Nobody has any right to put thoughts in Mr.
30 Walker's mind.

Q.—No, Mr. Robins, nobody would try. A.—I am not so sure.

Q.—\$20,000 was to be a lump sum? A.—I don't know whether it was to be a lump sum, or whether it would be paid to me monthly, because I never got to it.

Q.—You were to be clear out of the Walker business? A.—No, I was not.

Q.—In what capacity were you to remain? A.—I was to stay in the same position, nominally, to be a free lance, to go and come, and to use my time as I pleased. The public were to look upon me as being in the same
40 position, and the staff were to look upon me as being in the same position, for a year.

Q.—The letter continues:

"I hope I am right, for I should be very much wounded to think you would consider any such sum as that anything like adequate to these conditions.

My daughter, however, is begging me to get away from this place and all its painful associations as soon as possible. She knows that I have not

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had one full night's sleep since this thing opened up, and that I am fast developing a bad case of insomnia: also that my doctor is very apprehensive about me: so she is urging me to make any possible sacrifice for a quiet life. Therefore, for her sake, I am disposed to go a long way. What was proposed last week is not feasible, so it would be useless to repeat it: but if I receive a fair offer for my shares, and something more nearly reasonable as compensation in lieu of notice, I will try to accept it, provided I can be done with the thing promptly."

Do you still say that \$20,000 was not in compensation, in lieu of notice, or payment of your claim? A.—I don't know how they regarded it, it was not so put to me. 10

Q.—The letter continues:

"As to the shares, the figures I sent you on the basis of 9% as a going concern, plus the present cash value of the surplus stock, show a value of 215: but in dealing with me I think it would be no excess of generosity to come somewhat nearer to F's own valuation. At all events, the price of the shares is the key to the situation, as they are the great bulk of what I have left, and I have borrowed on them from the Bank of Commerce \$30,000: in addition to which I owe a considerable sum. The less I get for the shares the more I must have from some other source." 20

In other words, Mr. Robins, let me put this to you: you practically put to them your financial necessities, the necessity for the future payment of a certain sum, and you say, that sum I must have? A.—I did not put it that way at all. This is a letter to Mr. Lash marked "private", and "confidential", which you probably did not observe when you started to read.

Q.—You put it to Mr. Lash for them. A.—I put it to Mr. Lash for his consideration, and I did not then know whether he was a mutual friend or not, I hadn't had his answer.

Q.—You must have had a suspicion that Mr. Lash was no longer acting for you? A.—I was not in the habit of suspecting Mr. Lash, and I did not think Mr. Lash would do what he really did, and I do not yet think it was the right thing to do. 30

Q.—In this letter you speak of the "profits." A.—You avoid reading those.

Q.—If you want me to read them, I will read them, if you want them read again? A.—I would just as soon, it is only a few lines.

Q.—I will read them: "Our profits for the six years last completed were—Canadian, \$2,209,868; Foreign, \$3,339,336; Total, \$5,549,204; Average, \$924,867; equal to 18½% on Capital. I see no reason why the entire profits should not be distributed hereafter. The Reserve Accounts exceed \$3,000,- 40 000, which is more than we planned when we began to put away large sums. Nevertheless, I do not want to hold the shares under existing circumstances, and I think you will not wonder at that."

By the way, Mr. Robins, the figures you put in the statement that my learned friend put in this morning, showing the profits, those were figures, I take it, taken from the Walker company's private books? A.—No, they were not, I was one of the Walker company.

Q.—At all events, you extracted, you took those figures away with you before you left the office? A.—Certainly, how else could I get them?

Q.—Reading from the letter:

“As to compensation in lieu of notice. H. volunteered the opinion, after he had talked with E. about F’s plans, that one or two years’ notice would be no more than fair, and I did not understand that to imply any sentiment, either. While he did not say so, I inferred that he was voicing E’s opinion as well as his own; and when I just now so stated to E., he made no demur.” You understood Harrington and Edward were in accord in this matter?

10 A.—I will express what I had in my mind. I was trying to tell Lash what was in my mind. I cannot tell you any better than it is expressed there; that is what I thought; I told Ed. what Harry said, and he did not demur.

Q.—You naturally thought he agreed? A.—I naturally thought he didn’t disagree.

Q.—You will not go so far as to say you thought he agreed? A.—No, that is going further. He might have thought that was not enough.

Q.—You say in the letter:

20 “My salary and commission for the five years averaged \$34,217. The average of ‘one or two years’ is eighteen months—equal to \$51,325. The offer of \$20,000 represents seven months.”

Do you say it was not a lump sum in lieu of notice? A.—I still say what I said before.

Q.—“It hurt me to think of it after all H. said to me as to the injustice of F’s plans; and in the light of what they have both since said, I cannot conceive how they could bring themselves to make me such a proposition. If I were going out of my own accord and in very comfortable circumstances, a parting gift from each of them of a high-class motor car would not seem amiss, and that is all this amounts to. As recognition of a hardship inflicted upon me in a pecuniary way, to say nothing of my wounded 30 feelings, and, as they assure me, against their own wish, surely E. and H. cannot reconcile it with their sense of justice.”

Did you ever subdivide your claim as between “wounded feelings” and “pecuniary loss”? A.—No, it is a little difficult.

Q.—“I did not mean my last to suggest delay in the W’s decision about my shares, and I see no reason why it should. If they do not want them, I ought to be free to deal with someone else, for I can make no plans for the future until I know what my resources are.

I hope, my dear Lash, I may still feel that you have some sympathy for me. My reliable friends are now very few. My life here has not given 40 me much opportunity for ‘close fellowship’ except with the W’s; and until this matter took shape E. and H. were the men I felt I could depend upon in time of trouble. If their sentiments toward me now do not prompt them to go beyond strictly legal obligations, or what they think mere decency calls for—in other words, if they are bound to stick to F. in every aspect of the case—I shall be forced to believe that the softening of my own mind since I have had these talks with them is hardly warranted by the facts.

If you have telegraph facilities, I wish you would wire me whether

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this letter is of any use, because I have very little expectation that E. and H. would do anything, even individually, without getting your views on the matter."

You knew Mr. Lash's relations with them were close and confidential? A.—I always thought they were closer with me, I was Mr. Lash's friend for years before he ever knew one of the Walkers, that is how he came to be their lawyer.

Q.—You thought, because you had introduced him to the Walkers, he would, therefore, take your side? A.—No, I thought because we were longer friends than the Walkers, he was as much my friend as theirs; that is what I thought. 10

Q.—On that point; you knew Mr. Lash used to communicate very freely with the Walkers, and the Walkers with him, by long distance telephone? A.—Do I what?

Q.—You knew Mr. Lash was in the habit of communicating freely with the Walkers on the long distance telephone? A.—When?

Q.—During the time you were there, until 1912? A.—About what?

Q.—About any matter that came up about which they wished to consult him? A.—In connection with the distillery?

Q.—Or anything else? A.—I should say not about the distillery, because he used to write to me privately about the distillery matters. 20

Q.—You knew he came to Walkerville quite often? A.—Yes, because they had various other interests.

Q.—And he would often telephone and say he was coming down there? A.—I never knew him to do it about distillery business. We asked him to come about distillery business, and I generally asked him.

Q.—About other business, he was at Walkerville on very frequent visits? A.—No, I would say infrequent. He generally came to my house.

Q.—He would often go to Mr. Walker's house? A.—No, Mr. Lash was a busy man, and we didn't ask him to come up unless it was something quite important. 30

Q.—Mr. Lash writes on the 20th of August, 1912, in answer to your letter of the 15th, in which he says:

"You correctly say that I strictly refrained from expressing any opinion on the merits of the difficulty. I could not properly have done otherwise. I was under a yearly general retainer and I could not advise or act against the Walkers. My retainer was of course known to you, and it was not necessary to tell you that it prevented me from expressing any opinion or giving you any advice upon so important a case of conflicting interests as you had described to me, but because of our long personal friendship I felt that I should try and adjust matters amicably between you and the Walkers, and I authorized you to tell them so. I clearly recollect saying that I would have to have a talk with Mr. Frank before doing anything. I told you that in several cases in my long years of practice I had averted trouble between friends and clients by offering to mediate, and that if it were necessary to the solution of the difficulties in this case I would if asked 40

even go on the Company's Board, or take some other official part in its important affairs.

You misunderstood the effect of what I said when you got the impression that I said I made it a rule never to act for one partner against another, nor as between members of a group when I had been the adviser of the partnership or group. I could not have truthfully said that, for I have on many occasions acted for some against others, but I have always first tried to mediate. I do not recall using the term 'group,' whatever that may mean.

10 In Walkerville on the 14th my efforts as a mediator completely failed, not because the Walkers would not accede to my suggestions (they did accede to them), but because you had so entirely made up your mind as to your course that you would not even discuss with me any other way."

A.—I may say, in passing, he was in error about that; I did not refuse to discuss any other way; I simply refused to discuss that particular way. Mr. Lash could be wrong, as well as I could, at times.

20 Q.—"You would not even accede to my request to postpone our discussion till the next day, saying that it would be useless to do so, that you were sorry you could not accept my advice, that it was a matter which you had to decide for yourself and that you had decided it finally and irrevocably, and that you must take one or other of the two courses which your letter says you told Mr. Harry your mind was firmly made up to. Even then I hoped that you would later change your mind and have a talk with me, and when saying good-bye I told you I wanted you to feel that you could come to me whenever you wanted to talk further. I went to you as a friend, and though my efforts had failed I wanted you to feel that I was still your friend.

30 Your letter deals with two matters: First, my position professionally, and, second, your suggestion that you take September and October as a vacation and that the existing conditions be carried over till the end of October. As to the first, my professional position is and always has been a clear and simple one. My retainer still continues, and the duty which I undertook when I accepted it still exists. I could not properly refuse now to recognize that duty. I wonder you did not see that from the beginning. During your business life in Walkerville I have advised you many, many times upon business matters, but these matters have not been your own, and the fact that your present position was about to terminate or had actually terminated could not affect my professional position under my retainer. You say that you said one or two things to me during our interview on the 14th which you would hardly have been disposed to say had you regarded me as the professional adviser of the Walkers. I had no difficulty in distinguishing between what you expected me to regard as personal and what 40 you expected me to report to the Walkers, and I confined my subsequent interview with them to reporting conclusions only. The basis of my interview with you, clearly expressed at the time, was that your existing position with the Walkers could not possibly continue, and what I wanted to bring about was an amicable separation."

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Unless my learned friend wants the rest of the letter, I do not think there is anything there.

I will read this:

"Second. As to carrying over the existing conditions till the end of October. My suggestion of an amicable separation (acquiesced in by the Walkers) was practically to give you a year's vacation with substantial money payments during the year. I did not mention any amount because you would not let me get that far. You would not entertain any plan which involved your remaining beyond the end of the year, 31st August, if your services under the existing agreement were no longer wanted. Had you made the suggestion to me about the two months' vacation it would have been entirely inconsistent with the firm stand you had taken, and we possibly might have got further in the discussion and nearer to a solution if we could have reconciled the difference in principle between the two suggestions." 10

And so on. Then on the 21st of August, you wrote Mr. Lash again, as follows:

"My dear Lash:—

I think it well to send you copies of two letters I have written to E. and which will explain themselves. I need only add that the first brought him in to see me on Saturday, when he expressed himself as very sorry about the situation, and said he wished some satisfactory solution could be found. We were interrupted by Mrs. Walker calling for him to accompany her to Detroit, and he suggested our continuing the conversation on Sunday. He said he would not be at liberty until about noon, and it was arranged that I would be at his disposal. I sat in my conservatory from shortly after eleven to a quarter past two and heard nothing from him; then my niece noticed the cards of Mrs. and Mr. Walker in the hall, and upon enquiry found that they had called and been told that I was out as well as my girls, which was very vexatious, of course. I then telephoned Mr. Walker, but he was busy packing, and said he would see me for a few minutes on Monday before leaving for St. Andrew's, which he did; and that accounts for my letter of yesterday to him. 20 30

Except general kind expressions, Mr. Ed. made no suggestion which might lead to a solution, and there was evident the same reticence which has been so new and so marked a feature of my relations with him and H. since the first inkling of what was in E's mind was given to me; but he did ask whether I would object to some modification of method if the result which I hold to be essential could be attained; my reply to which was that I would welcome anything which would admit of my going from here without unpleasantness." 40

HIS LORDSHIP: The effect of the last part of the letter is that he asserts that Edward Walker, while packing, simply said some kind things; that will have to be explained, because that is very different from a doddering man.

MR. OSLER: "I send you this correspondence to facilitate matters in case E. and H. should show a disposition to dispose of the difficulty before

the former sails. He said to me on Monday, when suggesting my forwarding my views to him, that he would not be leaving the country for some two weeks and a half."

By the way, I think you said you did forward your views to him? A.—Yes, he asked me to write him.

10 Q.—"Which seemed to indicate the hope on his part that a settlement might be reached in the meantime. He also agreed with me that it would have been much better if he and H. had had a friendly talk with me as soon as they decided to fall in with F's wishes, and said he was now sorry that had not been done. In my letter to him I alluded to that subject only with the object of refreshing his memory. He did not in the least dissent from any statement I made as to the merits of the crisis, but told me frankly that nothing had been further from his thoughts or wishes than that we should part company. As this is equally true of H. from beginning to end, I am certainly justified in believing that there was no real occasion for what has transpired."

Mr. E. C. Walker about that time, I think that very day, went down to St. Andrew's, New Brunswick? A.—I don't know where he went.

20 Q.—He was leaving Walkerville? A.—He was leaving Walkerville, and expected to see his brother Harry; how he was going to see him at St. Andrew's I don't know, I had an idea he was going to New York, but it doesn't matter.

Q.—"Before leaving for St. Andrew's" is what it says in the letter. Some letters to Mr. E. C. Walker, copies enclosed to Mr. Lash, are dated the 16th of August, 1912. That is the first one that brought him in to see you? A.—Yes.

Q.—These are some three and a half pages. A.—I think I would like them to be read, if his Lordship will allow it.

30 HIS LORDSHIP: Anything you want read in that series, I will be glad to hear it.

MR. OSLER: The other letter is six pages. The first letter is dated August 16th, 1912, and it is the letter which Mr. Robins, in the letter to Lash, said brought Edward Walker in to interview him.

"August 16th, 1912.

Dear Mr. Ed.:—

40 The situation here affecting myself is wholly incomprehensible to me. The only thing clear is that Mr. Frank wishes our relations to cease, and that you and Mr. Harry have been persuaded to consent. Mr. Harry has told me from the first, in no uncertain terms, that he would regard it as a misfortune to the business, as well as much against his personal feelings; and I think I had good reason until the last couple of days for believing you to be of the same mind. The only explanation I get is that you feel you cannot have a rupture with your brother, and that if Mr. Frank and I cannot get along together it is better that one of us should go; the former I do not ask; with the latter I entirely agree.

But what reason was there to suppose that Mr. Frank and I could not

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get along together? We have had our differences in the past, but I had fondly supposed for some considerable time that things were greatly improved between us. The last serious friction which I recall was quite a long time ago, over our difficulties at Washington, when Mr. Frank made a charge against me which was without the slightest foundation in fact; and I naturally took it a good deal to heart for a few days, for Mr. Frank had wanted to stop the fight before then, and I felt the responsibility of going on against his wishes, notwithstanding that I had always been confident of winning in the end.

But when finally we did win, Mr. Frank himself was the spokesman in 10 presenting me with the watch and chain as a memento of that victory, and nothing could have been more handsome and appreciative than what he said. I felt that better times had dawned between us, and I was extremely pleased about it."

Was that a matter of Frank presenting you with a watch himself? A.—No, the shareholders, and he was the spokesman.

Q.—Did E. C. not know about the watch before you wrote this letter to him? A.—I imagine so, it was supposed to be a gift from the shareholders; I understood they collected money from everybody but me.

Q.—Including E. C. Walker? A.—I didn't ask a question about it, they 20 told me it was a gift from the shareholders, I know it was not paid for by the company.

Q.—The letter continues:

"I know of nothing since that time to account for the sudden decision to get rid of me. On the contrary, it was Mr. Frank himself who last fall, in the absence of yourself and Mr. Harry, expressed the hope that my connection with the Company would continue indefinitely; yet he has not even told me that he has changed his mind—much less, the reason for it. And in the interval the only unpleasantness between us of which I am aware was his rudeness to me after his return from Cap Martin, over a matter my part 30 in which is completely justified by his own handwriting, by Mr. Lash's approval at the time and since, and upon general principles. I would cheerfully abide by the decision of any competent business man on that question. However, as I made no retort to Mr. Frank's rudeness, as Mr. Harry can testify, it is difficult to see in that episode any explanation for what has occurred.

I do not think that you or Mr. Frank or Mr. Harry would welcome the suggestion that you wish to get rid of me simply because you think you can save my salary, or because you believe that there are no longer difficulties to be apprehended in this business in which I might be as well worth the 40 money as I think you will admit I have been heretofore."

Had E. C. Walker paid enough attention to the business to know whether you were really worth the money you had drawn out of it, or worth more?

A.—He used to ask about the foreign trade, and he knew what was doing, he knew the profits made. I think that is enough answer.

Q.—From that you think he realized how valuable you were? A.—I had made millions for them; I think that is enough.

Q.—You thought he should have appreciated that more than he did?
 A.—No, I did not; I think he did appreciate it, and I think his will shows it.

Q.—Oh, I see.

“But, whatever the reason may be, does it not appear to you that it would have been only fair to me to tell me what it is; and if anything has been said to you to change your opinion as to the desirability of my continuing here, do you not think that I might reasonably expect to be given an opportunity of meeting it?”

I have long regarded you as the most just of men and the most loyal
 10 of friends.”

Is that right? A.—Yes.

Q.—“The belief that I enjoyed not only your confidence but your affectionate regard has been one of the great pleasures of my life; and the affection I believed you entertained for me I have fully returned. Whatever my faults, I have supposed you to have no doubt of my devotion to the interests of your family. While I lay no claim to infallibility, I do not recall that you or Mr. Harry ever questioned anything I have done here in the absence of yourself and your brothers. Mr. Harry tells me that he has never been under any anxiety when I was in charge here; and I have hoped
 20 that you could say the same. As for Mr. Frank, while he has sometimes said disagreeable things, I have always attributed it to his temperament, and the freedom with which he has absented himself from the business would effectually negative any suggestion of uneasiness on his part.

I cannot help wondering, dear Mr. Ed., whether you realize what it means to me that I have heard not a word from your lips on a matter so momentous and so painful to me. Even if I had been gravely at fault, do you not think that my twenty-four years' faithful and unsparing service would entitle me to something different? Mr. Harry has come to tell me of his sorrow; and though he may not agree with my view of what would
 30 be right under the circumstances, he certainly has not suggested the contrary, and he has frankly admitted that the present situation is no fault of mine. This is some satisfaction to me, as it is also that Mr. Lash has neither attributed the crisis to my shortcomings nor characterized my views as unreasonable, though he does, undoubtedly, consider my decision unwise. He gives me to understand that you and Mr. Harry have yielded to the force of circumstances, and advises me to do the same. My sorrow at having to decline his advice is second only to that occasioned by the thought that you and Mr. Harry seem willing that all the consequences of this cruel injustice should fall upon me. I say “seem willing,” for I cannot yet believe
 40 it to be true.

But I am not writing this, dear Mr. Ed., to beg for anything. My object is a clear understanding. What has been said to you I do not know. With the best intentions there may have been failure to make my point of view clear; and I feel it to be only right that I should make sure of that. I might seek an interview with you, but this is perhaps better. You can read it at your leisure, and it will last if you care to keep it.

Moreover, I want to assure you that if I am driven to any course which

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causes you discomfort, it will only be because I see no possible way of avoiding it, and it will be one of the great regrets of my life.

This may possibly be my "good bye," in which case I wish you a safe and pleasant journey, and a return home in improved health."

What did you mean by, "if I am driven to any course which causes you discomfort? A.—The course we have talked about.

Q.—The campaign of publicity? A.—Yes, protecting my reputation.

Q.—And you thought Mr. Walker would understand from your allusion in the letter, as to that, because you had discussed that with him? A.—I had discussed it with whom? 10

Q.—With Edward Walker. A.—Quite frankly I started to tell him I would be driven.

Q.—Do you mean to say you started to tell Edward Walker you were going to initiate a campaign of publicity? A.—No, I told him I must protect my reputation. And my reputation would be bound to suffer if I went out in the way proposed then.

Q.—Do you think he understood? A.—I think he did, he seemed to.

HIS LORDSHIP: Did you think he would understand the letter of August 16th, which has just been read? A.—Yes, I did, or else I should not have written it. 20

Q.—You went to England in October? A.—No, I didn't go myself, I sent my family over in March, 1914.

Q.—When did you go away? A.—I think it was the last day of June I sailed.

Q.—Of 1914. A.—Yes. This was in 1912.

Q.—Any allegations you make personally about the incompetence of Edward Walker to make his will, the circumstances arose, and the deterioration took place, after you wrote the letter of August 16th? A.—There was gradual deterioration, although I should say for some time before that I should not have thought he was competent for an important matter of 30
business.

Q.—You wrote there six pages to him discussing your business, and you do not think a man you could write that letter to was incompetent in August of 1912? A.—Not incompetent to understand that. That was only one little proposition; one single thing.

Q.—It takes six pages to explain. A.—Yes, but it is only one thing. I regard that as something very different from that complicated will. I may be wrong.

Q.—You notice Lash says that there are a number of legal forms and words, and he does try to put it plainly, and in simple language? A.—Yes. 40

Q.—Do you say there is something in that will of February, 1914, which is not in understandable language, by a man you would write that letter to a year or so before? A.—No, I wouldn't say that. I want to be perfectly understood. I may be wrong, but I look at it as a whole. Mr. Ed. Walker would understand a thing for a time, and when I was trying to tell him a connected story, as for example, the situation in Washington, which was not more complicated than that will—

Q.—From 1907? A.—From 1907 to 1910. I found he did not grasp the entity. It is not for me to say he could comprehend that will paragraph by paragraph.

Q.—I didn't ask you that; I am asking your own opinion. A.—I should not have thought, for a considerable time before I got out of the business, that he could grasp that whole document, that whole thing, from my experience with him in that business.

MR. OSLER: You have told my Lord, I think, if I understood you correctly, that to some extent the opinions you formed were formed after this
10 letter of the 16th of August, that has just been read? A.—What opinions?

Q.—As to Edward Walker's competency, his mental capacity? A.—No, no.

Q.—You didn't mean to say that? A.—No, I expressed those opinions long ago.

Q.—Because, if I might anticipate—that letter was written on the 16th—after the 19th of that same month, you never saw Mr. Edward Walker again? A.—Yes, I did. You say I didn't.

HIS LORDSHIP: He puts it in an interrogative way. Counsel have got into that way of making a statement, with a rising inflection at the end.

20 THE WITNESS: If you do not catch that, it is a matter of assenting to something.

MR. OSLER: You did not understand I was asking a question? A.—I didn't, I thought you were putting up a proposition.

Q.—Did you think I was expecting an answer? A.—I didn't know.

Q.—Do you swear you didn't know? A.—I don't understand your question.

Q.—Do you swear you didn't know that I expected an answer? A.—Yes, I will swear I didn't know, I thought you probably did, that is as far as I will go.

30 Q.—You still say you did see Mr. Walker after the 19th of August? A.—Yes.

Q.—You never spoke to him? A.—That is a different thing.

Q.—And you never had any communication with Mr. Edward Walker after the 19th of August, 1912? A.—If that was on Monday, I think it was, that was the last time I spoke to him.

Q.—You did not rest content with the letter of the 16th, but the second letter that you wrote to him, a copy of which you enclosed to Mr. Lash, was dated the 20th of August?

40 HIS LORDSHIP: That is what he objects to, you are making a statement, and he bristles up to oppose it.

THE WITNESS: I answer to the best of my ability.

MR. OSLER: Then did you write another letter to Edward Walker, dated the 20th of August, 1912, a copy of which you enclosed to Mr. Lash in the letter of the 21st of August? A.—My impression is I did write quite a short one, some little thing I had left out, but I can't remember.

Q.—“Short” is an elastic term, what I might call “short” might seem “long” to you. A.—It takes a long letter to cover big ground.

Q.—In your letter to Lash of the 21st, you say:

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"I think it well to send you copies of two letters I have written to E., and which will explain themselves."

One of those, according to your productions, is the letter of August 16th, that I have just read? A.—Yes.

Q.—And is the other the letter of the 20th of August? A.—Is it the 20th, or 19th, I wrote to Ed. Walker?

Q.—The letter is dated the 20th. A.—That would be all right.

Q.—Have you that letter before you? A.—I think you said I wrote the second letter on the 20th?

HIS LORDSHIP: The second letter is on the 20th. A.—That is right, 10 I wrote him two letters.

MR. OSLER: The letter of the 20th reads:

"Dear Mr. Ed.:—

Acting upon your suggestion, I give you my ideas on the situation here affecting myself, and I will be as brief as seems consistent with thoroughness. I regret greatly that there was not an early full discussion between you, Mr. Harry and myself, whose relations had always been so harmonious, for your seeming aloofness pained me exceedingly, and gave me the impression that you were indifferent to the cruel position in which I am placed through no fault of my own, so far as anyone has attempted to show to me. 20 That affected my mind very materially; but I am very happy to think from the talks I have had with you both since Mr. Lash was here that appearances were misleading, which has renewed in me the earnest desire to spare you any avoidable trouble or worry.

"I stated to Mr. Harry at the very first that my understanding last fall with Mr. Frank was very clear; namely, that I was to continue with the business indefinitely, and that the terms in which he alluded to my remuneration implied that I might expect something a little better than before when he could take the matter up with his brothers. In view of the very handsome language in which he referred to my work at Washington after 30 our victory, and his great satisfaction with our campaign against Wiley in the interval, I should have been greatly surprised if he had given me any different impression, particularly as Mr. Harry's breakdown and Mr. Frank's own indifferent health pointed to an increase rather than a lessening of my responsibilities.

But I suddenly learn that Mr. Frank is determined to force me out." By the way, dealing with the last paragraph, Frank Walker had not undertaken to make that arrangement with you on his own account? A.—He certainly did.

Q.—Was it not going to be subject to confirmation, and discussion with 40 his brothers? A.—I can't tell you whether it was or not. I am simply telling you what he did.

Q.—Or expected it to be? A.—No, he asked me whether I was content that the rate of remuneration should run on for the current year.

Q.—You say he said you might expect something a little better, he would take the matter up with his brothers? A.—No, the manner in which he spoke, and what he said, I think justified me in understanding I might expect something better when he took it up with his brothers.

Q.—He was going to take it up with his brothers before he said anything definite? A.—No, he said something definite, we agreed that that year was to be the same scale as in the agreement terminated. That is because the two brothers were abroad. We spoke of their poor health, and it might be some time before they were capable of talking business.

Q.—Anything after the year was left indefinite? A.—As to remuneration, but not as to being in the office.

Q.—The remuneration was to be indefinite? A.—Yes.

Q.—That was to be settled with the two brothers? A.—Yes.

10 Q.—E. C. and Harry? A.—That is right.

Q.—“But I suddenly learn that Mr. Frank is determined to force me out, and you and Mr. Harry (against your own wishes, as you inform me), concede the point. Your right to make that decision I do not question: but I must maintain that I am entitled upon every ground to fair compensation for the termination, without cause given by me, of the clear understanding mentioned.

Neither will I dispute your right to consider my claims without sentiment: and from that standpoint I regard \$20,000 as quite inadequate.

20 After he had talked with you, and, as I inferred, with your concurrence, Mr. Harry told me that he thought I should have at least one or two years' notice if you desired me to leave. My remuneration under the five years' agreement averaged \$34,217 a year: the average of 'one or two years' is eighteen months—equal to \$51,325. The \$20,000 offered represents only seven months.”

A.—I told Mr. Ed. this, but only to show how far below it the proposal made to me fell; not to imply my concurrence in Mr. Harry's idea.

Q.—You did not agree with the idea that one or two years was sufficient?

A.—No, I didn't think it was enough.

Q.—The letter continues:

30 “I, unfortunately, cannot afford to accept less than I am fairly entitled to. Men who fill such positions as I have filled here are not usually dismissed on short notice without cause; and if I must appeal to a jury, I do not think I shall have to take any such sum as \$20,000.

I feel very strongly that my moral claims to special consideration are great: but that, of course, is wholly for you to decide. Nevertheless, I feel justified in stating why I think as I do.

40 It is beyond question that our Foreign Profits are due to my personal efforts. That, I believe, you would be the last to deny. It is also true that I have twice successfully defended from serious menace our United States trade, which gives us the great bulk of those profits. I can entertain no doubt that if I had been disposed to bargain, when you agreed to take the financial risk if I would do the work, I could have secured a permanent and very substantial interest in the results. I made no stipulation whatever, but devoted my evenings, Sundays and holidays for several years to this development, feeling absolute confidence that I could safely trust my future to you and your brothers.

The appended figures show that the Walker dividends have exceeded the

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entire Canadian profits by nearly \$700,000, and if my remuneration (reckoning my stock at par, which is all it would be worth without the Foreign Trade), were charged wholly against the Foreign Profits, the excess would still be over \$200,000. That is to say, I have not only done my part in looking after the business I found here, which was all that was expected of me, but what I have created and protected has already paid you over \$200,000: it has paid all the dividends on the shares not held by you: it has paid every dollar I have received: it has created a Reserve of over \$3,000,000: and for the past six years it has yielded profits more than fifty per cent. greater than those of the Canadian business. This magnificent creation I leave behind me for your future enjoyment. If that does not constitute a strong moral claim, I am afraid I do not know the meaning of the term. If the public would say that the man concerned should be sent adrift as is proposed in my case, I am no judge of public opinion. 10

Lash reminded me that the Capital was yours. That is true, and I will concede to capital the most extreme claims that the extremest capitalist would venture to advance. But the money risked in the Foreign Trade was never quite \$83,000. And I put in capital too—the only capital I had—my energy and brains: the time which belonged to myself and my family: and with such unremitting application as might have permanently undermined my health, to the serious impairment of my only capital; therefore, as I think, I took much the greater risk. And until your capital was safe, and a substantial profit had been made, I neither asked nor received one dollar for my extra time.” 20

You thought you should be on a sort of fifty-fifty basis, Mr. Robins? A.—There is no such thing there. Did I ask for two and a half millions, or three millions?

Q.—I was asking you whether you did or not? A.—No.

Q.—The letter reads:

“It may be said that I have been paid year by year for all I have done. From the legal standpoint that may hold good: but I have shown that I have really cost you nothing: and had it ever entered my mind that you would ever take that view, I should have protected myself by a written contract or left the field to some other man. If, therefore, I now suffer, it will be from too much faith in human nature, and I shall be forcibly reminded of your once saying that that was my chief weakness. 30

“Mr. Lash’s principal appeal to me was upon sentimental grounds. He urged me to do nothing which would militate against the mental rest so essential to the restoration of Mr. Harry’s health. I think it is hardly necessary at this late day for me to say how earnestly I desire the well-being of Mr. Harry and yourself. If there were no alternative, I would cheerfully make very great sacrifices for that. But it is idle to put the present question in that light. It is merely a matter of what is to you and your brothers a very small amount of money—no more than the Foreign Trade brings you every few weeks; and I cannot feel that I am called upon for that to suffer the greatest of all calamities—damage to my reputation. 40

The matter is very simple. If I go from here to engage in other busi-

ness, as I must unless there is some addition to my present resources, the inference is inevitable that I have 'fallen down' seriously. Hundreds of people familiar with the position I have occupied here, and the unbounded confidence of yourself and brothers unequivocally expressed by the unusual freedom of your movements these many years (to say nothing of your flattering remarks so often repeated to me), would ridicule the idea that any mere error of judgment would cost me my place. The most natural conjecture would be that I had grievously sinned, and that my kind friends had let me off easily."

10 Don't you think somebody may have thought that you were a bit overbearing toward Frank, and that is what brought the rupture about? A.—Not unless told about the friction between me and Frank; and you object to the campaign of publicity.

Q.—You had told your story to one or two confidential friends? A.—One or two confidential friends, Mr. Lash one of them.

Q.—You say one or two? A.—One outside of my own family. I wish others had been as considerate.

Q.—The letter reads:

20 "The only possible way to avoid this is for me to retire from business altogether. That I am prepared to do if I can live in such modest comfort as to make it appear to be my own choice. No one who knows me would believe that I was so anxious for leisure as to accept a poor man's life, with my good health and capacity for work. Moreover, without a certain income the resources of leisure would be impossible—a club or two: occasional modest travel: perhaps a part in public life. I couldn't fill in my time with a little garden and a chicken coop.

30 If, on the other hand, I am compelled to take up new work, with the inevitable inferences to my disadvantage, I must protect my reputation. That means that the public must be told how undeserved is my dismissal: I must give them the record of my twenty-four years' service here, and the circumstances surrounding my departure, and leave them to draw their own conclusions. If there is no objection to that on the part of anyone else, there is certainly no reason why I should shrink from it. But I should regret the necessity very much upon grounds not personal to myself."

HIS LORDSHIP: Did you think he had sense enough to understand the last paragraph? A.—He was going to see his brother, and I reckoned to some extent on that; I knew he was going to see Mr. Harry, he had asked me to write to him my view fully. I was complying with the request.

40 MR. OSLER: You have not answered his Lordship's question. Did you think he had sense enough to understand the last paragraph? A.—I would like you to read it again, before I answer.

Q.—We will give you a little more time, Mr. Robins. A.—It is only three or four lines.

(Mr. Osler repeats the last paragraph, commencing at line 13 on the preceding page.) i.e. line 27
supra.

A.—That strikes me as fairly simple; I think he could understand that.

HIS LORDSHIP: You think he could understand you were making a veiled threat? A.—No, it was not a veiled threat.

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Q.—You don't think he would understand it was a veiled threat? A.—No, I think it is very frank.

Q.—You mean it is not veiled, it is a mere threat without being veiled? A.—I do not consider it a threat. A man must protect his reputation.

Q.—Do you think a man with any sense—you say he has sense to understand that paragraph—would feel kindly to you when you made a threat like that to him? A.—My Lord, I had said precisely the same thing in effect in an interview.

Q.—What is the use of repeating it in the letter? A.—He asked me to write him; I simply complied with his suggestion. 10

MR. OSLER: Continuing with the letter:

"I lay the matter before you quite frankly, because I wish you to know why it was impossible for me to concede what Mr. Lash asked. There are times when a man must differ from his best friends. But I told Lash that if I had the money myself I would not hesitate a moment to forego even my legal claims. No man ever put more sentiment into his service than I have put into mine. It has been my greatest pleasure to think that you and your brothers were so free of foot and so free from anxiety.

I write this, of course, without prejudice, and because you and Mr. Harry have expressed the hope that some way might still be found to end the difficulty. If we fail, I shall have the satisfaction of feeling that it is not from lack of effort on my part. If, on the contrary, a solution should be reached before you sail, I shall be very glad indeed, and I am ready to give my most earnest consideration to any proposition which appears to me at all reasonable: in other words, I am prepared, because of the happier atmosphere created by my talk with you and Mr. Harry, to compromise between Lash's proposal and the position I took last week." 20

HIS LORDSHIP: Can you tell me, Mr. Osler, anticipating for a minute, so I will get the point of view of it, what was, as you understand, the settlement eventually made with Mr. Robins? 30

MR. OSLER: They paid him \$300,000 and took the stock.

HIS LORDSHIP: That was in 1912?

MR. OSLER: Yes.

HIS LORDSHIP: I have been looking forward to it.

MR. OSLER: Your Lordship will be interested to see how it was built up.

Q.—At the foot of that letter, Mr. Robins, you have a set of figures? A.—Yes.

Q.—They were there, of course, when you sent the letter to Mr. Walker? A.—Oh, yes. I thought they would help him to realize my point of view. 40

HIS LORDSHIP: Let me have an idea of them.

MR. OSLER: It is a tabulated statement of the company's Canadian profits to August 31, 1911, etc.

"Company's Canadian Profits to August 31, 1911	\$6,384,914
Company's Foreign Profits to August 31, 1911	4,699,888

Walker Dividends	7,058,435	
Walker Salaries	971,250	
Reserve Accounts	over 3,000,000	
W. R's Remuneration, 21 years	470,084	
Canadian Profits past 6 years	\$2,209,868	
Foreign Profits past 6 years	3,339,336	
	<hr/>	
	\$5,549,204	18½% on capital

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10 In view of present large Reserves, and there being no Bank borrowings, I see no reason why the entire profits might not be distributed from this time on."

Q.—Now, did you think Edward Walker would understand those figures? A.—I should think so.

HIS LORDSHIP: You would not have written them unless you meant him to understand them.

MR. OSLER: Then, on the 22nd of August, Mr. Robins, Mr. Lash writes you, as follows:

"Four Way Lodge,
 Morinus P.O., Muskoka.
 August 22nd, 1912.

20 My dear Robins,

Your private and confidential letter of the 19th came last night. You should receive to-day my answer to yours of the 15th, in which I point out very clearly my professional position. I shall therefore, as you request, regard your letter of the 19th, so far as the Walkers are concerned, as not having been written at all. There cannot, however, be any harm in presenting to you some aspects of the situation which I am sure you have not seen but which stand in the way of the solution which you think is the only one possible. Removed from the personal aspect out of which the complications have arisen and from what you term the moral aspect, the case is a simple one

30 so far as the legal position is concerned and when parties dispute, the legal position is never lost sight of. The facts as I understand them are these—An agreement was made for a period of five years. It was subsequently extended for another year which will expire on the 31st of this month. It makes certain provisions for the disposal of the stock which you hold in H.W. & S. Ltd., but at the highest these provisions are in the nature of options to the Walkers. For reasons which the W's consider sufficient you have been told that it is not intended to extend the agreement beyond the 31st. Unless extended the agreement will terminate on the 31st, and legally speaking the parties to it go their own ways. Here the personal and moral aspects

40 intervene. You say that there is no good reason why the agreement should not be continued indefinitely and that though it may not be legally necessary to give any reason for not continuing it yet morally good reasons should exist and you should be compensated if it be not continued. You say further that the value of your services in the past far exceeds the remuneration you have received for them & for personal reasons as well as on business results you feel that you have a strong moral claim for compensation. I have not

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blamed you for entertaining any of these views so far as the moral and personal aspects are concerned—the question of amount I say nothing about, but where I think you are wrong is in the way you are taking to enforce your moral claims. You say that because there is no proper reason for not retaining your services you will go out a discredited man, and that unless you are paid an amount in money large enough to make you independent for life and to provide for your family afterwards you will fight for your reputation, in what way you have not said, but the very fact that you have left it mysterious warrants the thought that you will not be careful so far as the Walkers are concerned, in your choice of weapons. I think you are assuming too much in thinking that because the other parties to the agreement do not want to renew it you will be discredited to the extent you suppose. I have hesitated to say to you what ‘the man on the street’ would, in my opinion, think of your attitude, because I am sure no such thought ever entered your mind, but does it not savor of a threat to do something which will harm, or will be intended to harm, the Walkers unless money which you could not collect otherwise be paid to you? There is no doubt that this attitude is having a very important bearing upon the situation, and I think it will make it impossible for me to succeed in straightening it out. You are making the question of the stock the stumbling block by putting it in the front and trying to force the sale of it as the important item essential to peace. There is a side to human nature (not unknown to yourself) which prevents people who might otherwise waive legal rights and admit moral claims, from doing so when they think an attempt at force is being made. I told you I thought the question of the stock should be taken up after all other questions are settled and in thinking this I am really doing you a service, for I am convinced that I could do more for you in that way than in any other which would involve a decision as to the stock at the present time. My dear Robins take the advice I gave in my letter received to-day, and go away for a couple of months and talk to me after you have got back your nerves and are able to look at the situation from a standpoint where your feelings will not prevent you from seeing it more clearly than in your present frame of mind it is possible for you to do. I may say that the amount to be paid to you during the year had you entertained the suggestion I made during our interview on the 14th would have been a matter for discussion and any sum agreed on would have had more or less bearing when we afterwards discussed the value of the shares.”

On the 23rd of August, Mr. Robins, you wrote to Mr. Lash in reply to his letter of the 20th, as follows:

“August 23rd, 1912.

My dear Lash,

Your letter of the 20th was received this morning. I am glad, very glad, to be assured of your continued friendship, though I cannot but feel that it has, for some reason unknown to me, lost some of that sympathetic tone which made it so specially grateful to me in the past. This is one of the mysteries which surround my present situation and make it more painful to me than it need be. I cannot help wondering why it should be thought that

I deserve it. Surely, my inability to accept your advice is hardly sufficient reason for it: and unless there is great discrepancy between what Mr. Ed. and Mr. Harry have said to me within the past few days and what you have heard, (which I will not suspect, much less suggest), I am wholly at a loss to comprehend the censorious complexion which, in spite of your kind expressions, your remarks last week, and your present letter, seem to me to have. How much I feel this it is impossible for me to say.

I accept, of course, in the utmost good faith, what you write as to your conception of your obligations to the Walkers, but I must confess I am
 10 greatly surprised: and while it may be presumption on my part to express an opinion on a professional question, I think I must state my point of view. Your retainer is from the Company, of which, though to a very modest extent, I am as much a part as the Walkers. As yet, so far as I can see, the Company is not in evidence.

I did not go to you in Toronto only on my own account. The situation at that time was that Mr. Ed. was abroad; Mr. Frank had given me no personal intimation of his desire for a separation: but it was revealed to me, I thought, by a suggestion from Mr. Harry which I could not suppose either
 20 of them expected me to accept, and which I could only interpret as intended to force me to take the initiative. It developed that Mr. Harry knew nothing of the verbal arrangement between Mr. Frank and me last fall: he stated that had he known of it he would under no circumstances have been the bearer of the suggestion: he said that if he were in my place his reception of it would have been the same as my own: to my specific question, his reply was that he personally desired me to remain, and that he would regard my leaving as a misfortune to the business: he said he would consider what Mr. Frank apparently desired a gross injustice to me: and he proposed that the matter should stand over until Mr. Ed's return.

This, in my judgment, left the case as though the conversation had not
 30 taken place, except in so far as it indicated Mr. Frank's design, and pointed to the probability of a conflict of opinion later on between Mr. Ed. and Mr. Harry on the one side and Mr. Frank on the other, which is precisely what I am given to understand did occur."

And that, I understand, had occurred on all previous occasions when Mr. Frank had given you offence, there was a conflict of opinion, with Harry and Ed. on one side, and Frank on the other? A.—They always told me they approved of what I had done, and disapproved of what he had done.

Q.—Until the last occasion, Mr. Ed. and Mr. Harry always carried their point? A.—Yes.

Q.—This time? A.—This time they told me they didn't feel equal to a
 40 rupture.

HIS LORDSHIP: It is the old case that blood is thicker than water.

MR. OSLER: It would not have arisen had it been otherwise. The letter continues:

"In view of that contingency, Mr. Harry agreed with me that the advice of a trusted friend would be opportune, and it was in that sense that I went down to you with his full approval. I had no thought of seeking your advice

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for myself alone, which must be evident from my speaking first to Mr. Harry, and was, I think, equally clear from what I said to you—that the Walkers were never more in need of good advice. The possibility that I could ever find the three brothers ranged against me so as to call for a legal adviser on either side had never entered my mind. What I apprehended was a trying struggle among themselves, and I foresaw the likelihood that Mr. Ed. and Mr. Harry would succumb: but that in such event they would do everything in their power to avoid my being unjustly dealt with financially, I was as confident as that the sun would rise on the morrow.

Therefore, I went to you not on my own behalf alone, nor in your legal 10 capacity, but as the friend in whom we all had unbounded confidence. I should not expect you to be willing to act for Mr. Ed., Mr. Harry and myself against Mr. Frank, any more than I expected you to act for the three brothers against me.

It is a new experience, I think, for you and me to differ as to facts, and I am puzzled by our differing now. In using the word 'group' I did not mean to imply that it was your word, but I brought away most clearly the impression that you never took sides professionally between men for whom you had been acting collectively: and I am perfectly sure that upon my return I told Mr. Harry that you could take no other part in this situation than 20 that of a mutual friend. You spoke, I remember, of the possibility of meeting the difficulty by joining our Board and sharing in our contentious discussions, I replying that that would hardly solve the problem, by reason of the fact that Mr. Frank had shewn a tendency which made it impossible, for me at least, to know what would meet his approval in the conduct of the business from day to day."

Did you feel, Mr. Robins, you had to have Mr. Frank's approval in the conduct of the business? A.—No; if I had the approval of the Board, but, at the same time, he could make himself very unpleasant.

Q.—You did not have to consult Mr. Frank's view on the subject, you 30 did not have to get Mr. Frank's approval? A.—We did not have very many Board meetings.

Q.—That was not the question. A.—If we had had Board meetings every few days there were many, many things that came up between Frank and me that would never have come up personally at all, but would have been decided by the Board. Naturally it was unpleasant to me to find Mr. Frank was not agreeable.

Q.—You did not think you had to get his approval? A.—It would have been very uncomfortable to go on if he didn't approve.

Q.—You now say that. Your course, I gather, was to go and speak to 40 Ed. or Harrington Walker before the Board meeting? A.—We had very few Board meetings.

Q.—Before the formal meeting of the Board, you would make sure of their concurrence in advance? A.—In a matter that I knew would require a good deal of discussion, and might become a little contentious, in order to avoid contention I would sound it out with the brothers first, with whom

I could discuss the thing to a finality. I did that in the interests of the business.

Q.—When you say you would sound out the brothers, you mean Ed. and Harry? A.—Yes.

Q.—Not Mr. Frank? A.—No, not Mr. Frank.

Q.—He would go to the Board meeting and find that his brothers had already committed themselves to you? A.—No, I wouldn't say that, because the Board meetings were so infrequent. I got together the two brothers, with whom I could discuss things to a finality, so they would be thoroughly informed, and I was always hopeful they would carry on the discussion with Mr. Frank.

Q.—The two brothers with whom you could discuss things to a finality were Edward and Harry? A.—Yes, and I would later, after their discussion with their brother, if he did not readily see things, then I should have to do it.

Q.—Sometimes they left you in the lurch? A.—They did, unfortunately.

Q.—They left you to get into a quarrel with Frank, when you thought they ought to have taken up the cudgels— A.—I never quarrelled with Frank.

20 Q.—I forgot: when you had been offended by Frank, when you thought they should have taken up the cudgels in your behalf? A.—No, I thought if they had taken a fair part in the discussion it would not have been a personal matter.

HIS LORDSHIP: It looks like lobbying before the session. A.—For the sake of peace.

MR. OSLER: It has to be done sometimes.

30 "I know, of course, that you would have saved me from a wrong impression if you had realized what view I was taking, though I really cannot see how I could have formed any other from what was before me. All your letters to me until now seem to me to forbid the presumption that, under any circumstances, you could be found acting against me—or, let us say, for the opposite side: and I repeat, that I never thought of any opposite side except the possible giving way of my trusted friends on the one point, which, by itself, would never have called for the services of any lawyer. I quote May 19th "I shall be always glad to see you and give what comfort I can": (July 23rd) "I presume there is nothing which you expect me to do at present. I have not heard from anyone but yourself on the subject": (July 28th) "Should F. turn up at any time, shall I mention the matter to him? If you think yes, is there any special way to begin? I instinctively fear the result of your opening it first under existing circumstances, but I really cannot say why."

40 On the 6th inst. I informed you that the brothers had reached a decision, saying—"They apparently do not feel it necessary to call in a mutual friend. . . . I appreciate to the full your willingness to be that friend, and the sympathy which I believe I have from you."

I think my letter of the 8th, to you shews most plainly that I had no thought of your becoming anything else but the 'mutual friend.' I spoke of your being consulted about the price of my shares, because our agreement

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provides for that: but I opened my mind to you without reserve, and I said—
'I leave it to your judgment to advance the idea or not.'

I had no uneasiness about your making an unfair use of anything I said to you last week—that I can assure you: but you will, I think, agree with me that some reserve would be natural even in a case of close friendship if one knew or imagined that the friend might become the advocate of the other side: and you will perhaps recall my saying, in answer to your enquiry what reply you should take to the Walkers, that you might tell them anything I had said. With a different understanding, it would be reasonable to expect that I would make some reservation. But, inasmuch as you had 10
not communicated to me the nature of your conversation with the Walkers, but only the result, I took it for granted that you would pursue the same course on the other side—not from mere punctiliousness, but because your only mission was to bring about an arrangement between parties who were equally your friends.

But, notwithstanding that you did precisely what I expected, I cannot help thinking that a professional relationship toward the one party in a case like this could hardly fail to conflict with the fullest exercise of sympathetic interest in the other, even if the misunderstanding were void of feeling. You very strongly urged me to submit to what I regard as great injustice. 20
out of consideration for the health of Mr. Harry. I could not help wondering whether you had urged the Walkers to anything like equal sacrifice out of consideration for my deeply wounded feelings, my health, which might well be affected, and my unquestioned devotion to their interests for 24
years. If they or you see in the offer made to me any concession whatever, I can only express my great amazement. Right or wrong, it is impossible for me at present to doubt that you felt your limitations: and it would be difficult to persuade me that if the three brothers must act as a unit in settling with me it could be otherwise.

I cannot wholly confirm your impressions of our conversation here. I 30
did not think that I refused to discuss with you 'any other way' as I understand you to use the words, nor did I gather that you gave me any opening. It occurs to me that I may have missed your meaning. As I at once told Mr. E. last Saturday when he suggested that there might be 'another way', I would welcome any means which would bring about the result I want. I do not recall your use of these precise words, but it is possible that I had in mind the two ways of going out—the amicable way if it is made possible for me to appear to retire of my own choice; the course I have indicated if compelled to take up other employment. I do remember your saying at one time something like this—'that means a capital sum', to which I replied 'yes': but 40
if you took that to imply that there was only one way in which my views could be met, it was not my intention that you should. I need not tell you that I was greatly upset, and I had been feeling far from well for a considerable time, with my head troubling me greatly, and constant indigestion. It is not unlikely that my mind was centred too much on certain things.

I did not think that I declined further discussion the following day. My recollection is that you asked me whether I would think over your proposi-

tion until the next day, and I know I refused that. I should have been most glad to talk with you again if I had seen in your attitude any hope of a settlement: and I really expected that you would come back to my room, if only to say another kind word before you went. I had no idea that you were still in the building when I left, as Mr. Harry told me the next day was the case." You don't think they were calling your bluff? A.—I won't allow you to use any such language in regard to me; I am a man of honor; I used no bluff with the Walkers. You treat me like a gentleman, if you expect to be treated like one. Now, put your question properly, and I will answer.

HIS LORDSHIP: He does not like that word, he is an Englishman.

10 MR. OSLER: I wish I could quarrel with him, I cannot; if I would, I could, as I do not wish to, I will not.

Q.—You did expect, Mr. Robins, that Mr. Lash was coming back to you, after your peremptory refusal to hear what he had to say? A.—I thought he would come back as my good friend and say, "good-bye, Robins."

Q.—And possibly open up negotiations? A.—That would be for him.

Q.—Not for you? A.—Not unless he had something more to say.

Q.—"Your reference to my suggested vacation impresses me as hardly what it would be if you were only the 'mutual friend'. I put the idea forward with the pure desire to demonstrate my unwillingness to give Mr. Ed. and
20 Mr. Harry unnecessary worry, and I believe Mr. Harry was as glad to accept it in that spirit as I was to offer it. I did not expect that it would lead to 'conditions' being made by them any more than by me. I am willing to join with the Walkers in recognizing the possibility that time for thought may conduce to an amicable arrangement as well as to the comfort in the meantime of Mr. Ed. and Mr. Harry. I shall be willing at any time to discuss matters further with you, as I should be if the vacation had not been mentioned. But I do not quite catch the meaning of the suggested 'announcement' at the end of this month. It looks something like a threat and a 'plan of battle' already decided upon. I will only say that any sort of announce-
30 ment which occurs to my mind would make further hope that unpleasantness may be avoided out of the question."

A.—You did not read that part of Lash's letter which gives me the thought, which is quite important.

Q.—I think I gave you the opportunity of having anything read. A.—I did not know it was there.

HIS LORDSHIP: Oh, well, you had better read it. It has an effect upon the last statement? A.—It was where he suggested that the Walkers would make no announcement at the present time. That word "announcement" was very suggestive.

40 Q.—Point out the part. A.—"If you say you will do this, I shall ask the Walkers meantime to make no announcement of the termination of your engagement and to let things go on as far as possible as if you were on a vacation."

Q.—That was not observed when you came to the end of the month? A.—It was only a few days away; I wondered what the announcement would be.

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MR. OSLER: You thought the suggestion there should be an announcement looked like a "plan of battle."

HIS LORDSHIP: There was no announcement before settlement? A.— This was my own proposition, that I should be out of the way at the end of the month, so there should be no possibility of the fat being in the fire and an amicable arrangement being impossible. And then I heard of the proposed announcement.

MR. OSLER: You were afraid of what would be in the announcement? A.—I thought it might make it impossible.

Q.—(Reading from the letter.) "I am not at all ashamed to admit that 10 when you saw me last I was in a fighting mood, because it seemed to me that I was being deliberately driven to a position where I must fight. I am not ashamed to admit that my heart softened at the first sign that Mr. Harry and Mr. Ed. were not as indifferent as they appeared to be. But I can hardly consent that what I proposed from genuine good will shall be put down to a less worthy motive.

I hesitated very much to write you on the subject when I learned from Mr. Harry that the brothers regarded you as their legal adviser in the case, and I acceded to Mr. Harry's urging that I would write only when I felt that it would please him. Since then Mr. Ed. has suggested that something 20 might be gained by my writing him, as you will know I have done. I suppose no one will deny that my present year carries the vacation, and that I could hardly have taken it before now if I had known I was to go at the end of this month, with Mr. Frank abroad, Mr. Harry an invalid, and the situation during the past three months. If anyone is afraid I might take unfair advantage of the vacation running into another fiscal year, they may dismiss the idea. If there is any other reason for making stipulations, I am unable to guess at it.

I will not trouble you now with other comments which I might make on what seems to me a rather hard criticism of the position I took in our personal discussion: but I feel bound to differ from you as to my stock. I thought, and still think, that it should be the first thing dealt with. It arises out of the written agreement, and the one thing which is settled seems to be that I am to go—for I do not suppose it to be necessary that my protest against my dismissal should take the form of a refusal to vacate my office, with the scene that must involve. Moreover, if the vacation suggested is adopted, I should hope that my room would be allowed to remain as at present, so that no comments would be invited calculated to interfere with my going out in a natural way if a solution of the difficulty is happily found. 30

Until I realize on my stock I cannot make any definite plans for other occupation, if that I must do: what I get for it will have a material bearing upon how much more I must have if I am to give up business. I cannot conceive that the Walkers have any legal right to delay the matter. I have asked whether they want the shares and whether they will make me an offer for them: I have offered to put a price on them if they will not. I don't see what more I could do. I expected at least to be informed if they want the shares, but I have heard nothing. Surely, I ought to be at liberty without 40

unreasonable delay to make the most of my resources. I hope this question will not be made an additional bone of contention.

I would say again that if Mr. Ed. and Mr. Harry had talked with me before you came up as they have talked with me since, I believe the situation to-day would be much more satisfactory to all concerned: and I think it is only fair to me that you should take that feature into consideration.

Once more expressing my pleasure that I may still regard you as my friend, and with kindest regards,"

10 Now, did you really think that if Mr. Ed. and Mr. Harry had talked with you before that meeting, that the result would have been different? A.—I did, and I think so to-day.

Q.—You think they would have overruled Mr. Frank? A.—Will you persist in putting questions like assertions?

Q.—Yes, I will. A.—I have answered that sort of question before. It might have taken another form, just as likely to have taken another form. They were not overruling Mr. Frank, as you say.

Q.—It would have resulted in leaving you as the Czar of the business? A.—I am not going to answer such a question as that. I make no profession to be a Czar.

20 Q.—Would it, in your opinion, have resulted in leaving you in charge of the management of the business? A.—I think it would have left me the faithful servant of the Walkers, as I was every day I was with them. That is what I think.

Q.—But servant, as you were, in definite control of the operations of the business? A.—No, not necessarily; if they cared to attend more to the business, I should have been very glad.

Q.—You would have tolerated even Mr. Frank. Would you have tolerated even Mr. Frank? A.—We got along first-rate between whiles, for long periods.

30 Q.—Would you have tolerated Mr. Harry? A.—I was always happier when he was around.

HIS LORDSHIP: I think you are quite right about their being there, because the manager of a bank that failed recently said a Board of Managers was an infernal nuisance.

(Court adjourned at 5.50 p.m. Thursday, May 15th, 1924, until 10 a.m. Friday, May 16th, 1924.)

Friday, May 16th, 1924, 10 a.m.

40 MR. FLEMING: My Lord, Mr. McBeth from the succession duty office in Toronto, is here. I want him to prove a statement filed in connection with this estate. There will not be much discussion, I just want to prove it formally. Will you permit me to put him in the box now?

HIS LORDSHIP: And resume with Mr. Robins afterwards, yes.

Exhibit No. 20: Filed by Defendant: Bundle of correspondence held together with clip.

HERBERT McBETH, Sworn. Examined by MR. FLEMING:

Q.—Mr. McBeth, what is your position? A.—Succession duty clerk in the succession duty branch of the Treasury Department.

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Q.—Of the government of the province of Ontario? A.—Yes.

Q.—You live in Toronto? A.—Yes.

Q.—You have been subpoenaed to produce some documents from the department? A.—Yes.

Q.—I have, from your department, a certified copy of the statement of assets. If my learned friend has no objection, I will put in a certified copy.

MR. OSLER: I have no objection.

HIS LORDSHIP: Yes, by all means.

MR. FLEMING: You produce the original; and do you know about this copy that is certified to by Mr. Meighen? A.—Yes. 10

Q.—That is a true copy of the original record in your office? A.—Yes, that is a true copy of valuations made.

Q.—Valuations made by the Estate, and the final valuations accepted by the government? A.—Yes.

Q.—For the payment of succession duty? A.—Yes.

Exhibit No. 21: Filed by Plaintiff: Statement of Assets: re succession duty.

MR. OSLER: No questions.

HIS LORDSHIP: Give me the net result, without the details.

MR. FLEMING: The total inventory according to the valuation by the estate was \$4,077,663.14, and as finally adjusted and accepted by the government, \$4,295,806.71. 20

CROSS-EXAMINATION OF WILLIAM ROBINS, Continued. By MR.

OSLER:

Q.—Mr. Robins, last night we finished our consideration of the letter of August 23rd, which you wrote to Mr. Lash. You wrote to him again on the 24th of August. Have you a copy in your file there? A.—Not unless Mr. McCarthy has it at the moment.

MR. MCCARTHY: You better take it.

MR. OSLER: This is your letter to Mr. Lash: 30

Private and Confidential.

“August 24th, 1912.

My dear Lash,

I have yours of the 22nd, and I cannot but note with gladness how much softer it is in tone than your previous letter, written as the legal adviser of the Walkers, and your talk with me in the same capacity. It confirms me in the belief that if the professional character had never been brought in you would have been far more powerful to serve all the interests of the Walkers than you can ever be as their lawyer. I am fully aware that on the legal aspect of the case alone I could hardly have a more formidable opponent than yourself: but I am very thankful to know that defeat in the courts will in no degree weaken my weapons of defence if I am forced to defend my reputation: and that this necessity will follow the refusal of the Walkers to deal justly with me I am absolutely sure, and shall be equally sure to the end. To my mind it is not even debatable. 40

Your view of the legal position is naturally based upon your understanding of the facts. I maintain, and I think I shall be able to produce pretty good evidence, that the arrangement made with me by Mr. Frank was not

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only for a year, except as to remuneration. I fancy I shall prove just as good a witness as he will if it comes to that; and all the circumstances of the time favor my version of what took place. I shall never believe that it was remotely in his mind then that they would want me to go at the end of the year. His lack of frankness on the subject during the past three months, and the methods he has adopted to carry out his designs, point in the opposite direction.

10 However, if money compensation was the first consideration with me, I should doubtless lay great weight upon the uncertainties of the law, and the adage that 'a bird in the hand is worth two in the bush.' But that is by no means the position, and it never will be.

You say that 'for reasons which the Walkers consider sufficient' they will not extend the agreement which they regard as terminating on the 31st instant, but I do not. I admit that it is not always legally necessary to give reasons, though I believe that the failure to produce good reasons for prematurely terminating an agreement has certain consequences: and I am quite sure that to refuse any reason to a devoted and eminently successful servant of 24 years would strike reasonable men as positively brutal.

20 It cannot be alleged that the reason is the agreement of the controlling shareholders and directors that my going will, in their judgment, be in the best interest of the business, for two of them have admitted the contrary to me, and one of them, at least, has admitted it to a third party. Therefore, these two directors are clearly making the interests of the business secondary to their present personal comfort: and the question arises in my mind whether this could be justified with their duty to the minority shareholders.

30 You speak of the probability that, if I feel bound to fight for my reputation, I shall not be careful, so far as the Walkers are concerned, in my choice of weapons. I have no hesitation in saying to you, privately and confidentially, that I cannot see the least reason why I should. I shall not have to take up any weapons if Mr. Ed. and Mr. Harry are, even to a small degree, alive to what is due from them to me upon every ground. I say with all my heart—"God forbid that they should fail." No man who knows me well credits me with caring much about money. If misfortune had come to these men, and I could have been useful to them, wild horses could not have separated us, even though it had meant to me only the most modest living.

40 But what are the facts? Over and over again, for years past, I have been assured in the most positive terms that they would never permit their brother to carry matters to extremes: that I could depend upon their support so long as I was right. When they told me, years ago, that they were going to make provision for their interests to be a unit in case either of them should die, to ensure the control of Mr. Frank, (which they often freely discussed with me when he did things of which they gravely disapproved, but which they failed to deal with vigorously), and, as I understood, did make such provision, I was warranted in believing that while they both lived, or if one of them should die, I was safe so long as I deserved to be protected." You knew, Mr. Robins, that Walker brothers had made provision in their

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wills for maintaining their interests as a unit? A.—I knew nothing about the wills.

Q.—On what did you base the statement in this letter? A.—I did not catch that.

Q.—On what did you base the statement in this letter? A.—What they had said to me.

Q.—So when you say you knew nothing about the wills, you merely mean you hadn't read their wills? A.—They didn't intimate a will. They told me they would make an arrangement by which their interests would be a unit, as a voting matter, if either died. Whether they carried it out or not, I did not know, but I supposed they did, because they told me they were going to. 10

Q.—“On several occasions when the indignities put upon me by Mr. Frank seemed more than I could endure, and I declared that I must go, they asked me to have patience, relying upon their regard and backing: and, until now, they always brought about before long a restoration of amicable relations between Mr. Frank and me. More than once, the affront had been so great that an apology was indispensable; and it was offered. I always accepted it in the most friendly spirit, determined to do all in my power to cause the trouble to be forgotten: and several times Mr. Frank and I had talks in which he emphatically assured me that I enjoyed his undiminished confidence, and praised my work as highly as I could possibly desire. 20

These unpleasant episodes were not infrequently marked by special tokens of the regard of Mr. Ed. and Mr. Harry; and once or twice Mr. Frank himself gave substantial expression, as it seemed, to the sincerity of his spoken words when harmony was restored.

Thus, in the years when I apparently had much of life before me, in the very fulness of my bodily and mental vigor, with no lack of tempting opportunities elsewhere, in surroundings more attractive than these would ever have been but for the personal attachment, I accepted the assurances mentioned in the fullest confidence; only to find them worthless in the end. 30

I have been during the past six years in the enjoyment of such easy financial circumstances as a man of my business record may, with all modesty, consider he has earned. After long years of sacrifice of my own fair leisure for the sake of these men, I have been able of late to go abroad for a rest once in three or four years, (though my trip in 1908 was wholly spoiled by Mr. Frank's interference in the Trinidad matter, upon an unsupported yarn from Rust, whom he knew to be my bitter enemy, for whom he had expressed mistrust and contempt while I still believed in him, and who at that moment was clandestinely violating the most positive assurances given to me and Mr. Harry together shortly before in London. Mr. Frank's line of action was some cable messages to me, very offensive in tone, all in plain language, and without asking me whether Rust's story was correct, or what I had to say in explanation.) 40

I have been able to live upon a scale reasonably commensurate with the common estimate of my standing in this business and of my financial position: it has been within my means to pay a couple of visits to Harrogate

for the relief of my gout or rheumatism: I have increased my Life Insurance, at an annual cost of some \$3,900, making my total premiums over \$5,000: I have been able to recognize the growing claims of branches of my family in which I am much interested: and I had looked forward to a continuance of all this, which I feel is no more than I have merited.

10 Much of this comfort I shall have to lose under the very best of circumstances: my insurance I shall probably have to cut down, either by dropping some of the policies or taking paid up policies. And the friends whose promises have failed me, whereby I have dropped the substance of other opportunities for the shadow of this, will continue to draw large revenues from the business which was made in my spare time, for which I was never paid.

I insist that, unless the code of honour is to count for nothing, these men cannot withhold from me substantial compensation for the consequences of their failure to keep the promises they made to me, and which I regarded as of equal value with signed and sealed contracts. I should have considered it a reflection upon them to ask for written guarantees. If they do the very utmost I would think of asking, the loss to me in money's worth will be very great; and they cannot relieve me of the heart-ache I carry.
20 How they can hesitate for a minute I cannot understand. I should have thought they would have hastened to anticipate my reasonable expectations, and have cheerfully exceeded them. Instead of that, I was left to think that neither my feelings nor my material interests gave them the least concern.

Now, happily, there has been a change in that respect, and I hope it may last and bear fruit, in which case the restoration of my faith in the men will go far to offset the inevitable sacrifice of the comforts of life, and the heart-ache inseparable from giving up in this way, after twenty-four years, a connection to which I have devoted the best that was in me, and in which I could not have taken more jealous pride if the business had been entirely my own.

30 In another way Mr. Ed. and Mr. Harry owe me a debt. My troubles with Mr. Frank have been mostly in connection with questions of business on which we have differed, but on which his brothers have agreed with me. In my anxiety to avoid friction, I have generally sounded one or both of the brothers in advance: but when Mr. Frank has come into the discussion, and he has been opposed, I have generally been left to argue with him alone, and the brothers have often failed to help me out with a word. Had they done their part, I am persuaded that most of the friction would have been avoided. This Mr. Harry very frankly conceded the day he went away. I might, of course, have dropped these questions when the discussion became threaten-
40 ing. Until six years ago it made no difference to me, in money, for I had only a fixed salary. But, apparently, my zeal for Mr. Frank's own interests was my fault in his eyes. I wonder whether he would have spent as much time abroad, on the yacht, and on the links, if I had been ready to surrender my studied opinions unconvincd.

In thus throwing upon me the whole burden of discussion, Mr. Ed. and Mr. Harry failed in their duty to themselves and to the business. If, as I

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believe, my persistence has been beneficial to the business, though distressing and disastrous to myself, it is an added claim upon their consideration. The results of my work would be a strong claim if it had been free from these disagreeable features.

If, then, my friends decline to recognize these claims to the extent necessary to avoid reflections upon my reputation, and my legal claims are insufficient, how can I afford to limit my choice of weapons to those which will be inoffensive to them? All the presumptions must be against me—the most natural one that a valuable man is never willingly dispensed with: those which will be drawn from the reputation for honour and liberality enjoyed far and wide by the Walkers, and very largely from the policy which I initiated here and have so uniformly adhered to. When I came here, all that was known about the Walkers away from here was that they were distillers. I induced them to become patrons of curling, lawn bowling, and other wholesome sports, to show an interest in the volunteer forces of the country by prizes for shooting, to go in for the entertainments which have been heard of far and wide—with the result that the popularity of their name excited the jealousy of the Toronto distillers, formerly the best-known people in the business, and led to my frequent snubbing and disparagement in that quarter. 10

The idea that the Walkers would be unjust or mean to anyone, least of all to a faithful employee, would be scoffed at almost anywhere where their name is familiar, which is covering a wide area. Ask any man who has been about for us. Our outside men have constantly reported that our concern stands in the very first rank as to honour and liberality. What would it accomplish for me to barely say that I had left here for no fault, or that I had been badly treated? I should have to show it, just as we had to show that our statements about Wiley were borne out by facts. There would be only one course open to me. I must state what I had done, and what I had suffered, and that I was sent away because the brothers were too weak to stand out against what they admitted to be unjust and bad for the business: And I must put it in such shape as to challenge contradiction and be convincing if not refuted. It would be useless to say, 'I built up a new and valuable business for them.' Valuable is a relative term. And if the reply should be—'we paid him all his services deserved,' and if it should be added—'we offered him a very handsome sum on retiring,' which Mr. Z. A. Lash considered ample,' where should I be? Last year in London I heard an American comedian say that a man would have no more chance than 'a tallow cat chased through hades by an asbestos dog.' That would be me. 30

In the spurious whiskey campaign which you so heartily approved; in our attacks upon William Mida and Dr. Wiley, we didn't regard generalities as adequate. Nor would they be in this case. I should have to give facts and figures. 40

You tell me that I should not gain any sympathy. That wouldn't matter if people concluded that there was nothing against my reputation. But as to sympathy: I haven't noticed that it usually runs to the richer or the

stronger, except from the rich and strong. Millionaires perhaps side with millionaires, but they are the few. When Mrs. E. C. Walker had trouble with her head gardener a couple of years ago, and he sued for \$2,000 for wrongful dismissal, she called me in to see what I could do. I had quiet enquiry made among the 'common people' which convinced me, as well as Mr. Frank and Mr. Harry, that Mr. Ed. would lose if the case went to trial. Mr. Ed. had offered the man \$500, and stubbornly refused to pay any more. I persuaded the man to take \$1,000, and Mr. Frank and Mr. Harry privately made up the difference themselves to save Mr. Ed. annoyance."

10 How long was that before 1912? A.—I can't tell you when it was, you can get the date from the Bartlett firm, if it had gone to suit, they would have been in the matter.

Q.—It was, at all events, only a couple of years before 1912, according to your letter? A.—I don't know. Does it say so?

Q.—"Mrs. E. C. Walker had trouble with her head gardener a couple of years ago." A.—That is it.

Q.—At that time, Mr. E. C. Walker determined he would not be held-up by this gardener? A.—I don't think it was a case of being held-up; my sympathies were entirely with the man.

20 Q.—Notwithstanding your advice, Mr. E. C. Walker refused to follow it.

HIS LORDSHIP: "Stubbornly" is the word used. A.—Yes.

MR. OSLER: Is that an accurate description of the state of mind at the time? A.—I got that from his brothers, his brothers were very anxious this thing should be settled, and they said, Ed. wouldn't pay any more. I made up my mind it was not fair to the man. I persuaded him to take \$1,000 and the two brothers paid the difference.

Q.—When you wrote this letter to Mr. Lash, did you think "stubbornly" correctly described Mr. E. C. Walker's attitude on that occasion?

30 A.—It was a correct description from what the brothers said his attitude was.

Q.—Had you any reason to doubt it? A.—No, none whatever.

Q.—You put it forward to Mr. Lash as a fact, at that time? A.—It was a fact.

40 Q.—"At Sandwich, last winter, I sat through every minute of a trial for defamation of character in connection with the municipal election here. I was sure the jury ought to throw the case out: the Crown Attorney present was of the same mind: the judge said after the verdict that he confidently expected an acquittal: but the jury gave \$1,000 damages, and Coburn learned that they gave it because of the impression that it would not fall upon the Councillor concerned, but would be paid by the Walkers, who were known to be favorable to him, and unfavorable to the complainant."

"So, as between me and the rich distillers, just as between me and my chauffeur, what sympathy there is will mostly go to the poorer man—the under dog: so, if it is sympathy I want, and I am not indifferent to it, I am not afraid to take my chances.

I have never wanted to make any threats. I haven't all these years

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borne indignities which it is much against my nature to accept, to want now to threaten the men for whose sake I have borne them—first from the father, and now from his son: and at times when I was as independent of Walkerville for a living as I was of the moon: but the attitude of the Walkers forced me to point out what I might be compelled to do: and I think my legal right to do it cannot be disputed. If, therefore, what is legal is to be the only measure of their obligation to me, I think I cannot be blamed if I follow their example. And if we cannot agree as to the moral claim (if, indeed, the offer made to me was on that account), it is my right as much as theirs to have my own opinion about it.”

10

Were you making threats against them? A.—No, I was not.

Q.—You swear that? A.—I swear that.

Q.—That is not a haphazard answer? Do you swear, notwithstanding the correspondence we have just read, and notwithstanding the rest of the correspondence I am just coming to, that you made no threats against the Walkers? A.—I made no threats; I told them what I felt I would have to do, and, if they were considered threats by others, they were not considered threats by me.

Q.—Reading from the letter:

“You are wrong, my dear Lash, as to my attitude about my stock. I have never tried to force the Walkers to buy it: I don't care whether they buy it or not: I have reason to believe that I know parties who would take it at a good price: I have only asked to be told whether the Walkers want it, and, if so, to see if we can agree on price without unnecessary delay. 20

I understand what you suggest as to the resenting of an attempt at force, for my own nature gives me all the example needed. And that is precisely why you found me so resentful of the tactics pursued here: an attempt to do what has but a solitary justification, if that—the absence of the written security which I could have had for the asking when these gentlemen felt a little more dependent upon me than they do now. 30

If it is any satisfaction to you, or if it will do ever so little to prove to you that I am naturally neither vindictive nor unreasonable, I will waive the point about the stock, at least for the present, though I am unable to see how I can make up my mind on the main question unless I know what I can get for it. The question with me is a sum total, a net result. The stock can be valued at par for all I care if there is enough else to give that result: and if anyone valued the stock at enough in itself, the rest could go hang—I wouldn't bother the Walkers for another dollar if it was as sure as death that I could recover from them.”

When you speak of the “main question,” you mean you had set your mind on exacting a certain figure? A.—On what? 40

Q.—On exacting a certain figure? A.—No.

Q.—Was not your mind made up? A.—No. I had made the main question throughout the whole correspondence the question of whether they should give to my retirement from that business the appearance of a voluntary retirement; that is all.

Q.—You made up your mind that at the conclusion of the negotiation,

if it were successful, you should be in possession of a certain figure? A.—No, that even is not correct. I made up my mind I should be in possession of a much larger figure than I had been before.

Q.—You had a figure in your mind? A.—I had a figure in my mind; but didn't get it.

Q.—You had a minimum figure in your mind? A.—Finally.

Q.—Which you ultimately did get? A.—I hadn't come to that minimum at the time this was written.

Q.—That was the main question? A.—The main question was whether I would be able to give to my retirement from that business the complexion of a voluntary retirement.

Q.—That was nothing more than to say you had to get a certain sum? A.—I had to get enough money to do it.

Q.—You didn't care where that money came from, whether it came in part from the stock which you owned, or in part from compensation? A.—No, it didn't make a bit of difference.

Q.—You were determined to get enough for that purpose? A.—I was determined to get enough, if I could.

Q.—And, if you couldn't, you still swear to me on your oath that you made no threats? A.—I swear I never made a threat of any kind.

Q.—(Reading from the letter): "I heartily approve of taking the vacation, and as much in the Walkers' interests as my own, to say the very least. I am quite willing to take it on the understanding expressed in mine of yesterday. I know that I need rest, though I am not so sure of getting it. But the trouble isn't with my nerves. I could dare anything I ever dared, and, for the matter of that, I believe that if I could be rid of my heartache I could do as good work to-day as ever. But the wound is slow to heal. Gertrude begs me to forget it—to make up my mind that the men through whom I received it were never the friends I believed them to be. But the pain sticks. I wake up with it; and when I think it has subsided a little, it comes back with full force. Perhaps it will go after a while: I'm sure I hope so. I will not predict what my views will be later, except that never, under any circumstances, would I accept any such sum as \$20,000, unless, of which there is no probability, my stock added should bring enough for my wants. I should feel degraded to accept it, whether in lieu of reasonable notice, or for breach of agreement, or in recognition of my moral claims. If it is that or nothing, I cheerfully say 'let it be nothing.'"

I think I shall be in Toronto on Tuesday, and if so will ascertain whether you would care to see me.

I have been very frank with you in this letter, because I am most glad to respond to the hand which seems to be held out in yours. I don't see that it can do any harm, and it may do some good. It, at all events, gives you my point of view. I didn't in any way draft it, but have run it off just as the thoughts came to me."

There is a foot-note: "Conceding that my reputation will need protection, what other way is there, in your opinion?"

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That is followed by another letter of the 24th of August to Mr. Lash, reading as follows:

“August 24th, 1912.

My dear Lash:—

As it was all I could do yesterday to get off my letter to you, it was hurried, and perhaps imperfect. I should have taken more time but for your reference to a possible ‘announcement’ which I am convinced the Walkers and you would deeply regret later.

I had intended to allude to just one other remark in your letter—namely, ‘The basis of my interview with you, clearly expressed at the time, was that your existing position with the Walkers could not possibly continue.’ That is pretty emphatic language, as I clearly noted at the time. It would precisely fit a case of the gravest misconduct on my part: for such service as mine, no less than charity, might well cover a good deal. 10

And I could not fail to see that your whole attitude was equally consistent with the same presumption; for I perceived not the slightest admission of hardship to me, and I observed with surprise and sorrow that the claims to consideration which I advanced were brushed aside by you almost curtly. And you write now as though the offer made to me was an act of grace, and the Walkers’ acquiescence therein a generous thing. 20

Inasmuch as you were with the Walkers, I believe, for several hours before you came to me, my mind naturally enquires whether it took all that time to secure their assent to what you thought I ought to accept at once and gratefully.”

Did you mean that in that paragraph? A.—I did, or else should not have written it.

Q.—Your impression was that Mr. Lash would have liked to have done better for you, but couldn’t get the Walkers to agree? A.—No, I didn’t form any conclusion as to whether Mr. Lash would like to do better for me or not; I tried to explain that yesterday, that I thought he came with a distinct understanding of what he might suggest to me. 30

Q.—I will put it this way: He did not explain, according to you, whether it was Lash or the Walkers who were sticking on increasing the amount to such a sum as would enable you to retire on the terms you wished to retire? A.—I am not talking about that, I am talking about \$20,000.

Q.—I am talking about the paragraph in the letter. A.—That paragraph refers only to the \$20,000.

Q.—Will you answer my question: Knowing Mr. Lash, and your relations with him—knowing the three Walker brothers, and your relations with them—you tell Mr. Lash that your mind naturally enquires whether it took him several hours to secure their assent to what Mr. Lash thought you ought to accept? A.—Yes, I couldn’t make it any plainer than that, could I? 40

Q.—I am asking you if that paragraph correctly expresses what you had in your mind at that time? A.—Precisely.

Q.—(Reading from the letter.) “And I am still, at this moment, with-

out the least clue to what really precipitated the crisis, unless it is to be found in the information indirectly received that Mr. Frank blames me for the Bristol Negotiation correspondence—though you wrote me, after his return from Europe and meeting with you, that he then understood the matter and was pleased that you had left the way open for a renewal of the negotiations. Yet, only a few days later, he opened a discussion of the subject; complained bitterly that the negotiation was not peremptorily stopped when the price was dropped from \$15,000,000, though he did not indicate me, and did indicate Mr. Harry (to whom he had given 'positive instructions' in New York before sailing), and he deliberately insulted me because I candidly but politely expressed my opinions.

10 What can any man make of a situation such as this? And what man with a spark of spirit would be content with it?" You were also communicating with Mr. Harry Walker at that time, by letter? You produce a copy of a letter to Harrington Walker, dated the 25th of August, 1912. Mr. Harrington Walker was away from Walkerville at this time? A.—Down at Magnolia.

HIS LORDSHIP: What salutation does he give Mr. Harry?

MR. OSLER: That does not appear in the copy in my brief, it is a copy
20 produced by Mr. Robins.

THE WITNESS: I always addressed him, "My dear Mr. Harry."

MR. OSLER: The letter to Harrington Walker, dated August 25th, 1912, is as follows:

"August 25th, 1912.

My dear Mr. Harry:—

As Lash's letter of the 20th has been duplicated to Mr. Frank for conveyance to you, I think you ought to see my reply, a copy of which is enclosed. Lash is a great lawyer, but even he can make mistakes: and I do not think his interpretation of his duty under his retainer will stand close
30 investigation. However, if there must be lawyers between us, I would as soon he should be yours as not, except that it naturally rather shocks me to find a man who was my friend before he knew you or your brothers, and who became your adviser through me, acting against me in what may be the fight of my life.

The allusion to a possible "announcement" in a few days is ominous, and I feel bound to point out to you that if any hostile step toward me is taken it must precipitate action on my part which cannot fail, whatever the consequences to myself, to give you and Mr. Ed. a great deal of worry, which is what I earnestly desired to avoid when I proposed the interval of
40 two months. It would make the situation irretrievable, as I think you cannot fail to see. I emphasize this because Lash does not definitely accede to the proposal I made, and it is impossible for me to allow it to be made conditional upon any promises on my part except that I am prepared, if you all are, to do nothing during the two months which will militate against an amicable settlement later. And there is only this week left for the decision.

No one can blame me for the shortness of the time for consideration of a question of no little importance to all concerned. You know when I

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learned what conclusion you and your brothers had reached—the 6th instant, and that I then pressed for a prompt settlement of the matter about which there was no difference of opinion, namely, your option to take my shares if a price could be agreed upon. It never entered my head, of course, that my protest against the arrangement I claim was made with me by Mr. Frank being violated should take the form of my insisting upon staying here, for my arrangements for many years have not been with the company, but with you and your brothers, who, as the controlling interest in the company, could bring about any relations between the company and me which you desired. And my objection now will be, as I conceive (for I have had no legal advice on it), that you have failed to have the company retain my services, and should make good to me the damage I shall suffer through such failure. 10

Therefore, I can see no object in any “announcement,” to say nothing of the certain consequences of it.

It was not until the 14th that any attempt was made to come to an understanding with me, and then Mr. Ed. was on the eve of going away for a considerable time. How long you would have been prepared to stay here I do not know, nor whether negotiations could be successfully continued in Mr. Ed's absence. 20

Q.—Did you doubt whether negotiations could go on successfully in Mr. Ed's absence? A.—I didn't know to what extent they would want to have Ed. Walker in it.

Q.—Did it occur to you it was not unlikely they would want to have him there, and have his concurrence? A.—I don't know other than he desired to be in communication, and I understood he was going to Europe.

Q.—Will you answer my question? A.—You put something in my mouth, I can't answer your question without accepting what you suggest. Now, if you will ask me what I understood, or what I thought, I will tell you frankly. I cannot answer your question in your form without protecting myself against false inferences. 30

Q.—I think my question was a question you could have reasonably answered. A.—You think so, I don't, I would like you to put it in some other way.

Q.—I think I shall have to accommodate myself to you. Did it occur to you as likely that they would not come to a conclusion on this without Mr. Ed's presence? A.—No, it was not that; I simply say I don't know to what extent Mr. Ed's presence was necessary, or being able to communicate with Mr. Ed. would be necessary. That is all. All I had in my mind is suggested right there. 40

Q.—We have heard the letter read, and heard necessarily what you said. I ask you now, what had you in your mind that prompted what you stated in the letter? A.—I thought that possibly Mr. Ed's absence might interfere with matters going on. That is the thought.

Q.—And that was the thought that was in your mind at that time? A.—That it might, not that it would, but that it might.

Q.—“But I think you will realize Mr. Frank is the very last person with

whom I could profitably have any discussion, for you can hardly be under any misconception as to what I must think of his action toward me.

I purpose going to Toronto to-morrow to arrange with a lawyer to act for me in the event of any hostile course being adopted here at the end of the month, which is the least I can do in prudence under the circumstances. I learn that Lash is expected to be there on Tuesday and Wednesday, and I will telephone him to ascertain whether he would like to see me. It may possibly seem advisable for his lawyer and mine to meet." A.—There is an error I discovered, it must be, "him and my lawyer to meet."

10 Q.—No doubt you intended to say that. "My object is to show in the clearest possible manner my desire to prevent precipitate action which cannot fail to throw the fat into the fire, and I hope you and Mr. Ed. will see it in that light."

Well, then, an arrangement was made, Mr. Robins, that you should go away for a couple of months. And Mr. Lash wrote to you on the 28th of August.

MR. MCCARTHY: I do not know whether Mr. Robins answered that question of yours, or not. My learned friend asked you a question, Mr. Robins.

20 THE WITNESS: I did not hear it.

MR. MCCARTHY: I will ask the reporter to repeat it. (The reporter repeats the question: Well, then, an arrangement was made, Mr. Robins, that you should go away for a couple of months.) A.—I did not understand that to be a question, I thought it was an observation. That was not precisely correct; it was not that I should go away for a couple of months, it was that I should go away on a holiday, and at the end of a couple of months we possibly would be able to arrive at some conclusion, say within a couple of months. I didn't stay a couple of months as a matter of fact.

30 Then there is the letter Mr. Lash wrote from Toronto to F. H. Walker, dated August 27th, 1912, reading as follows:

Personal. "Toronto, August 27, 1912.
F. H. Walker, Esq.,
Walkerville, Ont.

My dear Walker:—

40 In thinking over the Robins matter I thought it might advance the situation somewhat were I to suggest to Robins that, instead of carrying over the present position till the end of October, thus extending his engagement until that time, as I thought his suggestion to your brother Harry involved, he should assume that his engagement will not be renewed, and that between now and the 31st of October he should take a rest or a vacation of his own, not expecting to return to the Company's employ, and that if during that time he desired to talk to me further about an amicable adjustment I would be glad to see him, and that I would then talk to you further. My object in doing this was that the situation as between him and the Company would be a fixed one, and that the question of your taking over his stock, which he made the prominent feature in connection with the whole situation, need not now be discussed. I thought that in six weeks

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or two months from now all parties would be better able to discuss what was fair to be done, freed from the effects of the personal element which now so largely bulks up. I accordingly wrote him from Muskoka and made this suggestion, telling him that if he said he would carry it out I would ask you to defer making any announcement to the staff that his engagement was at an end or making the formal changes which must necessarily be made for the future, treating the situation in the office so far as the staff is concerned as if he were on leave of absence, although he would actually not be on leave, as he would not be in the service of the Company beyond the 31st of August.

As I intended being in Toronto to-day, and thinking he might want to see me, I telegraphed him that I would be here to-day. He came down, and I have just concluded an interview with him. He is willing to act on my suggestion, and I hope you will do the same. As I am acting as your professional adviser in this matter, I thought it right to say to him that I was making this suggestion as a mutual friend and without your knowledge; but I would like you to comply with it as I feel instinctively that it will be in the general interest to do so. I avoided discussing the legal position except to say that you took the position that his engagement would end on the 31st of August and that it would not be renewed. I told him, however, that in asking him to carry out my suggestion I did not ask him to waive any rights which he thought he had or might have.

I intend to go back to Muskoka to-morrow evening, and I would like to hear from you by wire, sent to me here, as early as you can to-morrow. If you cannot get off a wire to-morrow in time, send one to me at the Royal Muskoka Hotel.

I presume you would wish me to communicate with Robins. Perhaps, however, you would prefer communicating yourself. I told Robins I would write you to the above effect to-night. He told me he intended to return home to-morrow.

I have not heard from you since I wrote you enclosing a copy of my letter to Robins in answer to his which he wrote on the 15th, after he had seen your brother Harry. Of course Robins on his part is to say nothing." Then, I think you assented to that on the 29th of August, when you wrote Mr. Lash, Mr. Robins, did you? A.—I did.

"August 29th, 1912.

My dear Lash:—

Your letter of yesterday, enclosing copy of yours of the previous day to Mr. F. H. Walker, reached me at the King Edward Hotel.

I think your letter to Mr. Walker correctly expresses the understanding between you and me. As I have not been acting through a lawyer, it is quite possible that I may not always have put my ideas into the most appropriate words, but I feel sure that everything is clear between you and me. Even if I had a written contract with the Company for a term of years, it would be folly to insist upon staying here against the Company's wishes: and my position is that the Walkers, with whom my arrangements have always been made, and who, as controlling shareholders, could and can effect

any relations between me and the Company they wish, have made it impossible for me to continue with the Company, in breach of a clear verbal understanding.

I sincerely share your hope that it may not become necessary to raise that question outside of ourselves. I will initiate nothing during the next two months to jeopardize an arrangement: and I very much regret that the Walkers did not consult you in the first place as the mutual friend, for I cannot doubt that such a course would have entirely avoided the chief difficulty which has arisen."

- 10 What did you mean by "the chief difficulty"? A.—Why, the chief difficulty was the atmosphere. You have read one of my letters of the 29th of August, I wish you would read the other, it is very short.

Q.—I have a notation regarding that letter.

Private.

"August 29th, 1912.

My dear Lash:—

I want to tell you again how greatly it eased my heart to talk with you in Toronto on Tuesday upon the old footing, and to have your assurance that nothing you had heard had weakened your respect for me. Perhaps I may never learn what it was that so unexpectedly brought Mr. F. H. Walker to the determination to force me out; and it will always seem to me very unfair to leave me in the dark about it. His action, however, would not surprise me so much: but that his brothers should pursue the same course toward me will always be inexplicable.

- 20 I appreciated greatly the little note you penned at the foot of your letter yesterday. It seemed to me to speak volumes of sympathy, and I have needed that very much of late. When I told my girls and my wife last night it cheered them immensely, so that I have the more reason to be glad.

- 30 I will write you after a while as to the only process which appears to me feasible for arriving at a settlement with the stock valuation made the last feature. I have no definite plans as yet for going away, but I think it will be a course for my rheumatism somewhere, and I am making enquiry about Caledonia Springs.

With kindest regards, and warmest thanks from my family as well as myself,

I am yours very sincerely,"

Then, on the second of September, I think, is the next letter I am able to use, which you wrote to Mr. Harrington Walker.

"Sept. 2nd, 1912.

Dear Mr. H:—

- 40 Upon my return from Toronto last Wednesday night I found your telegram, and I replied on Thursday that matters had been arranged as I suggested to you. You have perhaps been sent a copy of Lash's letter to Mr. F., setting out the understanding; but if not, I may say briefly that on neither side is anything to be said or done which might militate against a satisfactory settlement during the next two months. That means, of course, that there shall be no inkling of what has taken place—I shall be most careful

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to keep my promise in that respect, and I hope nothing will leak out on the other side.

I am arranging to go down to Caledonia Springs between Ottawa and Montreal, for my rheumatism, and I am trying to secure accommodation for Wednesday.

I thought that I might have had a line or two from Mr. Ed., by this time, but there has been nothing.

When I left the office on Saturday, closing a connection of nearly twenty-five years, I went out just as I might have gone had I been the most unfaithful and unprofitable employee the concern ever had. I cannot help 10 thinking that the manner of my going will sometimes prick the consciences of your brothers and yourself in time to come.

I hope you are getting along nicely, and I am,

With kindest regards,

Yours sincerely,"

Q.—It had been arranged, of course, Mr. Robins, that you should leave matters in such a position that nobody would suspect anything? There was no trouble? A.—That was the understanding.

Q.—Then you wrote to Mr. Harry again from Caledonia Springs on the 15th of September. A.—Why don't you read his letter to me of 20 September the 9th, before you read my letter to him?

Q.—I have not got a letter of September the 9th. I have a letter of September the 8th. A.—That is it.

Q.—From J. H. Walker. A.—Let us have the salutation.

HIS LORDSHIP: What is the salutation? A.—He always called me, "My dear Mr. Robins."

MR. OSLER: The letter reads as follows:

"Sept. 8th, 1912.

My dear Robins:—

Please pardon me for not answering your letter of the 2nd sooner. I 30 intended doing so at once, but every time I have started something has interfered.

I was glad indeed to get your message and also your letter, and hope and pray that before the end of October a satisfactory settlement will be reached.

You may be sure that I will do all in my power to keep the matter from getting out.

E. C. and his wife were here for luncheon a week ago yesterday on their way to New York. He asked me to say to you that he had received your letters and that (he) felt that he should have acknowledged them, but he 40 hardly knew what to say, and that he was really not up to writing. He did not seem to be quite so strong as he was when I was in Walkerville. Personally, I think it is a mistake his taking this trip; however, I hope it will prove to be a good thing.

I was glad to hear you were going to Caledonia Springs and hope most

sincerely that it will do you a lot of good. I have been feeling very well lately, etc."

MR. MCCARTHY: Is that written from Magnolia?

MR. OSLER: I presume so.

THE WITNESS: I have another little paragraph here.

MR. OSLER: This purports to be a copy of the correspondence. A.—It did not purport to be a copy of everything.

Q.—You only gave us what you thought was good for us. A.—Good for whom?

10 Q.—Good for the clients I am representing. A.—I gave you everything I thought you would care to have. You can have the original letters, if you like.

Q.—I don't want them now. A.—Mr. Fleming told me you were not entitled to the correspondence at all, we offered it to you voluntarily, and it was a matter of giving it to you as soon as possible.

Q.—The giving of the letters was a matter of grace? A.—I understood from Mr. Fleming you were not legally entitled to the correspondence, but I had nothing to keep back, and I gave it to you.

20 Q.—Having nothing to keep back, you only gave what was good for us. MR. MCCARTHY: Why don't you read that?

MR. OSLER: I will not have my cross-examination interrupted. I will read the correspondence from my brief; if the witness has kept back some parts of letters, my learned friend can bring that out.

HIS LORDSHIP: That may be correct; it is more a matter of time. I should think you would be willing to accept it.

MR. OSLER: That may be so. I don't know what is in it. I don't suppose there is any bomb-shell.

30 HIS LORDSHIP: It is strange you should ask for copies, and be given what are supposed to be copies, and when the trial is on, you should have what is not correct.

THE WITNESS: That is the concluding paragraph.

MR. OSLER: It is not here.

THE WITNESS: I should like his Lordship to know what it is.

HIS LORDSHIP: I think you better let it in.

MR. MCCARTHY: Didn't you give them a similar copy of what you have in your hand? A.—Yes, at least, I thought so. This may have been left out inadvertently.

40 This is the paragraph: "Have been feeling very well lately, but still have quite bad days, however, they don't come as often." All I wanted was, he and I talked about our affairs in the same friendly way.

MR. OSLER: Mr. Harry was telling you he was having his bad days? A.—He was telling me how he was, assuming I was taking an interest in how he was.

Q.—We will come to the letter of September 15th. These copies are really not accurate at all? A.—No, but I gave you a copy of what I had myself.

Q.—I am sorry I did not know that act of grace was not complete. A.—I wish you to call attention to these facts.

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MR. McCARTHY: You are better off than we were, we got nothing.

THE WITNESS: I gave you, in fact, what my solicitor Mr. Fleming said you were not entitled to, and I was perfectly willing. It is what you said you would like to have.

MR. OSLER: Do you mean to say I said I would like to have extracts?
A.—No.

Q.—I asked for letters. A.—That is what you had when you cross-examined me on the Discovery. I gave you a copy of what I had at the Examination, precisely.

Q.—We will get on with the cross-examination.

“Copy.

Private.

Caledonia Springs, Ont.,

Dear Mr. H.:—

Sept. 15th, 1912.

I received your letter of the 8th a couple of days ago and was very glad to know that you have lately been feeling pretty well. I trust the improvement will keep up and lead to your complete recovery.

I shall continue to share your desire for a satisfactory settlement next month, though I must confess myself much less hopeful of it than when Mr. Ed. left home. What he then said indicated his intention to interest himself actively in the matter before sailing: and I cherished the expectation that it would mean the consideration of the question by him and you in the spirit which you had uniformly manifested toward me until the 6th of last month, and the view always heretofore taken by you both of the causes of friction between Mr. Frank and me. Had that expectation been realized, I believe the result would have been to remove all danger of unpleasantness and gone a long way toward dispelling what is the most bitter feature of the situation to me.

If, however, as appearances indicate, our past specially close relations, and your approval of my conduct, are to have no bearing upon the present difficulty, I cannot be very sanguine of Lash's ability to offer any terms which it will be possible for me to accept. Still, I will hope for the best.

While I make the fullest allowance for Mr. Ed's state of health, I know, of course, that there must be another explanation. His discussions with me showed that he had no difficulty in grasping all the facts and considerations I put before him.

I am very hopeful that the treatment here will relieve my rheumatism, though it is not as yet apparent, otherwise I am not getting any benefit. I am not sleeping well, nor is there any abatement of the headaches which I have had pretty constantly for the past three months. I do not look for any improvement in that respect until I am rid of suspense. With kindest regards,

I am yours sincerely,

Was that letter true, were the statements in that letter true? A.—Yes, every one of them.

Q.—I would gather from that letter that Mr. Ed. was your sheet-anchor in this controversy? A.—Well, you can gather what you please; there is nothing there to intimate it to me.

Q.—Was it not a fact you were largely relying on Mr. Ed. to secure the terms you wanted? A.—I thought something would come from his

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request that I should write him before he went abroad, as I understood he was going abroad, I thought that meant he was going to give special attention to the matter.

Q.—Was not it a fact that your expectation, or hope, of being able to arrive at a satisfactory arrangement was based largely on what you thought would be Mr. Ed's view? A.—I didn't know what Mr. Ed's views would be.

Q.—I know, but you hoped they would be favourable to you? A.—What I felt was, if Mr. Ed. gave consideration to the matter, it was likely to be something like just and right.

10 Q.—And you hoped, did you not, that he would be able to carry his view?
A.—Well, naturally.

Q.—Then, did you see any of the correspondence between Mr. F. H. Walker and Mr. Lash? A.—Never, until last night.

Q.—Let me read to you a copy of the letter that F. H. Walker wrote to Mr. Lash on the 27th of September, 1912. I want to have your comment on it.

(Mt. Clemens, Mich.)

“Sept. 27, 1912.

My dear Lash:—

20 Replying to yours of yesterday, I can quite understand how the Robins' matter puzzles you—if he would only confide in you fully as he should do it would simplify the matter a great deal, but in his present humour it makes it most difficult. What Harry writes you is quite correct, namely, if he had only told me frankly last fall when I suggested we should let the old agreement continue another year—that he was in any serious financial difficulty I certainly should gladly have proposed that he should stay two or three years longer until he could have recovered his position financially, but he never confided in me, nor consulted me regarding his condition, so I had no opportunity of advising him or helping him in any way. You understand he has never consulted me in any way about his agreement, or his own condition.

30 I regret very much now to see him leave us when he is in trouble, but it is too late—the affair has gone too far to consider his coming back to us for even a limited period. He has unfortunately talked to at least two men in Walkerville about the matter, and has undoubtedly said nasty things about me and is blaming me entirely for all the trouble, and if he should come back now it would appear as a great victory for him, backed by my brothers, against me. This, of course, I cannot consider for a moment. Unfortunately both Ed. and Harry have allowed him to get the impression that they side with him and think I am treating him badly. I don't at all blame Robins for having this impression from the correspondence I have seen between them and him. He has misstated several facts in his letters to

40 them reflecting seriously on me and I have been obliged to ignore them in order not to annoy my brothers. They have, so far as I know, not attempted to correct him and so his statements stand. What I have written disposes of your first question in the negative.”

I suppose this was as to the suggestion whether you could continue in the business? A.—Whose suggestion?

Q.—Mr. Lash's suggestion. A.—That is absolutely news to me.

Q.—You have not read this letter before? A.—I read it last night.

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Q.—“The second question I am glad to be able to answer in the affirmative—in spite of all that has happened I have a most friendly feeling for Robins and shall be very glad if I can assist in helping him out of his financial difficulties if they are serious and he is in need of assistance—more than this I think I cannot say but I assure you I am most sincere in this statement. Am sorry I cannot go down and talk this over with you but as you understand I do not want to interrupt my course of treatment here unless absolutely necessary. I am feeling wonderfully well after three baths but I should have at least fourteen. I have great faith that this treatment will keep me free from gout for a long time and at least let me get some ducks 10 later on. With regards.”

HIS LORDSHIP: Before you ask a question, which sometimes seems to annoy Mr. Robins, I am going to ask him to make what comment he likes upon that letter.

MR. MCCARTHY: May he have a copy before him? A.—I think I have it in mind, I read it last night. It was a vast surprise to me. My first comment, my Lord, and I exceedingly regret to have to make it, is that the letter is untrue.

HIS LORDSHIP: It is a letter written by Mr. F. H. Walker, not to you, but to Mr. Lash, his legal adviser. A.—Yes. It is untrue. He did know of my 20 heavy financial losses. He exaggerates the matter a little when he speaks of my financial difficulty. I was not in any financial difficulty, but I had made very heavy losses. And he knew it, and knew it very well, because I told him all about it. I didn't tell him I was seeking any assistance from him, I told him incidentally.

MR. OSLER: Perhaps you should have, and let them compensate you. A.—No, I didn't need it.

Q.—He does not say he did not know you had made financial losses. A.—He says he regrets he hadn't known.

Q.—“He didn't tell me he was in any serious financial difficulty.” A.— 30 He is talking about losses.

Q.—No. A.—I didn't tell anyone I was in serious financial difficulty, I never told that to Lash, because I was not.

Q.—Therefore, Frank Walker did not know you were in serious financial difficulty. A.—I saw some other correspondence that shows he knew perfectly well. What he meant was my losses, which had been mentioned to Lash.

Q.—Which had been mentioned to Lash? A.—Yes, not in detail, but generally. Now, the next thing is—

Q.—Wait a moment. Do you mean to comment on the letter? A.— 40 Yes, his Lordship asked me to make any comments I pleased. The next thing I want to speak of is that no suggestion, of the most remote kind, ever came to me to go back; nothing would have induced me to go back. That was a purely voluntary suggestion on the part of Mr. Lash. Now, as to this pretense that if Frank Walker had known I was bothered, financially or otherwise, he would have been glad to have helped me out; if we have these letters, as we intend to have them, there are other letters to show he had no such sentiment in his heart.

Q.—Is that all you want to comment on that letter? A.—Wait a minute; his Lordship asked me to make all that I wished. Yes, I want to make another: in all my long correspondence no statement I made was challenged in any particular. Mr. Frank Walker in writing to Mr. Lash, who was dealing with me, does challenge my statements, but does not take the trouble to tell Mr. Lash what my mis-statements were. I would like to comment on that.

10 Q.—You think that letter should have been many pages instead of a page and a half? A.—I don't care how long, as long as he told the truth, and put Lash in a proper position to deal with me; and if anything was to be challenged in what I was writing, it should have been done then, not now.

Q.—Then the next letter is a letter from Lash to you on the 4th of October, 1912. A.—You do not want to read Harry Walker's of the 3rd?

Q.—I don't think I have left out anything of consequence.

Personal.
William Robins, Esq.,
Walkerville, Ont.

"Toronto, Oct. 4th, 1912.

My dear Robins:—

20 I suppose that you will have reached home by this time; if not, that this will await your return.

As you and I are going to discuss matters as old friends, I suggest that when we meet you should be able to explain to me in detail your financial circumstances. I could not help inferring from previous interviews that things financially are worrying you, both at present and in anticipation. I may be able, if I know all about the position, to help you in solving the difficulties, and if I can do so you may be sure that it would make me happy.

I hope that your stay at Caledonia Springs has dispelled your rheumatism and improved your health generally."

30 "I shall be in Toronto on Tuesday and Thursday only of next week."
Do you say, when that letter was written, Mr. Lash, or the Walkers, knew that you were in financial difficulty? A.—I have not said they knew I was in financial difficulties.

Q.—You will agree with me? A.—Lash says that he inferred; I am not responsible for his inferences.

Q.—I did not ask you to assume any responsibility; I asked you whether or not, at that time, you suggest that they knew of your financial difficulties? A.—I do not see how they would, when I had never suggested it to them.

Q.—I do not either. A.—Mr. Frank knew of my losses.

40 Q.—Mr. Frank knew you had had losses. You replied to that letter on October 5th, 1912, Mr. Robins, I think.

"Walkerville, October 5th, 1912.

My dear Lash,

Your kind letter of yesterday touches me deeply, and strengthens my conviction that if you had come into this matter as the mutual friend before the irrevocable decision was reached, much present unhappiness and future regret to all concerned would have been avoided.

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I will go down to Toronto on Monday and be at your disposal on Tuesday. If you cannot spare time enough that day, I will stay over.

I got home Tuesday night, I cannot yet say much about my rheumatism, but I got a lot of fresh air, and friends think I am looking very well. But the mental strain has been severe, and my insomnia continues. I had planned to write you to-day, asking whether we could not soon get together. Apart from my desire to end the suspense, the situation is threatening to become embarrassing, for there has certainly been some 'leakage' somewhere. I am, therefore, very glad to have heard from you.

Most heartily reciprocating all your goodwill, and with kindest regards, 10
joined in by my wife and Gertrude."

HIS LORDSHIP: The impression I get from the Lash letters is that Mr. Lash explained frankly he was acting for the Walkers, but throughout Mr. Robins has been attempting to drive him off that ground, and get him to take what he calls a more sympathetic view of the case; and Mr. Lash points out again that that cannot be done, but Mr. Lash is willing, as much as he can, in view of the circumstances, and what he considers the interests of his clients, to help Mr. Robins personally. That is what I get out of it.

MR. OSLER: I think that is it exactly, and I do not think the correspondence is capable of any other interpretation. 20

Q.—Then, on the 8th of October, I think you had a long interview with Mr. Lash? A.—Yes, this letter identifies it, the letter of October the 9th.

Q.—Before we go to that, I want to read to you Mr. Lash's letter to F. H. Walker, at Mount Clemens, Mich., reporting this interview with you.

Private.

"Toronto, Oct. 8th, 1912.

Frank H. Walker, Esq.,

Park Hotel. Mount Clemens, Mich.

My dear Walker:—

I wrote Robins last week suggesting that at our next interview he should be prepared to explain to me his financial position. I told him I would be in Toronto to-day. He came down last night, and I have just concluded nearly a three hours' interview with him. His nerves are in a much better condition, and he did not get excited at all." 30

HIS LORDSHIP: Let that go? Is that correct? A.—I am willing to take Mr. Lash's statement.

MR. OSLER: "He explained to me what his position was; and, although he has assets enough to meet all his liabilities and leave a small surplus, yet, speaking generally, he would have no income except the dividends on the Hiram Walker & Sons, Limited, stock, and that stock would have to be made use of to raise money to meet liabilities, so that the dividends on it would have to bear a first charge for money borrowed. If he sold the stock, it would amount to the same thing, as he would have to use some of the proceeds to meet liabilities." 40

Is that a correct statement? A.—I have no doubt it is; I can't recall now; I have no doubt.

Q.—"Seeing that the question of income would be all-important to him for the next few years, I suggested to him that we might talk about an

arrangement on the following lines,—To have an agreement made with him for the purchase of his stock at a price to be agreed upon; to limit a period (say three years) for the completion of the purchase, giving him the right to call for the completion of the purchase (if he wished to do so) at any time during the period, but not giving you the right until the expiration of the period to complete it; meantime to allow him to receive the dividends on the stock; a term of the agreement to be that if the business was sold in the meantime, or reorganized under a new plan, you should have the right to put his stock in, and he should have the right to accept what it might represent on the sale or reorganization, or the cash purchase price, and that a payment on account should be made to him now of an amount sufficient to relieve his financial difficulties. I told him that I had not suggested any such plan to you, but that if he thought favorably of it we could discuss the figure or the price for the stock and the amount to be paid on account now. He would not discuss the basis at all; he wanted to cut clear once and for all.”

10 Is that correct? A.—Yes, I should not have put it that way though.

Q.—But it is substantially correct? A.—It is substantially correct. I did not think it advisable to continue to hold the shares.

20 Q.—“I thought that the suggestion would have been attractive to him because of the income. I hesitated to make it, as I myself saw objections to it, but I took the responsibility, feeling that if the figure we might arrive at for the stock was satisfactory you would agree to the other. However, that suggestion is at an end.

We then talked about the value of the stock. I said I did not want to fix any value for the stock; that I wanted to get for him a lump sum which would buy the stock and settle all differences. I told him that the figure he first named, \$400,000, was out of the question, and he said that it was a matter to compromise on.”

30 Is that right? A.—I don't know if I said that or not, I can't remember whether I said that or not. I had already come down to \$350,000. I suppose that was recognition it was a matter of compromise.

Q.—You did, in fact, ask for \$400,000? A.—I suggested \$400,000.

Q.—You won't put it on the ground that you asked for it? A.—No, I can't say I did. The letters are there to speak for themselves.

Q.—Will I put it this way; you suggested \$400,000, but asked \$350,000? A.—Yes, my first suggestion was \$400,000.

HIS LORDSHIP: That is ordinary business bargaining.

40 MR. OSLER: Did you say that the higher figure was a matter to compromise on? A.—I can't remember whether I said that or not; if Lash says so, and as using my language, I am willing to stand by it, I will not quarrel with it; I can't remember whether I used that language or not.

HIS LORDSHIP: That is a very fair statement.

MR. OSLER: “I said that it was hardly fair for him to fix an exorbitant amount and then talk about a compromise with reference to it; that the question was not one of compromise at all, but was to endeavor to arrive at a figure which reasonable men would consider fair and which I would take the responsibility of affirmatively recommending.”

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Do you remember that? A.—Yes, that correctly represents; yes, that is correct.

Q.—“I asked him what his ideas of a ‘compromise’, as he called it, were. He said,—\$300,000. I am giving you necessarily only the isolated, main material items of our interview. He enlarged a great deal upon his reasons for asking that sum. I told him that if I was going to be able to bring about an agreement which would end the difficulties I must be able conscientiously to recommend an amount which I sincerely believed would under all the circumstances be a reasonable one, and that I could not recommend so large a sum as \$300,000, and that if I were asked the question,—did I consider that amount reasonable?—I would have to reply that I did not, and that I considered it very unreasonable.” 10

Is that substantially correct? A.—I think so, yes.

Q.—“From what your brother Harry has said to me as to what he and Mr. Ed. would be willing to do personally, I had determined sometime ago to recommend a payment of \$250,000, which would of course take the stock and settle all differences. In fixing this figure in my mind I was somewhat influenced by what I knew your brothers would be willing to do, and I was prepared to recommend it to you and to think that it was reasonable under all the circumstances, and, in fact, generous. I told Robins that I would recommend the payment of this amount, but that I could not recommend the larger figure. I told him also that my sincere opinion was that under all the circumstances the sum was a generous one and should be accepted. We talked a long time about it, with the result that he would not recede from \$300,000.” 20

Is that correct? A.—That is correct.

Q.—“I expressed my disappointment and said that I thought when I had fixed \$250,000 in my mind and mentioned that figure to him it would have been at once agreed to, and that I could not conscientiously recommend any more. He made a similar reply with reference to the \$300,000, and expressed his disappointment that I thought it too much, and that he could not accept any less. He made the remark (which I think was made without fully considering what it meant) that he could not do what he had in view with respect to his future on less than \$300,000, and that if he were in a different position he might look at it in a different way. We parted in the most friendly way, I saying that if he changed his mind he should let me know. He answered by a similar remark,—that if I changed my mind I should let him know.” 30

Is that correct? A.—That is correct.

Q.—“He made allusions to justifying himself, bringing out the facts, &c. I told him that any allusions of the kind would make it more difficult on my part to effect an arrangement.” 40

Is that correct? A.—I can't remember that, that is too much detail.

HIS LORDSHIP: All these letters show that he thought the thing well out. He was, what I call, making the fight of his life. He no doubt expressed these things, having retained them so long, to Mr. Lash, but he cannot remember the whole thing now. Anyway, it came down to \$300,000, and \$250,000.

MR. OSLER: That is it.

On the 8th of October, 1912, Mr. Lash sends a copy of that letter to Mr. Harrington Walker, as follows:

"Toronto, Oct. 8th, 1912.

J. Harrington Walker, Esq.,
Rockledge, Magnolia, Mass.

Dear Mr. Walker:—

I enclose copy of a letter which I have just written to your brother Frank, re Robins. I need not add anything further, except to say that I shall be
10 glad to hear from you on the subject."

On the following day, the 9th of October, you wrote to Mr. Lash again, Mr. Robins, as follows:
Private and confidential.

Walkerville, October 9th, 1912.

My dear Lash,

You said you were grieved that I could not yesterday see eye to eye with you, and I was truly grieved that you should feel so; for I had fully expected that you would regard my offer as very fair, and I was so anxious you should that I had 'pared' very close in estimating what would enable me to give to
20 my 'stepping down' a fairly reasonable complexion of being voluntary.

I want you to thoroughly believe that I greatly appreciate your personal interest and kindness: but I cannot help feeling that if you more fully realized what I have gone through for years past, (the petulant and contemptuous reception of ideas carefully thought out, with nothing but zeal for the interest of the business, while my critic was taking his ease; the disregard of my long and close knowledge of matters of which he knew little or nothing; his diminishing respect for my judgment, in spite of the accumulated proof of my successful handling of difficult questions; the mortification of his interference in matters which were supposed to be left to me), you could not but
30 more fully sympathize with my contention that I have now been treated with gross brutality and that my claims are morally much stronger than a written contract, because the influence against me has prevailed only by reason of broken promises which I believed to be as good as any document.

My offer included continued goodwill toward the Company, which I cannot possibly entertain unless I feel that something has been done with the object of mitigating to some extent the undeserved cruelty of my position—not by you, but by the principals. I cannot so regard what you proposed, if for no other reason than that it barely equals what J. H. expressed as his view of the least that should be done if the separation had come about
40 without any of the present painful features, and in a way which would have given ground for none of the unpleasant inferences which I fear cannot now be wholly avoided, locally at least, whatever happens. I have this morning learned that significant remarks have already been made here, by a man who is unfriendly to me solely upon suspicion that I covertly acted for the W's in a municipal fracas with which I never had the least connection; and which, I am sure, never would have arisen had I been representing them."

You refer there, I suppose, Mr. Robins, to your calculation that one or two years' salary would have been equal to about \$51,000? A.—Yes, that is

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what I am referring to. That is the only suggestion Mr. Harry Walker ever made that resolved itself into money.

Q.—You were putting it on the footing the stock was worth \$200,000, and they were adding some \$50,000? A.—No, I was not, I put no estimate on the stock, because Mr. Lash wouldn't talk about it, therefore, I didn't bother about it. I didn't estimate the value of the stock, excepting as I point out here, it was worth \$215,000 on a 9 per cent. basis. That is the only estimate of the value of the stock I ever made.

HIS LORDSHIP: The impression I have got from the correspondence so far, and it is only proper that I should express it, so Mr. McCarthy will know what is in my mind, with a view to combating it, is that Mr. E. C. Walker would derive the impression from these letters of Mr. Robins'; first, the idea that Mr. Robins was making threats of doing them some injury if they did not comply with his suggestions, on account of the enormous services he had rendered to them; second, that Mr. Robins drove a hard bargain with them, and succeeded in getting \$50,000 more than their legal adviser advised them he should take. Now, that is my impression generally. Is there any use going on? 10

MR. OSLER: We are very close to the end of it. I want your Lordship to see the ground on which the additional \$50,000 was put. 20

HIS LORDSHIP: The whole thing is directed to the fact, it is suggested that Mr. E. C. Walker thought so much of Mr. Robins, was so fond of him, it was likely he should keep 1,000 shares, \$100,000 par value, yet in his will, and if he changed his will it was such an extremely ungenerous thing to do it must be evidence of incapacity of mind.

MR. MCCARTHY: That is not our suggestion, it is your Lordship's.

HIS LORDSHIP: Yes, that is my suggestion.

MR. OSLER: Your Lordship will remember it is not only in the letters but in the interview with E. C. Walker the threat was made.

HIS LORDSHIP: In a case like this, it might be an injustice if I expressed my opinion later; if both sides know what is in my mind at present, they can govern themselves accordingly; although I am quite ready to change that opinion. 30

MR. OSLER: Mr. Robins, you say in this paragraph I have just read, from the letter of the 9th of October, that the amount proposed barely equals what J. H. expressed as his view of the least that should be done; I am asking you if you did not make that estimate on the footing that J. H. had suggested one or two years, that you calculated that would equal about \$51,000? A.—I took the average, I took 18 months.

Q.—You did calculate that would amount to \$51,000? A.—Yes. 40

Q.—They were offering \$250,000, and that would leave \$200,000 left for the stock? A.—Yes, around that.

Q.—I am going on reading from the letter of October 9th:

"If I made any mistakes in so pressing my opinions as to annoy F. H., the two brothers must share the responsibility, seeing that they always supported me.

I look for no consideration from F. H. If sentiment comes in at all, it must be, I am convinced, from the others. Both of them have said very

clearly what would warrant belief that they would like to do something to show their regard for me. Apparently, however, whatever you do will be with F. H. alone.

I am very reluctant to conclude that the brothers meant nothing by what they said. I can hardly believe they would wish the difference between your figures and mine to bring about a crisis deplorable for all. I feel very strongly that it would be no little comfort to them to know that I could be depended upon to help them out in certain contingencies by no means improbable—to say nothing of my influence at Ottawa, and my ability to present the case more convincingly than most people because of the special study I have given to it. At all events, I did, some years ago, convince the Minister, when Gooderham, Blackstock, Beatty and others said it was hopeless and had better not be attempted. I recently carried my point with Mr. Saunders, of the Ontario License Department, when Gooderham said I would only make things worse, and with marked advantage to all the distillers.

I want to know whether you at all object to my asking J. H. if he would like to have a strictly confidential talk with me. I should be much relieved if you do not object. I do not want to leave any room for vain regrets later. When he left here he expected I would join my wife at Swampscott, and expressed the hope that he would see me then. He could hardly have thought that in such event there would be no reference to the matter at issue.

If you do not object, may I tell him all that passed between us yesterday, or shall I limit myself: and, if the latter, may I say what we each proposed, or only that the difference between us is \$50,000. That is nothing to them, but much to me, and I think I could give them value for it many times over at Ottawa alone.

Will you kindly wire me to-morrow to the Detroit Club, which will give you latitude of expression that might be unsafe if the message came here? Whatever is to be done, I want to lose no more time.

And, my dear Lash, let me ask you to realize that at my age, and with the infirmities which threaten me, in spite of my sound heart and lungs and apparent general good health, a comparatively small addition to my income means all the difference between reasonable comfort and the reverse. My rheumatism has been making rapid advances, which may call for frequent visits to 'cures', and for changes of climate: and I have not infrequent attacks of piles and bladder trouble which make my own bath-room and a drawing-room when travelling at night no mere luxury. I don't want to magnify trifles, but only to show that if I have to 'sail too close to the wind' my life is not likely to be any too attractive: and I don't think I flatter myself in saying that I should make many personal sacrifices before denying my family.

I thank you again for every evidence of your friendship, which I hope always to retain. If you cannot approve of certain feelings I have expressed, it may be because you are a better man than I am, and I am very willing to believe it: but, for your own sake, I hope it is more due to the fact that you have never had an equally bitter experience."

Now, I understood you to say, Mr. Robins, on your Examination for Discovery, that you had come down to \$300,000 out of consideration for Mr. Edward Walker, and Mr. Harrington Walker? A.—That is absolutely true.

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Q.—Do you mean that answer? A.—I mean everything I say; I am on oath, Mr. Osler.

Q.—Let me read question No. 164 from the Examination for Discovery: "Q. 164. What was the subsequent course of the negotiations? A.—There was correspondence between Lash and myself, and he and I met in Toronto, in the meantime he had been urging me, out of consideration for E. C. Walker and J. H.'s state of health, to make a sacrifice. I had an interview in Toronto and told him that out of consideration for E. C. and J. H., and my affection for them, and so on, I would reduce my terms to \$300,000. I had previously insisted on \$350,000. At first I asked \$400,000. He said it was out of the question, and we parted, I told him all right." 10

Now, do you say you came down to \$300,000 out of consideration for E. C. and J. H. Walker? A.—I do, the same as I said there.

HIS LORDSHIP: I do not see how those statements differ; what he says now in the box, and what he said there, seems to be the same.

MR. OSLER: Oh, yes; I am comparing it with the statement in the letter where he is practically appealing to get \$50,000.

HIS LORDSHIP: I do not give a rap for that. When arguing a case you say things you may not be able to substantiate. This man puts a great many arrows to his bow. 20

MR. OSLER: And did not always shoot them in the same direction.

HIS LORDSHIP: A lot of them landed, you know.

MR. OSLER: Then, Mr. Robins, Mr. Lash wired you on the 10th of October, as follows:

"On Tuesday I wrote Mount Clemens and Magnolia substance of our interview giving the figures. Replies not yet received. I suggest you allow me to send them extracts from your letter just received leaving out all personal allusions and statements likely to invoke replies or denials. Meantime it would not be advisable for you to ask for the personal interview. Answer." 30

And you replied the same day by wire, as follows:

"Will do nothing against your wishes or judgment while any hope of agreement between us, and should not have written but for fact that your suggested presence here to-day if I concurred and parting request to be advised if I changed my mind gave me impression that Magnolia was leaving decision entirely to Mount-Clemens and that you did not purpose communicating with latter at present. Am glad I was wrong. I accept your suggestion as to my letter, but have strong feeling my writing might be misconstrued in one quarter and shall be glad if you can give supplementary communication complexion of part of Tuesday's talk, which, in fact, I believe would be correct as to all you would use except perhaps allusion to infirmities. However, will be content with what you think best." 40

HIS LORDSHIP: Who was "Mount Clemens?"

MR. OSLER: "Mount Clemens" would be Frank Walker, and "Magnolia" Mr. Harrington Walker. Edward Walker had left for England.

Mr. Lash wrote to F. H. Walker, and sent copy to Harrington Walker on the 10th of October, as follows:

Private.
F. H. Walker, Esq.,
Walkerville, Ont.

"Toronto, October 10th, 1912.

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My dear Walker:—

I wrote you on Tuesday giving the substance of my interview with Robins. I was in Montreal yesterday. On my return this morning I found a long letter from him, from which I enclose extracts covering all essential parts. I am also sending a copy of the extracts and of this letter to your brother Harry.

- 10 I have written Robins telling him that I had reported the substance of our interview on Tuesday and that I am sending you extracts from his letter, and I have told him that I am leaving town again to-morrow morning and shall not be back until Tuesday next, when I expect to find your and your brother's answers to my letters.

In my letter to you of Tuesday last I wrote as your adviser, and I did not allow my feeling of friendship and sympathy for Robins to influence my judgment any more than I thought as your legal adviser I should be influenced by it. If you or your brothers feel that you can accede to the appeal which he has made to me in his letter received to-day, personally I shall be very much pleased.

- 20 In some parts of his letter Robins enlarged upon the personal aspect of the case. As these enlargements do not affect the substance of his letter, I am sending you extracts only, and, as he marked it 'Private and Confidential', I first wired for permission to send the extracts, and I have received it.

P.S. I have just received your wire. He intended the \$250,000 to cover price of stock only. To me he claimed \$150,000 more for compensation. This seemed so exorbitant that I did not complicate the situation then by mentioning it to you."

Harrington Walker replied to that on the 12th of October, as follows:

- 30 "My dear Mr. Lash:—

Your letters of 8th and 10th with enclosures were duly received. On receipt of first I wired you as there was no chance of getting letter to you by Thursday. I did not know that Robins had ever asked for any more than \$250,000, so felt he should not now demand more. It is hard for me to answer your letter of the 10th, as what I must say may annoy Frank and I have done far too much of that in the past, however, I will write plainly just how I feel, trusting I will be able to make it right with Frank later, and possibly you can help me. I still feel we should make a settlement with Robins, and from your saying that you would be very much pleased if we can accede to the appeal he has made, I feel that you think it would be better for us to do it. I have no idea what Frank will write you, but, from the way he has talked to me on several occasions I am afraid he will not agree to it. When I first told him that Ed. and I were willing to pay \$200,000 for the stock, he said we were fools and when he heard I had told you to pay the larger amount if necessary he thought I was crazy, therefore I hardly think he will agree to the amount you now name. And I am not sure what Ed. would say, however, I am going to take it upon myself to tell you you can settle at this

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figure (\$300,000), if Frank writes that he will not agree to it, and I will assume the responsibility of making a settlement with my brothers."

HIS LORDSHIP: If their idea was \$200,000, and they eventually set \$300,000, it would account for the \$100,000 cut out of this will. I will not stop you, if you want to go on.

MR. OSLER: "Frank says he does not care what Robins might do, that he can do no harm to the business, or to us, but I don't quite agree with him in this. I have no idea he would gain anything by it himself, but it certainly would not be a good thing for the business and the stories he would publish about us would be far from agreeable. I will now leave it in your hands, as far as I am concerned, to settle. If Frank does not agree, you can decide how to handle it, but I would suggest that Robins does not know that we are not all in equally in the settlement. I am making this offer on Frank's account as much, if not more, than for Ed. and myself, for if we do not make the settlement, Frank, I imagine, will be in the most unpleasant position of the three of us. 10

I am most anxious, if possible, to bring about a better feeling in Robins' mind towards Frank, therefore it seems to me he should feel we all three are doing the same.

It is needless to say that I have always felt that Robins was entitled to a reasonable amount but I admit I think the amount he is asking is too much. 20

If you make the settlement with him, I presume you can arrange with him to postpone the payment until I get home about November first.

Shall be most anxious to hear what you think of my decision."

HIS LORDSHIP: All the letters I have heard read of the Walkers, except one of Frank's, show they were very decent men.

MR. OSLER: I will read another of Frank's.

HIS LORDSHIP: Mr. Robins tells me that part of that is insincere; there is nothing appears on the face of it of that kind.

MR. OSLER: This is a letter from Robins to Lash, on the 13th of October, 1912, I think I shall only read a paragraph from that, although the whole letter may go in. 30

"If by any chance you can wire me favorably on Tuesday, I wish you would: and if there is any reason for caution, you might telegraph me here to go to Detroit and send the important message to the Detroit Club."

Mr. Frank Walker wrote in reply to Mr. Lash's letter in the same way Mr. Harrington had done, under date of Oct. 14th. I want you to listen to this, Mr. Robins, I want your comment:

"Walkerville, Oct. 14, 12. 40

My dear Lash,

Yours of 10th duly received and acting on your suggestion I at once decided we should accede to Robins' demand of \$300,000, and I wrote Harry to this effect and asked him to wire me immediately on receipt so I could advise you to-day. He now wires me that he had already written you to close the matter as you suggested, and you probably have his letter this morning. This settles the matter and I am very much relieved to have the difficulty adjusted. You may be sure your efforts are fully appreciated by

us all—without you I am sure we should have become involved in an interminable trial which might have ended anywhere. You will of course advise Robins at once so the present strain may be relieved.

I assume the arrangement contemplated an immediate transfer of his shares, but you will of course advise us of this in due course. It is not very material in any case.

I hope you may have a good week with the ducks. I am going up Wednesday for the balance of the week."

10 Now, what are your comments on that? A.—My comments on that will have to come from some of the other letters we are going to have in. Insincere, I am sorry to say it, but I am obliged to; but I will be able to show it.

Q.—Insincere, to the extent of taking his part in adding another \$50,000, put on the ground of consideration for your health and unfortunate circumstances. A.—You asked for my comments, you have them.

Q.—I am asking if you took into account the suggestion I have just made, in making these comments? A.—I have taken it all in.

Q.—On your Examination for Discovery, I think you referred to the gentleman who wrote that letter as being capable of anything, and most vindictive? A.—Capable of anything, in what way.

20 Q.—Let us have a look at your examination, I would like to compare your views on different occasions. At question No. 289:

"Q. 289. When do you say undue influence was exercised by Mr. Frank Walker? When do you say undue influence was exercised by Mr. Frank Walker? A.—When the will was made.

Q. 290. Have you any facts in mind on which you base that charge? A.—By the fact he was an extremely vindictive man, I think he would have gone to any length."

A.—Yes, in vindictiveness toward me.

30 HIS LORDSHIP: Who is Mr. Aikman?
MR. OSLER: A gentleman who is dead.

HIS LORDSHIP: Who was he?

THE WITNESS: He was formerly a partner of the eldest brother, who died some two years before I went to Walkerville.

Q.—He was cut out in connection with the will? A.—He was dead. He was a great friend of Mr. Walker's.

MR. OSLER: Question No. 291:

40 "Q. 291.—Did you rely on any fact? A.—I relied on the fact that he acted in a most dishonorable way, being the circumstances which led to my leaving the business, showing himself capable of anything, I think."

Do you want to qualify anything you said on the Examination for Discovery, in view of the letters? A.—Not at all.

Q.—That you heard read, from Mr. Walker to Mr. Lash? A.—I do not qualify it at all.

HIS LORDSHIP: Mr. Robins has been perfectly consistent throughout; when he makes a statement, he makes a statement, and that is an end of it.

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MR. OSLER: We come to the conclusion of the arrangement; Mr. Lash writes you on the 15th of October, as follows:

"Toronto, October 15th, 1912.

William Robins, Esq.,
Walkerville, Ont.

My Dear Robins:—

I have just received yours of the 13th. I also received letters from Magnolia and Walkerville, and the result is that I have been able to telegraph you as follows,—‘Am glad to say that the matter will be arranged as you wished. Am writing.’ This means that you will receive \$300,000, that you will transfer your stock, and both parties will consider all disputes and claims at an end; and there is to be included, to use the words of your letter to me of the 9th inst. ‘continued goodwill toward the Company.’ I have frequently assured you that no illwill toward yourself exists among any of the three brothers, and nothing has been said by any of them in any way reflecting upon you or your services to the company, and I assume that the personal element which at one time since the unfortunate difference arose crept into the matter will be eliminated on all sides for the future. 10

I want to express my sincere pleasure that matters have been adjusted, and I think that, when you consider the whole matter with the irritation which you have hitherto felt removed, you will admit that the Walkers, all three, must have felt towards you in the most friendly way and must have recognized the value of your services to them when they authorized me to arrange for the payment to you of the sum mentioned. I know that these friendly feelings did exist all the time, and continue to exist. 20

Mr. Harry Walker in writing to me suggested that the payment of the money be postponed until he returns to Walkerville, about November 1st; but if you wish it before that time no doubt it can be arranged. I leave here on Thursday afternoon for St. Ann’s duck marsh, and expect to be away all next week; therefore please write me to-morrow so that I may get your letter on Thursday morning. Hoping that your intended trip, to renew the old cure which did you so much good on a previous occasion, will benefit you equally again.” 30

HIS LORDSHIP: That is emollient. Is there an answer to that?

MR OSLER: Yes. I will leave out the telegram.

October 16th, 1912.

My Dear Lash,

I hurriedly acknowledge the receipt of yours of yesterday, between a Catholic funeral service of the lengthened type and some pressing matters which must be arranged this afternoon in Detroit. 40

I want first to express as strongly as I possibly can the friendliness of your part in the settlement. If we have not been wholly agreed on some points, I am glad to remember that we have in the past sometimes been

in a similar position, but, I think, without loss of esteem and regard on either side. I hope, and I believe from the tone of your letter, that we are still very good friends, and I trust we always shall be.

It is entirely agreeable to me to fall in with Mr. Harry's suggestion that the payment of the money be postponed to about the first of November, as I can easily get all I require for present needs now that the future is defined.

10 I shall honestly make good the understanding as to 'continued goodwill toward the Company', and, while I will not pretend to you that I have changed my views upon certain episodes of the past, there need be, so far as I am concerned, no reviving of the personal element.

My wife and Gertrude wish to be most kindly remembered to you, and join me in hoping that you will thoroughly enjoy your outing in the marsh. I thank you very much for your good wishes as to my rheumatism, and am, as always,

Yours very sincerely,"

HIS LORDSHIP: First-rate.

20 MR. OSLER: Having reached that conclusion, you had a change of heart, Mr. Robins, and wanted to buy the shares back? A.—I had nothing of the kind. I hadn't sold them in the meantime, to begin with, I never wanted to buy them back.

Q.—You say that advisedly? A.—I say it advisedly. Go on, if you think you have anything that shows anything else.

Q.—Let us see what might be taken—

HIS LORDSHIP: He has learned now that the milder you are, the more dangerous you are.

MR. OSLER: I have a letter here which made me ask him if he said that advisedly; a letter written on the 23rd of October, 1912, to Mr. Lash, as follows:

30 Private.

"October 23rd, 1912.

My Dear Lash,

I was at the office this morning, and Mr. Frank and I had a pleasant meeting. There was no reference to anything that is past, but we just met as though nothing had occurred. By-gones are truly by-gones so far as I am concerned, and I trust we shall all feel and be better for it.

40 There is a point I want to take up with you so as to make sure that there will be no misunderstanding at the last moment. It never occurred to me until a couple of days ago, and it may be that it is quite unnecessary to speak of it now. I refer to the accrued dividends on my shares to August 31st. We have been in the habit of paying interim dividends as there were funds available; and the past two or three years, during which we have generally had money on deposit in the Savings Department of our bank, we have paid 2% each quarter. At the Annual Meeting the dividend for the year has been declared, and the excess over the interim dividends has been paid as soon as convenient. I have taken it for granted that there would be no question about my getting the full divi-

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dend for the fiscal year, notwithstanding that it may not be paid before the settlement is consummated. And as the settlement is, I suppose, as of August 31st, I have thought it possible that the estimated accrued dividends from that date to the transfer of the shares, or interest on the amount agreed upon, might be considered fair, seeing that I have practically had no income in the meantime. But, welcome as even small sums are to me now, I want you to understand that I am not going to ask for anything which you think I should not ask for; and that is why I take the matter up with you now, since you may be preparing some sort of a document in anticipation of Mr. Harry's return.

Another thing which I mention for you to deal with just as you think best is that, now we have 'buried the hatchet', I feel differently about retaining my shares if the W's would rather I still had a material interest in the Company, subject, as you suggested, to my being at liberty to take a fixed price for them at any time. When you and I were talking, I felt that any connection with the concern would be a constant pain to me. I do not now feel that way. If they should want my help at Ottawa or otherwise, there would be no motive for my pressing my own views on the course to be pursued if my shares had a fixed value; therefore, I see that I could submit my ideas for their consideration and cheerfully accept their decision, whatever it might be. So, if you think they would rather have it the way you proposed, I am quite willing; and your own valuation of the shares, (175) would be quite satisfactory to me." A.—That is so.

Q.—You were prepared to reverse the transaction and keep the shares at 175? A.—Quite so, if they wished it. It was part of my goodwill toward them, and toward Mr. Lash; if they wished it. That is all I said.

Q.—Then follows a reference to your investment in the United States Motors, which I need not read.

Mr. Lash replied pointing out that the dividend suggestion was no good.

"Toronto, Oct. 31st, 1912.

William Robins, Esq.,
Walkerville, Ont.

My Dear Robins:—

I received your letter on Tuesday last, after my return from the Marsh, but I have not had a chance to answer it till now.

The question of the dividend on the stock occurred to me, and, had you entertained the first suggestion which I made about your retaining the stock under a special agreement relating to it, of course the question would have settled itself. When, however, we abandoned that idea and took up a settlement for a lump sum in full, I assumed that whatever sum was agreed upon would be in full. I think I said to you that I did not want to fix a price for the stock, but that I wanted to fix a lump sum which would include everything, including the stock. If I did not say this to you I certainly said it to the Walkers.

I think it would be extremely unwise to raise the question about the dividends; now that harmony has been restored. I think also it would be unwise for me to suggest that you would now be willing to hold the stock on the terms of a special agreement. I explained in my report to the Walkers what I had suggested about this but that nothing had come of it, and I am afraid that were the matter to be reopened a false impression might be created. I feel so relieved that the very difficult matters I was dealing with have been settled that it would be extremely distasteful to me to have to in any way reopen them, and I do not think
10 it would be in your interest to do so.

I cannot place my hand upon your letter at the moment, and I do not know whether this replies to all its material parts. My recollection is that in your letter you dealt with the two points only,—1st, the question of dividends, and, 2nd, the question of your continuing to hold the stock under a special agreement.”

On the 1st of November, you wrote, as follows:

“November 1st, 1912.

My Dear Lash,

I have your letter of yesterday, for which I am much obliged. You
20 certainly did put the matter to me just as expressed in your letter, though it never entered my mind that the dividend earned for the past year was involved any more than my commission for the same period, both of which were at the time of our discussion equally undetermined. I am naturally disappointed, for the few thousand dollars represented mean a good deal more to me than for many years before, and more than I supposed they ever would again until this break stared me in the face. However, as I said in my last, I am not going to raise the question against your wishes, and I would not for a good deal be the cause of anything distasteful to you now. I take it, of course, that what you say has
30 no application to my commission, and I can readily understand that it would in your mind be a thing quite apart from the dividend, notwithstanding that in my mind the one seemed to be as fully earned as the other at the close of the year. It would go very hard with me to have to forego the commission, and I haven't the least idea that the question can arise.

I am quite content with your view that the matter of my keeping my stock had better stand as arranged. I wrote what I did with the idea that it might substantiate my assurances of continued goodwill toward the Company. But I should very much dislike to have my motives mis-
40 construed.

I am very sorry to hear that Mr. Harry returned home not at all well, and I do not wish to trouble him about my matter until he is feeling better.”

Then Mr. Lash writes to Mr. Robins, on the 4th of November, as follows:

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"Toronto, Nov. 4th, 1912.

William Robins, Esq.,
Walkerville, Ont.

My Dear Robins:—

I am in receipt of yours of the 1st inst. Your commission is quite distinct from your stock; it forms part of your salary, and should be paid the same as salary. I have written Mr. Frank Walker to that effect to-day, as the question of commission was not pointedly mentioned to him in connection with the settlement, and my letter should prevent any wrong impression from arising with respect to it." 10

You did get commission to the 31st of August? A.—Yes.

Q.—This is the letter from F. H. Walker to Mr. Lash of November 5th, 1912.

"Nov. 5—12.

My Dear Lash,

Yours of 4th re the question of commission on year's business. There has never been any question in my mind on this point, it of course ranks the same as salary.

Harry is here to-day, and I understand the whole thing has been closed up by exchange of cheques for the several a/cs. Thank Heaven 20 and you this is now a closed incident. Am pleased to learn by yours of 1st that the Canadian, etc."

HIS LORDSHIP: He has reference to a newspaper?

MR. OSLER: I would suppose so.

Q.—Then, Mr. Robins, when you last saw Mr. E. C. Walker in August of 1912, he was on the point of leaving for St. Andrews? A.—Yes.

Q.—We had that before. A.—Yes.

Q.—And when did you leave Walkerville? A.—Permanently?

Q.—Yes. A.—On the 7th day of March, 1914.

Q.—And, during that time, Mr. E. C. Walker had returned to Walkerville? A.—Well, he must have because I saw him driving. 30

Q.—You saw him frequently? A.—No. I didn't, not frequently, only a few times; but he must have returned because I saw him.

HIS LORDSHIP: Can you tell us the last conversation, and when? A.—That is very clear; on the 19th of August, 1912, it was just for a few minutes only.

Q.—You went nearly two years without seeing him at all? A.—I was abroad for a good while, and away at Atlantic City, and so on; and he was away. The period we were both in Walkerville at the same time, I think, would be very short. 40

MR. OSLER: There was a period, or there were periods, during which you were there? A.—Yes, because I saw him there.

Q.—Do you suggest any reason why you did not see anything of each other on the occasions when you were both in Walkerville, was it that he had been abroad and didn't know you were there? A.—I don't know, I am not suggesting any reason why I did not see him.

Q.—Don't you know there was a reason why you didn't see him?
A.—Well, I presume there is a reason for everything, isn't there?

Q.—Now, tell me what was the reason? A.—I don't know what was the reason. If you ask me what was passing through my mind as a possible reason, I will tell you.

Q.—Then, give us that. A.—I thought that he really felt somewhat ashamed, and I was very sorry, and, as I said before, I thought I couldn't take the initiative. I felt that he felt ashamed of what had been done, and that is why I didn't see him.

10 HIS LORDSHIP: Do you not think, as a sick man, you might have gone and taken him by the hand and said, "Don't be sorry?" A.—I had no opportunity, I didn't see him except when driving past.

MR. OSLER: Mr. Robins, do you tell me seriously you have given me your best opinion on that subject? A.—It is not necessary to ask me twice, when I have answered a thing once that is my final answer.

Q.—I think it is really a pity it was not so in this case, because let me read from the Examination for Discovery, at question No. 191:

"Q. 191.—After E. C. Walker left on Monday the 19th of August, did you ever see him again? A.—Yes.

20 Q. 192.—When did you see him again? A.—I didn't have speech with him, I saw him.

Q. 193.—In Walkerville? A.—Yes.

Q. 194.—Why didn't you have speech with him? A.—Because he held aloof from me, it was not my business to take the initiative." A.—Precisely what I am saying.

Q.—Why didn't you tell me just now that he held aloof? A.—Isn't it the same thing? We are splitting hairs.

Q.—You meant it to be the same thing? A.—I meant it to be the same thing, that he held aloof because he felt somewhat ashamed.

30 HIS LORDSHIP: You gave the impression apparently in that question and answer that he held aloof from anger; you say it is because of shamefacedness? A.—I thought it was, and I thought it was the same with Harry, and I was sorry because I didn't want them to feel that way.

MR. OSLER: How far away was your house from E. C. Walker's? A.—I should say 700 or 800 yards.

Q.—Was your house nearer the distillery, or was his? A.—Mine was nearer.

40 Q.—So that when he was going to the office you would see him? A.—I did not know where he was going at the times I saw him, and the only times were when I was out for a walk with my dog.

Q.—Do you say you saw him infrequently? A.—Quite infrequently. For the period such as you are talking about, from the time I left the business until I left Walkerville, I can't say how many times, it is infrequent during that period.

Q.—Is not it a pity you didn't answer that question the same as you did on the Examination for Discovery? A.—It will be a pity, if you find I didn't.

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Q.—I will read question No. 198:

“Q. 198.—How long was he in Walkerville after that, at periods when you were there? A.—I can't tell you, I frequently saw him on the street.”

A.—Well, frequently.

Q.—There is quite a difference between “frequent” and “infrequently.” A.—It was frequent for the period; I might see him to-day, and I might see him in two days time; but when you take it for the whole period from the time I left the business until I left Walkerville—and that is the question put to me—it was very infrequently. I have nothing to change 10 whatever.

Q.—You have nothing to change whatever? A.—No; I daresay I saw him six or seven times, I should think that would be as many times as it was, and I would call that frequently, under the circumstances.

Q.—Now, Mr. Robins, let us take a step backward; on the question of your salary; you told us yesterday, I think, that Mr. Hiram Walker had enmity toward you, and the question of fixing proper remuneration was deferred until after his death? A.—Yes.

Q.—Of course, after he died, you had no difficulty in getting Mr. F. H. and Mr. E. C., and Mr. Harrington, to give your services proper recog- 20 nition? A.—I would not like to say that.

Q.—Who was your friend in these negotiations? Who was the man that thought you ought to get a little more, and who was the one that thought you ought to get a little less? A.—I can't tell you that,—what discussions they had amongst themselves, I can't tell you—but I know on one occasion Mr. Ed. told me that his views were beyond those of Mr. Frank.

Q.—Mr. Ed. told you that his views were beyond those of Mr. Frank? A.—Yes.

Q.—You looked on him as being the man who would be inclined to 30 give you more, rather than the others? A.—Not any more than Mr. Harry.

Q.—I am going to show you letters which you wrote to Mr. Harry, the first is dated December the 11th, 1904.

MR. MCCARTHY: Have these been produced?

MR. OSLER: No.

MR. MCCARTHY: May I ask why these letters were not produced? It places us at a great disadvantage.

HIS LORDSHIP: Yes, a great disadvantage, in a case like this.

MR. MCCARTHY: A motion to produce was made in Chambers, and 40 your Lordship said while there is a very strong presumption where documents are not produced, yet you could not act on the presumption.

HIS LORDSHIP: I remember something about that. I was thinking of the case of the Gas Company v. Jones.

MR. MCCARTHY: Yesterday correspondence was produced to Mr. Miller Lash by my learned friend, and my friends had copies in their briefs. Why are we denied?

HIS LORDSHIP: Where is Mr. H. C. Walker?

MR. WALKER: They are referred to.

MR. OSLER: We have a great deal of information for the purpose of this trial; what we produce is only the material we had before the action began; we do not produce material we get for the purpose of the trial and had our brief to my learned friend.

HIS LORDSHIP: Certainly, once you find extra documents, you put in a supplementary affidavit on production.

MR. OSLER: Not unless we get it before we make enquiries.

10 MR. MCCARTHY: That is novel practice to me.

HIS LORDSHIP: Do you cease to make enquiries until you lull them into a sense of security, and then make enquiries, and make the production, and take them by surprise? Oh, no.

MR. OSLER: Then, Mr. Robins, this is the letter of the 11th of December, 1904:

"Walkerville, December 11th, 04.

My Dear Mr. Harry,

For some time past I have had it in mind to have a little talk with you about my remuneration, but for one reason and another I have postponed
20 it. In view of your improved health I feel that I may now do it with a free conscience."

HIS LORDSHIP: He could do it in 1904.

MR. OSLER: \$15,000 was a big salary in 1904.

"While I am aware that it takes a good man to earn \$15,000 a year, that is not a salary upon which one can become a fairly rich man, unless he lives much more economically than I think a good man ought to live, and has different views from mine as to what is due to the business which gives him his living. Nor is it by any means a large salary as things go now."

30 In the letter there are some references to the reason why you think you should have a larger salary, and, on the second page, you say:

"I am going to be perfectly frank with you and say that, in my judgment, I ought not to be making less than \$25,000 a year. I know of a good many men in salaried positions which do not seem to me to be of greater importance, who are making more than that, and, so far as I can see, without either more ability, more energy, or more fidelity than I have given to my work."

MR. MCCARTHY: Does that letter form part of the present exhibit,
No. 20?

40 MR. OSLER: I do not suppose so.

MR. MCCARTHY: Well, put those in.

MR. OSLER: Is that your signature to that letter? A.—I am willing to admit it without seeing my signature.

Exhibit No. 22: Filed by Defendant: Letter dated Dec. 11, 04, from plaintiff to Mr. Harry Walker.

Q.—Then, Mr. Robins, on the 23rd of December, 1904, there is another letter to Mr. Harry, as follows:

RECORD

In the
Supreme
Court of
Ontario

Plaintiff's
Evidence

No. 22
William
Robins.

Cross-Ex-
amination,
16th May,
1924.

—continued

"Walkerville, December 23rd, 1904.

RECORD

In the
Supreme
Court of
Ontario

Plaintiff's
Evidence

No. 22
William
Robins.
Cross-Ex-
amination,
16th May,
1924.

-continued

My Dear Mr. Harry,

As I said to you the other day, after learning how kindly you and Mr. Ed. had received my suggestions regarding my remuneration, I have no desire to argue any particular detail for the sake of argument; but I know that you always welcome my views, and that you always wish to look at matters in the right light. I stated then that I could not quite agree with Mr. Ed. that \$15,000 a year is as much as the Distillery itself should pay, and I venture to give my reasons."

Mr. Ed. seemed to be the one questioning the amount, didn't he? A. 10
—In a way. I thought it was a very peculiar view to take. I didn't know just how he arrived at it.

Q.—Was that the occasion when you first noticed his mental power was weakening? A.—What date?

Q.—December, 1904? A.—I can't say anything about that; I thought sometimes he took very peculiar views, from my point of view.

HIS LORDSHIP: They are always peculiar when they don't agree on the salary question,—clerks and lawyers, everybody is the same—they are very peculiar when they will not give a decent salary. I think you were worth \$25,000 a year at the time, but the day is past and we cannot help 20
it. A.—He thought it as much as the distillery itself should pay.

Q.—The distillery was the big thing in their lives. A.—But he and all of them did, at least sometimes, that is, what I thought was peculiar.

HIS LORDSHIP: I have tried to keep this case to the mental condition of E. C. Walker.

MR. McCARTHY: Apropos to what your Lordship said—

HIS LORDSHIP: I will let you go the limit.

MR. McCARTHY: I do not suggest for a moment that any man has not the right to change his will at any time, whether he has reason for it or not, provided he was capable.

HIS LORDSHIP: That is the whole thing: was he capable, and was there undue influence? We have spent a whole day on the question of the \$100,000, and whether it was to be considered as a deliberate withdrawal on the part of Mr. Robins. 30

MR. OSLER: Now, Mr. Robins, you had been asked by E. C. Walker, in 1901, if you would act as his executor? A.—Yes.

Q.—And you said you would? A.—Yes, I did.

Q.—Did you assume that he had made you his executor? A.—I did, because he was just that sort of man, if he had changed his mind he would have come and told me.

Q.—Did you think you were a beneficiary under the will as well? A.—I had no thought about it at all, no thought whatever. If you ask me, it ran through my mind for a good many years that he would probably remember me in his will, that is all. 40

Q.—You were thinking for all these years that he would remember you? A.—I was thinking he probably would, yes.

Q.—And when you heard that he had died, and had made a new will, did you make any enquiries as to whether he had remembered you? A.—No, I thought that I would hear of it if he did.

HIS LORDSHIP: That would be indelicate; I do not think Mr. Robins would do that. A.—I came to the conclusion that he hadn't, that is all.

MR. OSLER: Of course, you knew at that time, when you heard that he had died, that Mr. Harry Walker, and Mr. Frank Walker, and Mr. Z. A. Lash were then alive? A.—That I understood they were, yes.

Q.—In 1915? A.—Yes, I did not hear to the contrary.

10 Q.—When you first threatened this litigation, they were all dead? A.—Much to my regret, they were.

Exhibit No. 23: Filed by Defendant: Letter dated Dec. 23, 04, from plaintiff to Mr Harry Walker.

HIS LORDSHIP: Does anybody remember the clause giving the legacy to Mr. Robins?

MR. McCARTHY: Clause No. 20.

HIS LORDSHIP: There is something in my mind as to this clause, as to the personality of these people. Stephen Adelbert Griggs got \$100,000 par value in 1901. Was he living in 1914? A.—Yes, my Lord, he is living
20 now.

Q.—That is a withdrawal from Mr. Griggs? A.—Yes.

Q.—William Robins, \$100,000.00 par value of the capital stock. And C. M. Walker \$25,000. Was he living in 1914? A.—I believe he was.

MR. RODD: He is dead.

THE WITNESS: He is dead now, his Lordship asked if he was living in 1914, and I am told he was living.

HIS LORDSHIP: So it was not only you that suffered by the bequest not being reproduced in the new will, but others as well?

MR. McCARTHY: I think Griggs got something in lieu? A.—He got some-
30 thing in lieu.

HIS LORDSHIP: As far as that particular clause is concerned.

MR. McCARTHY: Griggs' bequest was made up for in another way.

HIS LORDSHIP: I notice, in Exhibit No. 3, that the National Trust Company was made executor, in 1913, instead of William Robins? A.—And the two brothers.

MR. McCARTHY: They are all cut out.

MR. HELLMUTH: I have no questions.

MR. McCARTHY: I am in this unfortunate position, that I have never seen this correspondence at all.

40 MR. OSLER: Your client had the greater part of it.

MR. McCARTHY: On the contrary, he hadn't. The letters which my friend has read, and these letters, my client had never seen, because they were letters between Mr. Lash and the Walker brothers themselves.

HIS LORDSHIP: That is a very great disadvantage.

MR. OSLER: Of course, my friend's language is a bit abrupt. Your Lordship will observe that the witness himself read from a volume of correspondence which he had furnished to me, and which comprised the greater part of what I was reading from.

RECORD

In the
Supreme
Court of
Ontario

Plaintiff's
Evidence

No. 22
Wm. Robins
Cross-Ex-
amination,
16th May
1924.
—concluded.

RECORD

In the
Supreme
Court of
Ontario

Plaintiff's
Evidence

MR. MCCARTHY: The greater part of what you were reading from, is true; but the greater part of what you produced last night, isn't.

HIS LORDSHIP: Mr. H. C. Walker courteously handed him this correspondence to follow.

MR. OSLER: No, it is a copy of what he handed to us.

HIS LORDSHIP: That came from your possession?

MR. OSLER: No, your Lordship is under a misapprehension.

HIS LORDSHIP: I know he produced it to you; I saw Mr. H. C. Walker courteously hand it back.

MR. OSLER: It came originally from my learned friend's client, and he is complaining that he has not got it in his brief. 10

MR. MCCARTHY: I am not complaining of anything of the kind. What I say is this: last night Mr. Miller Lash produced a bunch of correspondence, part of which is here, which has been put in, and the balance is here, which has not been put in; the greater part of which I have never seen, and I have never had an opportunity of reading. Now, if it is relevant, and goes in, this may be relevant and should also go in.

HIS LORDSHIP: You want to re-examine Mr. Robins after you have had a chance?

MR. MCCARTHY: Yes, my Lord. 20

HIS LORDSHIP: All right, you may do that.

No. 23
Argument
re Legacy
to St.
Andrew's
College

MR. FLEMING: My Lord, we have agreed to put in certain material in connection with the legacy to St. Andrew's College, and the documents will be an extract from the Minutes of a Meeting of the Board of Governors of St. Andrew's College, held on March 26th, 1915.

HIS LORDSHIP: I am going to ask you to make a statement as to how it applies to the case.

MR. FLEMING: Under the will of 1901, there was a legacy to Upper Canada College, and under the will of 1914, at the suggestion of Mr. Z. A. Lash, as appears by his letter of February 16th, 1914, Exhibit No. 9, he diverted that to St. Andrew's College. That is the point we make. The late Mr. Walker died about the middle of March, 1915, and, on the 26th of March, 1915, the National Trust Company made a loan to St. Andrew's College of \$9,500 on the security of an assignment of that legacy, before the will was proved or any action taken on it. 30

And we think that, with the letter, constitutes some evidence of the fact that Mr. Lash was the man who was interested, as a governor of St. Andrew's College, in diverting that.

HIS LORDSHIP: Suppose he was. Mr. Walker was a rich man, and wanted to do the decent thing toward educational institutions, he has no children of his own, and he gives the bequest to Upper Canada College by the will of 1901, and changes it to St. Andrew's College by the will of 1914. Does the fact that Mr. Lash was a governor, or interested in St. Andrew's College, affect this case? 40

MR. FLEMING: The letter which I read yesterday, my Lord, says: "I have also changed the legacy for Upper Canada College to St. Andrew's College."

HIS LORDSHIP: Under what class do you put that?

MR. FLEMINGS: Undue influence.

HIS LORDSHIP: Mr. Lash?

MR. FLEMING: Yes, we will argue that Mr. Lash, in his capacity as solicitor in advising as to the will, used that position to get a legacy of \$10,000 for Upper Canada College, and diverted it to a college he was interested in.

HIS LORDSHIP: Undoubtedly.

MR. FLEMING: We say that is a proper argument, and the letter
10 shows there was a reason why he was interested in that.

HIS LORDSHIP: What does it matter to this plaintiff whether Upper Canada College got it, or St. Andrew's College got it?

MR. FLEMING: It doesn't matter, but we have a number of similar transactions in connection with the will we want to use as part of our argument in connection with influences that we suggest were used wrongly, so far as the deceased was concerned.

HIS LORDSHIP: I do not feel like taking it in at the moment. I remember reading a case where Vice-Chancellor Blake, asserting his opinion before one of the English judges, said, as to the duty of a solicitor
20 when drawing a will, he was not to change the man's mind, but it was his duty to advise him generally as to his estate, so it should be done sensibly. I think that case is in 19 Grant.

MR. FLEMING: I have read the case.

HIS LORDSHIP: Does not this come to that?

MR. FLEMING: I think it is an entirely different state of facts.

HIS LORDSHIP: I know of a solicitor for a church, who drew the will of a general manager, and he put in something for the church.

MR. FLEMING: The late Chief Justice Moss set aside a will in the court of appeal for that reason, as being undue influence.

HIS LORDSHIP: Of course, a solicitor must be careful, but that the
30 solicitor should be a mere clerk in taking down dictation, or instructions from a testator, which may be silly, or unreasonable, cannot be so, but he should give good advice.

MR. FLEMING: He goes further than that. I will read the letter again.

HIS LORDSHIP: Yes, I remember that. That is eleven days before the will was signed.

MR. FLEMING: Yes, eleven days before the will was signed. That is the letter in which he enclosed the completed will.

HIS LORDSHIP: The testator does not make his will until the 27th of
40 February. He says, all right, Lash wants to switch this from Upper Canada to St. Andrew's; I don't know anything about either; if Lash thinks so, I will do it. Is there any harm in that?

MR. FLEMING: At this time, we say, serious illness incapacitated Mr. E. C. Walker from doing any business. That is the issue in this case.

HIS LORDSHIP: When it is tendered, how can I keep it out?

MR. MCCARTHY: We contend that while it is possible Mr. Walker

RECORD

In the
Supreme
Court of
Ontario

Plaintiff's
Evidence

No. 23
Proceedings
at Trial,
Agreement
re Legacy
to St.
Andrew's
College.
16th May,
1924.

—continued

RECORD

In the
Supreme
Court of
Ontario

Plaintiff's
Evidence

No. 23
Proceedings
at Trial,
Agreement
re Legacy
to St.
Andrew's
College.
16th May,
1924.

knew nothing about St. Andrew's, he did know a great deal about Upper Canada.

HIS LORDSHIP: All right, put it in, if there is no objection. As to the financing of it before the will proved, I don't know about that.

MR. FLEMING: That is a feature of the transaction.

MR. OSLER: That was after the death. The view we take is that it is utterly ludicrous; I will not load the record with objections.

MR. FLEMING: My learned friend has consented to this document going in.

MR. OSLER: I admit the signatures, and so on. 10

MR. FLEMING: "It was moved by Lt.-Col. A. E. Gooderham, Seconded by Dr. H. J. Hamilton and unanimously agreed,—"

That, in connection with the bequest of the late Edward Chandler Walker, Dr. Z. A. Lash be requested to arrange with the National Trust Co., for an advance of the sum, in whole or in part, such advance to be secured to the National Trust Co., by the assignment of the legacy; and, that the Headmaster, Dr. D. Bruce Macdonald, be authorized to execute on behalf of the College such documents as may be necessary in arranging for the advance and in making the assignment."

HIS LORDSHIP: What was the date of the Resolution or By-law? 20

MR. FLEMING: This is a Resolution on the 26th of March, 1915, after the death of Mr. Walker, not long after the death. Then attached there is Memorandum of Agreement made the 30th day of March, 1915, between the Board of Governors of St. Andrew's College, Toronto, of the first part—and—National Trust Company, Limited, of the second part. I put that in as Exhibit No. 24. The last payment made on account of the legacy was on the 13th of November, 1915. There is nothing in the correspondence except one statement that I want to put in.

HIS LORDSHIP: I am making this note, "Mr. Lash took candy from a baby." 30

Exhibit No. 24: Filed by Plaintiff: Extract from minutes of meeting of Board of Governors of St. Andrew's College, held on Mar. 26, 15. And Memorandum of Agreement, made 30th Mar. 1915.

HIRAM H. WALKER, Sworn. Examined by MR. MCCARTHY:

Q.—Mr. Hiram H. Walker, you are a son of which of the Mr. Walkers? A.—J. Harrington.

Q.—And are you an only son? A.—Two others.

Q.—Who are the other two? A.—Harrington E. and F. Caldwell Walker.

Q.—Are either connected with the business? A.—Harrington E. 40

Q.—And yourself? A.—Yes.

Q.—What position do you occupy respectively in regard to the Walker distillery business? A.—I am Vice-President and Treasurer, my brother is President.

No. 24
Hiram H.
Walker.
Examina-
tion-in-
Chief.
16th May,
1924.

Q.—Your brother is President, and you are Vice-President and Treasurer? A.—Yes.

Q.—You were on the 24th of December, served with a writ of summons, and a copy of the statement of claim in this action, were you not?

A.—I don't know the date, but I was served with it.

Q.—Did you enter an appearance? A.—I consulted with our attorneys, and the attorneys for the National Trust Company.

Q.—Am I right, Mr. Registrar, that the pleadings were noted closed as against Mr. Hiram H. Walker?

10 THE REGISTRAR: I believe so.

THE WITNESS: Whatever was done in that respect was done with my consent after consultation with counsel.

MR. MCCARTHY: When you speak of your counsel, who do you refer to? A.—I refer to counsel in Detroit, Mr. Lucking, who is not officially recognized with the case as he is a member of the American Bar; also counsel for the National Trust Company.

Q.—Who do you refer to? A.—I don't recall which one, I think probably Mr. Osler, and I think probably I consulted Mr. Rodd at the same time.

20 Q.—Whatever was done, or left undone, was done on their advice? A.—Yes, though I consulted them, I did not do it myself, it came through a third party.

Q.—Your brother Harrington E. Walker followed the same course? A.—Yes.

Q.—The pleadings were noted as closed against you two, and therefore, no notice of claim was ever filed by either of you? A.—That is correct, I believe.

30 Q.—Now, who was your father's executor? A.—My two brothers and myself, and, as far as the Canadian estate, the National Trust Company, but the National Trust Company did not appear as to the American estate.

Q.—As far as the Canadian property was concerned, you and your two brothers, with the National Trust Company, were the executors? A.—Yes.

Q.—And who was your uncle Frank's executor? A.—The Detroit Trust Company.

Q.—Both for the property in Canada and the United States? A.—I believe the Detroit Trust Company appointed the National Trust Company as administrator in Canada.

40 Q.—Now then, will you give me the date of your father's death? A.—December 19, 1919, I am not positive of the day of the month.

HIS LORDSHIP: In December, 1919? A.—Yes.

MR. MCCARTHY: And your uncle Frank's? A.—I cannot give you that.

Q.—About what year? A.—Well, it was about two years prior, I think, I wouldn't swear.

Q.—You think it was two years before your father's death? A.—I think it was about, I wouldn't swear to that.

RECORD

In the
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Plaintiff's
Evidence

No. 24
Hiram H.
Walker.
Examina-
tion-in-
Chief.
16th May,
1924.

—continued

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No. 24
Hiram H.
Walker.

Examina-
tion-in-
Chief.
16th May,
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—continued

Q.—Then, at the time of your uncle Frank's death, and your father's death, were you and your brother Harrington E. connected with the business? A.—Yes.

Q.—And, upon their death, you stepped into their shoes, did you? A.—On the death of my uncle Frank, I wouldn't say that I stepped into his shoes, because my father took the position of President at that time, and I don't recall that I had an official position outside of being one of the directors at that time. I don't think I held any office until after father's death.

Q.—Who kept your father's files, and your uncle Frank's files in the office? A.—Uncle Frank's files were not kept by the same party who kept father's files. 10

Q.—Who kept your father's files? A.—Latterly, during his life, Mr. Benfield, who was father's private secretary, probably the last two or three years of his life, I don't recall exactly, and he has since been retained by the executors; he might be called secretary of the estate, and he has since had charge of those files.

Q.—Do you yourself know anything in regard to those files? A.—I never have opened the files, if I want anything out of them, I ask Mr. Benfield to get the correspondence for me.

Q.—You never interfere with them yourself? A.—No. 20

Q.—Anything you want, you ask Benfield to get for you? A.—I don't know that I have had occasion to call for anything out of those files very much.

Q.—If you did have to? A.—In connection with this action I did ask for something.

Q.—Up to that time, you don't know whether you ever had occasion to call for any files? A.—Oh, I may have, I wouldn't say if I had or not.

Q.—If you did, you did it through Mr. Benfield? A.—Yes.

Q.—And never interfered yourself? A.—Exactly. 30

Q.—Who looked after your uncle Frank's files? A.—I believe they were looked after by Mr. J. A. McDougall.

Q.—What was his position in the business? A.—He is secretary of Walker Sons.

Q.—That is a partnership? A.—It was a partnership, it is not a partnership, it is Walker Sons Incorporated.

Q.—It was a partnership? A.—Some years prior. It was incorporated some few years ago. Pardon me, Mr. McDougall, in keeping those files, was not doing it as secretary of Walker Sons, but in the capacity of an individual.

Q.—He was doing that as an individual, acting for your uncle Frank? A.—Exactly, that is my understanding. 40

Q.—And were those files intact when you came into office, your father's and uncle's files? A.—I have no way of knowing anything about my uncle's files, whether they were intact, or not, I presume they were.

Q.—You don't know? A.—I have no knowledge.

Q.—Now, you were served with a subpoena, Mr. Walker, were you not? A.—I was.

Q.—Have you got the subpoena there? A.—I think Mr. Rodd has it. I haven't it in my possession.

HIS LORDSHIP: If you have the original it will do.

MR. MCCARTHY: In fact, I believe you were served with two subpoenas? A.—Yes.

MR. RODD: There is one, and there is the other.

MR. MCCARTHY: You can identify these, Mr. Walker, can you, as subpoenas with which you were served? A.—I think those are correct.

10 Q.—Now, you were asked for the production of a power of attorney from Mr. E. C. Walker, that is your uncle Ed., as he has been called during the trial, to your father, have you got that? A.—If I may, I can answer the whole question in a few words, if I may be permitted to say it.

Q.—The whole question is very simple. A.—I haven't it in my possession; I imagine it is here, if it is found; I gave instructions to search the files thoroughly for it, and for all documents mentioned, and all the documents they have been able to find have been turned over to Mr. Rodd and Mr. Osler. They have not passed through my personal hands.

Q.—You are answering the subpoena generally? A.—I am.

20 Q.—What was done with the subpoena? A.—I had two copies of it made, one for Mr. Lucking, and one for Mr. Rodd to see, but inadvertently one copy went with the original to Mr. Rodd's office, and whether Mr. Rodd turned one over to Mr. Osler or not, I do not know.

Q.—What do you produce under the subpoena? A.—I can't say what I produce. I will have to leave it to my counsel to say what was found, or to Mr. Benfield. You understand there were some files I was to produce as executor, and the other files I was to produce as an individual, but I have nothing as an individual. I had nothing to do with that matter, so I wouldn't have it in my files. I am here to produce, as executor,

30 what Mr. Benfield found.

Q.—Will you get for me what you produce under the subpoena? A.—I will have to ask Mr. Rodd. I appear to have here an invoice from Mr. Z. A. Lash to E. C. Walker for \$500, which is his fee for drawing the will of E. C. Walker and Mrs. Walker, and including attendance at Walkerville. That has been receipted, and it is dated March 3rd, 1914, and it is receipted "March 1914." I have here a cheque evidently in payment of that account, dated March 4th, 1914, for the same amount, signed, "Edward C. Walker, by J. Harrington Walker, attorney." I have here a power of attorney, I imagine, without reading it, it is the one you asked

40 for.

Q.—I will refer first to the power of attorney, it is dated the 12th day of December, 1913, and by it Mr. Edward Walker appoints his brother J. Harrington Walker as attorney.

"1. To demand, sue for and force payment of, receive and give discharges for all moneys, securities for money, debts, stocks, shares, bonds and other personal estate now belonging or hereafter to belong to me;

2. To settle, compromise or submit to arbitration all accounts, claims and disputes between me and any other person or persons;

RECORD

In the
Supreme
Court of
Ontario

Plaintiff's
Evidence

No. 24
Hiram H.
Walker.

Examina-
tion-in-
Chief.
16th May,
1924.

—continued

RECORD

In the
Supreme
Court of
Ontario

Plaintiff's
Evidence

No. 24
Hiram H.
Walker.
Examina-
tion-in-
Chief.
16th May,
1924.

—continued

3. To accept the transfer of, and to sell, surrender or dispose of, any stocks, shares, bonds, funds, annuities and other securities now belonging or hereafter to belong or to be transferred to me;

4. From time to time to vote at meetings, General or Special, of any companies, or otherwise to act as my attorney or proxy in respect of any stocks, shares or other investments now held, or which may hereafter be acquired by me therein;

5. To invest any of my moneys in such manner, at such rate of interest, and upon such securities, as my said attorney shall think fit, and from time to time to vary the said investments, or any of them, and, in the meantime, and pending any such investment, as aforesaid, to deposit the said moneys, or any part thereof, with any bank or bankers to whom my said attorney shall think fit to entrust the same; 10

6. Out of such moneys to pay any calls upon shares, or other expenses in respect of any part of my said estate, as my said attorney shall think fit, and to receive the dividends, interest and income arising from any stock, shares or other estate now or hereafter belonging to me;

7. To carry into effect and perform all agreements entered into by me with any other person;

8. For the purposes aforesaid, or any of them, to endorse and sign my name to any cheques, dividends or interest warrants, or other instruments payable to me, and to sign my name and execute on my behalf all contracts, transfers, assignments, deeds and instruments whatsoever; 20

9. To concur in doing any of the acts and things hereinbefore mentioned in conjunction with any other person or persons interested in the premises;

10. From time to time to appoint and remove at pleasure any substitute for or agent under him in respect of all or any of the matters aforesaid, upon such terms as my said attorney shall think fit;

11. Generally, to act in relation to my estate and in the premises as fully and effectually in all respects as I myself could do, and whether I am concerned solely or jointly with any other person or persons. 30

AND I hereby undertake to ratify everything which my said attorney, or any substitute or substitutes, or agent or agents, appointed by him under the power in that behalf hereinbefore contained, shall do or purport to do in virtue of these presents.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 12th day of December, 1913.

(SGD.) EDWARD C. WALKER."

That is witnessed by Robert J. Daniels. Who is Mr. Daniels? A.—Mr. Daniels is connected with the business, and has been for some 40 time; not the distilling company.

HIS LORDSHIP: Who drew the power of attorney?

MR. MCCARTHY: Mr. J. H. Coburn of Walkerville.

HIS LORDSHIP: Mr. Walker sometimes calls himself "E. Chandler Walker," and sometimes, "E. C. Walker." As a rule, a business man adopts a signature for all purposes and sticks to it.

Exhibit No. 25: Filed by Plaintiff: Power of Attorney, dated December 12th, 1913.

MR. McCARTHY: Now, so far so good. What else have you got for me? A.—Again, I will have to refer to Counsel.

Q.—I hope the fishing will be better this time. I may say, my lord, there are a good many documents mentioned in the subpoena I do not think I need.

MR. OSLER: Suppose you call for what you want.

MR. McCARTHY: I should like to get from the witness the file in connection with the drawing of the Will of February, 1914.

THE WITNESS: I do not think anything was found in connection with that.

Q.—From where did you get that information? A.—Well, if it is not in the hands of Counsel, it was not found. I can consult Mr. Benfield this afternoon, he has left the room. I may say there was a very thorough search made three or four times through all the files.

MR. RODD: Mr. Benfield will give you all that information.

THE WITNESS: Everything that was found, having any relation to the subject, whether there was any question about its relationship or not, was submitted to the Counsel.

MR. McCARTHY: Correct me if I misstate anything. I understand you made copies of the subpoena, sent one copy to Mr. Rodd, and the other to a gentleman in Detroit, Mr. Lucking; and you yourself took no further part in the matter? A.—No, I would not say that, I gave very definite instructions to Mr. Benfield to make a very thorough search through all the files he had access to, which I think he did. I told him if he came across those papers he should turn them over to the Counsel.

Q.—Not turn them over to you? A.—Not turn them over to me.

Q.—Did he give you a list of what he turned over to them? A.—No, I consulted Counsel and was advised it was not necessary I should know, that it should necessarily pass through my own hands.

Q.—You consulted Counsel, and they told you that if it did not pass through your hands it was not necessary you should know what Mr. Benfield produced? A.—I know that Mr. Benfield produced everything that was there, as far as his access was concerned.

Q.—Did he tell you what he did produce to them? A.—There are a lot of things, as he said, that have no bearing on the subject.

Q.—Did Mr. Benfield tell you what he had turned over to Counsel? A.—I don't recall whether he did definitely or not.

Q.—At any rate, everything that Mr. Benfield found he turned over to Counsel and not to you? A.—Exactly.

HIS LORDSHIP: You live in Detroit? A.—Yes.

Q.—In your father's house? A.—No. There were other matters that had nothing to do with Mr. Benfield's files, they were Hiram Walker & Sons, and they were searched for at another period by another party.

MR. McCARTHY: Let us get a little more accurate information. With reference to my inquiry of a minute ago as to the file of correspondence,

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if such existed, between Mr. Lash and your father, in connection with your uncle Ed.'s will of February 1914, did you ask Mr. Benfield whether such a file existed? A.—I did, on that particular point, and was advised he was not able to find anything.

Q.—Mr. Benfield told you he could not find anything? A.—Exactly.

Q.—There was no correspondence at all? A.—That is my recollection.

Q.—But, if you are wrong, Mr. Benfield will be able to correct you? A.—Exactly.

Q.—We have got the power of attorney. Here is a letter, Mr. Walker, 10 if you will kindly look at it, from Z. A. Lash to your uncle Mr. E. C. Walker. Where did that letter come from, or who dug that up? A.—I have not seen the letter, but I presume it was probably taken out of the files by Mr. Benfield, who searched through the files.

Q.—It was probably taken out of the files? A.—I presume it was.

Q.—You never saw it until this moment. A.—This is the letter that Mr. Fleming has just read, I take it?

Q.—Yes? A.—No, I have not seen it. I do not recall having known about it until it was read yesterday.

Q.—You did not know that Mr. Benfield had discovered this letter, do 20 I understand you to say that? A.—I did not know Mr. Benfield had discovered that particular letter, I do not recall it.

Q.—There is another one of January 28th, also written by Mr. Z. A. Lash to your uncle Mr. E. C. Walker, do you know where that came from? A.—My same answer will apply in this case.

Q.—The same answer will apply to that, Mr. Benfield probably dug it up; where he got it, you don't know? A.—I presume, if he dug it up, it came from the file which he had in his possession.

Q.—Do I understand Mr. Benfield looked after E. C. Walker's files? A.—No, after E. C. Walker's death all his papers and files were left, I presume 30 by the National Trust Company, in father's care, they were left in the office and father took charge of them. That is how they would get into Mr. Benfield's hands. It was through this amount of correspondence in my uncle's file, which he had left there, that had to be searched through.

Q.—Do you know when this search was made by Mr. Benfield? A.—After I received that subpoena, although he had gone through the files previously looking up as much information as he could in connection with this case.

Q.—So that Mr. Benfield was the man who discovered the letters 40 from Mr. Lash to your uncle E. C. Walker, of the 28th of January, 1914, and the 16th of February, 1914, they were not handed to you but were handed direct to the solicitors? A.—That is it.

Q.—And if there were any answers to this correspondence, in your uncle's files, that I presume would also have been found by Mr. Benfield, and handed to the solicitors? A.—If there were answers, I presume that would have been the case. I do not know for a fact whether the National Trust Company had any other files of my uncle's, or whether there were

any other files of my uncle's at any other place, and I am not in a position to know.

Q.—Now then, did Mr. Benfield turn over to you any correspondence in reference to the settlement which was made between your father and your uncle Frank, and Mrs. E. C. Walker, the widow of your uncle, E. C. Walker? A.—He didn't turn them over to me, he turned them over to the solicitor.

Q.—Do you know whether he found anything or not? A.—I don't know whether he found anything or not. I think that there was in the file some place a copy of the agreement which has been produced and was read yesterday; whether there was anything else in connection with it or not, I cannot say.

Q.—He didn't report to you on any subject? A.—Not in detail.

Q.—You are completely in the dark in regard to any documents mentioned in this subpoena and which Mr. Benfield may or may not have found? A.—I am confident that everything that was found after a most careful search, was turned over to the solicitor.

Q.—When you say you are confident, on what do you base that confidence? A.—On Mr. Benfield's integrity, and others assisted him in the search, including one or two of the lawyers from Mr. Lucking's office in Detroit, who assisted in the search, they were assisting Mr. Benfield in the search.

Q.—Who were assisting Mr. Benfield, what lawyers do you refer to? A.—Lawyers from Mr. Lucking's office.

Q.—Do you know their names? A.—One of them. When I say they were assisting, I do not know to what extent they were assisting in going through the files, I know they were there with Mr. Benfield, and I believe they were assisting him in the search. It was Mr. Dean Lucking and Mr. VanAucken.

Q.—Is Dean Lucking generally regarded as the senior partner? A.—No, he is the son.

Q.—So, Mr. Lucking's son, and Mr. VanAucken were there at the time, as far as Mr. Benfield reported to you? A.—Not all the time, just occasionally.

Q.—Mr. Benfield never submitted a list, or reported to you at any time, but either reported direct to Mr. Lucking or Mr. Rodd? A.—That is my understanding.

Court adjourned at 1 p.m. until 1.30 p.m., Friday, May 16th, 1924.

40

AFTERNOON SESSION. Friday, May 16, 1924.

Examination of HIRAM H. WALKER continued by MR. McCARTHY.

Q.—Mr. Walker, I think you told me that no papers had been handed to you, or letters, in connection with the agreement between your father

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and your uncle, and Mrs. E. C. Walker? A.—I don't recall saying "No."

MR. OSLER: I may say I have received a few papers here which have just been handed to me with respect to some negotiations between Mr. Lash and Mr. Harrington Walker, which are privileged. They are with those that appear on the file.

HIS LORDSHIP: Are they of that character?

MR. OSLER: Of that character. Some of them are about Harrington Walker's own will. Then those that do relate to 1915 are of a confidential character, except two or three. One is a letter from Mr. Lash to Mrs. E. C. Walker, with reference to it, and there is a note that the above letter is correct. That letter is dated March 22nd, 1915. 10

HIS LORDSHIP: There was no litigation mooted at that time.

MR. OSLER: No, it is not a question of litigation, it is a question of privilege as between solicitor and client.

MR. MCCARTHY: I fear I must accuse you of being guilty of some iniquities, that you only give me what is good for me, or bad for me. He has already produced letters passing between J. H. Walker and Mr. Lash.

MR. OSLER: Where Mr. Lash acted as solicitor for the testator, I have not thought any question of privilege could arise. This is a different situation, that my learned friend is now speaking of, with reference to correspondence relating to the agreement made in 1915 with the widow of the testator, and the brothers, namely, Harrington and Frank Walker. Now Mr. Lash was acting as solicitor for Harrington and Frank Walker the testator having died some time before. 20

HIS LORDSHIP: The allegation is, by the plaintiff, that the executors practically admit what is alleged by the plaintiff, by making a settlement. There is evidence, I am not quite sure as to the admissibility of it, that Mrs. Walker told Mr. Robins that she had brought this claim.

MR. OSLER: Your lordship will probably hear Mrs. Walker's evidence which has been taken on commission. So far as this is concerned, it is quite clear, I suggest, that the communications between Harrington Walker and Mr. Lash are privileged. 30

HIS LORDSHIP: Is not the proper way to produce an affidavit on production setting forth the grounds for non-production, to give the other side a chance beforehand?

MR. OSLER: The only party concerned is the National Trust Company, and these letters never get into the possession of the National Trust Company.

HIS LORDSHIP: Some parties do not make an affidavit on production, they are not bound to, as, for instance, in bankruptcy; that being so, no order to produce was served; that seems to excuse them. 40

MR. OSLER: Instead of these inquiries, it would result in volumes of fishing subpoenas. We cannot come into Court and say we did not search.

HIS LORDSHIP: The only way to attack a thing like this is by comprehensive subpoenas.

MR. OSLER: That is not the method adopted.

HIS LORDSHIP: How can I refuse to allow these to be produced just on your statement, no matter how sincere you may be?

MR. OSLER: I take it, my lord, that the witness has got to inform himself, and, if necessary, the witness can go through these papers, and see if there is anything on the files in reference to the matter, and if there is anything relating to the settlement in which Mr. Lash acted as Harrington Walker's solicitor.

10 HIS LORDSHIP: I cannot direct him how he shall conduct his case, on the mere statement there does not seem to be sufficient possibility shown in some way. We may have had all this talk for nothing.

MR. OSLER: I thought I should take this objection at the earliest possible moment; we regard it as a fishing expedition.

MR. MCCARTHY: My learned friend says it is a fishing expedition, sometimes one has to fish if one wants to catch anything.

HIS LORDSHIP: The fish do not jump into the boat.

MR. MCCARTHY: Not as a rule. The difficulty is, as your lordship has properly pointed out, that the two Walkers have not defended; my learned friend Mr. Osler said the National Trust Company was defending on their behalf. I think Mr. Hiram H. Walker said in the witness-box
20 now that he had given the National Trust Company instructions to act for him.

THE WITNESS: I do not think I said that definitely, I said it was my understanding; I may be incorrect.

MR. MCCARTHY: I certainly would ask for the production of any letters passing between Mr. Harrington Walker and Mr. Lash in reference to this settlement; and what I would suggest would be, and I am perfectly willing to leave it to your lordship, if my friend would show the letters to your lordship and let you read them, and then your lordship may decide as to what parts you think are admissible. I have no desire to refer to anything that is not pertinent to the issue in this case.
30

HIS LORDSHIP: I think the best way is to have the evidence given under oath that they do pertain to the issue; I do not think it should be left to the Judge, he might err about it. As a rule, an affidavit is submitted under oath that the letters are of a confidential character passing between solicitor and client, for the purpose of advising him, and are written in confidence between the solicitor and client.

MR. OSLER: Or for the purpose of conducting negotiations.

MR. MCCARTHY: That places this witness in exactly the same position as if he had made an affidavit on production. I think your lordship intimated that is the proper thing to do.
40

HIS LORDSHIP: Mr. Hiram H. Walker should read these things, and be advised by Counsel, and then give his statement about them.

MR. MCCARTHY: I should like the witness, in doing that, to bring the letters up with him and give the dates, as well as telling from whom they are, as to each letter.

HIS LORDSHIP: He would have to do that in an affidavit on production, he would have to give his reasons. Oh, that is reasonable. You

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had better read out particulars as to the letters and the reporter will take down the dates.

MR. McCARTHY: That is what I suggest.

HIS LORDSHIP: This will take some time; are you able to go on with something else?

MR. OSLER: It will take some time.

MR. McCARTHY: Separate what you are prepared to produce, and what you object to.

MR. OSLER: I find a letter from Mr. Lash to Mrs. E. C. Walker—I will not interpret what it is—dated 22nd of March, 1915. 10

MR. McCARTHY: I understand you are prepared to advise Mr. Walker not to produce the others?

MR. OSLER: Yes.

MR. McCARTHY: He might stand in the box and give the dates, and stating he is advised so and so.

HIS LORDSHIP: That will clean it up.

MR. OSLER: Perhaps it would be more convenient if I listed the dates and handed them to him. They are not in exactly chronological order.

MR. McCARTHY: In the meantime, may I go on?

Q.—Then you do produce a letter from Mr. Z. A. Lash addressed to Mrs. E. C. Walker of March 22nd, 1915, in which he states: 20

“ Toronto, March 22nd, 1915.

Mrs. E. C. Walker,
Walkerville, Ont.

My Dear Mrs. Walker:

After I left you on Saturday I had a talk with Mr. Harry Walker, and I repeated to him the substance of our interview. While the matter is fresh in my mind I want to tell you the result.

I was much pleased with Mr. Harry's attitude, and I am glad to be able to say that I correctly judged him when I told you that I would be greatly disappointed if he did not take a broad and generous view of the position and see that the substance of his brother's wishes with regard to yourself were carried out. 30

I was right in thinking and telling you that your husband did not discuss with Mr. Harry the provisions made for you in his will. He left that for discussion with me. As I said to you, the questions what to do with “Willstead” and what provision to make for you constituted the chief changes in the provisions of the former will. The lists of legacies and gifts of pictures he had practically decided upon, and we did not spend much time over them. He said he would have the list completed and sent to me. This was done. Before I saw him he had evidently decided to give you an annuity and a pecuniary legacy. The former will and codicil had provided for this, but for smaller sums. It was with reference to details about “Willstead” that he had not come to a decision, except that he wished you to live there if you wished, and 40

as long as you wished, and he wanted you to be free to give it up if you preferred some other place. I think he felt that "Willistead" might be too large and require too much looking after to suit you permanently, but he did not want to decide this for you. I know that he wanted you to be able to make all reasonable expenditure and to be free from pecuniary anxiety as regards "Willistead" or any other dwelling house. These wishes are, I think, apparent upon the face of the will, and I am glad to be able to tell you that they were spontaneously expressed by himself to me. He approved of the suggestions for the provisions about "Willistead" which I made, and I promised to draft them in detail on my return to Toronto. The amounts of the annuity and the pecuniary legacy were fixed by himself, and I think (but of this I am not sure) that the probable interest on the \$200,000 was mentioned as being about \$10,000, thus making your income under the will \$35,000 per year, with no house rent or upkeep, &c., to come out of it.

I said all this to you, and repeated it to Mr. Harry, and I told him what you had explained to me about the expense at "Willistead." He said he thought his brother had underestimated what was required, and that he and Mr. Frank would correct this and do what may be required to attain the main object of the provisions in the will, viz., that you should continue to live in "Willistead" if you wanted to and that you should be reasonably free from pecuniary anxiety with regard to your living there. I feel quite sure that upon Mr. Frank's return the necessary business arrangements will be made to carry this out. The brothers will do it because they will in this way be carrying out what your husband evidently thought he was doing, and you need have no hesitation in allowing them to do so. In referring to Mr. Frank's return I do not mean that you are not to regard what Mr. Harry says as sufficient. I merely refer to the formalities which have to be carried out with the Trustees. You can, I think, rely upon Mr. Frank being entirely in accord with his brother.

An incident occurred at the conclusion of my talk with Mr. Harry which will illustrate his attitude. Mr. McDougall came in and inquired about the expenditure upon the house which your husband was building for your niece, Mrs. Donald Cassels. I said there was no mention of that in the will. Mr. Harry at once said it had been decided on after the will was made; that he knew your husband's intentions about it and that they would be carried out, and he instructed Mr. McDougall accordingly.

In order that there may be no mistake in what I have said so far as Mr. Harry is concerned, I shall send him this letter and ask him to read it, and to mark it correct if it be so, and send it to you."

There is a note, as follows: "The above letter is correct.—J.H.W." And there is a memo. on the front page of the letter as follows: "Handed to Mrs. Walker on March 27th." That is in pencil.

Letter dated the 22nd of March, 1915.

HIS LORDSHIP: In whose writing is the upper one?

MR. MCCARTHY: I do not know.

HIS LORDSHIP: Did Mr. Harry bring it back from Toronto?

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MR. McCARTHY: In whose writing is the pencil memorandum at the top?

THE WITNESS: I do not recognize that writing. It is father's writing at the bottom.

MR. SAUNDERS: That is Mrs. E. C. Walker's writing, "Handed to Mrs. Walker on March 27th." The letter comes from Mrs. Walker, I got it this morning.

HIS LORDSHIP: Mrs. Walker is not here, is she?

MR. SAUNDERS: No, my Lord.

MR. McCARTHY: I understand it is produced by Mr. Saunders acting 10 for Mrs. Walker, and not by this witness?

MR. OSLER: Yes. There are two other letters on the file, both from Mrs. Walker.

Exhibit No. 26: Filed by Plaintiff: Z. A. Lash's account for drawing wills for E. C. Walker and Mrs. Walker. Cheque dated March 4, 1914, for \$500 in payment of above account.

Exhibit No. 27: Filed by Plaintiff: Letter dated March 22nd, 1915, from Z. A. Lash to Mrs. E. C. Walker.

MR. McCARTHY: Are you producing these, Mr. Walker? A.—I understand from Mr. Osler those were in the files produced on my affidavit. 20 Q.—This is purely a social letter dated 10-11-14.

MR. OSLER: I only produce it because it is a letter written by Mrs. Walker in 1914, showing he had a good day, he was a little better than he was before.

MR. McCARTHY: This one is not necessary.

Then we have a letter that is undated; it may possibly be of significance; it is written from "Willistead" to Mr. Harry Walker, reading as follows:—

"Willistead.

My Dear Harry:

In regard to your request that I turn over to the National Trust Co. the deed of the St. Andrew's property, I feel that I have not accepted this will, or any of its provisions, and that after your promises to myself, to Andre, and to Mr. Lash, I cannot now approve of any suggestions or changes, without some legal advice.

I am not well enough yet, Harry, to take up any business matters, and I am trying to follow Dr. Shurly's advice, not to think of any business and not to worry over anything for the present. I hope to see you when you come to luncheon with Helen. Will you please explain this to Mr. McDougall, as I did not wish to speak to anyone about it. In 40 haste,

Yours,
MOLLY."

HIS LORDSHIP: Was there any envelope with that letter?

MR. OSLER: No, my Lord, just loose in the file.

- HIS LORDSHIP: Was there a file?
- MR. OSLER: Apparently it is as a result of the search conducted by this witness.
- Exhibit No. 28: Filed by Plaintiff: Letter undated from "Molly" to Mr. Harry Walker.
- MR. OSLER: The other letters I have arranged in chronological order.
- MR. McCARTHY: Tell who to and from, and I will accept it as coming from the witness.
- 10 MR. OSLER: A letter from Z. A. Lash to J. Harrington Walker, dated 22nd March, 1915.
- Letter from Z. A. Lash to J. Harrington Walker, dated March 29th, 1915.
- Letter from Z. A. Lash to J. H. Walker, dated April 8th, 1915.
- Letter from Z. A. Lash to J. Harrington Walker, dated May 1st, 1915.
- Letter from Z. A. Lash to J. Harrington Walker, dated May 25th, 1915.
- Letter from Z. A. Lash to J. Harrington Walker, dated May 29th, 1915.
- Copy of letter, with the initial indicating it is J. H. Walker, to Z.
- 20 A. Lash, dated May 31st, 1915.
- Letter from Z. A. Lash to J. Harrington Walker, dated June 1st, 1915.
- Letter of J. Harrington Walker's, entitled, "Copy of letter to Lash," dated June 16th, no year.
- Copy of letter from J. H. W. to Z. A. Lash of June 17th, no year.
- Letter from Z. A. Lash to J. Harrington Walker, dated June 15th, 1915.
- Letter from Z. A. Lash, per B. L., to J. Harrington Walker, dated June 21st, 1915.
- Letter from Z. A. Lash to J. H. Walker, dated June 29th, 1915.
- Copy of letter on J. Harrington Walker's letterhead, addressed to Z.
- 30 A. Lash, dated July 3rd, 1915.
- Letter from Z. A. Lash to J. Harrington Walker, dated July 9th, 1915.
- Letter from Z. A. Lash to J. H. Walker, dated July 12th, 1915.
- Copy of letter, without a date, and without any formal address, beginning, "My dear Lash," and initialled "J. H. W."
- Copy of the agreement, and letter—it has no bearing on the settlement—your Lordship will understand some of these letters have no bearing whatever on this question; some have, and refer to this and to other things.
- 40 HIS LORDSHIP: If they have no bearing they would not have the protection of being privileged; the mere fact of a client writing to a solicitor does not protect the client, unless it refers to the litigation.
- MR. OSLER: They were all addressed in the character of solicitor, and dealing with matters in which Mr. Lash was dealing as solicitor.
- HIS LORDSHIP: Does the Kitty O'Shea case go as far as that?
- MR. OSLER: I understand all letters passing between a solicitor and client are privileged if they relate to the business about which he is con-

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sulted as solicitor; if he is consulted otherwise than as solicitor, it is a different thing.

HIS LORDSHIP: In regard to litigation, I would say, I do not remember it going further.

MR. MCCARTHY: May we let that matter rest here for a moment, and I may recall the witness later; I do not want to take up time. I am quite clear, I have the same impression as your Lordship. So if the witness could stand down. Is Mr. Benfield here?

THE WITNESS: Yes.

HIS LORDSHIP: The affidavit that is required is set out in the case of 10
Betts v. Grand Trunk, and that case goes very much further than what you have now argued.

MR. HELLMUTH: May I suggest that it is my understanding, if I write to my solicitor asking his advice, or requesting him to deal with a matter, that letter is privileged, and that the solicitor cannot waive the privilege; the client may be able to do that, but unless the client waives the privilege it is confined to matters either actually in litigation or in contemplation of litigation.

HIS LORDSHIP: I should say whether in contemplation or otherwise, what is the use of protection; a client should be able to freely state his 20
case.

MR. HELLMUTH: Take a real estate transaction, without any litigation, where I write proposing to buy a certain property, and would like to have your opinion in regard to the title; now, the solicitor writes back and gives me his opinion; that, I submit, is clearly under the authorities.

HIS LORDSHIP: Clearly, if it comes into litigation.

MR. HELLMUTH: Before it comes into litigation. I have the right to say that letter in subsequent litigation cannot be produced.

HIS LORDSHIP: It must be reasonably connected with the litigation 30
that follows.

MR. HELLMUTH: Exactly; here we have litigation following this very question. As I understand Mr. Robins' examination, an attack was threatened to be made upon the will by Mrs. Walker; that is what he says, he says that Mrs. Walker threatened to make an attack upon the will. Then there were negotiations between Harrington Walker and Mr. Lash.

HIS LORDSHIP: Let us go on with this anyway.

MR. MCCARTHY: Do I understand the witness to claim privilege in regard to those documents which Mr. Osler has read?

HIS LORDSHIP: He does, of course, Mr. Osler advised him to. 40

MR. MCCARTHY: He can stand down.

MR. OSLER: When are you going to complete Mr. Walker's ex-
amination?

MR. MCCARTHY: When I see what Mr. Benfield says.

HIS LORDSHIP: You can postpone your cross-examination.

MR. MCCARTHY: You delegated your duty, whatever duty you had under the subpoena, to Mr. Benfield? A.—A portion of the subpoena.

Q.—What portion? A.—I think I distinctly said that portion which related to any papers in connection with the distilling company; I believe there were some Mr. Benfield had nothing to do with it, and that was delegated to another party.

Q.—Who is that? A.—Mr. Isaacs. You did not let me finish.

Q.—You delegated your authority or duty under the subpoena to Mr. Isaacs? A.—As far as any papers having to do with the distilling company, because Mr. Isaacs was familiar with the files.

10 Q.—And to Mr. Benfield, as far as they were concerned with other matters? A.—Yes.

GUSTAVUS BENFIELD, Sworn. Examined by MR. MCCARTHY.

Q.—Mr. Benfield, what was your position during the lifetime of the three Mr. Walkers, that is, Frank, Harry and E. C. Walker? A.—I was not here when E. C. Walker was alive.

Q.—When did you join? A.—January 1916.

Q.—In what capacity? A.—As the private secretary of Mr. J. Harrington Walker.

20 Q.—The last witness has told us, Mr. Benfield, that he asked you to make a search in reference to certain papers or documents mentioned in a certain subpoena? A.—Quite right.

Q.—Were you given a copy of the subpoena? A.—I saw the original subpoena and read it.

Q.—What did you do? A.—I searched all through the files, and the files had already been searched through, they were searched through when the case was first opened, and all papers in connection therewith were given to our counsel.

Q.—You searched through files which had already been searched through? A.—Yes.

30 Q.—What had been done when the files had been searched through? A.—All papers were taken down and given to our counsel.

Q.—Do you know that of your own knowledge? A.—I gave them myself.

Q.—You performed two offices. When did you first search the files? A.—When the case first started, about nine months ago.

Q.—On whose instructions? A.—My own interest; I searched J. Harrington Walker's files for any papers in connection which might lead to the E. C. Walker will, or estate.

Q.—Who told you that litigation had started? A.—I can't tell you who told me just now; I saw it in the papers that were served on us.

40 Q.—What is your present position? A.—Agent for the estate of J. Harrington Walker,

Q.—And as soon as you became aware that litigation had commenced, you, on your own initiative—correct me if I am misstating—made a search of J. Harrington Walker's files? A.—No, not on my own

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Plaintiff's
Evidence

No. 24
Hiram H.
Walker
Examina-
tion-in-
Chief
16th May,
1924.
—concluded

No. 25
Gustavus
Benfield.
Examina-
tion-in-
Chief.
16th May,
1924.

RECORD

In the
Supreme
Court of
Ontario

Plaintiff's
Evidence

No. 25
Gustavus
Benfield:
Examina-
tion-in-
Chief.
16th May,
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-continued

initiative. Blake, Lash & Cassels asked me to see if there were any papers in connection with it.

Q.—Where is your office? A.—In the Distillery Building.

Q.—You searched those files? A.—Yes.

Q.—By yourself? A.—By myself.

Q.—What did you do with the papers you found? A.—Handed them over to our Counsel.

HIS LORDSHIP: Taking a list A.—No.

MR. MCCARTHY: You didn't make a list, and take the dates? A.—
No. 10

Q.—Did you hand over all of those, or just some? A.—Any papers that had any bearing on the will, or estate, of E. C. Walker, I gave to Blake, Lash & Cassels.

Q.—Did you post them to them? A.—I can't tell you, at the time, whether I mailed them or took them down. I was going down to Toronto so often, I can't tell you.

Q.—So, when you got this subpoena, you went through the form of searching when you knew there was nothing to find? A.—I did, Mr. Rodd told me I would have to search the files, and I went through the files again. 20

Q.—You went through the motion? A.—Yes.

Q.—It was like Old Mother Hubbard? A.—I found the cupboard empty.

Q.—You have never seen these papers from that day to this, after you sent them to the solicitor? A.—No.

Q.—Speaking from recollection, do you remember whether there were any letters passing between Mr. Lash and Mr. E. C. Walker, or between Mr. E. C. Walker and Mr. Lash, about February 1914? A.—No, sir, not to my knowledge. I was not looking for—

Q.—Will you, Mr. Benfield, kindly look at this letter of the 16th of February, 1914, and tell me if that went through your hands? A.—I
never saw it before. I heard you read it yesterday. 30

Q.—You never saw it before? A.—I had nothing to do with the files of E. C. Walker, they didn't come into my hands at all.

Q.—I thought you said you had seen everything? A.—I didn't mention E. C., it was J. Harrington Walker's files.

Q.—What had they to do with the will of E. C. Walker? A.—We had no letters of E. C. Walker's in J. Harrington Walker's files. That letter was written by Mr. Lash to E. C. Walker.

Q.—Did you have anything to do with E. C. Walker's files? A.—
Nothing at all. 40

Q.—Who had to do with them? A.—I can't tell you.

Q.—Did you make a search, when you were advised, that litigation had started, in regard to E. C. Walker's files? A.—No. I had nothing to do with them.

Q.—Who did? A.—I don't know.

Q.—Do you know where they were? A.—I fancy all the files of E. C.

Walker's were destroyed by J. Harrington Walker three years after the death.

Q.—What reason have you for that fancy? A.—J. Harrington didn't want useless papers about; some were cheques, and that sort of thing, because he didn't want them.

Q.—Why this supposition? A.—I saw him do it.

Q.—It is more than fancy, then, you saw him do that? A.—I saw him go through E. C. Walker's files and pick out anything of any value and destroy the balance.

10 Q.—What did he do with those of value? A.—I can't say sir, I never saw them.

Q.—Did he keep them in his room? A.—Not to my knowledge.

Q.—What room was he in when you saw him go through them? A.—It was his own private room when I saw him going through these papers.

Q.—It was in his own private room you saw him go through E. C. Walker's files? A.—Yes.

Q.—Was it in his own private room he kept E. C. Walker's files? A.—It was at the time.

20 Q.—Were you in charge? A.—I was in charge of his own personal files.

Q.—How do you know he kept those of value and destroyed those that were not? A.—Because he told me so.

Q.—He told you he had kept those of value and had destroyed those that were not? A.—Yes.

Q.—Have you any idea of the number destroyed, and the number kept? A.—I would say 99½ per cent. were destroyed.

Q.—99½ per cent. were destroyed, and ½ per cent. were kept. How many documents would be included in the ½ per cent.? A.—I think about 1,000 or so in the pile he had on his desk, I never looked through

30 them.

Q.—Did he ask you to file them away? A.—No, sir.

Q.—What did he do with them? A.—I can't tell you.

Q.—You didn't see them? A.—I didn't see them at all.

Q.—You didn't see them? A.—I didn't see them.

Q.—You just saw him go through the operation? A.—I just saw him go through the operation of going through the files.

Q.—What were you doing? A.—Sitting at my own desk.

Q.—And he did that personally? A.—He did it personally.

40 all. Q.—He did not trust that to you? A.—He did not trust it to me at

Q.—What he kept, and what he destroyed, you really don't know? A.—I haven't the slightest idea.

MR. OSLER: I suppose, Mr. McCarthy, you do not want to ask Hiram H. Walker about other things?

MR. MCCARTHY: Which others?

MR. OSLER: As to the financial statements.

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Walker.
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tion-in-
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—resumed

MR. McCARTHY: I do not know; he gets into the box without anything in his hand, except the subpoena.

MR. OSLER: We have a subpoena to produce documents relating to the Bank of Montreal, and the Bank of Commerce. I do not want you to examine the witness after I have cross-examined, because you would like to go back.

EXAMINATION OF HIRAM H. WALKER, continued by MR. McCARTHY.

THE WITNESS: I am not familiar with the Bank of Montreal and the Bank of Commerce matter. 10

MR. McCARTHY: I have not seen the documents he is producing, so I do not know whether I shall want to examine Mr. Walker again. I understood he had nothing. A.—I said I had nothing.

Q.—You delegated it to the other gentlemen? A.—Yes, and what they turned over was in the Court Room.

Q.—What they had turned over, not what you had? A.—Well, they had turned it over presumably for me.

Q.—You had better let me see what you have? A.—They are right there.

MR. OSLER: I may say we object to being called upon to produce the 20 financial statements.

HIS LORDSHIP: I do not suppose for a moment Mr. McCarthy wants them.

MR. OSLER: The subpoenas call upon us to produce them.

MR. McCARTHY: I haven't the faintest notion of what he has got. If the witness will tell me? A.—May I ask Mr. Isaacs to come up here?

Q.—What branch of the case is Mr. Isaacs on? A.—In reference to the distillery.

(Mr. Isaacs says there are papers with reference to the proposed sale of the distillery in 1912). 30

MR. OSLER: That again is not relevant.

HIS LORDSHIP: They have made out a comprehensive subpoena, and these people are trying to do what they can in answer to the subpoena.

THE WITNESS: There is a vast mass of detail in connection with this, your Lordship, for instance, letter books, copy books, and correspondence in connection with the Bank of Commerce.

MR. McCARTHY: I think it is pretty well covered by the evidence. We do not need to bother about the distillery business. What else?

MR. H. C. WALKER: With regard to the change from the Bank of Montreal to the Bank of Commerce. 40

MR. McCARTHY: We do not want that.

MR. OSLER: Have you finished with Mr. Hiram Walker?

MR. McCARTHY: Yes, for the present. We are not going into the details of the proposed sale of the distillery, only to establish the price.

MR. OSLER: I understand my learned friend Mr. McCarthy is finished?

HIS LORDSHIP: Mr. Hiram H. Walker may be re-called, and you can cross-examine him again.

CROSS-EXAMINED by MR. OSLER:

Q.—Mr. Walker, how long before your late uncle, Mr. Edward Walker, died had you seen him? A.—I saw him just shortly before he went to Washington.

Q.—What was your occupation in the distillery? A.—At that time, I do not recall definitely as to whether or not I was on the Board of Directors. I did not hold office on the Board, if I was on the Board.

10 Q.—That was in the early part of 1915? A.—I am not positive about whether, at that time, I was on the Board of Directors or not. I have not looked it up.

Q.—How long have you been working in the distillery? A.—I went in the distillery about 1908 or 1909. I think it was in 1909, not in the office but in the plant.

Q.—That is, you were in the manufacturing department? A.—Going through the different departments.

Q.—And were you continuously employed in the distillery up to the time of your uncle's death? A.—I was.

20 Q.—What branch of the business did he take most interest in? A.—He took more interest in certain questions relating to the distilling, and the mechanical end of the business, than he did in the sales end of the business, although, of course, he was interested in the results of the sales. He was not, as I recollect, as interested in the methods and procedure, and so on, of that end of the business as he was in the other.

30 Q.—Did you have occasion to see your uncle frequently during the last three years of his life? A.—I was living at Walkerville at the time, and my wife and I frequently—when I say frequently, it may have been two or three times in a month, and perhaps not as frequently, or perhaps more frequently than that; we would go to his house for dinner, or in the evening. Just how late in his life these visits continued, I cannot say, but I think they went almost up to the last of his life. I also saw him when he came down to the office. I did not always see him when he came down because at that time I was around the plant much more than in the office.

40 Q.—Did you have occasion to speak to your uncle?—A. Whenever I saw him. He always stopped me and asked me questions about this, that and the other thing in connection with one thing and another in the business; perhaps it was not always the distilling business, perhaps it was the waterworks company in which he was very much interested.

Q.—That is the Walkerville Waterworks? A.—Yes, that is one of the Walker Companies.

Q.—It was a municipal company? A.—A private company for the purpose of supplying water to Walkerville and the district about.

HIS LORDSHIP: You must have been a very young man in 1909. Are you thirty? A.—Yes, quite a little beyond that.

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MR. OSLER: How old are you? A.—I am 38, nearly 39.

Q.—In any of your conversations with your uncle did you observe whether or not he understood what he was doing? A.—I was just thinking; I made an incorrect answer, I was born in 1886, that makes me nearly 38, instead of 39.

Q.—In your conversations with your uncle did you notice whether he was able to carry on the conversation and know what he was doing? A.—I never noticed anything to the contrary. He would usually be the one to ask me a question about various things going on. I do not recall just what year it was, but it was I think 1910, or possibly 1911, that we made considerable alterations, or additions, in connection with the mechanical end of the plant, the electrical machines and water pumps, and he was very much interested in that and used to question me quite a bit in regard to the details, because I had been down there overseeing that construction. 10

Q.—Then, did you know your uncle was not a well man for some time before he died? A.—He was not physically well at times, which made him at times quite feeble. I mean, not particularly active at times, but at other times he used to walk—I am not positive as to whether he walked back and forth from the house occasionally, but my recollection is that he did at times. 20

Q.—Did he take any other form of exercise? A.—He did play a little bit of golf. And just how late it was in his life I am not sure, but prior to my coming to Walkerville he used to ride on horseback some.

Q.—Did he play billiards? A.—Yes, frequently, it was a great hobby of his, and he played billiards until very late in his life, I am not sure but what he played right up to the last, or within a few months of his death. He played with me when I was living in Walkerville, and I moved over in 1911, and he played billiards quite a lot after that.

Q.—Was he a good player? A.—Yes, he played a very good game. 30

Q.—Was he able to make difficult shots and combinations?

HIS LORDSHIP: Could he beat you? A.—Yes.

MR. OSLER: What I want to get at is whether his playing of billiards was confined to trying the simplest possible shots? A.—I didn't play billiards with him a great deal. I only played with him a few times, and I do not recall very much about how accurate his game was on difficult shots.

Q.—Had you any conversation with him on other subjects besides the distillery? A.—Yes, he used to chat about a great many things. He was a great lover of pictures, and he knew that both my wife and myself were fond of pictures, and he used to discuss his pictures very intelligently, in fact, he always talked about them as knowing a great deal more about them than I pretend to know. He would point out a certain picture he had perhaps rather recently purchased, and he would tell who it was by and something of the history of the painter, and the circumstances perhaps under which the picture was painted. And he generally showed a great deal of not only interest, but knowledge. 40

Q.—About how late did that occur? A.—Right up until the time of his most recent illness, that is, the last illness. As a matter of fact, he gave to us just a few months before he went to Washington, a painting. There were two or three paintings he was going to give to some of the nieces and nephews, and he asked us which of those we liked best. He had picked them out and commented upon them, and it could not have been many months before he went to Washington.

Q.—When you speak of the visit to Washington, you mean on the occasion of his fatal illness? A.—Yes.

10 Q.—You say he had selected pictures which he was going to give to the nieces and nephews? A.—Yes.

Q.—And he showed you those and discussed them? A.—Yes. And he gave us ours, and, I know he did the others too.

HIS LORDSHIP: He gave those in his lifetime; some were given under the Will? A.—Those were not in the Will, your Lordship.

RE-EXAMINED by MR. MCCARTHY:

Q.—Will you tell me when you were living in Walkerville? A.—I moved over in 1911, I believe it was.

20 Q.—And you moved back to Detroit when? A.—I moved back to Detroit, I think it was December, 1917.

Q.—How far did your uncle live from the distillery office? A.—Oh, it must be three-quarters of a mile, perhaps.

Q.—How did he usually go there? A.—He usually went in his machine. I have seen him walking in the direction of his home, and in the direction of the office, but I do not know whether he was walking the entire distance or not, I am not positive about that.

30 Q.—Can you tell me how often he went to his office? A.—He used to go down to his office, during the time I lived in Walkerville, I think nearly every day, excepting when he had those bad attacks that the Doctors referred to. He went down then nearly every day, sometimes for an hour and sometimes for two or three hours.

Q.—What attacks have you reference to that you say the doctors referred to? A.—I am referring to the attacks the doctors mentioned here in the witness-box.

HIS LORDSHIP: You have been attending here, have you, throughout the trial? A.—Not all the time, but most of the time.

40 Q.—You heard the doctors give evidence here? A.—Yes, that was correct, he did have bad attacks of illness, during which doctors were called in, and those particular days it may be he did not come to the office, there may have been two or three days, I don't recall, but between those attacks he was down to the office, as I recollect, nearly every day. I do not say that went right up to the last trip to Washington, I don't recall.

MR. MCCARTHY: During the year 1913, can you tell me whether he was in Walkerville continuously. A.—No, I can't remember anything about it.

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Q.—Were you there that year? A.—I can't even recall that; I was in Europe twice after I moved to Walkerville.

Q.—Do you remember what years you were in Europe? A.—No, offhand I can't. I was in Europe, well I wouldn't want to be sure, but I was over there twice between 1911 and 1917.

Q.—You cannot give us any idea of the year? A.—Yes, I can, one I was in Europe and got back in the spring of 1914, before the war broke out; and the previous trip was two years before that. I was there in the spring of 1914, I can place that by the date of the war.

Q.—When did you return. A.—I went over about early in the spring 10 and I returned in the late spring of 1914.

Q.—You said it was just before the war broke out? A.—The war broke out in August and I returned possibly two or three months prior to the time the war broke out.

Q.—You didn't go over there again? A.—No, I haven't been over there since that. I was there two years prior to that time, I think it was two years prior.

Q.—Do you recollect what time you went in the spring of 1914? A.—I can't tell you, no.

Q.—Do you remember when you came back? You said two or three 20 months before war was declared? A.—War was declared in August, 1914, was it not?

Q.—Yes. A.—Why, I imagine it was along in April or May.

Q.—How long were you over there altogether? A.—At that time I was over there, I think I was there about three months, I am not sure about that, I would have to look it up.

Q.—And the previous trip was two years before that? A.—I think it was two years prior.

Q.—That would be in 1912. Was it the same time of the year? A.—I was trying to see if I could connect that with some particular incident 30 in the year that would indicate whether it was in the spring or fall; but I would not be sure.

Q.—Can you connect it by the places where you were? Would you remain the entire time in England? A.—No, that first trip I was in England and France.

Q.—Do you remember whether it was winter or summer? A.—I made a couple of other trips before, and I am a little confused in my mind.

Q.—Do you remember whether your uncle Mr. E. C. Walker was in Walkerville in 1913? A.—I don't.

FRANK GILBERT, Sworn. Examined by MR. MCCARTHY:

40

Q.—Mr. Gilbert, what position did you occupy in Mr. E. C. Walker's household? A.—In the spring of 1912 I was houseman.

Q.—What would that mean, exactly? A.—I attended to the furnace and did odd jobs around the house.

Q.—Did you ever change the position? A.—In the spring of 1913.

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tion-in-
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Q.—Yes, what happened then? A.—I went upstairs to take care of Mr. Walker.

Q.—What position did you occupy then? A.—Valet.

Q.—How long did you retain that position? A.—Until the spring of 1914.

Q.—You became Mr. Walker's valet in the spring of 1913, after that did Mr. Walker remain in Walkerville? A.—We left for Europe in May of 1913.

10 Q.—And you returned to Walkerville when? A.—November of 1913.

Q.—What exactly did your duties require of you? A.—To take care of his clothes, and occasionally go out for walks with him, and go down to the office.

Q.—Yes, anything else? A.—No, there is nothing else.

Q.—Was there anybody else in attendance on him besides you? A.—When we was in Europe.

Q.—In Walkerville? A.—Not in Walkerville.

Q.—How long were you in attendance on him as valet before you left for Europe? A.—Just a short time, about two weeks, I think.

20 Q.—And during those two weeks, what was Mr. E. C. Walker's condition? A.—Seemed to be very good.

Q.—Was he in the house or out of the house, at that time? A.—He was out of the house a great deal.

Q.—Doing what? A.—Walking around the grounds, and down to the office.

Q.—Then you were simply a valet at that time? A.—Yes.

Q.—Did you go abroad with him? A.—Yes.

Q.—Who arranged the trip abroad? A.—Mrs. Walker.

30 Q.—Who got the tickets? A.—Mrs. Walker.

Q.—How did you go to New York? A.—By the Michigan Central.

Q.—Did you stay in New York? A.—About eight days.

Q.—Whereabouts? A.—At the Plaza Hotel.

Q.—During the stay in New York, what was Mr. Walker's condition? A.—Seemed very good.

Q.—Then, do you remember when you sailed for Europe? A.—I have the dates in my book.

Q.—You can refresh your memory, I think his Lordship will allow you?

HIS LORDSHIP: Yes.

40 A.—May 27th, at 10 a.m.

MR. MCCARTHY: What boat. A.—Kaiser Wilhelm II.

Q.—Where did you go? A.—We arrived at Liverpool on June 2nd.

Q.—What was Mr. Walker's condition on the way over?—A.—Very good.

Q.—Did he have anybody else in attendance on him at that time except you? A.—No.

Q.—Where did he take his meals? A.—In his room.

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Q.—Do you mean he had his meals in his room all the time? A.—
He took his meals in his room, but was on the deck a great deal.

Q.—How did he get on the deck? A.—I used to assist him.

Q.—Then, on board ship, what other duties did you perform? A.—
None at all but looking after him.

Q.—What did this duty consist of? A.—Just getting his clothes
ready for him and keeping his shoes cleaned. There is nothing else.

Q.—Nothing else? A.—Because the steward used to do anything else
he wanted done.

Q.—Then you got to Liverpool on the 2nd of June? A.—Yes. 10

Q.—Where did you go from there? A.—To London.

Q.—How long did you remain at London? A.—From June the 19th
to July the 10th.

Q.—You stayed where? A.—At the Claridge.

Q.—And during this time when in London what was his condition?
A.—Seemed to be very good.

Q.—Are you speaking of his physical condition? A.—Yes.

Q.—Was he able to go about? A.—Well, he went out in the car quite
a lot.

Q.—Who went with him? A.—Myself and Mrs. Walker. 20

Q.—Do you know of any places he went to when he was out? A.—
He went to his office in Trafalgar Square.

Q.—How often? A.—Just once that I know of.

Q.—How long was he there at the office? A.—I should judge about
an hour.

Q.—Any other place he went to? A.—Just for drives in the after-
noon.

Q.—When did you leave London? A.—July the 10th.

Q.—Where did you go? A.—To Paris.

Q.—By the way, I meant to ask you, do you know whether he con- 30
sulted any doctor when he was in London? A.—Not that I know of.

Q.—He went to Paris, and got there on July 10th? A.—Yes.

Q.—How long did he remain in Paris? A.—I made a mistake here;
it is from June 2nd to June 19th we were in London. We arrived in
London on June 2nd and on June the 19th left for Paris from London.
We left Paris on July the 10th for Dinard.

Q.—Where did you stay in Paris? A.—At the Astoria.

Q.—Do you know whether he consulted any doctor while he was
there? A.—Not that I know of.

Q.—What did he do when in Paris? A.—He used to go out for 40
drives a great deal.

Q.—Did you go with him? A.—Yes.

Q.—What other duty did you perform in Paris? A.—Why, just
taking care of his clothes, that is about all I had to do.

Q.—Where did he take his meals then? A.—In his room.

Q.—Who made the arrangements to go from London to Paris? A.
—Mrs. Walker.

- Q.—Then you said, I think, you next went to Dinard? A.—Yes.
- Q.—During the time he was in Paris, when out driving, did he make any calls when you were with him? A.—He might have, I didn't pay any attention to that.
- Q.—You went to Dinard about what time? A.—July 10th.
- Q.—Where did you stay there? A.—At the Hotel Royal.
- Q.—How long was he there? A.—From August 1st to September 25th.
- 10 Q.—What was his condition when he was at Dinard? A.—He was very good until August 1st, when he was taken sick.
- Q.—Do you know what he was suffering from? A.—No, I don't.
- Q.—Did you remain in attendance on him? A.—Until about August the 8th when Mrs. Walker sent to London for a man by the name of Simms.
- Q.—When you said he was taken ill, was he up and about? A.—No, he was in bed.
- Q.—For how long? A.—About four or five weeks.
- Q.—During that time, you said something about Mrs. Walker sending for a man named Simms from London? A.—Yes.
- 20 Q.—What duties did Simms perform? A.—He took my place as valet.
- Q.—What did you do? A.—I did odd errands, going to the store for drugs, or anything Mrs. Walker wanted.
- Q.—Simms took your place? A.—Yes.
- Q.—During the first eight days of the illness what duties did you perform? A.—Why, I didn't do a great deal for him at that time, Mrs. Walker was with him more than anyone else.
- Q.—Did you see him at all from time to time? A.—Oh, yes.
- 30 Q.—What was his condition as far as you could see? A.—Well, he seemed to be quite feeble, and didn't seem to understand very well, at that time.
- Q.—What do you mean by that? A.—When speaking to him he didn't seem to know just what you were saying.
- Q.—And how long did that continue? A.—As I say, I left after August the 8th and Simms took my place.
- Q.—You just performed those other duties you spoke of for Mrs. Walker? A.—Yes.
- Q.—When did you leave Dinard? A.—The 25th of September.
- 40 Q.—How many of you went from Dinard? A.—There was Simms, Mrs. Brewster, and a nurse and doctor from Dinard, and his wife, and Mrs. Walker's maid.
- Q.—A doctor from Dinard? A.—Yes.
- Q.—And the nurse? A.—The nurse we got from England.
- Q.—You don't mean Simms? A.—No.
- Q.—A female nurse? A.—A female nurse.
- Q.—Simms was a valet? A.—Yes.
- Q.—And the doctor was from Dinard? A.—Yes.

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tion-in-
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Q.—You all went from Dinard, where? A.—I don't know the name of the station.

Q.—What town did you go to? A.—To Paris.

Q.—Did these people go to Paris with you? A.—Yes.

Q.—What was Mr. Walker's condition then? A.—Not very good.

Q.—How did you get him there? A.—Why, we took him in a car to the train and then from the car to the train we had a wheel chair.

Q.—How did he get in the train? A.—We helped him in the train, Simms and the attendant.

Q.—And when you got to Paris? A.—He was met there with a chair 10 and taken from the train.

Q.—Where did you go in Paris? A.—To the Hotel Meürice.

Q.—And remained there how long? A.—October 12th.

Q.—Just there a day? A.—No, we arrived at Paris on October 12th.

Q.—And left? A.—And left for London.

Q.—The same day? A.—No, we arrived at Paris on September 25th and left for London on October 12th.

Q.—You arrived in Paris on September 25th and left Paris on October the 12th. Now, during the time you were in Paris who was attending Mr. Walker? A.—Simms and the nurse. 20

Q.—Simms and the female nurse? A.—Yes.

Q.—What doctor, if any? A.—Why, the doctor from Dinard stayed a few days.

Q.—Had you any doctor after he left? A.—Not that I know of, after that.

Q.—Who made the arrangement to go from Paris to London? A.—Mrs. Walker.

Q.—How did you get him there, who went with you? A.—We went from Paris to Dieppe, and from there to London.

Q.—How did you get him from the train to the boat, and from the boat 30 to the train? A.—By a car.

Q.—By a chair? A.—No, he was feeling better then.

Q.—You went from Dieppe to London? A.—Yes.

Q.—Where did you stay in London, at Claridge's again? A.—Yes, Claridge's.

Q.—How long were you in London at that time? A.—Until the 18th of October.

Q.—You had got to London somewhere about when? A.—It was in the evening.

Q.—When did you get to London? A.—On the 18th. 40

Q.—I think you left Paris on the 14th? A.—Yes, we got there on the 12th.

Q.—You got to London when? A.—In the evening on the 12th.

Q.—You left London on the 18th? A.—On the 18th.

Q.—During the time he was in London, do you know whether he was out at all or not? A.—I don't think he was.

Q.—When did you leave London, and where for? A.—For Liverpool.

- Q.—On the 18th? A.—Yes.
- Q.—Who made all the arrangements for that? A.—Mrs. Walker.
- Q.—Who went with you to Liverpool? A.—Mrs. Walker, and Mr. Walker, and Simms, and Mrs. Walker's maid.
- Q.—What happened to the female nurse? A.—They let her go in London.
- Q.—So you, and Simms, and Mr. and Mrs. Walker and Mrs. Walker's maid went to Liverpool? A.—Yes.
- 10 Q.—When did you sail from Liverpool? A.—Towards evening, about 5 o'clock.
- Q.—By what ship? A.—The Carmania.
- Q.—And you reached New York when? A.—October 26th.
- Q.—And did anybody meet you there? A.—I forgot to say Mrs. Brewster was with us.
- Q.—When did Mrs. Brewster join you? A.—In Dinard.
- Q.—Where did she come from, do you know? A.—Mrs. Walker sent for her while Mr. Walker was very sick.
- Q.—Where was she? A.—In the States.
- Q.—And Mrs. Walker sent for her, and she arrived at Dinard and 20 stayed with you the balance of the time?
- HIS LORDSHIP: How long is this uninteresting tour going to last?
- MR. MCCARTHY: It is very nearly over.
- HIS LORDSHIP: Good. I do not get anything out of it. You must have some object in bringing out all the names of the ships, and things.
- MR. MCCARTHY: I want to connect the trip, that is all.
- Q.—When you got to New York, did anybody meet you? A.—Mrs. Brewster's daughter, and husband.
- Q.—Where did you go from New York? A.—Back to "Willistead."
- Q.—And you reached there when? A.—About November 3rd.
- 30 Q.—How long did you remain in Mr. Walker's service as valet after that? A.—To the last of February, 1914.
- Q.—Where was Simms? A.—He went back from New York.
- Q.—He came to New York with you, and then went back? Now, while Simms was with you, what duties did you perform as far as Mr. Walker was concerned? A.—None at all.
- Q.—And before Simms came, you have told us what duties you performed? A.—As valet, yes.
- Q.—Then, after Simms left, did you continue to act as valet? A.—Yes.
- 40 Q.—And what was Mr. Walker's condition then? A.—Seemed to be very good after the ocean voyage.
- Q.—And after they got to "Willistead," from November to February, how was he then? A.—He was very good for a while.
- Q.—And then what happened? A.—Then he seemed to have a relapse.
- Q.—About what time would that be? A.—Well, they were numerous.
- Q.—Numerous relapses? A.—Yes.

RECORD

In the
Supreme
Court of
OntarioPlaintiff's
Evidence

No. 27

Frank
Gilbert.
Examina-
tion-in-
Chief.
16th May,
1924.

—continued

RECORD

In the
Supreme
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Plaintiff's
Evidence

No. 27

Frank
Gilbert,
Examina-
tion-in-
Chief.
16th May,
1924.

-continued

Q.—Lasting for what period? A.—It might be a day or so, and then he would feel very well again.

Q.—Then during the time you acted as valet to Mr. Walker did he shave himself? A.—Not after he came back from Europe.

Q.—Who did it? A.—I did it.

Q.—Did he dress himself? A.—No, I helped him to dress.

Q.—Any other duties you performed? A.—There were some, yes.

Q.—What were they? A.—I used to help Mrs. Walker with him when he was poorly.

Q.—What doing? 10

HIS LORDSHIP: Were you a sort of man nurse to him? A.—Yes.

MR. MCCARTHY: There were certain functions he had to perform, if my instructions are correct, which are of importance. Tell his Lordship just what those duties were. A.—I cannot very well explain them here, I don't think.

HIS LORDSHIP: You do not want to say them in public? A.—Yes.

Q.—You hesitate to say that. It is of a private nature? A.—Yes.

HIS LORDSHIP: I do not want a man who is naturally modest to say things he is delicate about, but, at the same time, I suppose we have to get them. Come into my room. 20

(His Lordship and the witness retire to his Lordship's room.)

HIS LORDSHIP: He had to insert a tube for excrement, and to press back the bowel. That is all.

MR. MCCARTHY: How long had you to perform that duty? A.—After we got to Dinard.

Q.—And did you perform that duty from that time to the time you left? A.—The nurse took that over when she came there.

Q.—And when the nurse left did you continue? A.—Simms took it, and I continued it after he left us in New York.

Q.—Now, during the time that you acted as valet did you have occasion to talk to Mr. Walker at all? A.—He never talked very much to me. 30

Q.—Who gave you instructions as to what clothes he would wear? A.—Mrs. Walker.

Q.—I forget whether I asked you how long you shaved him? A.—After he was taken sick we shaved him from then on until I left; before that he used to shave and dress himself.

Q.—When you came back to Walkerville in November? A.—I used to shave him.

HIS LORDSHIP: Did he use a safety razor? A.—Yes.

MR. MCCARTHY: Where did he have his meals after he came back? A.—He used to have some in his room, and others down in the dining-room. 40

Q.—How did he get down to the dining-room? A.—Walked.

Q.—With, or without assistance? A.—Without assistance.

Q.—How often would he go down to the dining-room? A.—Quite often.

Q.—Do you recollect, in that period, ever having any discussion with him of any kind? A.—No.

Q.—And who gave the directions in regard to his meals, dressing, and so on? A.—Mrs. Walker.

Q.—Did he give none himself at all? A.—Very seldom.

Q.—You cannot recollect of any conversation you ever had with him? A.—None whatever.

Q.—Did any doctor attend him when he got back in November? A.—Dr. Shurly, at Walkerville.

Q.—How often was he in attendance, do you remember? A.—He was there quite often.

10 Q.—Did you know what was the matter with him when Dr. Shurly was there? A.—No, I didn't.

Q.—Had he any nurse besides you, then? A.—No, he hadn't.

Q.—Was he up and about when Dr. Shurly was in attendance? A.—Sometimes he was, yes.

Q.—Was he able to feed himself? A.—He was until the last part of February, then he was in bed and we had to feed him.

Q.—Who fed him? A.—Sometimes I did, sometimes Mrs. Walker.

Q.—That is February, 1914, you are speaking of? A.—Yes.

20 Q.—What about his bath? A.—Why, we used to prepare his bath and he used to take that when he was able to be around.

Q.—How often would you have to perform this function with the tube? A.—About every day.

Q.—More than once? A.—Sometimes twice.

Q.—During the month of February, 1914, do you remember his ever going to the office at all? A.—Yes.

Q.—How often? A.—Quite often.

Q.—Is that when Dr. Shurly was in attendance? A.—Yes.

Q.—How did he get there? A.—By car.

Q.—Did you go with him? A.—Yes.

30 Q.—Did you wait for him? A.—Yes.

Q.—And brought him home again? A.—And brought him home again.

Q.—Did you ever know him to go any place else except to the office? A.—No.

Q.—How did you get from the car to the office? A.—I used to assist him.

Q.—Where would you be when he was in the office? A.—I sat right in the lobby, right near his door.

Q.—Are you able to say whether you ever saw him do any work while he was there, or not? A.—I never saw him do any work, I was on the out-
40 side and didn't know what was going on.

Q.—How many times a day would he go to the office? A.—Once a day.

Q.—How long would he remain there? A.—About an hour.

Q.—The rest of the time where would he be? A.—He would be home.

Q.—During that time you can't recall ever having any conversation with him? A.—No, I can't.

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tion-in-
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16th May,
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RECORD

In the
Supreme
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Plaintiff's
Evidence

No. 27

Frank
Gilbert.
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tion-in-
Chief.

16th May,
1924.

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No. 27

Frank
Gilbert.
Cross-Ex-
amination,
16th May,
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Q.—Who would give the orders in regard to him going to the office?
A.—Mrs. Walker would tell me he wanted to go to the office and I would get ready.

Q.—Who would order the car? A.—Mrs. Walker.

Q.—Who would tell you when he was ready to come home? A.—He would tell me when he was ready to go home.

Q.—You would help him back to the car? A.—Yes.

Q.—That is the way it continued up to the time you left? A.—Yes.

CROSS-EXAMINED by MR. HELLMUTH:

Q.—Was Mr. Walker what you would call a kind master, considerate? 10

A.—He seemed to be.

Q.—You were in Europe some time with him? A.—Yes, sir.

Q.—Did he take any interest at all in regard to your well-being, to see how you were looked after, where you were? A.—He asked me one time how we was fed at the hotel.

Q.—He wanted to know that? A.—Yes.

Q.—Did he make any enquiries at all in regard to how you were being housed, where your quarters were, anything of that kind? A.—No, he didn't mention those.

Q.—He just asked you how you were fed? A.—Yes. 20

Q.—He wanted to find out whether you were being satisfied with the food you were getting. A.—Yes.

Q.—Did he ever show any token of appreciation of your work as valet? A.—On my return from Europe he gave me a watch.

Q.—Had you ever any trouble with him at all? A.—None at all.

Q.—Did you know, or observe, that he was at all fond of pictures?
A.—Yes, he was.

Q.—Were you ever, while you were abroad, at any of the picture shops with him, or did you drive him there? A.—He was there once that I know of. 30

Q.—Of course, you didn't always go out with him? A.—No, not always.

Q.—You can't say where he went on other occasions, whether he went to these picture shops? A.—No.

Q.—The distillery office in London was on Cockspur Street just off Trafalgar Square? A.—Yes.

Q.—You say on one occasion, when in London, he went there? A.—I went with him.

Q.—And I may say, at other times, you cannot say whether he went there or not? A.—I don't know where he went on other occasions. 40

Q.—While he was in London, he was in pretty good shape? A.—He seemed to be.

Q.—And during that time he was dressing himself, and bathing himself, and that sort of thing? A.—Yes.

Q.—Did he, as a rule, prefer to have his meals in his own room rather than in the public dining room? A.—Yes, he did.

Q.—Did Mrs. Walker have them with him there too, when they were abroad sometimes? A.—Not a great deal.

Q.—Just sometimes? A.—Yes.

Q.—Had he a suite of rooms on the boat going over? A.—Yes.

Q.—A little dining room, as well as other rooms? A.—Yes.

Q.—It was in that room that he had his meals? A.—Yes.

Q.—Did he ever say anything to you about pictures? A.—Why, he did once, he spoke about a certain picture.

Q.—Tell us what that was?

10 HIS LORDSHIP: And when.

MR. HELLMUTH: About when? A.—That was before we went to Europe.

Q.—Just shortly before you went? A.—Yes.

Q.—What was the event? A.—I can't just remember what he said, it is some time ago, but he mentioned the picture, I stood and gazed on the picture with him.

Q.—Without offence, he was trying to educate your taste up to some good picture? A.—I don't know, I am sure.

20 Q.—I suppose you did know the pictures he was getting, you understood they were pretty valuable pictures? A.—Oh, yes.

Q.—Were you in his employ and acting as his valet at the time when any lawyer came up? A.—Yes.

Q.—That was in February, was it not? A.—Yes.

Q.—Did you know who the lawyer was who came up? A.—I heard it was a lawyer by the name of Lash.

Q.—How long did he stay there, Mr. Lash? A.—I understood he was there two days.

Q.—Did you know any will was being drawn then? A.—Yes.

Q.—So you knew a will was being drawn then? A.—Yes.

30 Q.—Was that at the time that Mr. Lash, or this lawyer, was there? A.—Yes.

Q.—Did the lawyer have some meals in the house, or do you know?

A.—I think he had luncheon; I know for a fact he was up once.

Q.—You think he was there for some two days, off and on? A.—Yes.

Q.—In the house? A.—Not in in the house, at the office.

Q.—Did Mr. Walker go down to the office with this lawyer one day?

A.—No, I think the lawyer went down first right after lunch and we followed about 3 o'clock.

40 Q.—So Mr. Walker, on that occasion when the lawyer was there, followed the lawyer down to the office? A.—Yes.

Q.—In the car? A.—Yes.

Q.—That was not one of the days he was laid up in bed? A.—Oh, no, of course not.

Q.—Was it a good day? A.—He seemed to be feeling pretty good that day, of course he was pretty feeble.

Q.—Was Mr. Walker a man who was rather careful about his personal appearance? A.—He seemed to be.

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Plaintiff's
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No. 27

Frank,
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Cross-Ex-
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16th May,
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RECORD

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Frank
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amination,
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—continued

Q.—And not a man who talked a great deal? A.—No, he didn't talk very much.

Q.—He was what you would call a silent or reticent man? A.—Yes.

Q.—Was he a man who took a great deal of interest in seeing that things about the home were in good shape, well kept up? A.—No, he never spoke of that.

Q.—Did you ever notice anything in regard to the doors, for instance, if they didn't fit tight? A.—He spoke once about a picture that was not straight.

Q.—He spoke once about a picture that was not straight? He liked 10
to find the pictures put straight on the wall? A.—He did.

Q.—Did he ever say anything to you about the doors? A.—No.

Q.—Did you know a man at all by the name of Fox? A.—Yes.

Q.—What did Mr. Fox do there? A.—He was the house carpenter.

Q.—Did you ever see Mr. Walker speaking to Mr. Fox, or discussing with him? A.—Occasionally, yes.

Q.—They had a practical carpenter who really was about the place most of the time? A.—Yes, he was there practically all the time.

Q.—He was what might be called, almost, a permanent official, the same as the valet? A.—Yes. 20

Q.—Mr. Walker was a man who was a very patient man, was he not? A.—Yes, he was.

Q.—And he did not treat those whom he employed with anything but the utmost consideration? A.—Yes, he was very considerate.

Q.—You said, I think, you used to shave him? A.—Yes.

Q.—If there is anyone one would quarrel with, it might be the barber? A.—I think it would be.

Q.—Did he quarrel with you? A.—No.

HIS LORDSHIP: He might be a good shaver?

MR. HELLMUTH: How would he summon you, had he a buzzer, or 30
pull-bell, or what? A.—Mrs. Walker used to tell me when he wanted me.

Q.—You did not frequent his bedroom very much. Had he two rooms together? A.—He had a sitting room right off the bedroom.

Q.—When he wanted you, it was done through Mrs. Walker? A.—Usually, yes.

MR. HELLMUTH: His going to the office, you have told me, was quite frequent, but the length of time he stayed, I think you said was about an hour? A.—About an hour, it may have been a little longer, but not very long.

Q.—You were speaking of after he came back from Europe? A.— 40
Yes.

Q.—Did he go to the office before he went to Europe, when you were there? A.—I was not with him as valet very long before we went to Europe.

Q.—During that time did he go down? A.—Yes.

Q.—So both before he went to Europe and after he returned in 1913, he went to the office? A.—Yes.

Q.—What sort of a man was he in regard to a sea voyage, was he a good sailor? A.—A very good sailor.

Q.—Did he seem to enjoy that? A.—Yes, he did.

Q.—Was he on deck a good deal? A.—Not on the return, but going he was.

Q.—Do you know at all whether he had to be careful about his diet? A.—Very careful.

Q.—This trouble of which you have spoken was one that required pretty constant attention? A.—Yes, it did.

10 Q.—And apparently there was a good deal of discomfort, if not pain, when this bowel protruded? A.—Why, he didn't seem to feel any pain.

Q.—He didn't show it? A.—He didn't show it, and he didn't complain any.

Q.—He was not a man who did complain? A.—He never complained much about anything.

Q.—Would he go down to dinner sometimes when he was pretty weak and would have to be helped into his chair? A.—Yes, he would.

20 Q.—So that he would sometimes make the effort to go down when he was pretty weak and feeble, as to his physical condition? A.—Yes, he would.

Q.—You didn't do much of the shopping with Mr. Walker when he was abroad in London? A.—I didn't go in the store with him.

Q.—Did he go about shopping? A.—On the first trip over, not on the return.

Q.—On the trip over you know he did go shopping? A.—Yes.

Q.—Was it pretty extensive? A.—For about an hour, shopping.

Q.—But the whole time? A.—Why, he would go from one shop to another.

Q.—Was it only on one occasion? A.—Oh no, several occasions.

30 RE-EXAMINED by MR. MCCARTHY.

Q.—Were you with him when he went shopping? A.—I went in the car with him.

Q.—Did you go into the shops with him? A.—No.

Q.—What shops did he go to? A.—I don't know the names of the shops.

Q.—Did you know for what purpose? A.—I can mention one, he went to buy socks, shirts, and ties.

Q.—Did Mrs. Walker go with him, or not? A.—Yes.

40 in the car. Q.—I think you said you always stayed outside? A.—I was outside

Q.—You said he was careful about his diet; who arranged his diet? A.—Mrs. Walker.

Q.—When he gave you the watch on your return, what did he say, do you remember? A.—It was given to me by Mrs. Walker from him.

Q.—Then he didn't give it to you himself? A.—Mrs. Walker said it was a gift from Mr. Walker.

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Plaintiff's
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No. 27
Frank
Gilbert.
Cross-Ex-
amination,
16th May,
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—continued

No. 27
Frank
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ination,

RECORD

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Evidence

No. 27
Frank
Gilbert.
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ination.
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—continued

Q.—Did Mr. Walker make any remarks about it to you? A.—No.

Q.—Did you make any remarks about it to him? A.—I don't believe I did.

HIS LORDSHIP: Did you thank him for it? A.—I believe I thanked him for it.

MR. MCCARTHY: When you thanked him, what did he say? A.—He didn't say very much of anything.

Q.—You say once to your knowledge he went to a picture shop, you didn't go with him, but sat outside? A.—I stayed outside.

Q.—Do you remember where the picture shop was? A.—No.

Q.—I think you told my friend Mr. Hellmuth that Mrs. Walker did not often dine with him alone upstairs? A.—Not very often. 10

Q.—Did she go downstairs? A.—Usually.

Q.—What would you be doing, that is in London or Paris? A.—I would go to the dining room myself, or go out somewhere.

Q.—Did you stay in the room? A.—No, Simms was there then.

Q.—On one occasion, you can't recollect when, he spoke about a picture to you? A.—Yes.

Q.—Do you remember what he said? A.—I can't remember what he said, it was a Dutch picture.

Q.—How did the conversation arise, if there was any? A.—He was just standing there when I came along and he spoke about the picture, 20 but I can't remember what he said.

Q.—Do you remember what room it was in? A.—In the hallway.

Q.—In the house at "Willistead"? A.—Yes.

Q.—Now you told my friend that you understood a lawyer named Lash was there for two days, where did you get that understanding? A.—I think it was Mrs. Walker told me that Lash was up.

Q.—You only know of his being at lunch on one day? A.—Yes.

Q.—Was Mr. Walker at the lunch table that day, do you remember? A.—I think he was.

Q.—Was that the day you spoke of Mr. Walker following Mr. Lash 30 down to the office? A.—Yes.

Q.—Do you remember how long he remained there? A.—I think it was about an hour.

Q.—Did you bring him home? A.—Yes. I think he was down both morning and afternoon that day.

Q.—You think he was down both morning and afternoon that day? A.—I am pretty sure he was.

Q.—Can you say whether anyone was with him in the room that day? A.—Not that I know of.

Q.—Was Mr. Harrington Walker or Mr. Frank Walker there at the 40 time? A.—They may have been around, I did not see them in the office.

Q.—You told my friend that Mr. Walker was careful about his appearance; I don't know whether I asked you before, but after he came back from London who selected his clothes for him that he should wear? A.—Mrs. Walker used to tell me what clothes to put out for him.

Q.—I think you left at the end of February? A.—Yes.

Q.—I meant to ask you about fixing the date of Mr. Lash's visit, how do you fix it as February? A.—Because it was the last week I was there.

Q.—Do you know whether Mr. Lash was there on any other occasions you know of, or heard of? A.—Not that I know of.

SIDNEY CECIL ROBINSON, Sworn. Examined by MR. MC-CARTHY.

Q.—Col. Robinson, where do you live? A.—Walkerville.

Q.—And did you know the late E. C. Walker? A.—Very well.

10 Q.—How long had you known him? A.—From 1887 until the time of his death.

Q.—During the last two or three years of his life did you see much of him? A.—No, I saw him occasionally. I severed my connection with the firm in February, 1913.

Q.—Up till that time you had been employed by the firm of Walker Sons? A.—Yes.

Q.—In what capacity? A.—In the Walkerville Water Company, and the Walkerville Light & Power.

Q.—They were companies controlled by the Walker Brothers? A.—Yes.

20 Q.—You severed your connection with these concerns in February, 1913? A.—Yes.

Q.—Up till that time on what occasions would you see Mr. E. C. Walker? A.—Before I left the firm my office was moved from the main office over to what they called the Walkerville Light & Power Building. I think I was there less than a year, in the power building, and up to that time I used to see Mr. Walker every time he came to the office, provided I was in. I was in and out, I was probably one-third of the time out.

30 Q.—Did Mr. Walker take an interest in your part of the undertaking? A.—He used to take particular interest in the water company, of which I was Secretary-Treasurer.

Q.—Had you a separate office apart from the distillery building? A.—I was in the distillery building, and there was another one in my office with me, there were two desks there.

Q.—Up till the time you severed your connection in February, 1913, how often would you see Mr. Walker? A.—Well, it is a little difficult to say now, but I used to see him, I should think, several times a week, when he was in Walkerville.

40 Q.—Would you, or would you not, discuss matters with him? Or what was the nature of your meeting? A.—He usually used to come in the west entrance, and my office was right to the right as you come through, and he often used to come to my desk and ask me if there was anything new. That was the usual question. If there was anything new I used to mention it.

Q.—Was that the extent of the conversation? A.—I might comment on the weather, or if there was anything that might interest him apart from business, I might comment on that.

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No. 28

Sidney Cecil
Robinson.
Examination-in-
Chief.
16th May,
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*In the
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Sidney Cecil
Robinson.
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tion-in-
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Q.—What was his physical condition at that time? A.—Of course he was weak, but he could usually, at that time, not always, walk up the hall to the office by himself. That was in 1912, up to the middle of 1912, I should say.

Q.—And after that? A.—After that I didn't see much of him because I was over in the other building on the south side of the tracks.

Q.—Up to 1912 he could walk up the passageway? A.—Yes.

Q.—By himself? A.—Yes.

Q.—Did you notice whether he had any difficulty? A.—Sometimes he would seem a little weaker on his pins, as it were. 10

Q.—After you left, or severed your connection with the company, did you see much of him after that? A.—They used to give a very large At-Home for the countryside, or residents of Walkerville, and I used to go up and help Mr. and Mrs. Walker to get a list out for the invitations, and help with that. That is about the only occasion. And, being up there at dinner once or twice with my wife.

Q.—Did you know the other brothers? A.—Very well.

Q.—You had known them the same length of time? A.—Yes.

Q.—How would you describe Mr. E. C. Walker? A.—A very fine gentleman. I must say he always reminded me of the ideal English gentleman. Of course, at times, his memory was not very good,—absent-minded, and forgetful. 20

Q.—What characteristics had the other brothers as compared with him? A.—He and Mr. Frank were entirely different, Mr. Frank and Mr. Harry. Mr. Harry was always very kind and considerate, and Mr. Frank he was very businesslike, and might put it sharply, but not ungentlemanly, if he wanted a thing done, he wanted it done right off the bat.

HIS LORDSHIP: Masterful? A.—Yes, that would be it.

MR. MCCARTHY: How would you compare the two men, Mr. Frank and Mr. E. C. Walker? A.—I don't know just exactly how to put that, but I think they were very much opposite in their character and disposition. 30

Q.—What do you say were Mr. E. C.'s chief characteristics? A.—Mr. E. C. was very kind, thoughtful, and considerate. I used to have a good deal to do with him in connection with any illness, he would want me to look after and see that no one wanted for anything, and occasionally he used to come down to my house, and was afraid probably he had kept me in, or something like that.

Q.—Kind and considerate? A.—Yes.

Q.—How would you describe Mr. Frank? A.—Mr. Frank, with his friends, was a prince. I think if you incurred the enmity of Mr. Frank why you couldn't get along very well with him. 40

Q.—Now, did you know Mrs. E. C. Walker? A.—Yes, I knew her very well.

Q.—Did you ever have occasion to see her after Mr. E. C. Walker's death? A.—Yes, on several occasions, she used to come to the house occasionally.

Q.—Do you remember any occasion on which you saw her when she sent for you? A.—Yes, I remember it distinctly.

Q.—What was the occasion? A.—It was shortly after her return from Washington.

Q.—After he died? A.—Yes, she asked me to come up.

MR. OSLER: I object. What Mrs. Walker may have said to this witness, as against us, it is not evidence.

MR. MCCARTHY: Go on. A.—And on this particular occasion, to my surprise, she told me all about her troubles with Mr. Frank and Mr. Harry, and Mr. Z. A. Lash, and it was all about the will.

Q.—What did she tell you? A.—She told me that the will was not her husband's will at all, she said the will was made by his brothers, and by Mr. Lash.

Q.—Yes, anything else? A.—Well, she mentioned the amount that was left to her under the first will, and that she couldn't keep up "Willistead" and carry on, that their expenses were \$60,000 a year while Mr. Walker was alive, and his income was \$400,000 a year. And she also told me about the disagreement she had with Mr. Frank Walker.

Q.—What did she say about that? A.—At that time, she said—I mentioned something about the will that was published in the paper—and she said it was not the will at all, and that she threatened to fall back on the first will of 1901, and bring Mr. Robins back here, as he was executor under that will. And then she said Mr. Frank threatened her, and she told him to get out of the house, and she hadn't spoken to him from that day on.

Q.—She told him to get out of the house, and she hadn't spoken to him from that day? A.—Yes.

Q.—How long were you with her on that occasion? A.—I thought I was only going up for a few minutes, but it was about two hours.

Q.—Where was this interview? A.—Up at Willistead.

Q.—Was anything said in regard to any other of her late husband's affairs? A.—Well, she said in the will there was mention about the pictures, and she said that she wanted to give me one of the pictures hanging up there, but she couldn't do it under the will, that they went to the estate. I think the reason she mentioned that was that Mr. Walker had given me three different paintings at times.

Q.—Is that all you can recollect of what took place? A.—Well, there may have been something else. I wrote a letter to Mr. Robins, knowing he was always interested in things about Walkerville, and mentioned to him confidentially of my interview with Mrs. Walker. And that letter contained everything.

Q.—Did you, at that time, know that Mr. Robins was a beneficiary under the first will? A.—No, I didn't, Mrs. Walker didn't mention that at all.

Q.—When did you first learn that Mr. Robins was a beneficiary under the will? A.—After Mr. Robins came from England in 1922, I think.

Q.—This letter you speak of was written when? A.—It was written, I think, in November, 1917.

RECORD

In the
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Court of
Ontario

Plaintiff's
Evidence

No. 28
Sidney Cecil
Robinson.
Examina-
tion-in-
Chief.
16th May,
1924.

-continued

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Supreme
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No. 28
Sidney Cecil
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tion-in-
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—continued

Q.—How long after the interview with Mrs. Walker? A.—I think, in that letter, I mentioned “last week.” I referred to “last week” as having been up to Willistead.

MR. OSLER: I do not want to begin the cross-examination of this witness, and have the cross-examination interrupted. I wish the cross-examination to stand and we will resume with this witness on Monday.

MR. MCCARTHY: I haven't anything that we can spend ten minutes on.

HIS LORDSHIP: Mr. Osler, do you think it will take more than ten minutes?

MR. OSLER: I would think so, I don't know.

THE WITNESS: I would like to get through.

MR. OSLER: We all want to get through. I would not like to have the 10 cross-examination interrupted.

HIS LORDSHIP: Mr. McCarthy says he has not any short witness.

MR. MCCARTHY: I would be in the same position; my friend will want to cross-examine the next witness.

CROSS-EXAMINED by MR. OSLER:

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amination,
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Q.—Then, Mr. Robinson, what was your position in the Walker Company before you left in 1913? A.—I was Secretary-Treasurer of the Walkerville Water Company, and Assistant Manager of the Walkerville Light & Power Company, and I was also drawing a salary from Hiram Walker & Sons for work I used to do in connection with the distillery. 20

Q.—You were under Mr. Robins? A.—Yes.

Q.—How long had you been employed in that capacity? A.—I should say about fifteen years prior to that. I started as office boy in 1887.

Q.—And, moreover, you were a close personal friend of Mr. Robins? A.—Yes.

Q.—You had been fortunate financially sometime before you left the Walker Company? A.—I made a good investment, and it had commenced to pay about the time I left.

Q.—You knew, of course, about Mr. Robins' resignation? A.—Yes.

Q.—Did he tell you the circumstances under which he had left? A.— 30 Yes.

Q.—You didn't hear that from outside? A.—No.

Q.—He made a confidant of you about his troubles, at the time of his leaving? A.—Yes, some of them, I wouldn't say all.

Q.—I suppose you got all there was time for; I mean particularly the offences he received from Frank Walker, and his failure to carry the other two with him, he told you about that? A.—I knew about it, yes, I wouldn't say I heard it all at the time he left, but I know all about it.

Q.—You heard a good deal at the time he left? A.—Yes.

Q.—And that was before you left the employment of the company, at 40 the time Mr. Robins left? A.—Yes.

Q.—It was not at the time you left? A.—No.

Q.—You subsequently left their employment also? A.—Yes.

Q.—From that time on, I gather you only saw Mr. E. C. Walker on a couple of occasions? A.—Oh, no, I saw him frequently.

Q.—I mean to speak to. You told Mr. McCarthy that you helped with the list of those who were invited to the entertainments? A.—Garden parties and at-homes.

Q.—You said you dined at their home often? A.—I was there two or three times after I left.

Q.—Did you see him on any other occasions? A.—Oh, yes, I would meet him probably in his car.

10 Q.—You would meet him? A.—Meet him casually.

Q.—But not to stop and have a conversation? A.—No.

Q.—You simply bowed as you went by? A.—Yes, passed compliments.

Q.—He always recognized you, of course? A.—Usually, I think, except probably going by, if I was on the street, he probably wouldn't catch sight of me quick enough.

Q.—If he saw you, he knew you? A.—As far as I know, yes.

Q.—After the death of Mr. E. C. Walker in 1915, did you keep up your intimacy and friendship with Mrs. Walker? A.—Yes.

20 Q.—Did you go to see her more often than before his death? A.—She was away a good deal after his death, she lived in Washington and New York half the time.

Q.—When she was here? A.—Yes, I would see her occasionally.

Q.—When you went to see her on this particular occasion, you spoke of, you were sent for specially by her? A.—She telephoned down and said she would like to see me. I went up there. I thought it was for a few minutes or something like that, but I was there for two hours.

Q.—That was an unusual thing? A.—Yes, it was.

Q.—Had she just come to town, or had she been here for some time? A.—She had only returned from Washington a few days before.

30 Q.—She was not very well? A.—That I cannot say; she didn't complain.

Q.—Don't you remember the impression she made on you was that she was a nervous wreck? A.—Well, I don't think she told me about that. I heard she had been ill in New York and couldn't go to Washington. I am not sure whether Mrs. Walker ever made that remark, or someone else.

Q.—You used that expression in your report to Mr. Robins, I believe, "she is a nervous wreck." A.—She was very nervous, if you call that quite ill.

Q.—Do you remember whether or not she was a nervous wreck at that time? A.—No, I couldn't gather from my conversation that she was.

40 Q.—But you did believe it? A.—I was told that her nerves sort of collapsed in New York.

Q.—I want to get whether you believed she was a nervous wreck? A.—I believed what was told me.

Q.—Did she tell you she was? A.—I can't be sure whether she told me, or somebody else.

Q.—In the interview you had that day, was there anything to indicate to you that she was a nervous wreck? A.—Not from talking to her, I didn't notice it.

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—continued

Q.—I will ask my learned friend for Mr. Robinson's report to Mr. Robins of this interview.

(Letter dated April 29th, 1917, from this witness to Mr. Robins, reporting on this interview, is produced.)

Q.—Is this your initial, Mr. Robinson? A.—Yes.

Q.—I show you two pages marked "Confidential," pages 13 and 14, dated April 29th, 1917? A.—That is a lead pencil date; it is dated below.

Q.—It is in ink on the top, at the right hand of the page, not lead pencil. At least, it looks like ink to me? A.—It is not my writing.

Q.—On the second page it is dated at the bottom, "Sunday, April 29th, 1917." A.—Yes. 10

Q.—So you were out about six months in the date of the interview; I think you told Mr. McCarthy it was November, 1917? A.—The date of that letter is the correct date.

Q.—If you said November, you were out six months? A.—Yes.

Q.—Is your memory pretty good, Mr. Robinson? A.—It is not as good as it used to be, it is fairly good, about the average, I guess.

Q.—About as good as E. C. Walker's? A.—No, I would say my memory is better than Mr. E. C. Walker's in his later days.

Q.—I will read from the letter, "I believe Mrs. Walker is almost a nervous wreck." Do you see that? A.—Yes, that is all right. 20

Q.—That is what you wrote to Mr. Robins? A.—Yes.

Q.—And that was the letter reporting to Mr. Robins on your interview with her? A.—Yes.

Q.—Do you say she was a nervous wreck at the time of your interview, or do you not? A.—I did not see any sign of it, but evidently she was telling me about her nervous condition, and that is where I took it from, I couldn't notice it from her conversation.

Q.—You didn't notice it. And yet Mr. Robinson, although you didn't notice that, you wrote to Mr. Robins, and said you believed it? A.—Yes. 30

Q.—Is that true? Is it true? A.—I wouldn't say it was, or was not, it is from her conversation I gathered she was verging on a nervous wreck; from my interview with her I couldn't see it. I can't make it any plainer than that.

Q.—You made it a great deal plainer to Robins when you told him you believed that she was? A.—Mrs. Walker had always a nervous disposition.

Q.—Always a nervous disposition? A.—As far as I could tell.

Q.—Are you sure you reported to Mr. Robins accurately what Mrs. Walker told you? A.—The only thing I haven't told you about—there was a great deal more I could have told. It is just from memory; just a matter of gossip at the time, I didn't have a note of it, or say anything to anyone else about it. 40

Q.—That is not an answer to my question. Are you sure you reported correctly to Mr. Robins what she told you? A.—As far as I know.

Q.—Did you know, or did she say, that she would fall back on the will of 1901? A.—That is what she said, she said she threatened Mr. Frank Walker, and that what she would do was to bring Mr. Robins back here,

as he was the executor under the first will, and by that threat is the way she got the new agreement with her brothers-in-law.

Q.—The impression she gave you was that the brothers were so frightened of Robins they would throw up their hands and give her anything? A.—I wouldn't say the two of them, I say she referred to Frank Walker at that time.

Q.—Did she tell you what provision was made under the first will for her? A.—She did, but I can't remember the details of it.

10 Q.—Did she tell you that the provision under the first will was more substantial and more beneficial for her than under the second will? A.—No.

Q.—Did she tell you it was less? A.—I understood she was getting less from the second will, from her conversation.

Q.—You understood she was getting less from the second will than from the first will? A.—Yes.

Q.—You say in this memorandum that under the original will she was left a lump sum and \$25,000 a year. Did you understand that was under the first will? A.—No, I didn't. I can't remember all the details of her conversation, not the figures and so forth.

20 Q.—You said here that she stated that she could never get a statement as to what Mr. Ed's income was, from all sources? A.—That is correct.

Q.—And she got desperate, and before her last trip to Washington they refused to leave Walkerville until a statement was produced, and the statement showed Mr. E. C. Walker's income to be \$400,000 per year. Did she tell you that she and Mr. Walker would not leave until they got a statement? A.—She told me they refused to leave on the trip to Washington until they got a statement of what Ed. Walker's income was. She indicated that Mr. Ed. Walker at that time felt they couldn't afford this, and couldn't afford that. That is her reason.

30 Q.—Did she tell you they both wanted that statement? A.—She said "we," I presumed she referred to her husband.

Q.—You have discussed this case pretty freely with Robins since it has been progressing? A.—Only once that I mentioned it to him.

Q.—Has he discussed this with you, this particular reference as to the income? A.—No.

Q.—He has never told you, for instance, it was only she who wanted the statement of the income, and not Mr. Walker? A.—I didn't catch that.

Q.—Did Mr. Robins tell you that, according to his understanding of that transaction, it was—

MR. MCCARTHY: I do not think that is what Robins said.

40 MR. OSLER: That it was only she, and not Mr. E. C.? A.—No, he didn't say that.

MR. MCCARTHY: I do not think that is what Robins said, and my friend must not make a false suggestion.

THE WITNESS: Mr. Robins never said that to me.

MR. OSLER: She did not indicate there was any difficulty in getting a statement of the income when it was called for? A.—She had had difficulty, apparently, up to that time.

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No. 28
Sidney Cecil
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amination,
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—continued

Q.—Please answer the question, did she indicate there was any difficulty in getting a statement of the income when called for? A.—She did.

Q.—At that time? A.—Probably not. She mentioned she had been trying to get it for years, if I remember the conversation correctly. And she said they had not had a statement of his affairs since Mr. Radford was dead.

Q.—Did she tell you that the brothers-in-law had kept Mr. Ed. in ignorance, in connection with Mr. Robins' affair? A.—She did.

Q.—And that if they told Mr. Ed. anything, it was lies? A.—That is the words she used. Mrs. Walker was very bitter at the time I talked with her, and I suppose she used rather strong terms. 10

Q.—Did you know Mr. Ed. had known all about that affair? A.—No.

Q.—Did you know he had had the advantage of Robins' complete explanation of it? A.—No.

Q.—Not a word of that? A.—No.

Q.—She didn't tell you that? A.—No.

Q.—And you didn't know it? A.—No.

Q.—You never heard it until I tell you now, that Ed. had Robins' full explanation of the difficulty at the time Mr. Robins left, in connection with this Robins affair? A.—No, she didn't tell me that Mr. Ed. had it. 20

Q.—Did you know that he had it? A.—No, I didn't.

Q.—You never heard he had it? A.—They usually tried to keep all the troubles away from Mr. Ed., for him not to have any business worries.

MR. MCCARTHY: This goes in as Exhibit No. 29, the two pages my friend has referred to.

Exhibit No. 29: Filed by Defendants: Pages 13 and 14, dated April 29th, 1917. Postscript to letter from Mr. Robinson to Plaintiff.

“April 29th, 1917.

Confidential.

P.S.—I have dictated the foregoing twelve pages to Miss Little, and will now finish up with a little gossip which I think will be of interest to you. Mrs. E. C. W. was in Walkerville for a few days last week, after an absence of several months. I think she wished a friend to tell her troubles, so she telephoned me. I went up after supper and was there for over two hours. She launched right out into the matter of her husband's will, and bitterly denounced F. H. W. and J. H. W., as the makers of the document, and that Mr. Ed. merely signed it, and that it was not as her husband intended. The will as published was not the original document, she threatened to break this and to fall back on his will of 1901 (I think this is the date), in which you were named as executor or trustee and this is where she had her hold on the brothers, and in this they feared you. I understand that in the original she was left a certain lump sum and \$25,000 per year, which wouldn't even keep up “Willistead.” She told me that their expenses, including travelling, amounted to \$60,000 per year. She stated that she could never get a statement as to what Mr. Ed's income was, from all sources, and in fact no information since Mr. Radford died. She got desperate and 40

just before their last trip to Washington, before Mr. Ed's death, they refused to leave Walkerville until the statement was produced. The statement showed that E. C. W's income to be \$400,000 per year. When she stated to F. H. W. that she intended to break the will, he threatened her she ordered him out of the house, and never spoke to him again, although he had written her several times since, wishing to heal the breach, she is just as sore against Mr. Harry, who she says was just a tool of F. H. W. She says that the brothers practically made over everything to themselves, and with reference to the paintings she said that all belonged to her, and if her husband wished to give one away, he would first ask her for it. They are all inventoried, and she could not move one from Willistead. I believe Mrs. Walker is almost a nervous wreck, when she went to New York last fall she was taken with a nervous breakdown, and had to stay there for a couple of months. The doctor wouldn't allow her to be moved to Washington, to be with her sister.

In connection with your affair, she states that the brothers kept Mr. Ed. in ignorance, and to use her own words, "if they told him anything it was lies." Mrs. Walker mentioned that she and Mr. Ed. called at Pentilly on the Sunday morning before you left Walkerville, with the intention of talking the matter over with you, and that they went away disappointed after having pushed the door bell three or four times, and then no answer.

Referring to the list of income tax assessments mentioned in a previous letter, I stated that exemption for married men is \$1,200. I find out that I am mistaken in this, it should be \$1,500.

I am sending by this mail part one of Sunday's Detroit Free Press, with a few items marked, which will be of interest to you.

Mrs. Ortved is still in the South, on Christmas Day the stork brought a baby boy who is getting along fine, however poor Mrs. Ortved went out of her head, and is not as yet in a condition to return home.

I notice that I have made several errors in my work with the machine. I so seldom use it now, and in addition I feel like a blockhead to-day

We are all well at the present time except that Mrs. Robinson is somewhat worried about Cecil and I think she would like to have him home from Ridley College, when he started in there last fall he went in for Rugby, cross-country runs of five miles, the result being that he strained his heart, and the only exercise he is allowed to take is walking.

Sgd. S. C. R.

Sunday, April 29th, 1917."

(Court adjourned at 4.15 p.m. Friday, May 16th, 1924, until Monday, May 19th, 1924, at 10 a.m.)

Monday, May 19th, 1924, 10 a.m.

(Court did not commence until 11 a.m., pending a conference between Counsel.)

MR. MCCARTHY: May I put in Mr. Robins now, my Lord, for re-examination?

HIS LORDSHIP: Yes.

RECORD

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Sidney Cecil
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—concluded

RECORD

*In the
Supreme
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Plaintiff's
Evidence

No. 29
William
Robins.
Re-Exam-
ination,
19th May,
1924.

RE-EXAMINATION OF WILLIAM ROBINS. By MR. McCARTHY:

Q.—Mr. Robins, at the time of Mr. E. C. Walker's 1914 will, what was the situation in regard to the Pere Marquette Railway Company? A.—The railway was in the hands of a receiver.

MR. OSLER: This is not re-examination.

HIS LORDSHIP: Mr. Robins stepped out of the box while the correspondence was to be considered, is not that it?

MR. McCARTHY: I did not re-examine him till the cross-examination was finished.

HIS LORDSHIP: That was the reason, was it not? 10

MR. OSLER: There was nothing in the cross-examination about the Pere Marquette Railway.

MR. McCARTHY: Reference was made to the Pere Marquette Railway when the witness was in the box, and I just ask what the explanation was.

HIS LORDSHIP: Mr. Osler's objection is there can be nothing new introduced in the way of re-examination. What do you say to that? Mr. Osler says this is something new.

MR. McCARTHY: The Pere Marquette Railway was referred to in the evidence, that is, Walker's connection with it at that time, and I just want to find out what the condition of the railway was. 20

MR. OSLER: I do not recall asking Mr. Robins anything about the P. M. Railway.

HIS LORDSHIP: Perhaps we better let it in subject to objection.

MR. McCARTHY: Look at this will, Mr. Robins, of December, 1901, with the notes on it, can you recognize Mr. Walker's signature? A.—Yes, that is it.

Q.—And by the way, did Mr. E. C. Walker continue to draw a salary from the business continuously? A.—No, he ceased to draw salary at the fiscal year ending August 31st, 1910. 30

Q.—Now, I am putting in, my Lord, further correspondence; your Lordship has already before you a file of correspondence which I think is Exhibit No. 20; a further file has been handed to us, which was the necessity for the adjournment of this re-examination. In this correspondence a great many letters appear written either simultaneously with, or between times, these other letters, and are written between the same parties. I desire to put that file in as Exhibit No. 30, as explanatory of the letters which are already in.

HIS LORDSHIP: All right.

Exhibit No. 30: Filed by Plaintiff: Bundle of correspondence.

MR. McCARTHY: Now, then, Mr. Robins, I don't know whether his Lordship is quite clear in his mind as to the circumstances leading up to the break in 1912, and, for that purpose, would you tell us concisely what took place in 1911, which finally led up to the break in 1912? 40

MR. OSLER: My Lord, surely this is not re-examination.

MR. McCARTHY: Surely it is; you brought the question up, I didn't.

MR. OSLER: I did not go into the question of the break at all.

HIS LORDSHIP: That is what it amounts to. Was not that the feature of the letters between Mr. Lash and the plaintiff?

MR. OSLER: As to the underlying cause of the trouble, I did not touch on it.

HIS LORDSHIP: It seemed to come out pretty definitely.

MR. OSLER: I do not think so. What happened was, it was suggested that Mr. Frank committed the offences, as the witness calls them.

HIS LORDSHIP: The shamefacedness of E. C. Walker was referred to.

MR. OSLER: I did not go into what was the trouble between Mr. Frank
10 and Robins.

HIS LORDSHIP: Mr. McCarthy assumes that conduct may have brought about the break.

MR. OSLER: My learned friend cannot bring in anything wholly exterior to the issue. We have the fact there was a difference of opinion; what followed that difference of opinion, and the effect it had on the relation of the parties, is immaterial as to the pros and cons, rights and wrongs.

HIS LORDSHIP: I do not suppose he is going into that.

MR. OSLER: I understood that is what he was going into.

HIS LORDSHIP: It is as to the alleged breach between himself and
20 brothers, nothing to do with the quarrelling with Frank.

MR. OSLER: If he does not mean to introduce the pros and cons?

MR. MCCARTHY: So far as they are material, I certainly do. I did not go into that in chief. My friend read certain letters from which the inference might be drawn that the plaintiff was responsible for the break, in some way, or trying to reflect on him in some way, as indicating a reason why E. C. Walker might possibly change his will. I want to get the whole story out.

MR. OSLER: I did not attempt to go into the details of the quarrel. The correspondence I read, and my cross-examination commenced with the fact
30 there had been a difference of opinion between Mr. Robins and Frank Walker.

HIS LORDSHIP: You seemed to make that quite clear.

MR. OSLER: What lay behind, the pros and cons, I did not touch. It is purely a collateral issue.

MR. MCCARTHY: You introduced it in cross-examination.

HIS LORDSHIP: I think that was touched upon somewhat; I think out of deference you avoided the details.

MR. OSLER: I think but one question arises, that there had been a quarrel. That is the issue your Lordship is trying; I think the pros and cons are neither here nor there, they were a matter between Mr. Frank
40 Walker and Mr. Robins.

HIS LORDSHIP: Mr. Frank dominated in the end, at least the suggestion is that he brought his brothers to his mind, in this way, they did not dispute with his suggestion that Mr. Robins should retire. And, if that is so, it might have had an effect on his mind. That is pretty far fetched, of course.

MR. MCCARTHY: Certain letters have been allowed to go in, and I want the whole story to be given.

HIS LORDSHIP: All right.

RECORD

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No. 29
William
Robins.
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ination,
19th May,
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William
Robins.
Re-Exam-
ination.
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—continued

MR. McCARTHY: What were the facts leading up to the final break?
A.—They were these: while I was in England, in the middle of 1911, I received a letter from Mr. Frank Walker, dated the 1st of July, in which he told me—

MR. OSLER: I do not wish to keep repeating my objection.

HIS LORDSHIP: Your objection covers all that.

MR. OSLER: Does your Lordship think this witness is competent to go in the box and say, "I received a letter from Mr. Frank Walker, in 1911," and undertake to give the details to your Lordship of what was in that letter.

MR. McCARTHY: I will give you the letter, don't worry. 10

HIS LORDSHIP: Are the executors of Frank Walker parties?

MR. McCARTHY: Yes.

MR. OSLER: I think any admission by one party is not an admission your Lordship can receive on this record; here the question at issue is whether this was the will. Now, the admission of one beneficiary is not evidence against the others, it is not evidence at all directed to the issue.

HIS LORDSHIP: Are they not so much associated that that can be introduced, on this issue, when this plaintiff was cut out of one thousand shares? At first blush, it might be suggested that was evidence of a non-assenting mind, unless there was some reason for it. Is not this on that line? 20

MR. OSLER: No, my Lord, because supposing, for example, Mr. Robins had been quite right, and Frank Walker quite wrong, still the question is what is the effect on the testator's mind.

HIS LORDSHIP: That is it; if the effect on his mind of something that occurred between Frank Walker and Mr. Robins was sufficient to change his mind, that is in your favor, not the plaintiff's.

MR. OSLER: Precisely.

MR. McCARTHY: My friend has already introduced the letters between the witness and Frank Walker. That is what started it. How can he object now? 30

MR. OSLER: I asked the witness Robins with reference to certain statements, as I have a right to do in cross-examination, but that does not mean that my learned friend can introduce evidence which otherwise is not evidence. Because, on cross-examination, it is shown that somebody has said so and so, or written so and so, what has he to say about it, it does not mean that other letters may be introduced.

MR. McCARTHY: Surely my friend does not think that a letter which is in evidence on cross-examination is any better in re-examination?

MR. OSLER: Is it the suggestion this came to Mr. Edward Walker's knowledge? 40

MR. McCARTHY: We are not talking about Edward Walker. My friend had introduced evidence between this witness and Frank Walker, and your Lordship asked this witness about a certain letter which Frank Walker had written in regard to this witness.

MR. OSLER: This witness, in regard to some correspondence produced, said he didn't know what the trouble was. He is trying to detail to your Lordship what the details were.

MR. McCARTHY: I am not asking for the facts leading up to the trouble, I am asking what the trouble was.

HIS LORDSHIP: A very special feature was made by you as to the relations between the witness and Mr. Frank Walker, it was drawn out with great care, and I think he has the right to be re-examined, and give his view, which he could not do to you unless you gave him the opportunity. I must say you were fair with him, Mr. Osler. I think so.

MR. OSLER: Your Lordship will take all this evidence subject to objection?

10 HIS LORDSHIP: Yes.

MR. McCARTHY: You were going on to say, Mr. Robins, that when you were abroad in July, 1911, you received a letter from Mr. Frank Walker? A.—Yes.

Q.—Is this the letter you referred to. Letter dated July 1st, 1911, from F. H. Walker to you? A.—Yes, that is the letter. I want to say here, Mr. Osler persists in speaking of a quarrel between Mr. Frank Walker and myself; there never was any quarrel.

20 Q.—Will you go on? A.—I was just saying, Mr. Osler persists in speaking of a quarrel between Frank Walker and myself; there was no quarrel whatever. I stated that in my evidence, that there was no quarrel. This letter from Mr. Frank Walker told me of the approaches made to him by Edmund Bristol, with a view to buying the business, and what he, Frank Walker, had done in regard to the matter. And the portion of this letter I particularly wish to call attention to is, "Don't allow yourself to think you are soon to be relieved of this business."

Q.—Coming back to my first question; when you were abroad in July, 1911, did you receive this letter from Frank Walker? A.—I received this letter from Frank Walker when I was abroad in 1911, in July. I heard no more on that subject until I got home.

30 Q.—Mention is made in this letter of a proposed sale to Bristol. A.—As to a proposal made by Bristol; he said he would try him at a price of \$300 a share. And I heard no more about it till I got back to Walkerville, then I heard very little.

40 Q.—What time would that be? A.—I got back sometime in October. I didn't hear about this because the election was on, and Frank Walker asked me to plunge into that. Mr. Frank Walker went abroad in the Fall of 1912, and he said a few words to me before going, of the fact that he was going to see Mr. Lash in Toronto, and talk over the Bristol matter with him, and he took from me authority to deal with my shares, as with his own, and so on. And he wrote to me from Toronto that he had seen Mr. Lash. Then he proceeded to Europe.

Exhibit No. 31: Filed by Plaintiff: Letter dated July 1st, 1911, from F. H. Walker to plaintiff.

"July 1st, 1911.

My dear Robins,

Everything here has been going on in such a quiet and usual way since you left that I have not bothered you with any letters, but a matter has now

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come up which I want to advise you of. Some time ago Edmund Bristol, K.C., and M.P. of Toronto whom I think you must know came up here to see us with a proposition to buy out all the distilling interests of Canada.

The same old story that has always proved a nuisance to me, and I told him plainly I was sure no group in England who might want to bring out a company in England could afford to pay us our price &c. &c. However, he was very persistent and has been ever since and I have finally told him that if he could satisfy Lash that his principals were well able to carry out a deal of this character I would then discuss the matter with him seriously. There the matter rests at present. Lash being away fishing, Bristol cannot see him for a few days. He assures me that his people are ready to pay cash for all the various plants and are keen to get them. Of course we will sell out this business or anything else we have if we can get our price so perhaps it is worth considering—although I have no faith in the scheme.

The special point I want to advise you of is this—that in order that we should not be turned down by our English accountants' report at the last moment as happened years ago—I have arranged with Price, Waterhouse & Co. to come on here now from their Toronto office and make an audit of our books for the past five years giving us a certificate as to our earnings for that period. This I think a wise precaution and in any case such a statement from these people would be a satisfaction to us. As the presence of these people in our office for a few days or possibly a few weeks might arouse some curiosity and criticism I have thought best to explain the matter to Ed—Harry—Radford—Ambery—Willie Isaacs and Harrington and I naturally want you to know it. Don't allow yourself to think you are soon to be relieved of this business but I do think from the way Bristol talks the thing is worth following up. I have as I have said very little faith in it but if we could realize anywhere near the figure I have told Bristol—about 3 for 1 I think we should all be pleased.

I am sorry to see our American trade pretty steadily falling off—and as usual we cannot see the reason for it. My own opinion is it is simply the result of bad business conditions generally in the States and perhaps we are suffering no more than others—but it is bad in any case.

I believe Ambery is going to send you some figures showing U.S. sales which he tells me you asked for in a recent letter.

Trust you all had an enjoyable time the Coronation week which of course you did—and I imagine you are now having a quiet and perhaps pleasanter time in the country.

Best regards to all your circle.

Sincerely,

(Sgd.) F. H. Walker.

Pardon this pen-written letter—could hardly use stenographer." (This letter is Exhibit No. 31.)

Q.—Is this a letter from Toronto, dated February 8th? A.—Yes, and one on the following day. These are letters in which he told me he had left

the matter with Mr. Lash. In due course, Mr. Lash wrote me personally. (he was in the habit of doing that very much) after he had seen Mr. Bristol, and the man behind him, and asked me for certain information which he needed in carrying on negotiations. And what I said was with the full concurrence of Mr. Harry Walker who was in Walkerville at that time. I was entirely passive in the matter, I simply responded to Mr. Lash's enquiries, and, when the thing reached a certain stage, we got into communication with Mr. Frank Walker, who was abroad, and he finally cabled to Mr. Lash asking what price he thought there was a reasonable prospect of getting.

10 He received Mr. Lash's reply, as I understood, and then he cabled to Mr. Lash to drop the matter entirely. Before Mr. Frank Walker returned from Europe, I was sitting with Mr. Lash in his room (he was ill at the time) and a letter from Frank Walker was brought in to Mr. Lash, he opened it and proceeded to read aloud to me. He expressed surprise that Robins had allowed the matter—

MR. OSLER: I object to what took place between Mr. Lash and the witness.

MR. MCCARTHY: You read letters between Lash and the witness.

20 HIS LORDSHIP: It is difficult to say where to stop. Here is Mr. Lash, their adviser, dealing with the question as to the sale, as to which Mr. Frank Walker had written Mr. Robins previously. Oh, I think so. I cannot tell for the moment exactly where it will lead. I will let it in in the meantime, I do not like to take the responsibility of ruling it out. We cannot try the case that way, I think.

MR. OSLER: I press the objection.

HIS LORDSHIP: Yes.

Exhibit No. 32: Filed by Plaintiff: Letter dated February 8, from F. H. Walker to Plaintiff. Letter dated (next day) Friday from F. H. W. to Plaintiff.

30 My dear Robins:

"Thursday, Feb. 8.

Lash tells me to-day that Bristol has notified him that he is coming to see him Saturday and is prepared to give him the names of all his principals together with all information Lash or we may demand in regard to them. Lash thinks this a strong indication that Bristol's friends mean business. It seems incredible but it may be so. I shall of course let you know what if anything develops Saturday. In the meantime I am curious to know what became of that "agreement to sell" which I intended having all the shareholders sign before going on with the Bristol negotiations. I think you

40 signed it but whether I had it completed by the others I simply cannot recall. I wish you would ask Radford if he knows anything of it and let me know. It is quite likely I put it away in my safe—if so he can find it. I have seen no one to-day but Lash so don't know how I shall find our friend Gooder-

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ham. Shall probably see him to-morrow. Am feeling very well to-day—
think I am improving steadily though slowly. Regards.
Sincerely,

(Sgd) F. H. Walker"
"Friday.

Dear Robins:

I have your t/m re that "agreement to sell". I am not surprised you
can't find it. I have not the slightest idea what I did with it. I remember I
explained it to you and you signed it and brought it back to me but from
that time my mind is absolutely a blank regarding it. It is really of no con- 10
sequence, we can easily prepare another if it becomes necessary. I have not
seen Lash to-day but I hear from his office that his wife is very low and not
expected to live many hours. It will be an awful loss to Lash but I presume
he has been expecting it for some. Saw Gooderham to-day and found him
in unusually good humor—you evidently had a good effect on him. Nothing
new developed in our interview. Leave for N.Y. to-morrow afternoon.

Yours, &c.,

(Sgd.) F. H. W."

MR. MCCARTHY: Go on. A.—Mr. Lash making a remark to the effect
that Frank Walker was surprised that Robins had allowed negotiations to 20
proceed when the price under discussion dropped below \$300 a share, which
was Frank Walker's price to Bristol. I at once said, "that is a very extra-
ordinary remark to make," or something to this effect, and Mr. Lash said
that he would remove that impression from Frank Walker's mind. When
Frank Walker got back I received two letters from Mr. Lash saying he had
explained to Frank Walker that whatever was done was wholly off his own
bat, I had simply responded to his enquiry; and Frank Walker was entirely
satisfied.

Q.—Are these letters in now? A.—I am inclined to think they are in,
if they are not, I can put them in. 30

Q.—Have you got them? A.—I have them somewhere, I am not sure
I have them here.

Q.—Were they in your hands with the file you had that day? A.—No,
I hardly think so, I think that only dealt with the correspondence re the
settlement, and this was actually preceding it.

Q.—Those were letters between Lash— A.—And myself.

Q.—In which he told you he had explained the situation to Mr. Frank
Walker? A.—Yes, and Frank Walker was entirely satisfied, and he was
glad the correspondence had not been entirely cut off as he was told to do by
Mr. Frank. Notwithstanding that, Mr. Frank Walker came back to Walker- 40
ville, and his brother Harry informed me, almost daily, that Frank was mak-
ing his life miserable by making this complaint.

MR. OSLER: Surely, not what Harry Walker informed him.

MR. MCCARTHY: Never mind what Harry Walker informed you.

A.—However, Frank Walker said nothing to me about it for some time, until one Saturday afternoon, and then he brought the subject up in an anonymous way, finding fault about it, but not attributing it to me or anybody else.

Q.—Finding fault that the thing had not gone through? A.—No, that Lash had not been stopped. I was on my guard, because I was apprehensive of certain things, and I said as little as politeness would permit. And that conversation took place upstairs at the lunch table where he and I were alone, and then we came downstairs and he was still talking, and I halted at his door, as in courtesy bound, until he finished what he wanted to say, when Harry Walker came along and Mr. Frank Walker then made a remark to this effect, he gave strict instructions—

MR. OSLER: Surely, my Lord.

HIS LORDSHIP: This is Mr. Robins' statement, Mr. McCarthy has not asked this question.

MR. OSLER: Surely my learned friend cannot introduce a mass of hearsay evidence.

MR. MCCARTHY: What is the hearsay about it? This is what Frank Walker said in the presence of this witness, and in the presence of his brother.

HIS LORDSHIP: Not evidence against the National Trust Company, and the executors of E. C. Walker, perhaps not.

MR. MCCARTHY: What Frank Walker said is not evidence any more than the letters? Surely.

MR. OSLER: I think my learned friend will find it hard to find any authority to show that a hearsay statement of that kind is evidence.

MR. MCCARTHY: What Frank Walker said to this witness is not hearsay.

HIS LORDSHIP: Having put in letters in which Mr. Robins expressed his mind freely to Mr. Lash, and Mr. Lash's answers, are you in a position, Mr. Osler, to object to this subject being referred to in re-examination?

MR. OSLER: I put in letters written by and addressed to Mr. Robins—clearly evidence as against him.

MR. MCCARTHY: Why evidence against him?

MR. OSLER: I take it, what was said to the witness, a party to this case, and what he replied, is undoubtedly evidence.

MR. MCCARTHY: On the same basis, what Frank Walker said to him, and what he replied, is evidence.

MR. OSLER: As against Robins, it is clearly evidence. I put to the witness certain other letters, which I had a right to do, as I have a right to put a newspaper article to him and ask for his comment.

MR. MCCARTHY: And, if you did, I could re-examine.

MR. OSLER: I took the witness over that, but that does not enable the witness to put before your Lordship a mass of hearsay evidence which, against the other parties, is purely irrelevant.

HIS LORDSHIP: Mr. Lash represented the Walkers, and the letters are from him to Mr. Robins, that you put in.

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MR. OSLER: But the Walkers are not on trial here.

HIS LORDSHIP: That is true, but members of the Walker firm are, in that they are residuary legatees, and personal representatives, and parties to this action.

MR. OSLER: My Lord, something that might be evidence against one party, if he were the only party to the action on a contract is not evidence in respect of the issue which we have here, which is a question of the will.

HIS LORDSHIP: This action is with respect to the validity of the will; but, as a side light, the other side says it is so shocking to think of a \$100,000 nominal legacy being cut off suddenly, without reason; have not they the right to go on and show that there is no reason for it, and it was influenced by the brothers? Does the record show where the undue influence is, I have not seen any particulars? 10

MR. OSLER: No, and we have not heard any evidence of it.

MR. MCCARTHY: No.

MR. OSLER: That does not permit my learned friend to put in hearsay evidence.

HIS LORDSHIP: A conversation with Robins hearsay?

MR. OSLER: Yes, a witness may go in the box and say I was told so and so. 20

HIS LORDSHIP: It is not as if Frank Walker's estate is attacked, but really because he is a residuary legatee.

MR. MCCARTHY: It is a conversation between Frank Walker and the witness.

MR. OSLER: That does not assume that the conversation related to the will.

HIS LORDSHIP: I am far past that. The case as put before me is the extraordinary character of the new will in that it cut off, without rhyme or reason, \$100,000 from this gentleman. That is what is before me. I do not see why this conversation should not be allowed in as evidence, after you produced the correspondence. 30

MR. OSLER: I can only press my objection.

MR. HELLMUTH: I submit, my Lord, that whatever my learned friend Mr. Osler may have introduced, whether relevant or irrelevant, at all events, any conversation between Mr. Frank Walker, or Mr. Harry Walker, as long as they were not conversations in the presence of Mr. E. C. Walker, which could be given, cannot be evidence against my client in any shape or form. If it were an admission by Mr. Frank Walker that he was entirely wrong in his dealings with Mr. Robins, that would be no evidence, unless it were shown that such admission had been made to Mr. E. C. Walker. Even in the view your Lordship takes, that there may be some evidence that it was extraordinary to cut Mr. Robins off, but your Lordship will see that Mr. Robins himself has said that Mr. E. C. Walker held aloof from him after his cutting off of his employment in 1912. 40

MR. MCCARTHY: That cutting off has not happened yet.

MR. HELLMUTH: Mr. Robins has already said that E. C. Walker held aloof from him; or he attempted to say it was his thought, or impression,

that E. C. Walker held aloof from him. There may have been a perfectly good reason for removing Mr. Robins from E. C. Walker's will, and it would be quite immaterial whether Mr. Robins was perfectly right in his controversy, or in the difficulty that took place with Mr. Frank Walker, or not. Mr. E. C. Walker had definitely, according to Mr. Robins, allied himself to, or sided with Mr. Frank Walker in the removal of Mr. Robins from the firm, and my submission is that the conversation between Frank Walker and Robins in regard to his removal, or quarrel, or anything else, is entirely irrelevant to the question as to whether this is, or not, a valid will.

10 HIS LORDSHIP: There is so much at large, it is difficult to make a clean-cut decision on whether the facts that E. C. Walker had before him were such that more than one opinion could be given as to their effect, and one or more influence may have influenced him in making his will. I should think that the conversation as to what was really meant, between Mr. Robins and Frank Walker, or J. H. Walker, is germane; anyway, I think I shall allow it in the meantime.

MR. MCCARTHY: May I call attention to the fact that the very first letter in Exhibit No. 20, which my friend put in, is a letter from this very man Frank Walker to Lash. If that is evidence against my client, surely a

20 conversation between the witness and Frank Walker must be evidence.

HIS LORDSHIP: I think so.

MR. OSLER: I do not think I put in a letter from Frank Walker to Mr. Lash.

MR. MCCARTHY: So you will not be mistaken, I will show you.

MR. OSLER: That was one of the two letters I asked the witness to comment on, which I have a perfect right to do in cross-examination.

MR. MCCARTHY: And I have a perfect right to re-examine.

MR. OSLER: On that letter.

MR. MCCARTHY: On anything you cross-examine on.

30 HIS LORDSHIP: That is the original letter he gave you.

MR. OSLER: In that file of correspondence on which I cross-examined Mr. Robins there were two letters from Frank Walker to Lash with reference to the final settlement, and I read them and Mr. Robins was asked to comment on them.

MR. MCCARTHY: How could they refer to the final settlement?

HIS LORDSHIP: What is objected to is a conversation between Frank Walker and Mr. Robins, and I am of the opinion that it would be clearly a great mistake to leave that out of the record.

MR. MCCARTHY: Go on.

40 A.—I think I had come to the point where Mr. Frank Walker said he had given strict instructions to Mr. Harry Walker before he sailed from New York—Mr. Harry Walker was in very poor health at the time, and seemed very much distressed, and I interposed very quietly with the remark that Mr. Harry had told me that, and it didn't seem to me it had any application to the negotiation as Mr. Lash was conducting it, and with that Mr. Frank Walker turned upon me in a very offensive way and used very offensive language to me.

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HIS LORDSHIP: Did he call you a fool? A.—He said he didn't see what the devil business I had to have any opinion about it at all. I made no reply whatever, and quietly left. There never were any words between myself and Frank Walker on the subject, we had no quarrel, we had no altercation, no difference of opinion whatever.

HIS LORDSHIP: This witness is entitled to say, or give his opinion, there was no quarrel; of course, naturally there are other inferences to be drawn from that.

THE WITNESS: Of course, that created one of these situations again where I was treated very rudely and felt there must not be a recurrence of that sort of thing. 10

MR. McCARTHY: Now, Mr. Robins, that was in 1911? A.—In 1912.

Q.—About what time? A.—I think in the month of May, I should think early in May, I am not quite sure.

Q.—I think you told my friend that previously, in 1911, prior to your agreement expiring, Mr. Frank Walker had made some remark to you in regard to carrying on? A.—Yes, he said I was more necessary to the business than ever, and he hoped I would stick by it, "Because," he said, "you know Ed. has been practically out of the business for a long time, and now Harry has broken down, and while you were away, I thought I would never be back to the office again." 20

Q.—That was before your agreement expired in August. That remark was made prior to the expiration of your agreement in August, 1911? A.—No. I was in Europe when that expired.

Q.—When was this said? A.—In November, 1911.

Q.—When was the question of the expiration of your agreement discussed between you and Mr. Frank? A.—I know it was after the 1911 election was over.

Q.—Then, I think you said that Mr. Frank went to the south of France for the winter of 1911-12, and returned about May, when this conversation took place that you have just told us about? A.—Yes, I can't be sure whether it was May, but he went away in February, as these letters show. 30

Q.—Did you have any further conversation with Mr. Frank Walker after that? A.—Nothing except incidentally about business.

Q.—Now, my friend has suggested, or possibly insinuated, you were indignant with Frank Walker, and wanted the brothers to put him out, from time to time? A.—That is entirely wrong; on the contrary, I was only too glad when these temporary difficulties with Mr. Frank Walker, his outbursts of temper, were removed by his assurance to me that he did not mean anything by them, and I did everything in my power to see that everything should be pleasant between us, and, as I have suggested to his brothers, they should do nothing which would not be in their own best interest. 40

Q.—Mr. Osler also referred to what you have called offences committed by Mr. Frank Walker, and he has preferred to use the word "quarrel". Do you make any distinction between the word "offence" and "quarrel"? A.—I never had a quarrel with Frank Walker in the whole time, because when he lost his temper like that I always went away without saying a word.

Q.—When you use the word “offence” what do you mean? A.—Rudeness, gross rudeness.

Q.—You were going to tell something about Frank Walker’s attitude to you?

HIS LORDSHIP: Wait one minute. What did you say about your waiting for a decision from the other two, as to whether they would put Mr. Frank out, and being disappointed when you found they wouldn’t? A.—No, I haven’t said that, my Lord.

10 Q.—Is not that the inference to be taken from these letters? A.—I do not think that; however, it is not for me to say.

MR. MCCARTHY: His Lordship asked you a question. A.—I do not know whether that is the inference or not, I do not think it is the inference I should draw from that answer.

MR. MCCARTHY: Answer his Lordship.

HIS LORDSHIP: I think it is important he should answer.

A.—I may tell you this, that following this last rudeness that I have mentioned, Mr. Frank Walker went abroad again very soon, and his brother Harry and I naturally talked a good deal over it, as to what was to be done to end that sort of episode, and it was distinctly Mr. Harry’s opinion that
20 there was nothing for it but for them to ask Frank to retire from the Board.

Q.—When was this? A.—Following this last one, and he gave me to understand that was distinctly his view of it, and he expected his brother Ed. would concur. I made no demand of any kind, I simply said I thought I could not stand any more of that.

Q.—Does not that mean, you now having proclaimed that view to Harry Walker, that you could not stand it, did not you lead them to believe that what you desired was to get rid of Frank? A.—My Lord, I would hardly like to put it that way. I want to be absolutely frank. I will admit this—

30 Q.—I asked you such a straight question? A.—I wouldn’t say it went that far.

Q.—If you would please try not to talk around the point? A.—I am trying not to. If you would tell me—

Q.—But I told you? A.—I would have been quite prepared, if I thought I could be guaranteed against a recurrence of that, I would have been quite prepared for a different solution. I would say frankly that there had been so many experiences of that sort, I hardly saw any other remedy for it.

40 Q.—I know of no man less unable to give a Roland for an Oliver; I do not quite see why you should be so annoyed at these things. His rudeness was to say, “what in the devil have you to do with it?” A.—I wanted a quiet life, and I was prepared to go away to get it.

MR. MCCARTHY: I do not know if you have answered his Lordship or not. It is important you should.

HIS LORDSHIP: I have his answer.

A.—I will say frankly that I myself thought there was no assurance of that sort of thing being ended with Frank, but if it had been put to me that there was a way, I would have been very glad to have accepted it. I had no animosity against Frank Walker.

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Q.—Harry told you he didn't think it could be done. This was a petulant man, and he did not restrain his language when talking to you, a man who had done a great deal for his business? A.—And I was a co-director.

Q.—He treated you as an underling? A.—I was a little older than he was, I was not a young boy, and I felt that.

MR. MCCARTHY: May I go back to his Lordship's question? I think it is a very pertinent question, and you should consider your answer. His Lordship asked you whether you intimated to Mr. Harrington Walker during the course of this discussion that unless some guarantee could be given you against a recurrence of this conduct on the part of Frank Walker that the only solution was for him to leave the Board, or one of you should leave? 10
A.—No, I didn't say that.

Q.—What was the impression that you gave, or was left on Harrington Walker's mind, by what you either suggested or did? A.—I think Mr. Harry distinctly understood I felt that must be the last of such incidents, I did not disguise that at all, I felt that must be the last, that I must be guaranteed it would be the last of them.

HIS LORDSHIP: And if they were repeated, you would have to go? A.—Yes, I thought so.

Q.—And the alternative was to make Frank Walker take himself, and 20 his mouth, away? A.—Well, whatever it might be.

Q.—Is not that so? A.—If there was no other way, yes; if there was no other way to guarantee me against a recurrence of it, either one of us would have to go, that was plain enough to me.

Q.—Either one of us would have to go. We cannot get any further than that.

MR. MCCARTHY: In regard to the disposition of Mr. Frank Walker, what do you say as to that, outside of these little outbreaks? A.—Why, between whiles he was just as nice as could be.

Q.—Did he communicate to you, or did you write to him? A.—Yes, 30 frequently.

Q.—Have you the letters to show? A.—I have letters from him of a most cordial and complimentary character.

Q.—Where are they? A.—In my attache case. You broke in; I want to read two or three letters to show my attitude.

Q.—From what are you going to read? A.—A copy of my letter to Harry Walker, the answer to which has been put in, in July, 1905.

HIS LORDSHIP: Surely you are not going to jump back seven years in a second. We were talking about 1912. A.—My Lord, this happens to be the only letter I have which shows what my attitude was. 40

MR. OSLER: This witness is evidently used to having his own way. I submit that letters as far back as 1905 are not evidence.

HIS LORDSHIP: He is making the second fight of his life now.

MR. MCCARTHY: Mr. Robins says it is an answer to a letter already in.

HIS LORDSHIP: I do not see why, for that reason, he should put in evidence that is no evidence.

MR. OSLER: His Lordship must apply the brakes somewhere.

MR. MCCARTHY: I submit that we should be allowed to put in an answer to a letter my friend has put in.

THE WITNESS: I think we put it in.

MR. OSLER: I am quite sure I didn't.

MR. MCCARTHY: When? A.—When I was in the box. It was a letter in which Harry said, "By no means must you resign."

HIS LORDSHIP: We have that.

A.—This is my letter, in answer to which the other letter was written.

MR. HELLMUTH: I object to that; absolutely, it is no evidence in this case, what this witness wrote in 1905.

HIS LORDSHIP: He says it is already in.

MR. HELLMUTH: If he put in a letter from Harrington Walker, how that went in I do not know, I object to his putting in his own letter which he wrote to Mr. Harrington Walker in 1905. It has no bearing, in any conceivable sense, upon the making of this will.

HIS LORDSHIP: That is true, on the making of the will, only it may be indirect evidence of undue influence.

MR. HELLMUTH: In 1905?

HIS LORDSHIP: A matter of years does not matter to this gentleman at all, supposing he can link it up with the whole matter he is willing and anxious to do, it.

THE WITNESS: My object was simply to show my attitude, that it was not as has been said, as being antagonistic and wanting to put Mr. Frank Walker out. May I read a few lines?

HIS LORDSHIP: It is objected to because it is going back seven years. I think you were antagonistic to him, and you were trying to get rid of him, and you lobbied the other two against him before you had a meeting, and influenced their minds, but the family affection was too strong, they would not put him out, and you went. That is my appreciation of it, so far. However, I am loath not to allow you to put in anything that will tend to change that opinion of mine. I think you thought Frank Walker was a nuisance around the business for he was always saying disagreeable things to you and trying to humiliate you. That is my opinion. However, it is so awfully remote from what we are really trying to try here, when we go back to 1905.

MR. MCCARTHY: You have heard his Lordship; tell us what your answer is to that? A.—Well, with all respect, his Lordship is entirely wrong, and whether it has any bearing on this or not, I should very much like him to remove that from his mind.

Q.—What is your answer to what his Lordship said?

HIS LORDSHIP: You heard what I said as to the conclusion I have come to so far, and that I was loath to prevent you showing anything to change my mind. Have you anything to change my mind?

MR. MCCARTHY: His Lordship gives you an opportunity to answer. A.—I say, with all respect, his Lordship is quite wrong.

Q.—You have expressed your opinion? A.—It is not an opinion, it is a fact.

HIS LORDSHIP: Now, I do not want speeches to be made; as this case

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has got to be so long, we have to stick to the issue, and the question which is clearly put must be clearly answered. I must insist on that.

MR. MCCARTHY: You wanted to read something out of a letter.

HIS LORDSHIP: Go on.

THE WITNESS: "On the last occasion of its discussion in my presence, I declared my entire willingness to fall in with whatever you and your brothers might wish to do, and in that I was absolutely sincere. My views remain unchanged as to what would be best; but if you wish a different course pursued, and whether because you think it better or because you would rather concede to Mr. Frank's opinions than have any friction, I shall raise no objection." 10

HIS LORDSHIP: I heard that before. That is civil enough, to put it that way to the weaker brothers.

A.—"Even if I could reconcile myself to it, I believe that it would be no real kindness to Mr. Ed. These things worry him all the time, and, as I think, far more than it would worry him to end them once for all. If you and he think that with me away pleasantness would be restored, by all means let that be the solution."

MR. RODD: What is he reading from?

HIS LORDSHIP: A carbon copy. 20

MR. RODD: Some other letter?

HIS LORDSHIP: It has the same sound.

THE WITNESS: That expressed my feelings at the time with absolute truthfulness.

HIS LORDSHIP: And they apparently said, all right, we will have to stick to Frank, and Robins can go. That is my opinion.

MR. MCCARTHY: Now, Mr. Robins, to go back, if I might put a concrete question. You heard his Lordship say as to what impression had been created in his mind in regard to Mr. Frank Walker's attitude to you, and yours to him. What, as a fact, did take place as between you and Mr. Frank Walker? A.—When? 30

Q.—During the course of your associations with him from 1905 until you left? A.—With the exception of these few episodes, as I call them, they were very nice.

Q.—One further question, which is really his Lordship's, did you take any steps to create friction between him and his brothers? A.—On the contrary, I did everything in my power to avoid it.

Q.—Another question, which is also his Lordship's, did you take any steps to load his brothers? A.—I did not.

HIS LORDSHIP: Not "load", canvass them, lobby? A.—No, I didn't. 40 My object in talking to the brothers first when a question of importance had to be discussed was that I desired them to take their proper part in the discussion, that they should not leave it so much to me.

MR. MCCARTHY: Just to clear up one other point; his Lordship, during your cross-examination asked you to comment on a letter that Frank Walker wrote containing more or less kind expressions toward you, and, I think, in answer, you characterized the letter as insincere? A.—Yes, I did,

with regret, because I knew the impression it might make, that I seemed ungenerous.

Q.—Is there anything further you would like to say in regard to it?

A.—I would like to give my reasons for thinking it insincere.

HIS LORDSHIP: When I asked you that question I gave you lots of time to consider it properly, but after two or three days, after thinking it over, you want to give another answer.

MR. McCARTHY: I do not think he is going to give another answer, but the reasons.

10 HIS LORDSHIP: I asked him to comment on it, and, if he is going to give another reason, it would be interminable.

MR. McCARTHY: I do not think he will give any other reason.

HIS LORDSHIP: If he does not want to give any other reason, then the reasons he gave will remain. I don't think so.

MR. McCARTHY: I will tender the question in this form, that the witness, having characterized the letter as being insincere, I have the right to ask him why he said so.

HIS LORDSHIP: No use. Tendered, and rejected.

MR. McCARTHY: Then turning to Exhibit No. 30, have you gone over
20 this file, Mr. Robins? A.—Yes.

Q.—You have already gone over Exhibit No. 20, which is in? A.—Yes.

Q.—I think you have given your reasons for your comments on Exhibit No. 20, are there any comments on the letters contained in Exhibit No. 30, which you wish to make, which has a bearing on the evidence already given from the letters put in in Exhibit No. 20? A.—If this has a bearing, I should like to draw attention to it.

MR. OSLER: This will be subject to my objection.

THE WITNESS: This is a telegram of August 16th, 1912, from F. H. Walker to Lash, and letter of the same date. May I read the telegram?

30 Q.—Yes. A.—“Think letter was written you yesterday better delay reply until you receive my letter of to-day. F. H. Walker.” The letter to which he referred was undoubtedly one which I wrote to Lash, at Mr. Harry Walker's own request, after he told me he had seen Mr. Frank Walker.

Q.—Your letter would be dated what? A.—The 15th.

Q.—It is part of Exhibit No. 20.

HIS LORDSHIP: And Mr. Harry Walker must have seen Frank Walker to tell him about it. A.—No, not about my letter.

Q.—Frank says in the telegram. A.—It was understood I was to write; when he saw his brother, perhaps he went back to him.

40 Q.—Nothing underhand was done. It shows there was confidence between the brothers. A.—Yes. I wrote this letter to Mr. Lash at Harry Walker's request, and immediately sent a copy to Mr. Harry Walker, who had gone to Magnolia, and he confirms it as being the letter agreed upon. Mr. Frank Walker's letter gives an entirely different version of the matter. I only saw this a day or two ago. I wish to make that comment.

MR. McCARTHY: In what respect? A.—The first thing he says is that in my talk with Mr. Harry I had asked whether they would give me two

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months' vacation, with salary. That was quite untrue. I had suggested that I go away ostensibly on vacation, just to give time for everybody to think things over, and avoid immediate criticism of the fact I was leaving the concern, which would have precipitated matters, which none of us wanted.

HIS LORDSHIP: That is a very fine distinction, not at all enough on which to base the statement that it was quite untrue—the statement of a dead man. A.—Well, I would rather not make it. It was very different to my suggestion. My suggestion was made in good faith, and I absolutely refused to receive salary for that, it was tendered to me on the settlement, and I said I did not wish it. 10

Q.—In this case I do not find anything to lead me to say that the Walkers would say anything untrue. A.—Mr. Frank Walker goes on to suggest that I was bluffing, and so on, and so forth.

Q.—Was that offensive? A.—This was not the situation I was ready to accept, and Frank Walker writing that letter to Lash was inclined to give Lash a very different impression from what he should have got from the facts, I think.

Q.—You have seen a juggler throwing up three balls and catching them; sometimes one of them drops. That is the whole thing. 20

MR. MCCARTHY: Are there any other letters in the file Exhibit No. 30? A.—There are letters in this file that show that the brothers were not in harmony over the settlement, that Frank Walker was writing privately to Lash and Harry Walker was writing privately to Lash.

HIS LORDSHIP: Telling Frank what he had done, so Frank could counteract it, saying, don't act till you get a letter from me. A.—There is one here from Harry in which he clearly intimates he is writing unknown to Frank.

MR. MCCARTHY: What I want to ask you is this: In looking at this file, having in mind the letters already put in, which were read to you on Thursday and Friday last, do you wish to comment on them, or do they speak for themselves? A.—I understand you can draw attention to these letters, therefore, perhaps I better not comment on them any more than I have said. 30

Q.—Are there any facts dealing with these letters which you wish to speak about? A.—I see no other mis-statement of fact, other than what I have drawn attention to.

Q.—Now, having regard to E. C. Walker for a moment. During the year 1911 did you have any intercourse with Mr. E. C. Walker at all? I think that is the year you said you were abroad? A.—Yes, I believe I saw him abroad, and I no doubt saw him a good deal in Walkerville. 40

Q.—Where was he in the winter of 1911-12? A.—The winter of 1911-12 he spent in Europe, principally in the south of France.

Q.—Do you remember what time he got back to Walkerville? A.—May, or June, of 1912.

Q.—How long did he remain at Walkerville that time?

MR. OSLER: Is this proper re-examination?

MR. McCARTHY: I think so, in view of the letters that have been put in.

MR. OSLER: I did not gather that the letters dealt with E. C. Walker's absence.

MR. McCARTHY: They do in some instances.

HIS LORDSHIP: I am hopeless about being able to decide that question, and therefore, doubting, I will let it go in.

THE WITNESS: I think he was in Walkerville continuously from the time he got back from Europe until the 19th of August.

MR. McCARTHY: Two letters which you wrote, and which my friend
10 put in, of the 20th and 21st of August, were addressed to him where? A.—
One is addressed to him in Walkerville, my recollection is it was the 16th of
August.

Q.—Yes, you are quite right. A.—That brought him in to see me on
the 17th, Saturday afternoon.

Q.—Now, up till that time, had you had any discussion with Mr. Ed, as
you call him, in regard to your leaving the business? A.—No, no discussion,
he had just said to me he understood there was some question, and he made
this remark that Frank didn't always mean what he said, or something like
that.

20 Q.—There was no discussion with him? A.—No.

Q.—How did you come to write this letter of the 16th of August? A.—
Because I had been expecting for weeks there would be something said to
me, and so did Harry, who was away in Magnolia, and I was hurt by the
fact that Mr. Ed. Walker, with whom I had been so intimate, and who so
frequently came into my room, should not come in to see me, and I wrote
him that letter.

Q.—Did you ever receive a reply to that letter? A.—No, he replied to
it when he came in the next day.

30 Q.—That was Sunday? A.—No, Saturday afternoon. And we had
quite a long talk, and then he said, "I am sorry, I have an appointment with
my wife to go to Detroit."

Q.—Was there any discussion in regard to leaving the business, on Sat-
urday? A.—Yes, that was discussed.

Q.—Can you tell us what that discussion was? A.—Mr. Ed. Walker
said it was a good deal against his wishes, he thought it would be unfortunate
for the business.

Q.—That is the substance of what he said? A.—Yes.

Q.—Did you write him again after that? A.—Yes, at his request.

40 Q.—When was that request? A.—He was to have seen me on Sunday.
He came to my house and was misinformed, they told him I was out, whereas
I was sitting in the conservatory waiting for him.

Q.—We have had all that. A.—I telephoned to him explaining, and he
said they would see me—

Q.—You told us that. A.—When I saw him for a few minutes on Mon-
day he asked me to write him.

Q.—You did; on what date? A.—Either that date or the next, that was
the 19th of August—here it is, it was August the 20th.

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Q.—The letter of August the 16th, begins: "Dear Mr. Ed, The situation here affecting myself—"

MR. OSLER: That is the 16th. The one I discussed was at the bottom of Exhibit No. 20.

MR. MCCARTHY: They are attached together; the one on the 20th is the one you wrote at his request? A.—Yes, at his request.

Q.—Was any answer ever received to that letter? A.—From him, no.

Q.—Or from anybody? A.—His brother Harry wrote me that Mr. Ed. Walker desired him to say he had received my letter and ought to have answered it, but didn't know what to say. 10

Q.—Mr. E. C. Walker went away, I think you said, about the 20th or 21st of August, to where? A.—The 19th, I thought he was going abroad, but somebody has told me he went to St. Andrews.

Q.—Did you see him again? A.—Not to speak to.

Q.—And the letter was never answered except in the way you say? A.—No.

Q.—Then I think we already have evidence in that in 1913 he went abroad for six months? A.—Yes.

Q.—Then, after he came back in November, 1913, did you see him again after that at all? A.—I can't say. 20

Q.—So that your last interview with him was in August of 1912? A.—Yes.

Q.—And when you last left him what was your relationship? A.—About the same as always—affectionate; I saw no difference.

Q.—Then this letter which has been put in, of August the 14th, to you from Walker Sons, of course, you did not receive that until the following April? A.—When I found it among a lot of papers. This new file put in throws some light on that; that letter of Frank Walker's to Lash, dated the 16th of August, says that the letter had not been delivered to me.

Q.—Although dated the 14th? A.—Yes. 30

Q.—By the way, just to clear up one thing, your agreement was with Walker Sons? A.—With Walker Sons.

Q.—There is nothing else arising out of your cross-examination you want to explain? A.—Well, I don't think of anything.

RE-CROSS-EXAMINATION By MR. OSLER:

Q.—Mr. Robins, you told Mr. McCarthy, if I might cross-examine?

HIS LORDSHIP: I do not know, it has not developed.

MR. OSLER: This was not touched upon in chief with this witness.

Q.—You told my learned friend, Mr. McCarthy, that Mr. E. C. Walker spent the winter of 1911-12 abroad? A.—Yes. 40

Q.—And when he returned he was continuously in Walkerville? A.—I said I thought so.

Q.—You are not very sure of that, I suppose, because I find a memorandum to the effect that on March 2nd, 1912, he sailed from New York, and on May 21st, 1912, he sailed for home. A.—Mr. Ed. Walker sailed in March?

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Q.—Yes. A.—I should not have thought so; no, that would fit in with Mr. Frank more closely.

Q.—Mr. Saunders tells me that is what he understands. A.—When Mr. Frank Walker sent that cable to Mr. Lash, Mr. Ed. Walker was on the Mediterranean.

Q.—What was the date of that cable? A.—I can't be sure about that.

Q.—At all events, you don't know whether or not he was continuously in Walkerville during the spring of 1912? A.—No, I don't know, I should say he was.

10 MR. MCCARTHY: I think the witness said he was away in the south of France in the winter of 1911-12. A.—He was, but Mr. Osler is not speaking of that time.

MR. OSLER: He could not have got back and sailed again on the 2nd of March? A.—No, I don't think that is correct. Mr. Frank Walker came home for a short time and went back again, but not Mr. Ed. Walker.

MR. MCCARTHY: That is the case, my Lord.

MOTION FOR NON-SUIT.

20 MR. OSLER: I would move, your Lordship, for a non-suit in this case. It does not seem to me that the plaintiff has made out any case attacking the will of 1914. The witness Robins, of course, can speak only as to the position up to August, 1912, and, although he gave an account, which was quite obviously exaggerated, as to the testator's mental capacity, it is quite inconsistent with the correspondence in which the witness himself engaged, with the late Mr. E. C. Walker, at that very time.

The only other evidence that has any bearing upon the question is that of the two doctors, Hoare and Dewar, and the commission evidence of Dr. Shurly.

30 HIS LORDSHIP: It is pretty strong, I mean they suggest aphasia, he could not complete sentences. There has been a good deal drawn out as possibly opposed to that. But how about Mrs. Walker's statement that she got the settlement as the result of disputing the will and the mental capacity.

MR. OSLER: In the first place, what Mrs. Walker may have said is not evidence; in the second place, I suggest that the evidence as to disputing the will was incredible.

HIS LORDSHIP: Where would it have landed her?

MR. OSLER: Under the will of 1901, she was entitled to an annuity of 40 \$10,000 a year

HIS LORDSHIP: The point is did they say or do something which showed their indisposition to have Mr. Robins come back and associate himself with her in disputing the will, so as to give her a million or so dollars more?

MR. OSLER: Well, I take it no Court is going to find that a testator was incapable of making his will, upon an allegation like that.

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HIS LORDSHIP: Do you not think it as well, in a case like this, that I should hear the evidence?

MR. OSLER: I am in your Lordship's hands.

HIS LORDSHIP: I think so.

MR. HELLMUTH: I accept the suggestion that the evidence should be put in.

HIS LORDSHIP: You can renew the motion.

MR. HELLMUTH: Your Lordship understands there would be a good deal to be said on a motion, that has not been said.

HIS LORDSHIP: I thoroughly understand that. 10

MR. HELLMUTH: I do not want your Lordship to understand there is nothing I could say.

HIS LORDSHIP: I am sure you did not exhaust the case.

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J. H. Coburn
Examina-
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Chief.
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J. H. COBURN, Sworn. Examined by MR. OSLER:

Q.—Mr. Coburn, you are a solicitor practising in Windsor now, I think?

A.—Yes.

Q.—You are also a barrister? A.—Yes. 20

Q.—And you did practise for some years in Walkerville? A.—Yes.

Q.—How long have you been practising altogether? A.—I have been practising here since 1898. I was in Toronto before that.

Q.—And when you came to practise in Walkerville did you know the late E. C. Walker? A.—Yes.

Q.—I suppose you knew Mr. F. H. Walker and J. Harrington Walker also? A.—Yes, sir.

Q.—Did you act as their solicitor in matters they consulted you about? A.—Yes.

Q.—To any considerable extent? A.—Yes. 30

HIS LORDSHIP: I notice when the power of attorney was given to J. H. Walker by E. C. Walker that Mr. Coburn drew it.

MR. OSLER: Who was their local solicitor here? A.—I was.

Q.—Did you know that Mr. E. C. Walker had made a Will in 1901? A.—Yes.

Q.—Were you consulted with reference to any codicils of that Will? A.—Yes.

Q.—Will you tell me when you were first consulted with reference to a codicil to that Will? A.—I think the first codicil was in 1903 or 1904. I have no way of fixing the date. 40

Q.—Have you a copy of it? A.—No.

Q.—You have caused search to be made? A.—Yes.

Q.—Did that involve an important change in the Will? A.—No, my

recollection is that he gave a legacy of some trivial, small amount to some person else.

MR. McCARTHY: Q.—Did he make the codicil? A.—Yes.

HIS LORDSHIP: That is the one nobody can find.

Q.—How did it leave your hands? A.—I took it over to Mr. Walker and had it executed.

Q.—That is the last you saw of it? A.—That is the last I saw of it.

MR. OSLER: You were going to say your recollection of it was what?

MR. McCARTHY: Is that evidence?

10 HIS LORDSHIP: I should not think so. I do not know why it is in except to show capacity.

MR. OSLER: It is in to show the history.

HIS LORDSHIP: History or atmosphere.

MR. OSLER: Had it any relation to Mr. Robins? A.—No.

Q.—Had it any relation to Mrs. E. C. Walker? A.—No.

Q.—Do you remember being consulted about other codicils? A.—Yes, I was.

Q.—Exhibit No. 3 is a codicil dated the blank day of November 1913? (It is shown to the witness). That is the one dated the blank day of November, 1913? A.—Yes.

Q.—By which he changed his executors? A.—Yes.

Q.—Tell us what you know about that, Mr. Coburn? A.—Well, I drew that under Mr. Walker's instructions, that is, Mr. E. C. Walker.

Q.—Were you present when it was executed? A.—No, I was not.

Q.—Will you tell us what you know about Exhibit No. 4, draft of codicil of December 1913? A.—That was also drawn under his instructions.

Q.—By you? A.—By me.

Q.—That is, by Mr. E. C. Walker's instructions? A.—Yes.

30 Q.—What did you do when you had drawn it? A.—I took it down to his office, and he was not there that day, and I met Mr. Harry Walker as I was coming away, he asked me what I wanted, and I said I wanted to see Mr. Ed. He said he was not feeling very well and had not come down. He asked what I wanted him for, if there was anything he could do. I said I had a codicil, for his will. He said if I would let him have it

MR. McCARTHY: That is not evidence against us.

HIS LORDSHIP: No, except in the way of showing capacity, or with respect to the charge of incapacity.

MR. OSLER: I am not concerned in what Harrington Walker said. At all events, in consequence of what Harrington Walker said, what did you do? A.—I gave it to Mr. Harrington Walker.

Q.—Do you know whether it was ever executed? A.—No, I don't.

Q.—Did you have any conversation with Mr. E. C. Walker with reference to his will? A.—Yes.

Q.—Will you tell me what they were? A.—Shortly before the second codicil was drawn, Exhibit No. 3, Mr. E. C. Walker sent for me and told me that he wanted—he was thinking of drawing a new will and wished me to attend to it for him. I asked him if he had made up his mind what he wanted to do; he

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said he hadn't, he would let me know later. And then I think it was at the same time he asked me to draw this second codicil, he said he would do that in the meantime. And, when the third codicil was drawn, he still had not made up his mind, he hadn't his full instructions ready for the will, and he instructed me to draw the codicil.

Q.—By that codicil Mr. Walker provided for revoking certain legacies under the will of December, 1901? A.—Yes.

MR. MCCARTHY: You cannot call it a codicil, it was never signed.

MR. OSLER: By the draft codicil, by the document you have there? A.—Yes. 10

Q.—Will you tell me what were the circumstances which Mr. Walker mentioned to you relating to that? A.—Well, the circumstances were that, as he told me, circumstances had changed, and he wanted to make certain changes on that account. He had the will before him and he indicated to me what sections he wanted to revoke.

Q.—For instance, the draft codicil provided for revoking clause 20? A.—Yes.

HIS LORDSHIP: How is that draft codicil evidence? A.—It is my office copy.

MR. OSLER: The codicil drafted by this witness was not executed. 20

MR. MCCARTHY: Does your lordship admit evidence as to the circumstances?

HIS LORDSHIP: Only on the point as to his ability then to look after his own affairs, to make his own will.

MR. OSLER: And his intentions with respect to beneficiaries.

HIS LORDSHIP: I do not know. However, it can go in.

MR. OSLER: Clause 20 provided, in the first place, for a trust in favour of William Aikman, Jr., of Detroit? A.—Yes.

Q.—What do you know about him? A.—Mr. Aikman had died, I think shortly before that. 30

Q.—When you say "before that," what do you mean? A.—Before the date of those instructions.

Q.—That draft codicil? A.—Yes.

Q.—And there was a trust in favour of Mr. Stephen A. Griggs of Detroit, \$100,000.00? A.—Yes.

Q.—What do you know about him? A.—Mr. Walker had given Mr. Griggs, at that time, the stock of the Walkerville Brewing Company.

Q.—Who was Mr. Griggs?

MR. MCCARTHY: Does he know, or did someone tell him this? A.—I know that. 40

HIS LORDSHIP: Please take the will of 1901, and tell us briefly what those clauses are. Is clause 20 about Mr. Robins?

MR. OSLER: Yes, my lord, clause 20 is a Trust in favour of William Aikman, Junior, for \$100,000 par value of the capital stock.

And a Trust in favour of Stephen Adelbert Griggs, for \$100,000 par value of the capital stock.

And a Trust in favour of William Robins, for \$100,000.

A transfer to C. M. Walker of Walkerville, of \$25,000 par value of the capital stock;—subject to provisos.

21 is a transfer to William Aikman, Junior, in capital stock of The Walkerville Land and Building Company Ltd.

HIS LORDSHIP: He is dead?

MR. OSLER: Yes.

And a transfer to Stephen Adelbert Griggs of 20 shares of capital stock of The Walkerville Malleable Iron Company.

22 is a Trust for Stephen Adelbert Griggs \$75,000 of the debt owing by 10 The Walkerville Brewing Company, Ltd. And a Trust for the benefit of E. W. Bauslaugh, \$25,000 of the said debt.

23 is not affected.

24 is a long provision for the creating of a playing ground for Walkerville.

MR. OSLER: What is the situation with reference to Mr. Griggs? In the first place, who was he? A.—Mr. Griggs was the manager of the Walkerville Brewing Company.

Q.—At that time? A.—At that time.

Q.—What had been his previous relationship to E. C. Walker? A.—Well, they were very close friends, and he had been with Hiram Walker & Sons 20 Limited for a time.

Q.—And he had left them and joined the brewery? A.—He was with the brewery before that.

Q.—The brewery was one of their subsidiary enterprises? A.—He was with the brewery when I came here in 1898.

Q.—What had been his connection with the brewery before the action taken in 1913, in November? A.—There had been a bond issue made in 1911 covering the indebtedness of the brewery, and Mr. Walker took the bonds.

Q.—So the debt he speaks of in paragraph 22 of his will of 1901 had been converted into bonds at this time? A.—Yes.

30 Q.—What position was Mr. Griggs in with respect to any benefits he was to receive from E. C. Walker? A.—When Mr. Walker took the bonds he turned over the stock to Mr. Griggs.

Q.—He turned over to Mr. Griggs the stock of the Walkerville Brewing Company? A.—Yes.

Q.—What about Mr. Robins? A.—Well Mr. Robins had left the firm at that time.

Q.—And Mr. C. M. Walker? A.—Mr. C. M. Walker was still in Walkerville. I don't know whether any arrangement was made in regard to him or not.

40 Q.—Did you make the suggestion to Mr. E. C. Walker that these provisions in his will of 1901 should be changed?

MR. MCCARTHY: That is suggesting, isn't it?

HIS LORDSHIP: Well, pretty much. But Mr. Coburn is a solicitor. A.—I did not make any suggestion to him at all.

MR. OSLER: From whom did you get the instructions? A.—From him.

Q.—From anybody else? A.—No.

Q.—Were you afterwards consulted about the making of the will, after the occasion when the draft codicil of 1913 was discussed? A.—I don't remember.

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I think I mentioned it to Mr. Ed. once or twice, and he was not ready, but I don't remember that.

Q.—When did you hear that Mr. Z. A. Lash had drawn the will? A.—Well, Mr. Lash came to my house that same night.

Q.—He was at your house on the same night he was up here? (At Walkerville). A.—Yes.

HIS LORDSHIP: Did he stay all night? A.—No, he just called on his way to the train.

MR. OSLER: I cannot ask anything that Mr. Lash said but in consequence of Mr. Lash's visit there did you know that the will had been drawn? A.— 10
Yes, I knew it was to be drawn.

MR. MCCARTHY: That is practically giving what Mr. Lash said, is it not?

HIS LORDSHIP: Pretty near it.

MR. MCCARTHY: The question is leading.

MR. OSLER: Then, Mr. Coburn, you knew Mr. E. C. Walker pretty well? A.—Yes.

Q.—What do you say as to his mental capacity at the time he consulted you with reference to these codicils of November and December 1913? A.—He appeared to be quite capable then.

MR. MCCARTHY: Surely! 20

HIS LORDSHIP: That would be putting Mr. Coburn in a position which he would probably disclaim. He is not an expert on mental diseases. Are there facts he can tell? It is a plain opinion, nothing else.

MR. OSLER: Surely the witness can say what conclusion he formed from the interview he had with the testator?

HIS LORDSHIP: It is the court's conclusion on the facts.

MR. OSLER: Surely you cannot substitute the opinion of a solicitor who can only give what he noticed. I will put it this way—

MR. HELLMUTH: If your lordship will permit me. I submit that in every case where a solicitor is called as the witness to a will he is allowed to testify 30
as to what, in his opinion, was the mental competency of the testator.

HIS LORDSHIP: Only to give facts.

MR. HELLMUTH: No, with the greatest respect I submit he can say the testator was, in his opinion, thoroughly competent and fit, if he witnessed the will.

HIS LORDSHIP: Quite so.

MR. HELLMUTH: If the witness was instructed to draw a codicil, I submit he can say what the mental capacity of the testator was, in his opinion, then your lordship has to come to a conclusion as to that.

HIS LORDSHIP: I think so. So as to make it clear on the notes, it is de- 40
duction from the facts, not general deduction. So long as we keep the medical and legal separate, I am satisfied.

MR. OSLER: Let us finish, Mr. Coburn, as to what took place between you and E. C. Walker on the occasions in 1913 when he discussed the making of another will—when he discussed the making of these two codicils—what do you say as to his capacity?

MR. MCCARTHY: I object to that, my lord.

MR. OSLER: As to his mental competence? Surely? How else can one do?

HIS LORDSHIP: That is true. My whole object in interrupting was to prevent general evidence going in from a physician, alienist or neurologist. You should ask Mr. Coburn to give the facts.

MR. OSLER: I am asking as to negotiations that passed between him and the testator at that time, and what he observed at that time, and, having that in view, what has he to say as to the mental capacity and competence of the testator?

10 MR. McCARTHY: There may have been no communications pass at all, therefore, he would be forming a blind opinion.

HIS LORDSHIP: I think, in connection with the drawing of wills, it must be the facts that are given to the court.

MR. OSLER: The witness can be examined as to various facts; he may also express an opinion.

HIS LORDSHIP: Is the solicitor in any better position to give an opinion than a witness who is there?

MR. OSLER: I do not suppose so.

HIS LORDSHIP: Can a witness express such an opinion?

20 MR. OSLER: I should think so.

HIS LORDSHIP: Without giving the facts to the court?

MR. OSLER: I think so; he must give the facts as well.

HIS LORDSHIP: The best way to get over it is to take the facts as to the speech.

MR. OSLER: I press your lordship to let me ask the question. I will ask as to all the circumstances, but I do want the opinion that he formed.

HIS LORDSHIP: All right, coupled with that understanding I will take it.

30 MR. McCARTHY: Your lordship will note my objection, which is practically as your lordship has said; the witness may tell what took place between them, upon which your lordship can base an opinion. It is not for a doctor or alienist to decide the question, nor for this witness, and what my friend is seeking to do is to substitute this witness for the court.

MR. OSLER: No, I am seeking to put the court in a position to decide by having the witness say whether any doubt crossed his mind, having regard to what he saw.

HIS LORDSHIP: Exactly, what he saw.

40 MR. OSLER: May I put the question in this way? Having regard to what you saw and heard on the occasions of the discussions as to the making of the will, and the making of these two codicils, Exhibits 3 and 4, one of which was executed, but the other apparently not, what is your opinion as to the competence, and mental capacity of the testator? A.—Well, I think he knew what he was doing. I did not see anything that would lead me to think he was not competent.

Q.—Did you hear anything? A.—No.

MR. McCARTHY: What he heard would not be evidence.

HIS LORDSHIP: It might if it was as to general reputation, or something.

MR. OSLER: Did you have any conversation on these occasions except as

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to the will? A.—I can't say as to that. I think I probably asked him if he had had a pleasant trip.

MR. MCCARTHY: If you don't remember, you had better not say it. A.—I don't remember.

MR. OSLER: Was it necessary for you to remind him of things?

MR. MCCARTHY: That is subject to objection again. Surely the witness does not need to be led.

THE WITNESS: In connection with the codicils I didn't remind him of anything; I didn't know what he wanted until he told me.

MR. OSLER: Was he confused in his speech? 10

MR. MCCARTHY: That is subject to objection too. It is all leading.

MR. OSLER: My learned friend has suggested he was confused in his speech; was the testator, or not, confused in his speech? A.—No.

Q.—Was there, or not, any indication of difficulty on his part in communicating to you what he wished?

MR. MCCARTHY: Your lordship will note my objection to this. The questions are all suggestive of the answer.

THE WITNESS: His speech was not as clear as it had been, it was a little thick.

MR. OSLER: Was there any indication as to whether it was due to diffi- 20
culty in expressing his thoughts? Was the difficulty in formulating his thoughts? A.—Well, I think

MR. MCCARTHY: Is he in a position to express an opinion on that?

HIS LORDSHIP: No.

MR. OSLER: What was the apparent cause of the difficulty?

MR. MCCARTHY: Is he in a position to express an opinion on that?

HIS LORDSHIP: Would it not require an expert to be able to say that?

MR. OSLER: Not necessarily.

HIS LORDSHIP: As to whether stammering was due to physical or mental causes? I do not think so. 30

MR. OSLER: He did not say "stammering," he said his speech was a little thicker.

HIS LORDSHIP: A thickening, not as clear as formerly.

THE WITNESS: He appeared to have difficulty in articulating, his speech was thick, he couldn't speak as distinctly as he had.

MR. OSLER: Was there anything about that which gave you the impression that he had difficulty in expressing his thoughts, apart from the articulation? A.—No.

MR. MCCARTHY: That, of course, is leading again.

HIS LORDSHIP: Yes. 40

MR. MCCARTHY: I am asking for your lordship's ruling.

HIS LORDSHIP: Yes, I know you are. Mr. Osler, if you will prevent a ruling being asked for in regard to each succeeding question, I shall be obliged. You see the point that is raised.

MR. OSLER: I might examine Mr. Coburn for half an hour before I got his impression. Perhaps it is a short-cut.

HIS LORDSHIP: I do not see that it is much of a short-cut.

MR. OSLER: You had known Mr. Walker for some time before that? A.—I had known him since 1898.

Q.—How frequently did you see him during that period? A.—Well, in the early years I saw him constantly, that is, up to 1903 or 1904 I saw him a very great deal, after that I didn't see him so often.

Q.—What was his general character and habit of communication with people he met?

HIS LORDSHIP: Customers, or solicitors?

MR. OSLER: I will put it generally, first?

10 A.—He was a reserved man, and, I always thought, rather diffident.

Q.—Did you meet him only in connection with business matters, or did you meet him socially as well? A.—I met him socially as well.

Q.—You better describe to me his habit of social communications, and business communications, as you found him during this period? A.—Well he was very quiet and thoughtful, he didn't talk very much.

HIS LORDSHIP: Did he tell humorous stories? A.—No.

Q.—He was not that kind? A.—Not to my knowledge.

MR. OSLER: Did you have occasion to communicate with him in connection with business matters frequently? A.—Up to 1903 or 1904 I was, in connection with the Lake Erie & Detroit River Railway; when the construction was over

HIS LORDSHIP: Excuse me, is that E. O. Bickford's original railway? A.—No, the Erie & Huron. I think 1903 was the year he disposed of the road, and after that I had less occasion to see him.

MR. OSLER: Was he a man who came to a ready conclusion in dealing with a matter, or not? A.—No, he very seldom gave a decided answer at the first meeting, he generally said he would take it into consideration, and he would think it over.

30 Q.—What was the result, when he had thought it over? A.—Well, when he had decided a question, he said so very shortly and concisely.

HIS LORDSHIP: And did not change his mind? A.—No.

MR. OSLER: Then, how frequently did you see him after November and December 1913? A.—I think that I was at his house twice after that.

Q.—When was the first occasion? A.—Sometime in the Spring, and I was there again in the Fall.

Q.—That would be the Spring of what year? A.—The spring of 1914.

Q.—On what occasion? A.—Well, I was there at dinner.

Q.—Who else was there? A.—My wife was there, I don't remember whether anyone else was there or not.

40 Q.—Did you see E. C. Walker there? A.—Yes.

Q.—What occurred at the dinner? A.—Well, it was just a social dinner, we had dinner together, and spent the evening afterwards.

Q.—What was Mr. Walker's condition at that time? A.—Well, I think that he was feeble in his physical condition, and he didn't talk as much as usual.

Q.—When he did talk? A.—When he did talk, as far as I could see, it was all right.

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HIS LORDSHIP: Did you see him smile or laugh during that meal, or during that evening? A.—I can't remember that.

Q.—You haven't an impression as to whether he looked to you like a melancholy man, or cheerful man? A.—Oh, he was a sick man, I knew that.

Q.—Sometimes sick men are fond of a joke? A.—I can't say whether he smiled, or not.

MR. OSLER: Where did you get the instructions for the codicils that have been spoken of? A.—At Mr. Walker's office.

HIS LORDSHIP: He asked you to go there? A.—Yes.

(Court adjourned at 12.45 p.m., until 2 p.m.)

10

AFTERNOON SESSION

Monday, May 19th.

J. H. Coburn
Cross-Ex-
amination,
19th May,
1924.

Cross-Examination of J. H. COBURN by MR. MCCARTHY:

Q.—Now, Mr. Coburn, were you the regular solicitor for the Distillery Company? A.—Well, I did business for them from time to time. Blake's firm were the solicitors, but I did work for them.

Q.—What was the nature of the work you did for them? A.—Well, I can't remember that now.

20

Q.—Did you do work for the other brothers? A.—Yes.

Q.—Frank, and Mr. Harrington Walker? A.—Yes, from time to time.

Q.—Were you their regular solicitor? A.—In the same way, yes.

Q.—What do you mean by "in the same way?" The same way as for Mr. E. C. Walker? A.—Yes.

Q.—Did you draw their wills? A.—No.

Q.—The three brothers were very different in a way, were they not? A.—Yes, they were.

Q.—E. C., and Harrington, resembled each other to a certain extent, did they not? A.—More so, yes, than Mr. Frank did.

30

Q.—Mr. E. C. Walker was essentially of a retiring disposition? A.—Yes.

Q.—He lived very quietly? A.—Yes.

Q.—Being abroad a good deal? A.—I think he went abroad nearly every year.

Q.—He gave you the idea of being more or less diffident? A.—Yes.

Q.—Genial in his own house? A.—Yes.

Q.—And very communicative as a host? A.—I wouldn't call him a talkative man at any time.

Q.—Frank Walker was quite so? A.—Yes.

Q.—Not to be offensive—he wanted to be more or less in the limelight? A.—I don't know about that. Mr. Frank Walker was very much more active.

40

Q.—And very much before the public. We used to see a great deal more

of Mr. Frank Walker than we did of any of the others? A.—Well, probably, yes.

Q.—And his manners were different from the others? A.—Yes.

Q.—Rather brusque? A.—Well, I never noticed that; he was more decided in what he said and did.

Q.—That is, he acted more quickly than they? A.—Yes, he acted more quickly than they did.

Q.—And when Mr. E. C. Walker did make up his mind he was not the sort of man to change it without a great deal of consideration and thought? A.—That was always my impression of him.

Q.—And there were certain objects in which he took a great interest? A.—Yes.

Q.—Such as pictures? A.—Yes.

Q.—And certain charities? A.—Well, I don't know much about that. He took a great interest in the affairs of the town.

Q.—We are told by one of the witnesses that he took a great interest in the waterworks system? A.—Yes.

Q.—And he also took an interest in the Memorial church? A.—Yes.

Q.—And the parks of the town? A.—Yes.

Q.—He was looked upon as a very public-spirited citizen? A.—Yes.

Q.—Whatever he did he did it very quietly, and unostentatiously? A.—Yes.

Q.—Now I see you were a witness to the will of December 1901, which is exhibit No. 2? A.—Yes.

Q.—And where was that will drawn, do you know? A.—I think Mr. Lash drew it, I don't know for certain.

Q.—How did you come to be a witness? A.—I was asked to be.

Q.—By Mr. Lash? A.—No, by Mr. Walker.

Q.—Did Mr. Lash send you the will, or did you go up there and find Mr. Walker with the will? A.—I can't say that.

Q.—At any rate, I notice that in this will every page is signed? A.—Yes.

Q.—Was that your idea, or Mr. Walker's, or Mr. Lash's suggestion, do you know? A.—I don't remember that.

Q.—And any corrections are carefully initialled? A.—Yes, I would see to that.

Q.—You notice at the end of the will: "The said foregoing will consists of this and the preceding twenty pages, each of which has been signed by the testator in the margin . . ."? A.—Yes.

Q.—Is that your dictation? A.—No, that is the way the will came to me.

Q.—You are a witness, and you can prove that will? A.—Yes.

Q.—That is your signature? A.—Yes.

Q.—Was that will read over to him at the time? A.—I don't think so.

Q.—Were the pages signed in your presence too? A.—Yes.

Q.—Who was there at the time this will was executed? A.—Mr. Radford, I see he is the other witness.

Q.—Was he Mr. Walker's Secretary? A.—No, he was secretary for Walker Sons.

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Q.—Then I gather from your evidence that you saw a good deal more of Mr. Walker in connection with the railway than you did after the years of 1903-1904, when they sold it? A.—Yes.

Q.—You were intimately connected with the railway? A.—Yes.

Q.—And you saw them frequently at that time? A.—Yes.

Q.—You didn't see them as frequently after 1903-1904? A.—No, not as frequently, I saw them from time to time.

Q.—The railway brought you together more than anything else, because you were solicitor for the railway? A.—Yes.

Q.—You wouldn't have occasion to see them after that? A.—I did have 10
occasion.

Q.—In connection with? A.—In connection with the Walkerville Land & Building Company, and one or two private matters of Mr. Ed's.

Q.—Do you remember when his health first began to fail? A.—From memory I should say it was two or three years before his death.

Q.—Did you notice anything peculiar about him in 1905, and subsequent years? A.—No.

Q.—You never saw him in one of the attacks of aphasia that have been spoken of? A.—No.

Q.—Do you know whether he attended his office or not? A.—I used to see 20
him there quite frequently, that is, when I didn't have business with him, I would see him in his room, or meet him probably.

Q.—In going into his room did he give you the impression he wanted you to stay and talk with him, or to get rid of you, what is the impression he made on your mind? A.—I seldom went in unless he sent for me.

Q.—When he did send for you, was there the feeling—now, the business is done? A.—Once in a while he would talk about other things, other than business, but not very frequently.

Q.—When did you first notice him getting feebler physically? A.—Well, I really can't say, Mr. McCarthy; I think that the last two, possibly three, years 30
of his life he did not seem to be as active as he had been, but I can't fix any date.

Q.—He never was a very active man anyway, was he? A.—No, he was not.

Q.—You noticed less signs of activity in the two or three years before his death? A.—Yes.

Q.—At the time when he gave you instructions, that you have told us about, in regard to these codicils, he had just come back from a trip abroad? A.—Yes.

Q.—Did you learn at that time he had had a very serious illness over there? 40
A.—I knew he had been ill over there. yes.

Q.—Did you see a marked difference in him on his return? A.—I can't say that I did, not immediately at that time.

Q.—You mean at the time of November? A.—No, I don't think so. He seemed to be quite himself then.

Q.—Although you said there was some difficulty in articulating? A.—
Yes.

- Q.—Did that continue throughout the interview? A.—I think it did.
- Q.—You think it did? A.—Yes.
- Q.—And the interview was at his request? A.—Yes.
- Q.—Now, the first codicil, which is called the second codicil, is dated the blank day of November, 1913, speaks of the former codicil? A.—Yes.
- Q.—When was that? A.—I think that was in 1903 or 1904. I cannot fix the date.
- Q.—And on this occasion in November, you cannot fix the date when you got the instructions for that? A.—Well, the only way I can fix it is by reference to my bill of costs book.
- Q.—Have you got that? A.—I have it here.
- Q.—Will you look it up and get me about the date of that? A.—I haven't the day of the month here. (In the book.)
- Q.—What entry have you? A.—I have, "1913, November, preparing second codicil to your will."
- Q.—That is the only thing you have in your books in regard to it? A.—Yes.
- Q.—Had you any written instructions? A.—No.
- Q.—Did you make any notes at the time? A.—I made a note on a scratch pad in his office.
- Q.—What was the effect of that note, do you remember? A.—I haven't any idea. It is embodied in the codicil.
- Q.—How long did that interview last? A.—Oh, I don't think I was there more than—I can't say.
- Q.—And it was just instructions for you to change the appointment of the executors from those named in the September will, to the National Trust Company? A.—Yes.
- Q.—I see you refer to it as the will bearing date the 21st of September, 1901? A.—Yes.
- Q.—The will here is the 21st of December? A.—I can't account for that.
- Q.—Had he this will before him? A.—I don't think he had at the first, no, I don't think so at the first.
- Q.—Did you have it when you drew the codicil? A.—No.
- Q.—This appears to be the second codicil to the last will and testament dated the 21st of September, 1901. Did you know of any other will besides the December will? A.—No.
- Q.—Now you say this December will, was prepared entirely by Mr. Lash, it was not typed in your office? A.—It was not typed in our office.
- Q.—How did you convey this codicil to him? A.—I took it down to his office.
- Q.—The next day, or? A.—I can't say that.
- Q.—And delivered it to him personally? A.—I can't say that either.
- Q.—Where did this codicil come from? A.—I don't know.
- Q.—It didn't come from your possession? A.—No.
- Q.—You never saw it then after you sent it to him? A.—No.
- Q.—Or handed it to him. Then what was the next occasion on which you had to see Mr. Walker in regard to his will? A.—That was in regard to that

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Q.—That is not the date either? A.—Yes, that is the date, December 6th.

Q.—Have you got the instructions that were given to you at that time? A.—No.

Q.—Did Mr. Walker have on that occasion the will of December 1901 before him? A.—I think he did.

Q.—And were the instructions as we find them in the previous codicil, just revoking clauses 21, 22, 23 and 24? A.—Yes. 10

Q.—Did you know what those clauses were? A.—Yes.

Q.—Did you take the will with you? A.—No.

Q.—How did you know what the clauses were? A.—Because I saw the will.

Q.—On that occasion? A.—Yes.

Q.—He must have had it with him? A.—I think he had, yes. I knew what they were anyway.

Q.—By this codicil he gave to Mr. Griggs the bonds of the Walkerville Brewing Company, together with all unpaid interest coupons, said bonds being an issue made by the company of \$150,000.00, bearing date the 30th of December, 1911? A.—Yes. 20

Q.—You have no memorandum, no writing, of this date? A.—No, I have no memorandum.

Q.—And how long did that interview last? A.—I can't say.

Q.—There was some difficulty of articulation at that time? A.—I don't remember, I can't say from memory.

Q.—This interview took place in his office? A.—In his office.

Q.—At his request? A.—Yes.

Q.—Did he appear to have any memorandum in front of him? A.—I don't remember that. 30

Q.—At any rate, you went back and prepared it, and I think you subsequently went up to hand it to Mr. Walker, and you met his brother Harry, and gave it to him? A.—Yes.

Q.—And this Exhibit No. 3, which has been put in, came from where? A.—It is my office copy.

Q.—When did you discover this? A.—I cannot fix the date of that, some-time ago.

Q.—Is this the one concerning which you wrote Mr. Robins? A.—Yes.

Q.—You knew at that time it had not been signed? A.—I didn't; I thought it had. 40

Q.—What was there to make you think it had been signed? A.—Well, I could repeat hearsay. That is the only way I can tell you. I was told.

Q.—Now, that was December, 1913. The next occasion, I think, on which you say you saw Mr. Walker was early in the year 1914? A.—It was, but I think I saw him at different times.

Q.—I mean, to speak to? A.—The next time I met him to have any conversation at all was at his house.

Q.—Was that before or after his illness in February? A.—It was after his illness.

Q.—Did you know of his illness in February? A.—Yes.

Q.—Did you know who was attending him? A.—No.

Q.—Had you seen him at all during his illness? A.—No.

Q.—You had heard he was ill? A.—Yes.

Q.—The next occasion you say you saw him was at dinner at his house? A.—Yes.

10 Q.—Can you fix the date of that? A.—No, I can't fix the date, it was sometime in the Spring, I can't tell you when.

Q.—You spoke of a visit of Mr. Lash's in 1914, can you fix the date of that in any way? A.—No, the only way I could fix the date would be by saying it was the night of the day that he was with Mr. Walker in Walkerville taking instructions for his will.

Q.—The night of the day, you don't know what day that was? A.—No.

Q.—You have nothing there that will help you to find that? A.—No.

Q.—You have nothing to tell whether it was January or February? A.—I have not here.

20 Q.—Whether before Mr. Walker's illness, or afterwards? A.—I can't tell you.

Q.—All you know is that Mr. Lash came to see you, and as a result of some conversation you had with him you gathered he had been up to get instructions for a new will? A.—Yes.

Q.—To go on to the occasion on which you dined with him, I think you and Mrs. Coburn were there? A.—Yes.

Q.—Who else were there? A.—I don't remember that anybody else was there.

Q.—Did Mr. Walker come down to dinner that night? A.—Yes.

30 Q.—Do you remember any feebleness physically on his part? A.—He was feeble, he didn't walk very well.

Q.—Was he using a stick then? A.—That I don't remember.

Q.—Do you remember his being assisted to his chair? A.—I do not think he was.

Q.—Will you say for sure he was not? A.—No, I won't.

Q.—You do remember he said very little? A.—Yes.

Q.—Any difficulty as to eating that night? A.—I don't remember that.

Q.—Do you remember whether he had a special diet? A.—I don't remember that either.

40 Q.—Was it somewhat of a trying experience being there with him on that occasion? A.—Oh, no, I used to go to his house quite frequently.

Q.—Did his condition make it somewhat trying? A.—I would not say that.

Q.—Did he go upstairs immediately afterwards? A.—No.

Q.—What did he do? A.—He went into the other room, that is, after dinner.

Q.—How long did he remain there? A.—I think he went upstairs shortly, I can't say what time, I think he went up somewhere between 9 and 10 o'clock; he didn't stay long.

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Defendant's
Evidence.

No. 31
J. H. Coburn
Cross-Ex-
amination,
19th May,
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—continued

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—continued

Q.—And during the time he was there did he take any part in the conversation at all? A.—Not very much.

Q.—So neither at dinner nor afterwards did he enter into the conversation to any extent? A.—Not very much.

Q.—Had he some difficulty in articulating then? What did he say? A.—I can't say from memory.

Q.—It was generally supposed, was it not, that he was a very sick man at that time? A.—He was not sick; that is, he was in poor health, but he was not so sick we were not invited there to dinner.

Q.—You knew that one of the great efforts Mrs. Walker made was to 10 divert his mind if she could? A.—Yes.

Q.—And possibly you were provided as the diversion? A.—May be.

Q.—How long after that, do you know, did he go away, or did he go away in 1914 at all? A.—I don't think he went away in 1914, I cannot say.

Q.—The next occasion you had to do with him was at dinner again? A.—Yes.

Q.—That was in the Autumn of 1914? A.—In the Autumn of 1914.

Q.—What was his condition then? A.—He was not nearly so well as he had been. I didn't see him that time because we waited dinner for him and they finally sent word down that he was not well enough to come, and asked to be ex- 20 cused.

Q.—On the second occasion you didn't see him at dinner at all? A.—I didn't see him at all.

Q.—So really the last time you did see him was in the Spring of 1914, to talk to? A.—Well I used to see him passing.

Q.—I mean to talk to? A.—I think I have spoken to him since that but only casually.

Q.—Then had you anything to do with the making of the will of 1914? A.—No.

Q.—Nor were you asked to witness it? A.—No, I don't think I was home 30 at the time when it was signed.

Q.—Then you knew nothing whatever about the preparation of the last will? A.—No.

Q.—When did you first know there was a will? A.—Well, I knew there was to be a will when Mr. Lash mentioned it, and I took it for granted it was done in due course. I don't know anything about that.

Q.—You don't know anything whatever about it? A.—No, I don't know anything about it.

Q.—On the last occasion when you did business with Mr. Walker did you notice that he was more feeble mentally, that is, in the way of not being as 40 aggressive from a business standpoint as he was? A.—He never was aggressive, and I would say I noticed nothing wrong with him except his physical condition.

Q.—Can you suggest any reason, knowing Mr. Walker as you did, why he would make changes in his will, for instance, in regard to the Walkerville Park property? A.—Yes, I think there was a reason for that.

Q.—That he told you of? A.—I am not sure that he told me; it was talked about though.

Q.—Talked about between whom? A.—It was talked about by members of the family, and also in town.

Q.—Were there any reasons you can suggest why he should lessen his gift to the church? A.—Yes.

Q.—Why? A.—Because the church had been built.

Q.—Yes, but the church had to be kept up? A.—Yes, but the church was built after the making of the first will.

10 Q.—Outside of the amount for the maintenance of the church? A.—There was an endowment given at the time it was built.

Q.—Mr. Walker was infinitely more wealthy a man when he made the second will than the first? A.—He felt he had done enough.

Q.—Is that gossip? A.—I am just surmising.

Q.—Was there any reason why he should cut down the gift to the Art Association, whatever it was, in Detroit? (The Detroit Art Museum). A.—I don't know.

Q.—Now you do know at the time the second will was made the Pere Marquette Railroad was in the hands of a receiver? A.—Yes, I believe so.

20 Q.—And a good many of the gifts under the first will were replaced by gifts of Pere Marquette bonds in the second will? A.—Yes.

Q.—Which, of course, destroyed their value to a certain extent? A.—No.

Q.—At that time? A.—No.

Q.—What were the Pere Marquette bonds selling at in 1914? A.—Pere Marquette bonds were not on the market.

Q.—What were they selling at? A.—They were not on the market.

Q.—What could they be sold for? A.—Pere Marquette bonds were secured on property which had been sold to the Pere Marquette by the first mortgage.

30 Q.—Interest was not paid on those bonds at that time, was it? A.—I don't know.

Q.—Did Mr. Lash stay any length of time with you on the occasion of that visit, Mr. Coburn? A.—Not any more than half an hour, I don't think.

Q.—And do you remember his coming on more than one occasion? A.—In regard to the will?

Q.—At that time at all? A.—Oh, no.

Q.—Just one visit? A.—Yes, he was on his way to the train.

Q.—I mean, you don't remember a subsequent visit? A.—Well, he always used to come to my house whenever he came to town.

40 Q.—You don't remember his coming again? A.—Oh, yes, Mr. Lash was many times at my house.

Q.—This particular time? A.—I cannot say from memory.

Q.—How is it you remember this one incident? A.—Well, I remember it because I had expected to draw Mr. Walker's will myself.

Q.—Because he had mentioned it to you? A.—Yes.

Q.—Mr. Lash came to tell you he was going to do it? A.—Yes.

Q.—And had got his instructions? A.—Yes.

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—continued

Q.—Did you, on that occasion, tell Mr. Lash about the codicils? A.—I don't remember that I did.

Q.—Did Mr. Lash ask you anything about that? A.—I don't remember that, I don't think so.

Q.—That was the only occasion that you can recollect when Mr. Lash made a visit to Walkerville in connection with the will? A.—Before it was signed, yes.

Q.—Or afterwards? You never knew the will was signed, as a matter of fact? A.—No, I didn't.

Q.—All you know is you were not asked to be a witness, if it was? A.— 10

No.

Q.—You also spoke of Mr. Walker as being a man who moved very slowly, he took a long time to give a decided answer? A.—Yes.

Q.—And after he had decided he was very firm? A.—Yes.

Q.—That he took a long time to make up his mind, and apparently spent a good deal of time and thought over it? A.—Yes.

Q.—Once he had made up his mind, he was not a man to change it? A.—

No.

Q.—There is no doubt, from what you knew, Mr. Coburn, that Mr. Robins had been of great service to the distillery? A.—I always thought so. 20

Q.—In fact, he was always looked upon as the whole works, if I may use that expression? A.—I would not say that, I would not go that far.

Q.—At any rate, the brothers were free to go as they pleased, and spent much time abroad, as they saw fit? A.—I don't know what the arrangements were about that.

Q.—They always went abroad every year? A.—I don't think they generally all went away at one time of the year, there was nearly always one at the office while the other two were away.

Q.—As you say, Frank was the aggressive member of the three? A.— That is my judgment, yes. 30

Q.—Then did you know Mr. Harrington Walker had had a stroke? A.—I didn't know he had a stroke, I knew he was in poor health.

Q.—In the years 1912, 1913 and 1914? A.—Yes.

Q.—Did you ever have occasion to see him at all? A.—Yes.

Q.—During that period? A.—Yes.

Q.—What was his condition? A.—Physical?

Q.—Yes? A.—Well he complained of having a sore back.

Q.—That was the result of an accident? A.—And he had a great deal of trouble with it.

Q.—He was using a steel brace? A.—Yes, he was using a steel brace, 40 he told me about having it, and all that sort of thing.

Q.—He didn't tell you he had had a stroke? A.—No.

Q.—What was his condition mentally? A.—Clear.

Q.—Was he slow, like his brother Ed.? A.—Well, yes, I think so, although not perhaps to the same extent.

Q.—Of the same retiring nature? A.—Yes.

Q.—And not aggressive? A.—I don't think so.

Q.—Were you ever present at any meetings of the three on a business occasion, in latter years? A.—I don't think I ever met the three together.

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Re-Examined by MR. OSLER:

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Q.—You have been asked something about the church; did you know about the situation of the Church? A.—Yes, I drew the Trust Deed for the Church.

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ination,
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10 Q.—When was the Church built? A.—In 1904.

Q.—After the first will? A.—Yes.

Q.—And do you know if there was any default in the payment of interest on the P. M. bonds? A.—No, I don't know anything about that.

STEPHEN A. GRIGGS, Sworn. Examined by MR. OSLER.

Q.—Mr. Griggs, what is your occupation? A.—President of the Walkerville Brewing Company.

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Examina-
tion-in-
Chief,
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Q.—Did you know the late Mr. E. C. Walker? A.—Yes.

Q.—For how long? A.—Since about 1865.

Q.—That was when you were boys? A.—Yes, sir.

20 Q.—What was his condition of health as a young man? A.—When I first knew him he was in good physical condition, but at the time he was about, I should say, 18 or 19 years old he was taken with hemorrhages of the lungs, and his father sent him at that time to southern France, and Egypt, and tried to get him into shape again. I know he had had two hemorrhages before that, before they discovered what was the matter with him, and on the third occasion, I think it was, Dr Andrews was called in.

MR. McCARTHY: Were you there when he was called in? A.—No.

Q.—Do not say it unless you were there yourself. A.—I can only say what he told me himself.

30 MR. OSLER: At all events, we need not trouble about what the doctor said. He went to southern France and to Egypt? A.—Yes.

Q.—What was the effect of the trip? A.—He stayed there quite a time to recover his health, and after he thought—

MR. McCARTHY: That is not evidence, surely. What he thought, is not evidence.

MR. OSLER: After a certain time, did he come back? A.—He came back.

Q.—What was his health then? A.—It was much better. Not to my knowledge was he ever troubled with lung trouble, but he was very careful with himself from that time on.

40 Q.—Did you come in contact with him frequently? A.—I used to see him occasionally, but after we left school not so often, until along about 1897, and at that time he asked me if I would take charge of the Walkerville Brewing Company, and I did so.

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Q.—It was Mr. E. C. Walker himself who asked you to do that? A.—At the time I took charge there he was in Europe, but later on he confirmed my position there as being in charge of the entire plant.

Q.—What arrangements were made with reference to the Brewing Company's stock? A.—He made me a present of \$5,000.00 worth of stock, and later on I bought stock from other shareholders, to some considerable extent. And I continued in that manner until the time of his death—not the time of his death, until I bought the balance of the stock.

Q.—Did you become connected with the Distillery Company? A.—I did, somewhere about 1906 or 1907, I am not quite sure as to the time. 10

Q.—And you became a director? A.—Yes, sir.

Q.—What was Mr. E. C. Walker's position? A.—He was president, and I was made assistant to the president.

Q.—Did you join the active executive organization? A.—Later, I was made a director.

MR. MCCARTHY: When? A.—I do not recall the year.

MR. OSLER: Who was the president of the Brewing Company at that time? A.—Mr. E. C. Walker.

Q.—Who was the manager of the Distillery Company. A.—Didn't have any manager that I know of, except Mr. Frank Walker, he was managing-director. 20

Q.—Then, what were your duties as assistant to the president A.—More particularly in looking after the manufacturing department, and in consultation, and general conduct of the business.

Q.—Did you come in contact with Mr. E. C. Walker during the course of your duties? A.—I had my desk in his office, so I saw him practically every day when he was at home.

Q.—Was he away from home very much? A.—Yes, I would not say he was away a great deal of the time, he may have been away more after I left than he was prior to my leaving; he was not away a great deal of the time when I was there. 30

Q.—When did you leave the distillery? A.—I don't remember the year, I think somewhere about 1911 or 1912.

Q.—Was it before or after Mr Robins left? A.—Before.

Q.—About how long before? A.—I should say two or three years before that.

Q.—Where was your house? Did you live in Walkerville? A.—Yes, sir.

Q.—Where was your house? A.—Right across the street from the entrance to Mr. Walker's premises.

Q.—Were your relations with him confined to business transactions? A. 40
—No, not by any means. We were very close friends.

Q.—Then, during the course of your appointment at the distillery, what were the subjects of your conversations with Mr. E. C. Walker, when he was at the office? A.—Largely pertaining to business affairs, although at times we would get back to the old times; personal conversation of a different nature.

Q.—What was his general habit and characteristic in discussing matters

with people with whom he came in contact? A.—He was quite reserved. He took time to consider everything he had in hand, and I don't think he ever acted without giving matters pretty careful consideration; he was not prone to a quick decision.

Q.—Did you visit at his house? A.—I did, very frequently.

Q.—Up to what time? A.—I may say to the time of his death, although during the last year I did not get around there so frequently, I was pretty busy, and I chided myself for going so few times as I did.

10 Q.—During the course of your acquaintanceship with Mr. E. C. Walker, did you notice any change in his condition? A.—It was a gradual failing, it was apparent to anyone that it was taking place, but while he failed physically, and was perhaps not as active mentally, yet I never felt at any time that he did not fully realize what he was doing, and he would never act until he did realize it, he would take time to consider any subject brought to his attention.

Q.—Do you remember any circumstances in connection with the distillery business where there were differences of opinion between Mr. E. C. Walker and Mr. Frank Walker? A.—Those conditions would arise at times, and I have in mind now one in particular where an incident arose in regard to the
20 manufacture of spirits from wood. A party was through there who had some patent, he got hold of Mr. Frank and he persuaded him that if we didn't adopt his system we would go to smash. That everybody would be making wood alcohol, and we would be put out of business. I remember he was insistent upon taking hold of it at a great expense. He never succeeded in convincing Mr. E. C. Walker he was right, and Mr. E. C.'s ideas prevailed in the end.

HIS LORDSHIP: What year? A.—Around 1910 or 1911, perhaps, about that.

30 MR. OSLER: What were the topics of conversation when you visited him socially at his house? A.—We talked of business and social matters, anything that happened to come up, nothing in particular. I didn't try to talk business with him to any extent, I didn't go there for that purpose.

Q.—Was there, or was there not, any confusion in his speech that you observed? A.—I never noticed anything of that kind, but he was rather deliberate in his talking.

Q.—You are a beneficiary under both wills, Mr. Griggs? A.—I was under the last one, and I understand I was under the first one.

Q.—Can you tell me what was the change in the position with reference to holding brewery stock after the year 1901, when the first will was made, and before 1914? A.—I don't quite catch the drift of your question.

40 Q.—Can you tell us what was the change in your position with reference to your holding brewery company's stock, with reference to the indebtedness of the brewery company to Mr. Walker? A.—At the time I left the distillery I made an arrangement with Mr. Walker for the transfer of his stock to me.

MR. McCARTHY: Is that in writing? A.—It was placed in writing later.

MR. McCARTHY: Should not we have the writing, my lord?

THE WITNESS: Goodness, I don't know where that has gone to. I know that I secured his stock, and gave the brewery bonds for \$150,000.00, payable

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\$5,000.00 a year. At the time of his death I had paid off, I think, \$20,000.00 of those bonds, taking them as they came due. And, in his last will he has, as I understand it, given me the unpaid bonds. That would be about \$130,000.00. I understand in the first will he gave me \$100,000.00 in distillery stock, and anything the brewery owed him in excess of \$75,000.00. And the brewery, at the time, of his death, owed him about \$60,000.00 in excess of the \$75,000.00. So, in the first will, I would, as I understand it, receive \$100,000.00, plus the earnings of the stock up to the time they were delivered; minus \$75,000.00; plus the interest on it.

MR. OSLER: Quite an intricate calculation? A.—That is what I would have benefited by in the transaction. As it was, I received \$120,000.00 in brewery bonds. 10

Q.—Would you have been better off, or worse off, Mr. Griggs, if the will of 1914 had not been made? A.—I think I would have been ahead about \$400,000.00

CROSS-EXAMINED: BY MR. McCARTHY:

Q.—Mr. Griggs, were you any relation of Mr. Walker's? A.—None whatever. 20

Q.—Just a school-boy acquaintance? A.—Yes, sir.

Q.—And I think you said you used to see a good deal of him up till 1897? A.—No.

Q.—After he came back? A.—No, he didn't come back in 1897. You misunderstood me. He returned from that trip which he took on account of his illness, it must have been in the 70's.

HIS LORDSHIP: 1879, probably? A.—I don't remember the year.

MR. McCARTHY: You said you knew him first in 1865? A.—Yes.

Q.—When was it he went to the south of France for his illness? A.—It must have been somewhere along about the early 70's. I don't remember just what time. 30

Q.—He was never a very robust man anyway, or youth? A.—As rugged as most of us were, not quite so much so as I was.

Q.—How did you compare in age? A.—I think I was about 8 or 10 months older than him.

Q.—When did your business relations first begin? A.—In 1897.

Q.—How did that come about? A.—He had approached me to take hold of, first, the American business for the Walkerville Brewing Company. I was, at that time, connected with the Michigan Central as General Agent, and attached to the office of the president. He wanted to know if I had time to kind of keep an eye on the American business, and open a warehouse in Detroit for the purpose of shipping beer to Detroit, and sold in the United States in competition with Bass ale. 40

Q.—That is how you first came in the business? A.—Yes.

Q.—Did you accept the American agency? A.—In a measure, not fully, I took charge of it temporarily.

Q.—Did you give up your Michigan Central connection? A.—No, I didn't give that up.

Q.—When did you give that up? A.—A little later.

Q.—When? A.—I can't remember the year exactly, perhaps I could tell you the year if I looked it up.

Q.—Somewhere about 1898? A.—I would think somewhere around there, I don't know exactly.

Q.—You gave up the Michigan Central job entirely? A.—Yes, sir.

10 Q.—You took this position under Mr. E. C. Walker, who was then the president of the Walkerville Brewing Company? A.—Yes, sir.

Q.—What was your position then? A.—Looking after that American agency.

Q.—Looking after the American agency only? A.—That is all.

Q.—When did you take any further interest in it? A.—I think it was during that first year, I may be mistaken about the year. They had trouble in Walkerville with Mr. Bott who was manager of the business, and finally Mr. Bott was dismissed, and they asked me to take temporary charge of the business.

20 Q.—Who asked you? A.—I am not sure whether it was Mr. Ed. or Mr. Harry, now.

Q.—Was Mr. Harry interested in it? A.—Somewhat, he was looking after Mr. Ed.'s interest in the business.

Q.—Mr. Ed. was really interested in it, it was a hobby of his? A.—He owned the principal interest.

Q.—You forget whether it was Mr. Harry or Mr. Ed.? A.—I think Mr. Harry asked me to come over and look after that until Mr. Ed.'s return.

Q.—You had given up the Michigan Central job? A.—I think likely I had at that time.

30 Q.—You came over to Walkerville and took what position, manager? A.—Practically in charge of the plant.

Q.—That is, the manufacturing end of it? A.—The whole thing.

Q.—Then Mr. E. C. Walker came back from abroad? A.—Yes.

Q.—And made you a present of \$5,000.00 worth of stock? A.—I don't know whether he gave me that stock before he went away, or after he came back, but he gave me the stock.

Q.—Any consideration for it? A.—None.

Q.—Except you were old chums? A.—That is all it was. It was not worth much at that time.

Q.—It was not worth much at that time? A.—Worthless.

40 Q.—That doesn't sound like Mr. E. C. Walker, to give away worthless stock? A.—I think he fully understood he had a dead horse on his hands, and he wanted me to try to pull it out.

Q.—And the way he started was by giving you some dead stock? A.—So I could hold office.

Q.—You didn't require to hold \$5,000.00 worth of stock to hold office? A.—Well, he gave it to me.

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Q.—You say you started to buy up the balance of the stock? A.—I bought some.

Q.—You increased your holdings from time to time? A.—No, I got one man's stock.

Q.—Whose did you get? A.—John Bott's.

Q.—The dismissed manager's? A.—Yes.

Q.—And his stock, I suppose, was for sale pretty cheap? A.—I got it pretty cheap.

Q.—How did your holdings stand then when you had Bott's stock? A.—I think about \$16,000.00.

Q.—Including the \$5,000.00, or exclusive of it? A.—Including the \$5,000.00.

Q.—You continued to manage the Walkerville Brewing Company? A.—I did.

Q.—Up to what time? A.—Up to the present time.

Q.—You are still the manager? A.—I am.

Q.—Do you own all the stock? A.—No, not now, I have made some changes in the stock lately.

Q.—But up to that time? A.—Up to the time I made the changes, which is this year, I owned all but four shares of the stock.

Q.—Which you bought from Mr. E. C. Walker, or his estate? A.—From Mr. Walker.

Q.—I notice from looking at the succession duties, or statement of affairs, you were indebted to the estate for a considerable amount of money at the time of his death? A.—No, sir.

Q.—\$36,000.00? A.—No, sir, I didn't owe them any money, that was a mistake. That was for the purchase of C. M. Walker's stock.

Q.—Are not you S. A. Griggs? A.—I am, but that was in connection with the purchase of some distillery stock I got from Mr. Reed, and for which they advanced money. The stock was paid for out of the earnings of the stock. It was entirely different from an ordinary obligation.

Q.—I see you are down among the debts and promissory notes for \$30,275.00. A.—That is in connection with the stock deal, when I bought distillery stock from Mr. Reed.

Q.—And they advanced the money? A.—They advanced the money.

Q.—Mr. E. C. advanced the money? A.—I think it was Mr. E. C.

Q.—You are down here as a debtor to the estate to that extent? A.—Yes.

Q.—Then, during the time you were running the brewery, and up to the time you became indebted to the distillery, did you see Mr. E. C. Walker much?

A.—Between the time I went to the brewery and the time I became connected with the distillery, I used to see him every few days, probably once a week, something of that kind.

Q.—He was always very diffident, a quiet, reserved man? A.—He was a reserved man, yes.

Q.—Quite different from his brother Frank in that respect? A.—Quite different.

Q.—Would you call him an aggressive business man, or easy-going? A.

—I wouldn't call him easy-going; he was a man of deep thought, and was not one of those you would select to pitch in and make an aggressive campaign.

Q.—If you wanted that done, you would select Mr Frank? A.—I might not.

Q.—Mr. Frank had all the characteristics that fitted him for that job? A.—Yes, and more of them.

Q.—How did he come to take you into the distillery? A.—I had done so well with the brewery, he thought I might be of some assistance in the distillery.

10 Q.—Up to that time you had done well with the brewery? A.—Yes. The brewery was started in 1889. I went in there in 1897. The brewery, up to that time, had had plant managers, and each one seemed to fight with each other, and so on. They lost money, so I guess they thought it was time to stop it.

Q.—You went in? A.—Yes.

Q.—Because you had made it a success, I guess they thought you could make a success of the distillery? A.—I don't know whether they thought I could make it a success, but thought I could be of some assistance.

20 Q.—In what branch were you to be of assistance? A.—In any way I could.

Q.—What branch did you utilize your ability in? A.—They gave me the position of a free-lance, I could do what I pleased.

Q.—In what respect? A.—All over.

Q.—They gave you a free-hand? A.—Gave me a free-hand to say what I thought should be done, and should consult them.

Q.—I thought you had an absolutely free-hand? A.—I could do as I pleased, and would do it.

Q.—Even Mr. Robins acquiesced in that? A.—I never asked him whether he did or not.

30 Q.—Perhaps we are wrong in attributing the success of the Hiram Walker Distillery to Mr. Robins, perhaps it belongs to Mr. Grigg? A.—I wouldn't say that.

Q.—I am asking you? A.—I wouldn't say that.

Q.—So the free-hand you were offered, you didn't take advantage of? A.—I do not put it as strong as that.

Q.—Did you take advantage of it? A.—Any recommendations I gave were acted upon.

Q.—What were they? A.—I didn't jot them down.

40 Q.—They were not sufficiently important to impress themselves on your memory? A.—No, I guess not.

Q.—What salary were you drawing from the distillery, in that capacity? A.—I think I started at \$3,000.00. I don't remember what I did get at the end.

Q.—When were you made a director? A.—I think likely somewhere about 1908, somewhere around there, or 1909.

Q.—You left the directorship, did you? A.—Yes.

Q.—Why? A.—Well, it was not agreeable to stay there, and I left.

Q.—Was not agreeable? What made it disagreeable? A.—Too many fellows nosing around behind trying to make trouble for me.

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Q.—Trouble for you as director? A.—No, as an individual.

Q.—Not as a director? A.—Not necessarily as a director, for me as an individual.

Q.—I think you told my friend your job was looking after the manufacturing department of the distillery? A.—Yes.

Q.—What did that mean exactly? A.—Well, it is a pretty large enterprise.

Q.—Had you ever had experience before that? A.—No.

Q.—You had not had any experience in any distillery? A.—No.

Q.—Do you suggest that the selecting of a, if I may use the expression, "green-horn," to run the manufacturing branch of Hiram Walker & Sons? A.—They didn't select me as a "green-horn," they expected to take advantage of any good judgment I might possess. 10

Q.—Not having had any previous experience? A.—Other than running the brewery; I managed to make a success of the brewery, and never was inside of one before.

Q.—How long were you there before you made it a success? A.—Right from the start.

Q.—Did you do your own brewing? A.—No.

Q.—You spoke of some little difference of opinion between Frank and E. C. Walker, in regard to the manufacture of spirits from wood? A.—Yes. 20

Q.—What was Mr. Frank's idea, do you remember? A.—He thought we ought to adopt it.

Q.—What was it for? A.—To prevent other people getting it and putting us out of business, that they could make spirits so cheap we wouldn't be in it.

Q.—But the difficulty was it couldn't be sold as whiskey? A.—He soon learned that, I guess.

Q.—So it didn't require E. C. to tell him that wood spirits could not be sold as whiskey? A.—I don't know about that. 30

Q.—That fad didn't last very long. Did Mr. Frank admit he was wrong? A.—I don't remember that he admitted it, but he must have come to that conclusion because he stopped the thing.

Q.—Do you remember what year that was in? A.—No, I do not.

Q.—After you left the Board in 1908, did you keep up your connection with the distillery? A.—I think I was there after 1908, I said I thought I left there in 1911.

Q.—1908, I took it down. A.—When I was made a director.

Q.—1906? A.—I went there in 1906, and a year or so after I went there I was made a director; I don't think I was made a director right after I went in there. 40

Q.—When did you leave? A.—1910, or 1911.

Q.—You said it was years before Mr. Robins did. A.—When did he get out of there?

Q.—1912. A.—I was out of there two years ahead of him, I am pretty sure.

Q.—Did you take any further interest in the distillery after you resigned your seat on the Board? A.—No.

Q.—Now then, after you left the Board of the distillery, which you say was 1910 or 1911, or from 1908 on, did you see much of Mr. E. C. Walker? A.—Yes, I used to see him very frequently.

Q.—He was abroad a good part of the time? A.—I can't say how much of the time he was away.

Q.—Do you remember the year 1911, for instance? A.—I don't recall him as being abroad at any time, I know he was abroad, but I can't say how
10 long, or what years.

Q.—Did you notice him failing physically at all? A.—Yes, I saw a failure physically.

Q.—Take the year 1912, for instance, what was his condition that year? A.—I wouldn't recall it by years.

Q.—Did you notice the same difficulty in articulation that Mr. Coburn did? A.—No, I didn't notice that.

Q.—Never noticed that at all? A.—I noticed he was more deliberate in his speech.

Q.—Did you see him in one of the attacks of aphasia, that other people
20 have seen him in? A.—No.

Q.—How long did you occupy a desk in his office? A.—All the time I was with the distillery.

Q.—How long would that be? A.—I was there four years anyway, and may be a little more than that.

Q.—Would you and he be there together? A.—Always, when he came to the office.

Q.—Did he come to the office often? A.—When I first went there he would be there pretty near every day; he did not come as often later.

Q.—Do you remember when he began to use a stick? A.—No, I don't.

Q.—Do you remember when he began to shuffle with his feet as he walked?
30 A.—No.

Q.—Do you remember them building a rail for him to take hold of going up and downstairs? A.—You mean the rail for a few steps?

Q.—Yes. A.—I don't remember the year, I know it was put there.

Q.—Did you ever see him walking along the corridor feeling the wall with his hands as he went? A.—No, I never happened to see him do that.

Q.—You never saw him in one of the attacks of aphasia? A.—No.

Q.—During the years 1912 and 1913, did you have occasion to visit the house at all? A.—I did.

Q.—As what? A.—Just an ordinary call.
40

Q.—Where would you find him? A.—I generally found him in the library.

Q.—To talk business with him, or was it socially? A.—I never talked business with him there; I had no business to talk with him. I generally would ask how he was getting along, but didn't go into details.

Q.—Did you ever see him in his room upstairs? A.—Yes, I have been in his room when he was ill.

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Q.—Do you remember February of 1913 at all? A.—I can't recall that particular month.

Q.—Do you remember the occasion when Dr. Shurly was in attendance on him? A.—I remember when Dr. Shurly went there, I don't know of any particulars pertaining to it.

Q.—Did you see him after that time at all? A.—I saw him right up to the time he went away on the final trip to Washington where he died.

Q.—Tell us where and when you saw him? A.—In his own house; I don't think I saw him anywhere else.

Q.—What was the occasion? A.—Nothing but an ordinary call. 10

Q.—Do you remember when that was? A.—I was frequently over there for the evening meal; I can't say when; I didn't keep any record of these things.

Q.—You have no recollection of the last time you saw him? A.—No, I don't.

Q.—You have no distinct recollection of any particular time that you can tell me about? A.—No.

Q.—Under the first will Mrs. Griggs was left a legacy, was she not? A.—I understand she was.

Q.—She was left the dividends from \$20,000 distillery shares, or an income from \$20,000.00? A.—I knew nothing about it, only what the evidence told. 20

Q.—That was a substitute for \$20,000.00 worth of Pere Marquette bonds? A.—I understand so.

Q.—Under the first will you were left \$100,000.00 in shares of distillery Stock, were you not? A.—So I understand.

Q.—Do you know what the stock pays now? A.—No.

Q.—Or then? A.—No.

Q.—You were also left 20 shares in the Malleable Iron Company? A.—The object in giving them to me was that I might qualify as a director of the Malleable Iron Works, and help them keep track of it.

Q.—\$75,000.00 worth of the brewery debt is assigned to you? A.—I have 30 it all in excess of \$75,000.00; was it not?

Q.—All in excess? We will just look and see:

"I direct my trustees to hold for the benefit of the said Stephen A. Grigg \$75,000.00 worth of the debt owing to me by the Walkerville Brewing Company, I.t.d."

Apparently the Walkerville Brewing Company, at that time, was indebted to Mr. E. C. Walker? A.—Yes.

Q.—And that debt was to be in the Trustees hands for you? A.—I have it the other way that I was to get all in excess of \$75,000, and the balance went to me. 40

Q.—Now, under the will of 1914, you got all the bonds of the brewery? A.—All that were unpaid, which is \$130,000 I think. Part had been paid.

Q.—"Stephen A. Griggs, all the bonds of the Walkerville Brewing Company which may be owned by me at the time of my death, or held for me by Walker Sons Company, with all unpaid coupons thereof—"

And \$150,000.00 is mentioned. Is that right? A.—That is right.

Q.—What interest do they pay? A.—I think it was 5 per cent.

Q.—You think that amounted to about \$130,000.00 worth of bonds? A. I think about that.

Q.—Payable at 5 per cent? A.—Yes.

Q.—You don't know what the distillery shares are worth? A.—No, only street talk.

Q.—Now, was there any change in Mr. Walker's friendship for you up to the time of his death? A.—No, none whatever that I discovered.

Q.—You had done well by him in the brewery, I understood you to say? A.—Yes.

10 Q.—And he rewarded you in the manner which appears in his will? A.—Yes.

Q.—He was not the sort of a man who would change his mind, once he had made up his mind that a person was worthy of his good-will, good-wishes? A.—Well I don't know what actuated him in any way, he may have thought he was making sufficient provision for me in his final will. I know nothing about it.

Q.—You don't know what actuated him in making the provision in the second will? A.—I don't know a thing about it.

20 Q.—Do you know whether he took an interest in other things about the town? A.—Yes, he was always interested in the affairs of the municipality, he had great pride in it.

Q.—He took great pride in the park? A.—In everything pertaining to it, of a public nature.

Q.—He took great pride in the church, which was a memorial church, was it not? A.—Yes.

Q.—He always was a man who was very keen on art? A.—Yes.

Q.—And generally public-spirited? A.—Yes.

Q.—And, of course, a man infinitely more wealthy in 1914 than he was in 1901? A.—Yes.

30 Q.—I notice that in a clause in the first will he gives you \$100,000.00 worth of stock at par, and the brothers, or the survivors of them, have the right to purchase them from you at the same price? A.—I don't know anything about that.

Q.—You were interested in some other enterprises too, Mr. Griggs, were you not? I mean, during Mr. E. C. Walker's lifetime? A.—I had stock in other industries.

Q.—Didn't Mr. E. C. Walker help you to finance in that connection? A.—No, he took some stock in an industry I was interested in, that is, the Dominion Motors.

40 Q.—The effect of that was to help you, was it not? A.—Not to help me more than the rest, there was a bunch of them in there, and he took \$10,000.00 worth of stock.

Q.—You were already a holder of the stock? A.—Of stock I bought, yes.

Q.—You induced Mr. Walker to take some stock? A.—I talked with him, he said he would take \$10,000.00 in it, with the rest of the crowd.

Q.—To help swing the business? A.—That was all.

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Q.—I wish you could define a little more clearly to me just what you had to do with the general conduct of the distillery business? A.—I can only say, if you bought an industry you would go and look over every part, and that is what I had to do.

Q.—Did you make a report? A.—I talked with Mr. Walker every day as to what was going on, what I discovered.

Q.—What did Mr. C. M. Walker do? A.—He was superintendent of manufacturing.

Q.—Did you interfere with him in any way? A.—I didn't mean to.

Q.—Did you make any suggestion contrary to his wishes? A.—Not that I know of. 10

Q.—It sounds as if you might have been a fifth wheel to the coach. They had a pretty complete staff. A.—He was inclined to take it a little easy.

Q.—Who? A.—C. M.

Q.—The business was on a pretty firmly established basis at that time? A.—Fairly so, I think.

Q.—They were making very large profits? A.—Not so very large at that time.

Q.—In 1908? A.—That came later. It is according as you call fair profits. We have different ideas on that subject. 20

Q.—You and I may have different ideas on the subject; what is your idea of a fair profit? A.—If a manufacturing industry is not good for 15 or 20 per cent. I don't think it is good for much.

Q.—What did the brewery make? A.—Well, that is personal.

Q.—I gather from what you have said, Mr. Griggs, that when Mr. Walker had a friend, he was a friend for life? A.—I think he was, unless the fellow did something that caused him to change his mind.

Q.—He had been a pretty good friend to you throughout? A.—Always had been close friends all our lives.

Q.—And, as I said before, having been good friends, unless there was some reason to change his mind, he would be the last man in the world to do it? A.—I suppose he thought I was doing pretty well. 30

Q.—You were not the only friend? A.—No.

Q.—They were few and far between; he was not a man who made many friends? A.—No.

Q.—Who is Mrs. Stephen Griggs, mentioned in the first will? A.—She is my mother.

Q.—She had, of course, no claim on Mr. Walker? A.—None whatever.

RE-EXAMINED: BY MR. OSLER:

Q.—Mr. Griggs, you told my learned friend you could not remember the last time you saw Mr. E. C. Walker; can you remember it by referring to any other date? I don't mean to remember the exact day? A.—I think I saw him probably not a great while before his departure for Washington, at the time prior to his death, but I can't say how long before that, although I don't think it was a great while. 40

Q.—Would it be a matter of months, or years?

MR. MCCARTHY: Please do not suggest.

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MR. OSLER: Is it a matter of months, years, or days, or weeks? A.—It was not years, and it would not be very many months, probably a month or two, I don't imagine it was any longer than that.

Q.—You were asked about some Pere Marquette bonds; do you know if the interest on those bonds was in default? A.—I am not sure, if they were in default it was only temporary. The Receiver reported to the court.

MR. MCCARTHY: You cannot give evidence as to what the Receiver did. A.—Well, with reference to the bonds.

MR. OSLER: What was the effect of the Receiver's Report ultimately as regards dividends? A.—It was paid.

HIS LORDSHIP: The last time you saw Mr. Walker, a month or so before he left for Washington, where he died, had he changed in any respect, for the worse, or better? A.—He was weaker, constantly growing weaker.

Q.—Was he in his bed then? A.—I don't think so, I never saw him in his bed at the last.

CLEMENT KING: Sworn. Examined by MR. OSLER:

Q.—Mr. King, what is your occupation? A.—I am at present in the Head Office of Hiram Walker & Sons. I have no position I can give a name to, it is work of a confidential nature in the Head Office.

Q.—How long have you been in the employ of Hiram Walker & Sons? A.—About 32 years next October.

Q.—In what capacity did you first join them, and where? A.—I made two trips abroad for them to the West Indies, one for eight and one for nine months, and I did some general work about the United States.

Q.—About when? A.—The first trip abroad took me eight months, I came back and had some time at the Head Office; the next trip was for nine months. It would take me two or three years travelling abroad, and I finally landed in New York.

Q.—What year? A.—I can't remember exactly the year I went to New York. I took charge of the New York office about 1893 or 1894, therefore, it must have been two or three years.

Q.—What had been your occupation before you joined their force? A.—I was in the service of the Canadian Bank of Commerce.

Q.—When you went to take charge of the New York office for the Walker company, how long did you stay there? A.—I was there until the early years of the war, I was twenty years altogether in New York.

Q.—When you left New York, what happened? A.—I was brought to Walkerville because, at the time of the war, they needed help that they thought I could render.

Q.—Have you stayed here ever since? A.—I have been here ever since, yes.

Q.—Did you know the late E. C. Walker? A.—I knew him very well.

Q.—How early did your acquaintance with him begin? A.—When I left the Canadian Bank of Commerce to take service with him, he was one of three brothers I interviewed when I came to Walkerville to engage with them.

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Q.—Before you were in New York did you have occasion to see him often?
A.—Only on such occasions as I came back here from my trips, I would meet him in the office. I had luncheon with him on several occasions.

Q.—What was the subject of your conversation on those occasions? A.—About my trips, and all sorts of things we talked about at luncheon.

Q.—When you went to New York how often did you see him, from that time on? A.—Well, he seldom came to New York without coming to the New York office. I think it is fairly safe to say I saw him on any occasion he was in New York.

Q.—About how frequently would that be? A.—Probably once or twice a year at least. 10

Q.—Up to the time when you left the New York office? A.—Well, up to the last time he came to New York.

Q.—Can you tell us the date of that? A.—I remember seeing him at Walkerville in 1913, and he had been to New York previous to that, and I must have seen him there then.

Q.—You came to Walkerville some time in the summer or fall of 1914?
A.—Yes.

Q.—Did you see him then? A.—I saw him in 1913. I don't remember seeing him after that. 20

Q.—You remember seeing him after you came back to Walkerville to live?

MR. MCCARTHY: He didn't say that.

THE WITNESS: I don't remember seeing him after I saw him in 1913, I don't recollect seeing him after that.

MR. OSLER: What was the subject of your conversation with Mr. E. C. Walker?

HIS LORDSHIP: When?

MR. OSLER: During the periods when he called upon him in New York?
A.—He would discuss the business from a general standpoint, he didn't take a great deal of interest in the details of it, he would want to know what we were doing generally. He never examined the books, or anything of that sort, it was more of a general nature. On other occasions he would drop business and we would discuss things that were of interest to both of us, outside of business. 30

Q.—Was his conversation apparently and his interest in the business apparently intelligent, or not? A.—Oh, yes; he had a brand of whiskey he invented himself, the "Epicure," in which he took a very great interest, and he would be asking about that, what we were doing with it, and that sort of thing.

Q.—Were there any other subjects of conversation between you? A.— 40
Well, he was a picture buyer, a picture lover, and that happened to be my hobby also, not buying, but trying to paint them. We used to go together to the picture galleries. He took a great interest in that sort of thing.

Q.—What do you say as to his ability to judge and appreciate a picture?
A.—He seemed to like, and have a fancy for the old masters, and things of that sort, because he used to go to galleries where such things were to be seen, and he would take me to see pictures he had seen, and thought I would like to see.

Q.—Did he discuss them with you? A.—Yes, we would discuss them together, and with the dealers sometimes.

Q.—Do you know whether he bought them? A.—Yes, I know of one or two pictures that he bought.

Q.—Where did he put them, when he bought them in New York? A.—He would frequently buy them and send them around to the New York office. We had an office then with elevated ceilings, and the walls could carry large pictures, and he hung some very valuable pictures there, from time to time. At one time the room had at least half a dozen pictures hung around.

10 Q.—Do you remember the names of any of the masters who were represented? A.—Yes, he had one by Sir Peter Lely, and one by Joseph Brandt, and a rather valuable picture by Gaisser. Those are three I remember very well.

HIS LORDSHIP: What is the good of this?

MR. OSLER: I want to show the general condition of the testator.

HIS LORDSHIP: Yes, he was a lover of pictures, and he hung them in an office where only a few people would see them, those who came in to buy whiskey

MR. OSLER: It might bring people in to buy whiskey. That was not the
20 object of hanging the pictures there, of course. The room was well suited for it.

HIS LORDSHIP: A man buying very costly pictures, according to his taste, and hanging them in a place like this, where his friends couldn't see them, does not seem to me to advance your case very much.

MR. OSLER: I do not mean to suggest he left those pictures there all the time, but let me ask you this, Mr. King; in the distillery office in Walkerville there are valuable paintings? A.—Some of these same pictures are there now that were hung in the New York office only temporarily, on their way to Walkerville.

30 HIS LORDSHIP: That is an explanation.

A.—We had the benefit of them while they were there.

MR. OSLER: Did you notice any change in his mentality, during the period you knew him? A.—I noticed he was slowing up a bit during the last few years I knew him, he was a little more deliberate than he used to be, and a little more quiet.

Q.—What were his characteristics as to conversation? A.—He was always very slow and deliberate in his speech; he was not given to forming quick opinions, he would hear what you had to say, and was very slow.

Q.—When you say he showed signs of slowing up, what do you mean? A.—A little more deliberate, and quieter in his manner.

40 Q.—Was he, or not, confused in his speech? A.—I never had an instance of that, I never saw an instance of that.

Q.—Do you remember any conversations on any general matters, apart from the business of the brewery, and apart from art? A.—He spoke to me sometimes about his travels, of places he had been, and I would ask him questions, as I hadn't seen these places myself, and was interested.

Q.—Was he able to discuss these intelligently? A.—Yes, he told me of

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trips he made to Egypt, and things he had seen there, the habits of the people, and that sort of thing.

Q.—Was he interested in politics? A.—Not that I ever knew, I didn't hear him talk politics.

Q.—Nothing about European politics? A.—No, I can't recall that.

Q.—Do you recall any conversation with reference to national subjects? A.—I remember, in Walkerville, having a discussion with him upon the Balkan question, at luncheon.

Q.—When was that? A.—About January, 1913.

Q.—Tell me what took place on that occasion? A.— We were talking 10
about the Balkan situation, I quoted Mr. Gladstone's famous expression about the Turk, "the unspeakable Turk," and he contradicted me, he said there were a good many fine men among the Turks, that I was mistaken in taking that general view of them, that he had met a good many Turks in his travels through Egypt and had found some who were quite different to "unspeakable."

Q.—Did the conversation end there? A.—No.

HIS LORDSHIP: You stuck to your point? A.—I stuck to my point.

MR. OSLER: Did he say "All right, you can have your way?" A.—His way was, if he couldn't agree, he would be quiet about it, and not press his 20
point.

HIS LORDSHIP: A pleasant man? A.—Very much so, my lord.

MR. OSLER: Did you have occasion to observe the relations between Mr. E. C. Walker and his two brothers, Mr. F. H., and Mr. Harrington? A.— Yes.

Q.—What do you say about that? A.—It struck me that the three brothers were very much attached to each other, and I had the feeling it was about the only trait they had in common with each other, so that any one would give in to the other two, or the two would give in to one, they seemed to like to pull together. 30

CROSS-EXAMINED: BY MR. MCCARTHY:

Q.—When did you leave the New York office, Mr. King? A.—In the early years of the war, it must have been 1914.

Q.—Can you fix the date? A.—I haven't a very good memory for dates, that is as near as I can remember.

Q.—How long had the war been going on before you left? A.—My memory for dates isn't very good.

Q.—I don't want your memory for dates, but give me some idea how long you remained down there after the war started? A.—It couldn't have been more than a year or so. 40

Q.—Was it a year or so after the war commenced that you left the New York office? A.—I wouldn't like to say positively, my memory for dates isn't very good.

Q.—You remember the outbreak of the war? A.—Certainly I remember the outbreak of the war.

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Q.—Do you remember how long you stayed in the New York office after that? A.—No, I can't remember accurately how long.

Q.—It may have been a year or more? A.—Yes, it may have been.

Q.—What time did you see E. C. Walker, in Walkerville in 1913? A.—When I came home on a visit.

Q.—You met him at luncheon, in the lunch-room at the office? A.—Yes.

Q.—Others were present? A.—Yes.

Q.—And there was a conversation in regard to the Balkan situation? It was really a conversation as to whether the Turk was "unspeakable" or not? 10 A.—Yes.

Q.—You would hardly call that European politics? A.—Hardly.

Q.—He had one thought, and you had another? A.—Yes.

Q.—He had seen some Turks perhaps that you hadn't? A.—I hadn't.

Q.—That was a very simple matter? A.—A matter of ordinary conversation, yes.

Q.—What was the New York office? A.—In what respect?

Q.—A selling establishment? A.—It was one of the outposts of the firm, showing samples of the brands.

Q.—A sales department? A.—Yes.

Q.—Mr. E. C. Walker was very keen on what he called the "Epicure," that was his pet point? A.—Yes. 20

Q.—Which he never succeeded in establishing? A.—It wouldn't go in the States.

Q.—And the general conversation with him was, he wanted to find out whether you had been able to make the "Epicure" go? A.—I don't know that it was general, it would be one of the topics.

Q.—I suppose the other was, "How are things going?" A.—He would ask generally about the other business as well.

Q.—What other business? A.—"Canadian Club."

Q.—He wanted to know as to the sales? A.—Generally. 30

Q.—He was anxious to know what the sales were. Did he ever discuss with you your method of selling, or was that left to you? A.—As I remember, he never discussed it to any great extent.

Q.—All he really wanted to know was how much money you were making? A.—You can put it that way if you want to. He wanted to know what the general sales, the general outlook was.

Q.—He wanted to know how you were succeeding in making the "Epicure" go? A.—Yes.

Q.—Which you never did? A.—Yes.

Q.—He would be in New York once or twice a year? A.—As near as I can remember. 40

Q.—How much time would you spend with him when he was there? A.—It would vary, sometimes he would come into the office and spend an hour or so, and sometimes he invited me to lunch, and would spend the luncheon hour talking with me.

Q.—When did you first notice him getting feeble physically? A.—I saw the last two or three years, he was slowing up physically.

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Clement
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Cross-Ex-
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Q.—Difficulty in walking? A.—At the very last he would require to use certain care in stepping down a place like this step.

Q.—Or stepping up? A.—Yes.

Q.—He was inclined to shuffle a little with his feet? A.—I can't say that; he wouldn't notice a step that might be in his way.

Q.—He was then walking with a stick? A.—I don't ever recall seeing him with a cane.

Q.—You would have to help him up or down steps? A.—I would help him up and down, there was one awkward step in the New York office that I was afraid he might trip on. 10

HIS LORDSHIP: Did he resent that at all? A.—No, my lord.

MR. MCCARTHY: The last time you would see him in New York would be when? 1911 or 1912? A.—I can't place that date.

Q.—Then you spoke about buying pictures,—did you know whether they were of any value or not? A.—Yes, I did.

Q.—How? A.—Because Sir Peter Lely's are of fine quality, and must be valuable.

Q.—You paint, yourself, I believe? A.—I try to.

Q.—And that is the only one you can mention of any value? A.—No, I could mention several. 20

Q.—That you know he bought? A.—That I know of his buying.

Q.—For which he paid a big price? A.—I know he paid \$2,000.00 for one, and one of Sir Peter Lely's cost more than that.

Q.—He would hang them in the New York office? A.—We would have the benefit of them as long as he chose to leave them there, they would gradually go.

HIS LORDSHIP: He kept track of them? A.—Oh, yes, my lord.

MR. MCCARTHY: Did he ever give you any? A.—He gave me a couple of pictures when I got married, as a wedding present, and I have them yet. 30

Q.—I suppose, like all the foreign trade men, you would do business with Mr. Robins altogether, wouldn't you, when you came up here to Walkerville?

A.—Yes. Yes, I had a great deal to do with Mr. Robins.

Q.—Mr. Robins had initiated the foreign trade? A.—So I understand.

Q.—Naturally, when you came to Walkerville, Mr. Robins would be the man you would see? A.—Yes.

Q.—In your communications he would be the man you would communicate with? A.—Yes. When I came to Walkerville I saw the brothers as well.

Q.—How often would you come to Walkerville? A.—It was irregular.

Q.—Once a year? A.—Perhaps it would average that.

Q.—You are still in their employ? A.—Yes. 40

Q.—You are not able to name the position? A.—I do work of a confidential nature.

Q.—There is no name attached to that position? A.—No.

Q.—And have you had any increase in salary? A.—Since I came up here, yes.

Q.—How much?

HIS LORDSHIP: Mr. McCarthy!

MR. McCARTHY: A man's ability to express an opinion is somewhat gauged by what he thinks of himself.

HIS LORDSHIP: I do not want this man to tell his own affairs.

MR. McCARTHY: I only want to place the same value on his evidence, that his employers do on him.

HIS LORDSHIP: You write it down on this paper. A.—(Witness wrote on piece of paper). That was my former salary, when I came up here, and I am now getting that.

10 HIS LORDSHIP: It is immaterial.

MR. McCARTHY: Your lordship has passed judgment on it?

HIS LORDSHIP: Yes, I have.

MR. McCARTHY: The great difficulty is that your lordship is not allowing any other court to do so.

HIS LORDSHIP: That is true.

MR. McCARTHY: That may complicate the proceedings.

HIS LORDSHIP: I am not going to allow this man's income to be an issue in deciding this case.

MR. McCARTHY: That is your lordship's ruling; it is unfortunate.

20 HIS LORDSHIP: It is not unfortunate, as, doubtless, if you go before another court, you may be castigated for asking a question you should not.

MR. McCARTHY: As a rule, the Appeal Court are very courteous to me; I can't say that for every court.

HIS LORDSHIP: Do you mean me?

MR. McCARTHY: No. If the cap fits.

Q.—Your conversation with him, as I think you told us, during the occasions when he was in New York, were in regard to business, or these pictures? A.—Yes.

30 Q.—Do you remember the last time you saw him in New York? A.—I told you I couldn't recall that date.

Q.—Now, you did tell me you noticed him slowing up a bit physically? A.—Yes.

Q.—Did you notice any change in him mentally, or in his manner of speech? A.—He was a man of such slow method of speech, and thinking that when I began to notice the change the thing was imperceptible, I couldn't say I noticed any drastic changes, it was a gradual slowing down.

Q.—Did you notice any difficulty of articulation, such as Mr. Coburn spoke about? A.—No, I didn't notice any difficulty of articulation.

40 Q.—You never noticed any attacks of aphasia as have been spoken about? A.—No.

Q.—The occasions you would see him would run one hour, or may be two or three hours? A.—Depends on the occasion, and when and how I had luncheon with him.

WILLIAM H. ISAACS: Sworn: Examined by MR. OSLER:

Q.— Mr. Isaacs, you are in the employ of the Hiram Walker & Sons?
A.—Yes.

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tion-in-
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Q.—How long have you been in their employment? A.—Since December, 1891.

Q.—What was your first position? A.—Office junior.

HIS LORDSHIP: You have been 33 years there? A.—Yes, my lord.

MR. OSLER: What is your present position? A.—I am Assistant Managing Director.

Q.—You are one of the members of the Board? A.—Yes, sir.

Q.—Were you acquainted with the late Mr. E. C. Walker? A.—Yes, sir.

Q.—When did you first come in contact with him; when you joined the business? A.—Immediately on joining. 10

Q.—What was your occupation at that time, as office junior? A.—Messenger.

Q.—For whom? A.—The three Walker Brothers, and Mr. Robins, anybody who wanted a message in the office, I had to carry it. I copied letters, got the mail, and such things as a junior would do.

Q.—What I wanted to ask you was whether your work brought you into contact with Mr. E. C. Walker, or others in the establishment? A.—It brought me into contact with Mr. E. C. Walker.

Q.—What was the first change in your employment from that? A.—About a year and a half after that I was transferred to the shipping department. 20

Q.—How long did you stay with the shipping department? A.—About 2 years.

Q.—And then? A.—I was transferred to the bookkeeping department.

Q.—How long were you there? A.—I was there up until 1912.

Q.—Then what became of you? A.—I was appointed Assistant Treasurer immediately after Mr. Robins left. I was appointed a director in 1915—Assistant Managing Director at that time.

Q.—Did you have occasion to speak to Mr. E. C. Walker during the course of your employment, while he was alive? A.—Well only on very, very minor matters, until I got to a more executive position, then it was only on one or two occasions I spoke to him. 30

Q.—About when was that? A.—That was, I should think, about six weeks previous to February the 11th, 1913, it may have been eight weeks. I fix that date because that was about a matter that was commenced on that date, February the 11th.

Q.—What was the matter? A.—Regarding the question of insurance.

Q.—Who had been dealing with the insurance before that? A.—Mr. Ambery.

Q.—Just tell me what you had to do with it, and give me an account of what occurred? A.—Our insurance policy for a good many years had been rather cumbersome, and each year we were issuing a cheque on February the 11th, as all our general policies expired on that date, but we were getting out a new form as I thought that policy could be modified. I spoke to the inspector who was in Walkerville at the time, and asked him what he would suggest in order to make it just as legal as it was before, yet simplify it. He made sug-

gestions, and I, first of all, put it before Mr. Ambery, who asked me to see Mr. E. C. Walker, because Mr. Ed. took very great interest in insurance.

That is about the only thing in my whole connection with the business, of an important nature, that Mr. E. C. Walker dealt with. My work was mostly in the accounting department.

Q.—He didn't trouble with the accounting? A.—Only to ask questions about his personal account.

10 Q.—What did you do when Mr. Ambery told you to submit it to Mr. E. C. Walker? A.—I handed it to him and told him I had seen this inspector, and asked him for his approval of it. He kept it for,—I can't just recall at the moment— it may have been several days, but he returned it to me, and he approved of it. I can't give the words, but the effect was that he approved of it. And that was adopted.

HIS LORDSHIP: Was this a policy you had to get the insurance companies to agree to? A.—Yes, my lord.

MR. OSLER: It was a general form covering various risks? A.—Yes, on the buildings, contents, stocks, and machinery, of every nature.

20 HIS LORDSHIP: This time you spoke to Mr. Ambery was when? A.—It was probably some weeks previous to the change on the 11th of February, 1913.

MR. OSLER: How do you know it was not the previous year? A.—Because we didn't change our policy that year.

Q.—Did Mr. E. C. Walker appear to understand matters you were discussing with him? A.—Perfectly.

MR. MCCARTHY: That is objected to.

MR. OSLER: I do not know on what ground?

MR. MCCARTHY: Opinion.

MR. OSLER: Then did you have any other communications with Mr. E. C. Walker? A.—Not of an important business nature.

30 Q.—Any communication with reference to matters other than business? A.—Yes, we discussed matters in connection with the 21st Regiment, of which he was Honorary Colonel.

Q.—Were you a member of the regiment? A.—Yes.

Q.—In what capacity? A.—I was a private, and lieutenant, and I retired with the rank of major.

Q.—Had you occasion to use any horses? A.—Yes, Mr. E. C. Walker loaned me some horses.

40 Q.—When was that? A.—It was in 1912, at the Goderich camp, the officers were short of horses, and Mr. Walker had several saddle horses, and I spoke to him one day in the office and asked him whether he would consent to let us use some horses for the camp. Mr. Walker, if my memory is correct, told me that Mrs. E. C. Walker sometimes had guests who used those horses, but he would speak to Mrs. Walker, and he asked me to come up to the house later in the day.

MR. MCCARTHY: What Mrs. Walker did is not evidence.

MR. OSLER: It is what the testator told him.

HIS LORDSHIP: There is no doubt about it.

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MR. MCCARTHY: The testator told him about something else.

HIS LORDSHIP: He can say what the testator told him about those horses.

MR. OSLER: Go on. A.—I spoke to Mr. Walker about those horses, he said Mrs. Walker had guests who rode those horses, but if I came up to the house later in the day he would tell me if I could have them. I went up after 5 o'clock and he loaned me one horse, and gave me permission to use a horse which he had previously given me for my personal use, which I had had for 4 or 5 years.

HIS LORDSHIP: What year was the Goderich camp? A.—August, 1912. 10

MR. OSLER: You said that he had given you one of these horses some years previously? A.—Yes.

Q.—How did you have to have permission to take it to the Goderich camp? A.—In 1907 he loaned me a horse, and about 1909 he gave me the horse, but with the right to borrow it back from me at any time they required it at "Willi- stead." Consequently, when I was going to camp, I felt I should ask him whether I could take that horse away.

Q.—Did you see Mr. E. C. Walker on other occasions?

HIS LORDSHIP: Are you going to drop that occasion? What is the point there? 20

MR. OSLER: The point there is that Mr. Walker was dealing with such a matter as this.

HIS LORDSHIP: He was decent enough to lend Major Isaacs a horse.

MR. OSLER: Yes.

HIS LORDSHIP: If that is all; I do hope there won't be much of that sort of thing.

MR. OSLER: There was another horse also.

HIS LORDSHIP: I am trying to limit the case; it is going too far.

MR. OSLER: We will keep it as close as we can.

HIS LORDSHIP: I dare say you are making that effort, it is in your brief, 30 I suppose, and you have to ask about it. What are we going to do with all this evidence about horses, and pictures, with respect to proving whether the man was compos mentis, or not. There must be more important evidence than that.

MR. OSLER: Your lordship realizes the difficulty we are under in being asked to meet a claim like this, the events being 10 or 12 years ago, and most of the people have died, and those who are alive did not keep notes or correspondence. It is not easy to recall such incidents.

HIS LORDSHIP: I honestly tell you that the picture business, and the horse business is having very little effect on my mind. 40

MR. OSLER: Did you meet Mr. E. C. Walker socially, Mr. Isaacs? A.— Only on occasions when the officers of the band would be invited up to the house, and parties they would have at the house to which the public would be invited too.

Q.—Did you speak to him on those occasions? A.—Not more than simply shaking hands at the reception, and possibly passing on.

Q.—Was he accustomed to invite the office staff to go on the yacht? A.— Sometimes.

Q.—Was Mr. E. C. Walker present on those occasions? A.—I have been on the yacht with E. C. Walker and the office staff.

Q.—Taking your knowledge of E. C. Walker, as you had it, what do you say as to his capacity to do business?

MR. MCCARTHY: I object. It is opinion evidence.

HIS LORDSHIP: On the ground it is general?

MR. MCCARTHY: It is general opinion evidence.

10 HIS LORDSHIP: Well, I am not sure of that; a man associated in business would be different than a man simply called in to give an opinion. What sort of business man was he?

MR. OSLER: What sort of business man was he? A.—I never had an opportunity of knowing what sort of business man Mr. Walker was.

HIS LORDSHIP: He does not know.

MR. OSLER: Did you ever hear him speak when he was confused in his speech? A.—No.

Q.—Did you, or did you not, in the course of your association with him, see him, or hear him say anything which indicated he was not competent to do
20 business? A.—No.

CROSS-EXAMINED: BY MR. MCCARTHY:

Q.—While Mr. Robins was there, Mr Isaacs, I think you said you were in the bookkeeping department? A.—Yes.

Q.—You were, I think, the head man in the department? A.—Yes, when I left.

Q.—And it was after Mr. Robins left that you moved up to be Assistant Treasurer? A.—Yes.

Q.—And since then you have been Assistant General Manager, and Director? A.—Assistant Managing Director.

30 Q.—During the time you were head of the bookkeeping department would you come in contact with Mr. E. C. Walker at all, except in regard to his personal account? A.—No, except personal greetings.

Q.—I am speaking from a business standpoint. He said, "Good morning" or "Good evening," or if he met you on the street he would greet you. A.— I would have occasion to take cheques in to him to get them signed, in the later days.

Q.—He was an extremely courteous man? A.—Extremely, they all were.

Q.—But very quiet? A.—Yes.

Q.—And dignified? A.—Yes.

40 Q.—Then, I think you told my friend that you only spoke to Mr. E. C. Walker on very minor matters, and only on one or two occasions? A.—Yes.

Q.—The only occasions you spoke of were six or eight weeks before the 11th of February, 1913? A.—Yes.

Q.—Would you tell me what proposition you put up to him at that time? A.—I could show you better, I have one of the forms.

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Q.—Describe it. A.—It is a long document attached to each policy we used, about 2 feet long, and printed on two sides, giving an accurate description of every one of our buildings. There was a repetition of practically every clause there, and we embodied these repetitions in one clause which described the building, contents, and that sort of thing, instead of repeating it a great many times one clause covered it all.

Q.—A consolidation? A.—A consolidation of these clauses.

Q.—The whole thing put to him on that occasion was whether it would be in their interest to consolidate the clauses or leave them as they were? A.—Yes.

Q.—Mr. Walker was not in a position to give you an answer at that time? A.—No, he couldn't anyway because it was quite a long document and it would take some time to read it.

Q.—It all came down to whether the consolidation clause covered everything? A.—Yes.

Q.—He had himself dealt with the insurance end of the business for some time? A.—He was the head of the department.

Q.—It was one branch he was interested in. After some little delay he finally sent word that he approved of the consolidation? A.—He handed it to me in his office—

Q.—Saying that he approved of the consolidation? A.—Yes.

Q.—At the time you were occupying the office of Assistant Treasurer? A.—Yes.

Q.—While you were Assistant Treasurer would you see Mr. E. C. Walker? A.—Not on business matters.

Q.—When you were Assistant Managing Director would you see him from time to time? A.—I was not Assistant Managing Director until Mr. E. C. Walker died.

MR. MCCARTHY: Out of deference for your lordship's wishes, I will cut out about the horses and the pictures.

NEILS C. ORTVED: Sworn. Examined by MR. OSLER:

Q.—What is your occupation, Mr. Ortved? A.—I am a chemist, with Hiram Walker & Sons.

Q.—When did you go to work for the company? A.—1906.

Q.—Have you been their chemist ever since? A.—Yes.

Q.—Did you know Mr. E. C. Walker? A.—From the first day I came, yes.

Q.—Did you have occasion to see him during the subsequent period, until he died? A.—Yes.

Q.—On what terms were you with him? Did you simply see him in the office, or did you see him elsewhere? A.—I was directly under the management of Mr. Frank Walker, but on certain occasions Mr. E. C. Walker called me into his office and asked me to do certain special things for him.

Q.—Did you see him in his house, as well? A.—Yes.

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tion-in-
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Q.—On what occasions? A.—Well, at the receptions there most of the people from the town were there, and once in a while private parties.

Q.—Now, what were the subjects of your conversation with Mr. E. C. Walker with reference to the business? A.—Mostly pertaining to the plant I was conected with outside.

10 Q.—To what extent did you discuss that with him? A.—He always asked me how everything was going, and so on; until a certain year, in 1910, he called me into his office and told me that he wanted to originate a new whiskey, something similar to the "Epicure," which had been developed under his instructions, just before I came, some years before I came to the firm. And I asked him what he wanted to do now, and he said he wanted to make a pure rye malt whiskey. The "Epicure" was pure barley malt whiskey. We talked over the difficulty there would be with the new whiskey on account of the hulls of the rye not being able to be strained like barley. And we discussed the matter and decided that the first experiment should be made in accordance with the formula for the barley malt whiskey, and made in the same mash tub. And that the liquids should reach to the fibre of the hulls of the rye. And to see what we got that way. And I remember I reported to him that it was very slow filtration, we didn't get near as much yield as he 20 expected, didn't get near as much filter from the brew. And I asked if I should try another way, and he said, "No, we will put this away." That means, we will mature it for a while and see how it comes out, and decide about other changes next year. About a year after he called me in again.

HIS LORDSHIP: What year would that be? A.—This was 1910. Next year he called me in again and asked how it was coming along, and I said I would find out and get a sample of the brew from the warehouse, and we did test it. E. C. Walker seemed to be satisfied with the changes that had been made in the year, but asked me to make a couple more tries, and we changed the formula to a certain extent and got a little more yield from the grain, and 30 we also put that away for maturing. The next year, in 1912, the same thing happened. And the same thing happened in 1913. For four consecutive years he called me in and asked me about the whiskey, and also discussed the change in the formula that we should make.

MR. OSLER: As chemist you were in charge of the actual operation? A. I was responsible for that.

Q.—Did the course of your discussion with Mr. E. C. Walker indicate whether or not he knew the technical position A.—He was fully conversant with the method of converting the malt, the temperatures, and things in connection therewith.

40 Q.—Did you discuss the chemical changes? A.—Yes.

Q.—Did you simply report what they were to him?

MR. McCARTHY: Ask him what he did, and do not suggest.

MR. OSLER: Did you, or not, discuss with Mr. E. C. Walker the technical and chemical changes? Did your discussion cover that? A.—It covered that, yes.

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Q.—Do you know whether or not Mr. Walker appreciated the effect of the experiments? A.—Yes.

MR. McCARTHY: I object to that as being opinion evidence.

HIS LORDSHIP: He says he did appreciate. I do not know how he got to that opinion; it will be brought out in cross-examination.

Q.—He appreciated there were improvements made from year to year? A.—Yes.

MR. OSLER: Did you receive any orders in connection with that particular series of experiments from anybody else? A.—No, sir.

Q.—Did you notice any change in Mr. Walker's mental condition? A. 10
—Change from when?

Q.—Say 1910? A.—No, sir.

Q.—Down to 1913? A.—No.

Q.—Did you notice any change from any previous occasion? A.—No.

Q.—When did you last see Mr. E. C. Walker? A.—I saw Mr. Walker the last time was the 20th of September, 1914.

Q.—What was his condition then? A.—He was very weak physically, he was sitting having his tea in the billiard-room.

Q.—Did you talk to him? A.—Yes, sir.

Q.—What was the subject of the conversation? A.—I had a fine visit 20
with him that day, and he was very interested in showing a collection of pictures.

Q.—Perhaps before I ask you about the interview in his billiard-room, Mr. Ortved, may I ask you what was the object of trying these different mashes in the different years? A.—Well, the object was to get the most complete conversion, the most complete yield in spirits, and the best quality of whiskey.

Q.—What were you going to do when all the different yearly experiments had matured? A.—Well, we were going to select the best, but couldn't do 30
that before they were all three or four years' old.

Q.—As a matter of fact, Mr. E. C. Walker died— A.—He died before the last one was matured.

Q.—Did it come up to expectation? A.—I think it would have come up to Mr. Walker's expectation.

MR. McCARTHY: That is not evidence, surely?

THE WITNESS: It is, in a way, if you knew what he was after.

MR. OSLER: What about the interview in the billiard-room? A.—Mrs. Walker had gone around with us to show us the pictures, Mr. Walker couldn't walk, we came back to the billiard-room and Mr. Walker asked my friend,— he was especially interested that day—"Have you seen the picture in there?" 40
He pointed in to a picture that was hanging in the drawing-room. My friend said, "I think so." He said, "I will show you a better way to look at it." He asked Mrs. Walker to put the spot-light in a certain place, and he asked Mrs. Walker to close the folding-doors until only two or three inches were left, and he asked my friend to look at the picture through the opening of the doors, with the light on. It showed the picture in much better light than showing the whole thing at one time.

HIS LORDSHIP: Is that all? We have had that several times. No more picture business.

MR. OSLER: How do you remember the date? A.—It was my anniversary; I know I invited my friend over for dinner that night.

CROSS-EXAMINED: BY MR. MCCARTHY:

Q.—You had your own laboratory? A.—Yes.

Q.—When you came there you found the "Epicure" whiskey, which was more or less of an obsession with Mr. E. C. Walker, had been a failure? A.—I did not.

10 Q.—What did you find in regard to it? A.—It was the greatest success in the world.

Q.—Is that your opinion? A.—Absolutely, a very confident opinion.

Q.—I thought it would not go in the States? A.—It never was on the market in the States; it was not, for a reason.

Q.—Where does it sell? A.—It doesn't sell, because it was not put on the market.

Q.—It was the greatest success in the world, but you did not sell it. A.—As whiskey.

20 Q.—From a scientific standpoint it was the greatest success in the world, but from a practical standpoint it was not worth anything? A.—That was not tried out.

Q.—They sold 20,000 barrels during the war, but they could not sell it here? A.—Yes, if they had wanted to put it on the market before they could have sold it, but they didn't want to do it.

Q.—They wanted to keep it? A.—To a certain time.

Q.—You were principally under Mr. Frank Walker? A.—Yes, sir.

Q.—He was Managing Director, so-called? A.—Not alone "so-called," he was the Managing Director.

30 Q.—He was away a great part of the time? A.—Not so much.

Q.—What do you mean by, "not so much?" A.—Not so much; he was there enough time to look after the business.

Q.—And Mr. E. C. Walker was a practical distiller, was he not? A.—I don't know that he was a practical distiller, he was an old man when I came there. I don't know how much he knew.

Q.—You don't know how much he knew. In 1910 what was the proposition he put up to you? A.—As to the rye whiskey proposition, it was to make a whiskey practically the same, under the same conditions as he had made the "Epicure" whiskey.

Q.—Only substituting rye for barley? A.—Rye malt for barley malt.

40 Q.—He said to try another whiskey following the same formula as in the case of the "Epicure," but substituting rye malt for barley malt? A.—Yes.

Q.—You did it? A.—Yes.

Q.—A small sample? A.—Not so small a sample, 1,400 gal. may be.

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Q.—What was done with that, did that ever mature in his lifetime? A.—It matured some, yes.

Q.—So as to enable you to test it? A.—We tested it that year, yes.

Q.—At what year? A.—Those years; you can test whiskey in three or four years.

Q.—Did you test it all before that? A.—Yes, we tested it every year.

Q.—What did the test show? A.—The test showed an improvement every year.

Q.—You say you reported to Mr. Walker? A.—I did, yes.

Q.—It improved in what way? A.—That is a question I don't think I can explain to you; it is chemical. 10

Q.—In quality? A.—Yes, in quality.

Q.—Have you ever put that on the market? A.—No, because we never made enough of it.

Q.—Notwithstanding the improvement in quality, you did not put it on the market. In 1911, what was the proposition he put up to you? A.—To see if we could improve the quantity of yield.

Q.—How was that to be done, or was it left to you to do it? A.—No, he told me, "We will try to sparge the grain more, and increase the yield, to get more of the liquid out." 20

Q.—He told you to sparge the grain more? A.—Yes.

Q.—So as to get more yield? A.—Yes.

Q.—That didn't alter the quality? A.—No, that improved the yield.

Q.—In 1912, what was the suggestion he made to you? A.—I think we were giving it several different temperatures when sparging, and he told me to alter the temperature.

Q.—He told you to alter the temperature? A.—I can't remember exactly what temperature we used, but he told me to alter the temperature, and also to sparge so we could get more yield.

Q.—It was still unsatisfactory from the standpoint of yield? A.—It was getting better. 30

Q.—It was unsatisfactory still? A.—I couldn't call it unsatisfactory, because whiskey like that will always be yielding bigger quality, and going up in price.

Q.—What determines the price, quality? A.—Yes, quality.

Q.—This was more or less an obsession with him; was it not? A.—No, it was not; he was thinking of finding something new, and better than anybody else had made.

Q.—And he had tried the "Epicure?" A.—Yes. 40

Q.—And now he was trying this?" A.—Yes.

Q.—Has it ever matured sufficiently to tell whether it is good whiskey or not? A.—We were interested in the policy of the firm, but not interested in seeing if that matured well.

Q.—This was a fad of his own? A.—This was his own idea.

Q.—It was a fad of his own? A.—It was his own idea.

Q.—Then, in 1913, did either you or he make any other suggestion?

A.—We decided we would make two other mashings, a larger quantity, which we did.

HIS LORDSHIP: Well, did you know that E. C. Walker had this debated with his fellow directors as to whether it would be put on the market, that year? A.—I don't know that.

Q.—They would not take you into consultation as to that? A.—No.

MR. McCARTHY: All this was purely experimental? A.—Yes, a preliminary experiment.

Q.—And apart from the settled policy of the firm? A.—Yes.

10 Q.—And the whole story is this: In 1910 he wanted to get a new whiskey different from the "Epicure," by substituting rye for barley malt? A.—You can't get it from rye malt except you use rye malt.

Q.—You reported the yield? A.—No, the result couldn't be obtained right away, but it could be improved on.

Q.—The yield was unsatisfactory? A.—I said the yield could be improved on; it is not the same.

Q.—It is not important. In 1911, 1912 and 1913 certain other suggestions were made, by either of you, with regard to improving the yield? A.—Yes.

20 Q.—That is the whole story? A.—That is the story.

MR. OSLER: I will read from the commission sent to England.

HIS LORDSHIP: What is the general nature of it?

MR. OSLER: Three witnesses; Albert Lund, Gilbert Sylvester Harriss, and Alfred Eugene Florigny, employees in the London Office, who met Mr. E. C. Walker, were examined, as well as Edward George Cundle, a representative of Messrs Thomas Agnew & Sons, who speaks of his having engaged in the purchase of a picture at that time. I will give your lordship the actual transaction with regard to the pictures.

(Mr. H. C. Walker reads the evidence of Albert Lund.)

30

EXHIBIT NO. 33

Depositions of Capt. Albert Lund, Alfred Eugene Florigny, Edward George Cundle and Gilbert Sylvester Harriss, witnesses on behalf of the Defendants in this action, taken pursuant to the Order of Charles Garrow Esq., K.C., Master of the Supreme Court in Chambers, dated the 12th day of April, 1924, before me, Russell Davies, Barrister-at-Law, Commissioner, appointed under the said Order, at Goldsmith Building, Temple, London, England, on Thursday, 1st May, 1924.

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N. C. Ortved
Cross-Ex-
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Exhibit
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Depositions
read at
Trial.
19th May,
1924.

MR. R. A. WILLES (instructed by Messrs. Linklaters & Paines) Appeared as Counsel for the Defendants.

40 MR. A. T. BUCKNILL (instructed by Charles Russell & Co.) Appeared as Counsel for the Plaintiff.

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It was agreed between the parties that the evidence of the witnesses should be taken down by a Shorthand Writer and transcribed, and that the reading over of the transcript to and the signature by the witnesses should be dispensed with.

George Whitefield King (of Messrs. Walsh & Sons) a Member of the Institute of Shorthand Writers was sworn as Shorthand Writer.

MR. BUCKNILL: I do not know whether it is the practice in Ontario that the witnesses in waiting should not be present, but I am instructed to ask that they should not be present here.

(The witnesses Alfred Eugene Florigny, Edward George Cundle and Gilbert Sylvester Harriss were requested to leave the room, and did so.) 10

CAPTAIN ALBERT LUND, Sworn. Examined by MR. WILLES:

1. Q.—I think you are a director of the Company of Hiram Walker & Co., Ltd.? A.—Yes.

2. Q.—I think that is the Company of which the late Mr. Walker was Chairman? A.—Mr. E. C. Walker was President.

3. Q.—Was he President of it up to the date of his death? A.—Yes.

4. Q.—For about how many years have you known or did you know the late Mr. E. C. Walker? A.—Close upon 40 years from this date. 20

5. Q.—For about how many years have you been connected with the Company of which he was President? A.—33 years.

6. Q.—And during a period of that time, were you both of you co-directors of the Company? A.—No, I have been a director since 1909.

7. Q.—And he was a director long before that? A.—Yes, with his father.

8. Q.—Were you connected with the Company before you became a director? A.—Yes.

9. Q.—For about how many years have you had any common business interests with the late Mr. E. C. Walker? A.—33 years.

10. Q.—Did you see him throughout that time frequently or not? A.—Frequently. 30

11. Q.—And had you an opportunity of determining his business capacity and his general intelligence? A.—Most certainly.

12. Q.—What sort of a man was he; what sort of physique had he? A.—He was a tall typical type of American gentleman; clean-shaven and most particular about his dress. He was very keen on pictures. I knew him before I met my wife, because my wife was a great friend of his father's.

13. Q.—You had known him socially as well as in business? A.—Yes.

14. Q.—During your intercourse with him, what was your experience as to his business capacity? A.—Very clear. I think his business capacity was very good indeed. 40

15. Q.—Did you have an opportunity of determining whether he had a good memory? A.—Most certainly.

16. Q.—Had he a good memory? A.—Yes.

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tion-in-
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17. Q.—Did you have an opportunity of determining from your intercourse with him whether he was mentally capable of understanding the management of his property? A.—Most certainly.

18. Q.—Was he capable of understanding the management of his property? A.—Most certainly.

MR. BUCKNILL: I do not know whether you could give me any indication as to during what part of the 33 years.

10 18a. MR. WILLES: You shall have that later on. (To the witness) You say you saw him frequently. Can you tell us about how frequently in the later years before 1913, say, you saw him? A.—Being a director, I attended the Board meetings at which he was often present, and he would come over here on visits. I would see him then socially and on business matters.

19. Q.—Would that be every year? A.—Every year or two. If I was out there, I would see him practically every year.

20. Q.—I think the last year in which you saw him was 1913 was not it? A.—That is right.

21. Q.—I think that was when he was over here? A.—Yes, in London.

22. Q.—You are the Manager in charge of the London Branch of the firm's business, are you not? A.—I am the Managing Director resident in London of Hiram Walker & Sons' business.

20 23. Q.—In 1913, I think your office was in Cockspur Street? A.—20 Cockspur Street.

24. Q.—After 1913, and indeed during the war, I think your office changed its position several times, did it not? A.—Yes, we were commandeered.

25. Q.—You were commandeered twice or more? A.—We first of all had to go to Waterloo Place. Then we were removed from that place and had to go to Lincoln's Inn Fields. Then from Lincoln's Inn Fields, when peace was declared, we went to our present address.

30 26. Q.—As the result of your movements, I daresay your documents were not as easy to trace as they would have been? A.—They were very hard to trace.

27. Q.—Have you since this investigation became necessary had the documents at your office, so far as they relate to communications with the late Mr. E. C. Walker, traced and extracted? A.—Yes.

MR. BUCKNILL: I object to that question because it can only be hearsay.

28. MR. WILLES: I asked him the fact whether he had caused it to be done. I am going to call the man who did it. (To the witness) The question is this. Since the necessity for your giving evidence in this case arose, have you caused the records of your office in London to be examined for the purpose of producing extracts from your books? A.—As well as in my power.

40 29. Q.—Such as related to this matter?
(Question objected to).

A.—Yes.

30. Q.—Do you know a Company which is called the Trinidad Leasehold Ltd.? A.—Yes, I do.

31. Q.—Had you any connection with that Company? A.—The previ-

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ous Company used to be called the General Petroleum Company. Then there was a Syndicate formed and I was a director of the Syndicate and Petroleum Company.

32. Q.—Can you tell me whether in the year 1913 you were a director of that Company, the Trinidad Leasehold Ltd.? A.—Of the Syndicate, or the Petroleum Company?

33. Q.—You say you were a director. Were you a member? A.—Yes, I was a director. I cannot quite say that. I think probably I was, but I cannot quite say.

34. Q.—Can you tell me whether the late Mr. E. C. Walker was in any way connected with the Company or the Syndicate? A.—Certainly. 10

35. Q.—In what way? A.—With his two brothers, to put up the capital for finding the oil in Trinidad. Then they made it into a Syndicate with a man called Mr. Randolph Rust.

36. Q.—Was that before the Petroleum Company was floated? A.—Yes.

37. Q.—Then what happened when the Petroleum Company was floated? A.—Then they wanted more capital and it was formed into the Leasehold. I think it was the Central Mining Company.

38. Q.—Did you ever have any conversation in relation to this business with the late Mr. Walker? A.—About the oil business? 20

39. Q.—About what you have just told us; about the Syndicate and the Petroleum Company? A.—Yes I did, certainly.

40. Q.—Can you remember whether you ever wrote to him about it?

MR. BUCKNILL: I object to that question.

MR. WILLES: As to whether he ever wrote to him?

MR. BUCKNILL: I object to it.

MR. WILLES: I do not know whether I can take a ruling on the objection.

THE COMMISSIONER: I take a note of it.

41. MR. WILLES: Do you remember whether you ever wrote to him with reference to this business? A.—I believe I did; I am sure I did. 30

MR. BUCKNILL: I object till the copy of such a letter is produced.

42. MR. WILLES: Will you look at that copy letter. What is the date of it?

(Question objected to).

A.—The 1st of July, 1913.

43. Q.—Looking at that document, can you remember whether you wrote to Mr. E. C. Walker with reference to the matters you have mentioned about that time?

(Question objected to).

A.—Yes. 40

44. Q.—First of all, does that letter refer to that business?

(Question objected to).

A.—Yes. It is addressed to him there in Paris.

45. Q.—I understand the copies of your letters are kept in letter books? A.—Yes.

46. Q.—Do you object to sending your letter books to Canada? A.—For business purposes it would be awkward to part with the books.

47. Q.—Looking at that letter, will you tell us whether you communicated with the late Mr. Walker with reference to this matter about the Trinidad Company and, if so, at what period?

MR. BUCKNILL: I object on the ground that it is secondary evidence of the contents of the letter.

MR. WILLES: Looking at that letter, can you tell us whether, and if so when, you talked to Mr. Walker about it at all?

(Question objected to).

10 A.—It would be probably just before he went over to Paris.

48. Q.—About how long before that letter was dated? A.—It would be, say ten days before the 1st July, 1913; something like that.

MR. WILLES: I tender the document, as an Exhibit now.

MR. BUCKNILL: I object.

(The copy letter dated 1st July, 1913, was handed in and marked "A. L. 1.")

49. MR. WILLES: Was the discussion about this business, for the provision of capital for the Trinidad business, of such a nature as to give you an indication at that date of Mr. Walker's business capacity.

20 MR. BUCKNILL: I object on the ground that it does not show the discussion between this witness and the late Mr. Walker.

MR. WILLES: Was the discussion of such a character as to enable you to form an opinion of the late Mr. E. C. Walker's business capacity at that date?

A.—Most certainly it was.

50. Q.—Did you find any change in his usual business capacity at that date? A.—Nothing at all.

51. Q.—Your Company is a distillery Company, I think? A.—That is right.

52. Q.—Did your company ever deal or contemplate dealing in malt whisky? A.—What was the name of the whisky; "Epicure" was it not?

30 53. Q.—Yes, Epicure? A.—Most certainly.

54. Q.—Was the late Mr. E. C. Walker concerned with that? A.—Certainly as being President of the Company.

55. Q.—Did you have any discussions with him about the sale of Epicure whisky? A.—Often.

56. Q.—What was the nature of the discussion you had with him? A.—About the registration of the mark for the Eastern Hemisphere.

57. Q.—The registration of the mark of what? A.—Of Epicure whisky and for the advancement of the brand in England and the Eastern Hemisphere.

40 58. Q.—Was the late Mr. E. C. Walker interested in that? A.—He certainly was as President of the concern of Hiram Walker & Sons. It belonged to Hiram Walker & Sons.

59. Q.—Now, will you look at the copy letter of the 23rd September, 1913.

(Document handed to the witness).

Do you produce that copy letter? A.—I produce this copy letter.

60. Q.—Did you write it? A.—I dictated it.

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61. Q.—And signed it, I suppose? A.—Yes.

MR. BUCKNILL: I object to that copy letter going in as an Exhibit.
(The copy letter was handed in and marked A. L. 2.)

62. MR. WILLES: (To the witness): Have you the copy before you? A.—I have.

63. Q.—Looking at that letter, can you tell us whether you communicated with the late Mr. E. C. Walker on this subject of the trade-mark of Epicure in 1913?

(Question objected to).

64. Q.—Can you tell us whether you discussed the question of Epicure with E. C. Walker in 1913? A.—On several occasions during his stay in London about that time. 10

65. Q.—What is the date of the letter? A.—23rd September, 1913.

66. Q.—Was the discussion of that matter of such a character as to enable you to form an opinion as to the mental capacity in business of the late Mr. E. C. Walker?

(Question objected to).

A.—Yes.

67. Q.—The question is this. Was the nature of that discussion about the trade-mark of such a kind as to enable you to form an opinion as to the business capacity of the late Mr. E. C. Walker at that date? A.—I am quite sure of it. 20

68. Q.—And did you find any difference in his business capacity at that date from that which you have told us before?

(Question objected to.)

A.—None whatever.

69. Q.—Did you ever see the late Mr. E. C. Walker after that date? A.—Referring to this letter of September 23rd, I think I must have been in Canada, but I am not quite sure of the time when I left for Canada. I went over for a Board Meeting there, but I think it would have been very close to that letter. Of course, it is here signed Albert Lund. It is very hard to remember all these dates in 1913. 30

70. Q.—Just look at the last line of the letter and tell us, in view of that, whether you had left? A.—I must have been here.

71. Q.—Do you remember whether you saw the late Mr. E. C. Walker when you went over to Canada? A.—In August we crossed. I went over to the Board Meeting and he was going back to Canada. Therefore, I did not meet him again.

72. Q.—Then did you never meet him again before his death? A.—No.

73. Q.—Did you ever in the course of your intercourse with Mr. Walker see him in the presence of his brothers? A.—Often, for the last 33 years. 40

74. Q.—With his brothers and his wife? A.—Yes.

75. Q.—You met them socially? A.—Certainly.

76. Q.—What was the character of their relation to one another? A.—Most friendly. I have never seen three brothers, the eldest brother the President, the second brother the Managing Director, and the third brother the

Treasurer, more friendly, and they worked together in the most friendly nature.

77. Q.—During the last period of the time you saw Mr. Walker personally, did you ever see any signs of alteration in his normal health? A.—None whatsoever, both socially and in a business way.

78. Q.—I say his normal health? A.—No alteration at all. For the 40 years I have known him, I saw no alteration.

79. Q.—Was he a talkative man? A.—No, not at all. He was quiet, but he could tell a joke now and then. At social events, luncheon or tea, he could always talk to ladies and enjoy his tea and things like that.

10 HIS LORDSHIP: Did counsel attend on this occasion?

MR. WALKER: The counsel were Mr. A. T. Bucknill, for the plaintiff, and Mr. R. A. Willes, for the defendant.

(Mr. McCarthy states that all the questions asked this witness, down to number 69, are objected to. And the objection taken upon the examination to the letter dated September 23rd, 1913, addressed to Edward C. Walker, at Hotel Royal, Dinard, France, was also taken by Mr. McCarthy at the trial.)

HIS LORDSHIP: He submitted drawings or drafts of the trade-mark, and the effect of it is he did not see any change in his mental capacity, therefore, E. C. Walker was capable of judging about the trade-mark.

20 MR. MCCARTHY: That is the point; we do not know.

(Mr. McCarthy reads the cross-examination.)

CROSS-EXAMINED by MR. BUCKNILL:

80. Q.—Are you a shareholder in the Walker Company? A.—In Hiram Walker & Sons, Ltd.

81. Q.—And a director? A.—Yes, the director resident in London.

82. Q.—You were engaged by Mr. Robins in 1888 were not you? A.—I do not think so; it was by the firm Hiram Walker & Sons Ltd. It was about that date, but I was not engaged by Robins; I was engaged by Hiram Walker & Sons Ltd.

30 83. Q.—Were you not promoted through Mr. Robins' influence in 1890? A.—I do not think so. I think the three brothers, Mr. E. Chandler Walker, Franklin H. Walker and Harrington Walker decided that.

84. Q.—At that time, you were a friend of Mr. Robins, were not you? A.—I knew him in a business way.

85. Q.—Only in a business way? A.—Yes, friendly and socially and in a business way.

86. Q.—Do you still consider yourself a friend of his? A.—No.

87. Q.—Mr. Robins was in London in 1913 was not he? A.—I cannot tell you that; I cannot be sure of the date.

40 88. Q.—Do you remember going out to Canada after Mr. Robins' visit in 1913; just before the war, I suppose? A.—I do not remember that. I think I was out there in 1916.

89. Q.—In 1916 Mr. Robins had left Canada, had not he? I think he left Canada about November of 1913? A.—I cannot tell you that.

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90. Q.—Do you remember going out to Canada some little time before Mr. Robins left there? A.—I remember being out there after he left the firm.

91. Q.—You were in the neighbourhood of where Mr. Robins was residing? A.—Yes.

92. Q.—You did not go to see him or communicate with him, did you? A.—I am not quite sure about that.

93. Q.—I put it to you that you did not? A.—I saw him.

94. Q.—I put it to you that you did not call on him or communicate with him in any way? A.—No.

95. Q.—Is that true? A.—I am not sure about that at all; I cannot remember it. You say that was 1913. 10

96. Q.—1913? A.—That was the year before the war. I think you are wrong or he is wrong. I think it was 1916, during the war.

97. Q.—Who was it who first asked you if you would give evidence in this case? A.—This firm of solicitors here, Messrs. Linklaters and Paines.

98. Q.—Have you got in your possession any letter from them with regard to your giving evidence? A.—No.

99. Q.—Did you receive any letters from them? A.—From whom?

100. Q.—From the firm of solicitors? A.—No.

101. Q.—How did you get into touch with them? A.—Messrs. Linklaters and Paines telephoned to me. 20

102. Q.—Have you had any correspondence with them with regard to giving evidence? A.—No.

103. Q.—Have you had any correspondence from anybody else with regard to giving evidence? A.—No, Who would I have had it from if it was not from the firm?

104. Q.—I cannot tell you? A.—I want to be truthful.

105. Q.—I am not suggesting you have; I am merely asking you whether you have? A.—No.

106. Q.—I suppose, after you had a telephone message from these solicitors you went and saw them? A.—No, I did not; they came and saw me. 30

107. Q.—Did anybody else discuss with you the question of giving evidence? A.—What do you mean; any of my co-directors?

108. Q.—Anybody? A.—No, nobody discussed the thing at all. Mr. Jackson asked me a whole lot of questions at my office and I answered them to the best of my ability, and I think I put my signature to it. Then I thought the whole thing was finished, but apparently it is not.

109. Q.—I want to know, first of all, the date when your solicitors came to see you? A.—I cannot tell you that now. I can find that out in the office calls-book. 40

110. Q.—You say you signed a document? A.—No, I gave an affidavit and I said "This is to the best of my belief" and I signed my name.

MR. BUCKNILL: I should like to see it and I call for it.

MR. WILLES: Of course, my friend must make this an exhibit, if he calls for it. I object to producing it unless he is going to put it in. My friend must determine whether he puts the document in or not. He cannot look at it first.

THE COMMISSIONER: Yes. I think that is right; you are entitled to call for it, but if you call for it, it goes in.

(The document was produced, handed in and marked "A. L. 3.")

111. MR. BUCKNILL: With the exception of that document, are there any other documents that you have in your possession with regard to your giving evidence? A.—Nothing at all.

112. Q.—Or any correspondence? A.—Nothing at all.

113. Q.—You say the only person who has spoken to you is Mr. Jackson. Is that right? A.—That is right. This gentleman here.

10 114. Q.—Nobody else? A.—No.

115. Q.—Is Mrs. Walker in England now? A.—Mrs. E. C. Walker?

116. Q.—Yes? A.—Not to my knowledge.

117. Q.—Has she at any time spoken to you about giving evidence? A.—Nothing at all. The last time I saw her was two or three years ago. I do not know that Mrs. E. C. Walker, or Mrs. F. H. Walker, or any of them are over here.

118. Q.—You say that you saw Mr. E. C. Walker in 1913? A.—Yes.

20 119. Q.—What was the date when you first saw him in 1913? A.—I should say about July. I have not my note books and everything else, but I should say about July.

120. Q.—Where did you see him? A.—At my office and at my private house, 33 Hans Mansions.

121. Q.—In 1913, I want to know rather closely the first occasion you saw him? A.—When he was over here, about the 10th of June. He sent me a wire that he was going to arrive in London; that he was arriving that evening.

122. Q.—You say he sent you a wire; all you have is that you received a telegram? A.—Yes, and naturally, being President of my Company, I would call on him the next morning.

30 123. Q.—About what date would that be? A.—About the 11th or 12th June.

124. Q.—Where did you see him? A.—Claridge's to the best of my belief.

125. Q.—Who was present when you saw him? A.—I cannot tell you that. I cannot remember, but I might have seen his valet or anybody else. I went in there as a co-director. I think his wife was there with him.

126. Q.—Was his wife present? A.—His wife was in the hotel with him, but whether she was there at the time I cannot remember. If I wanted to talk business with him, probably she would not have been present.

127. Q.—Is the answer you cannot remember? A.—I really cannot remember.

128. Q.—How long did you see him for? A.—I cannot remember that.

40 129. Q.—Was it an hour? A.—No, it would not be an hour; it would be about half an hour, say, because I used to call upon him on my way down to the office.

130. Q.—On this particular occasion, on the first occasion, you saw him in answer to the telegram, at Claridge's? A.—Yes.

131. Q.—What did you discuss with him? A.—I cannot tell you.

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132. Q.—Was he as clear-minded then as he was 33 years previously?
A.—Quite as clear as he was 40 years ago; 33 years ago anyhow, since I have been in the employ of the firm.

133. Q.—Did you notice any vagueness in his talk? A.—None whatsoever.

134. Q.—Did you notice that he was unable to concentrate his mind? A.—No.

135. Q.—Did you notice any ageing of his mind at all? A.—No.

136. Q.—None? A.—No. He held himself as straight there as he did 33 years ago when I saw him. 10

137. Q.—I am referring to his mind? A.—I saw no difference.

138. Q.—He was just as clear as he was 40 years previously? A.—Say 33 years ago, since I have been in the employ of the firm.

139. Q.—You would not say that during the last 8 or 9 years of his life he had been failing mentally? A.—How old was he when he died?

140. Q.—I am afraid I cannot tell you? A.—Naturally when a man is about 66 or 70, he is not so active.

141. Q.—That is physically. I am talking about mentally? A.—Mentally, no difference at all.

142. Q.—You would not say he was failing mentally? A.—I am perfectly sure there was no change mentally at all. 20

143. Q.—Did you ever notice that he repeated his question? A.—No.

144. Q.—Or got drowsy while you were talking to him? A.—No.

145. Q.—Do you suggest that in June of 1913, he was capable of carrying on and transcating in his mind any complicated business matter? A.—Certainly, he was quite capable. Naturally, he being President of the Company would leave the details for me.

146. Q.—But you were in a position to judge? A.—Yes, I was.

147. Q.—Would you say, when you saw him at Claridge's in June of 1913 that he was capable of coping with any business transaction however complicated? A.—Without a doubt. 30

148. Q.—When did you see him after the occasion you saw him at Claridge's after the telegram? A.—I should say about the 20th of June.

149. Q.—On how many occasions did you see him during that visit in June to England? A.—As far as I remember, I think he was only in England about a fortnight.

150. Q.—During that particular visit, before he went abroad? A.—Practically every day. He would come down to my office, or I would call upon him on my way to the office in the morning.

151. Q.—You have dealt with the first occasion. Would there be any books in your office which would show the occasions when he called there? A.—Yes, we have got a calls-book, but then as I say, during the war, our office was commandeered and these call-books are not things you keep. 40

152. Q.—Can you produce the calls-book for June, 1913? A.—I doubt it, but I will try.

153. Q.—I should like to see it, if it is in existence. If he came to the office, would his name go into the calls-book? A.—Not necessarily.

154. Q.—What other books are there in the office which would show that he was there in June 1913? A.—Except my clerks will prove it to you. He would come into the office and sometimes in the afternoons. Sometimes he would have a cup of tea in the office, but I really cannot remember how often he came, in those days. Naturally we would not put in in the calls-book when he came in for a cup of tea.

155. Q.—I am asking about when he came to transact business in the office. What documents are there that would show he came there? A.—I will hunt it up, if you want it.

10 156. Q.—I want the dates some time.

MR. WILLES: I have not any books here. I have a man who has made a search in the records.

157. MR. BUCKNILL: I want to know if he transacted business there? A.—He talked to me but I cannot tell you those dates.

158. Q.—On how many occasions do you say he came to the office? A.—I cannot tell you that; it is so impossible, so many years back, but whenever he was over here, I used to see him there practically every day.

159. Q.—You said that, but I want to get at the number of occasions he transacted business in 1913? A.—When you transact business with your
20 principal, it may be at tea, lunch or in the evening, but he often used to come in with his wife and come into my room and say "How are things getting on," and give a general opinion, but I cannot give you the dates.

160. Q.—The answer is, you cannot remember the dates? A.—Really I cannot.

161. Q.—On how many occasions did you see him at Claridge's during that period? A.—I cannot remember that.

162. Q.—But however many occasions there were throughout June, there was no change at all in his mental capacity? A.—None whatsoever.

163. Q.—And throughout June, you saw no sign of any mental incapacity
30 at all? A.—I did not.

164. Q.—During the whole of that time, in June 1913, was he as clear mentally as he was during the 33 years you saw him? A.—I think so.

165. Q.—Is there any record of any business done by him in June? A.—In June I wrote to him about this Epicure matter.

166. Q.—That is a letter written by you; I mean business transacted by him? A.—I cannot remember; it was ordinary general business. It is 11 years ago now.

167. Q.—The question is whether there is any record of his having transacted business in June, 1913? A.—What do you call "record?"

40 168. Q.—A note in a diary or a letter written by him? A.—I never keep those things at all. If the President of my Company talked to me about ordinary business matters, I would not keep a note of those things.

169. Q.—But if he signed a document? A.—But, I cannot say whether he signed it. He talked to me and he had trust in me.

170. Q.—The question I asked is whether you have any record of any document which emanated from him on any business question in June, 1913?

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In the
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Court of
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Defendant's
Evidence.

No. 36
Albert Lund
Cross-Ex-
amination,
19th May,
1924.

—continued

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*In the
Supreme
Court of
Ontario*

Defendant's
Evidence.

No. 36,
Albert Lund
Cross-Ex-
amination,
19th May,
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—continued

A.—I do not think I have, because it would have been of a private nature and those documents were all destroyed when we were commandeered from one office to another.

171. Q.—The answer is, you cannot produce any documents? A.—Not at present, but I think I could find documents, if I went to the trouble. But I think they are all destroyed.

172. Q.—Do you say he was a man of generous instinct? A.—Most decidedly.

173. Q.—Man of fine character? A.—A very kind hearted man.

174. Q.—And a fine character? A.—What do you call fine character? 10

175. Q.—A man of generous nature and a man who would not do anything which was what I call a dirty thing? A.—That is so. He was of very fine character and a kind hearted man.

176. Q.—Have you ever had any conversation with regard to giving evidence with a Mr. Miller Lash? A.—No, never. He is a co-director of mine.

177. Q.—You have never spoken to him about it? A.—Never, I have not seen him for two years.

178. Q.—You say you saw Mr. Walker in June practically every day. When did you next see him? A.—I do not think I saw him again after that.

179. Q.—He came back to England in October. Did you see him then? 20
A.—No, I was out in Canada attending a Board meeting and, as I came back from the Board meeting, he was going back to Canada. In fact we crossed on the ocean.

180. Q.—The last occasion when you saw him was in June, 1913? A.—Yes, I have given you the date.

181. Q.—Can you remember anything you discussed with him in June, 1913? A.—About this registration of Epicure whisky and oil matters.

182. Q.—I want to know about the registration. Who initiated the discussion? Did you? A.—Yes.

183. Q.—What part did he take in the transaction? A.—He thought it 30
a very good thing to have it registered and we put it through our register people, Messrs. McKenna & Co. Mr. Walker looked after that.

184. Q.—Is the answer to that, that you suggested the whisky should be registered? A.—No, he was as keen as anything about the registration of the whisky called Epicure.

185. Q.—The initiation of the matter came from you? A.—No.

186. Q.—Did not it come from you? A.—No, he was my boss.

187. Q.—When do you suggest it was? A.—At one of these meetings shortly after he came over. 40

188. Q.—In June of 1913? A.—Yes.

189. Q.—Do you remember who was present besides yourself? A.—I do not think anybody was present; I cannot remember, but my then secretary might have been present.

190. Q.—Who is he? A.—Mr. Miller.

191. Q.—Is he here? A.—No, he is dead.

192. Q.—How often did Mr. Walker refer to the whisky registration?
A.—I cannot tell you that really. He might have referred to it three or four

times, but really I cannot remember. I want to tell you these things to the best of my belief.

193. Q.—What other business matters did he refer to in June, 1913? A.—He would talk about the general business of the firm of Walker.

194. Q.—That would naturally come from you as the London Manager? A.—Not a bit; he would talk to me. He would say "You will be pleased to hear so and so." It was a general talk about general business.

195. Q.—What other matters? A.—Because I could not ask him questions and say "How much dividend are you going to pay next year?"

10 196. Q.—With the exception of that, what other business matters? A.—I cannot remember that, really; a lot has happened in the last 11 years.

197. Q.—At any rate, if your evidence is to be accepted, I have made this clear, have not I, that he was discussing with you substantial matters of business? A.—Without a doubt and if I had any trouble and wanted his advice, I would have asked him for it.

198. Q.—That is in the year 1913? A.—Yes.

199. Q.—Therefore, if your evidence is to be accepted, his mind was pretty severely tested? A.—How do you mean "tested"?

200. Q.—Tested as to whether it was capable or not? A.—Without a
20 doubt it was quite capable.

201. Q.—And throughout the whole of that you never say any trace of wavering in his mental capacity? A.—I never say anything at all.

202. Q.—No trace at all? A.—No.

203. Q.—He was just as clear in June, 1913 as he was during the 33 years? A.—I think so.

204. Q.—I am looking at this document which you called a proof, which you signed. You were asked this question: "State your opinion generally as to his mental capacity to make a will on the 27th February, 1914? (A) In my opinion up to September, 1913, he was in every way of an ample capacity to made a valid will." You had not seen him since June? A.—I had letters from
30 him though, to the office.

205. Q.—Have you the letters? A.—They are letters to my office on business matters.

206. Q.—Letters signed by him? A.—I do not know whether they are signed by him, but it was correspondence.

207. Q.—If there are any letters signed by him, I should like to see them. Have you any? A.—I do not know.

208. Q.—It says here, "Did you correspond with him and receive letters from him? (A) Yes, most certainly, but after the lapse of time and several removals, I think I cannot produce his letters." Have you since you signed this
40 been able to find any of his letters? A.—No.

209. Q.—Then it says, "Do you know whether the testator suffered from any bodily ailment? (A) Not to my knowledge; occasional chill caused by travelling. No operation. I should call him a healthy man." When you saw him in June, was he apparently, as far as you saw, a perfectly healthy man? A.—Yes. Perfectly mentally healthy in every way.

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No. 36
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210. Q.—Not only mental health, but physically healthy? A.—Naturally he would have a cold, but no operation; no doctors as far as I know.

211. Q.—With the exception of a cold, apparently capable bodily? A.—I quite agree.

212. Q.—In June of 1913? A.—In June of 1913.

HIS LORDSHIP: Mr. Bucknill represented the plaintiff, and yet, on the examination, he seems more hostile to your case than the other one.

MR. MCCARTHY: I think he carried it to the full limit. The examiner's view was that this man had told the story, and he let him go as far as he liked. 10

HIS LORDSHIP: The question of general opinion as to mental capacity was asked by your agent in England; that has to be taken, that is put in.

(Mr. Walker reads the evidence of Alfred Eugene Florigny.)

No. 37
A. E. Flor-
igny
Examina-
tion-in-
Chief.
19th May,
1924.

ALFRED EUGENE FLORIGNY, Sworn. Examined by MR. WILLES:

1. Q.—I think you are the accountant of the Company? A.—Quite right, in the London office.

2. Q.—And I think you have been in the London office for a number of years? A.—32 years.

3. Q.—As accountant? A.—Not the whole time.

4. Q.—Perhaps you were junior when you joined and you are now ac- 20
countant? A.—Yes.

5. Q.—Were you accountant in 1913? A.—Yes.

6. Q.—During the time when you were in the service of the Company in the London office, did you from time to time see the late Mr. E. C. Walker? A.—Yes, on many occasions.

7. Q.—About how often a year on the average did you see him? A.—I expect I saw him every time he came in the office.

8. Q.—Did you meet him in circumstances which enabled you to form any opinion as to his business capacity?

(Question objected to.)

A.—Yes, I should think so, as regards financial matters. 30

9. Q.—What opinion did you form of the late Mr. E. C. Walker's business capacity? A.—As far as I was concerned, I should say his business capacity was quite good in every way.

10. Q.—In your experience, what was his usual mental condition? A.—Quite good; quite normal.

11. Q.—Did you have any opportunity of determining whether or not he had a normal memory? A.—I think so, as far as I can judge.

12. Q.—Have you since you heard of coming to give evidence here gone through the records of your office and taken extracts from your records of all references to documents which you had anything to do with or which bear any relation to the communications with or about the late Mr. E. C. Walker? A.—Yes, the correspondence and copy of the account? 40

13. Q.—And letters? A.—Yes.

14. Q.—Do you produce that letter?

(Question objected to.)

Is that the thing that you have made and are you prepared to swear that the contents of this bundle—and I see you have original documents attached—are correct copies of all the entries you have in the office which relate to communications about or with the late Mr. E. C. Walker in 1913 and onwards?

A.—Yes.

(The documents were handed in and marked "A.E.F. 1")

10 MR. BUCKNILL: I do not want to make comments, but the last witness, I am told is now conversing with one of the witnesses outside. I am told Captain Lund is now conversing with Mr. Hariss.

MR. WILLES: He is not very wise. He has never given evidence before, but, of course, it ought not to be done, I tender that bundle now.

15. (To the witness): Do you remember whether you saw or had any communication with the late Mr. E. C. Walker in the year 1913? A.—Yes, I remember seeing him several times in June.

20 16. Q.—When he came to England and to Europe, what was done, if anything, about his financial arrangements? A.—The usual thing, I believe, as far as my memory serves me, is that he had a letter of credit which he would use as required.

17. Q.—Look at that document for a minute; perhaps, it will bring it to your mind.

(Mr. Bucknill objects to the witness looking at the document).

Looking at that document can you tell me if you communicated with the late Mr. E. C. Walker about financial matters in the year 1913, and if so, at what date?

MR. BUCKNILL: I object for this reason, that the document is not the original and, therefore, he cannot refresh his memory from it.

30 MR. WILLES: Is the document before you one which you copied from the original? A.—Yes.

18. Q.—I tender that evidence. Looking at that document, can you tell us when, if at all, you communicated with the late Mr. E. C. Walker with reference to financial matters in 1913?

(Question objected to.)

A.—It would be the 14th November.

19. Q.—In what way did you communicate with him? A.—With reference to the statement of accounts.

20. Q.—Did you keep any copy of the statement of accounts? A.—Yes.

40 21. Q.—Have you got it? A.—Yes, there is a copy of it.

22. Q.—Do you produce it? A.—Yes.

23. Q.—Is that a copy of the statement of accounts?

(Document handed).

(Mr. Bucknill objects).

(The document was handed in and marked "A.E.F. 2.")

24. Q.—Did you, during the later years in which you saw the late Mr. E.

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amination,

C. Walker, notice any change in his capacity for business or to manage affairs?
A.—No, I cannot say I noticed any change at all.

25. Q.—What sort of man did you find him; was he reticent or talkative, or what sort of a man? A.—No, he was, I should say, a very quiet man. He always spoke very quietly. He was not a great talker at any time. I would not have so much opportunity of judging that, because he would only talk to me with regard to finance, not general subjects.

(Mr. Foster reads the cross-examination.)

CROSS-EXAMINED by MR. BUCKNILL:

26. Q.—Who was it who first asked you what you could say about Mr. Walker's condition? A.—It was the gentleman from Messrs. Linklaters. 10

27. Q.—When was that? A.—That might be about 10 days ago.

28. Q.—Have you discussed the evidence you should give with Captain Lund? A.—No.

29. Q.—Never? A.—No.

30. Q.—Did Captain Lund tell you he was going to give evidence? A.—I knew Captain Lund was going to give evidence.

31. Q.—Did you know that before or after you saw the gentleman from Messrs. Linklaters? A.—Will you put that question again?

32. Q.—Did you know Captain Lund was going to give evidence before or after somebody from Messrs. Linklaters saw you? A.—After. 20

33. Q.—Did Messrs. Linklaters tell you that Captain Lund was going to give evidence? A.—I do not think they told me; I gathered it. I think I was there at part of the interview.

34. Q.—What interview? A.—Which the gentleman representing Messrs. Linklaters had with Captain Lund.

35. Q.—Were your proofs taken at the same time or how did the matter come about. Where did you see the gentleman from Messrs. Linklaters? A.—At our offices at Waterloo House, Haymarket.

36. Q.—Who was present when you saw him? A.—Captain Lund and Mr. Harriss, I believe part of the time. 30

37. Q.—You all three were present at an interview? A.—Yes.

38. Q.—With somebody from Messrs. Linklaters? A.—Yes.

39. Q.—Were you all three asked what evidence you could give with regard to the mental condition of the deceased Mr. Edward Chandler Walker? A.—I do not know that we were all asked. I know what I was asked. Mr. Lund was asked, but I will not say definitely whether Mr. Harriss was asked.

40. Q.—You were all three present? A.—I do not know whether Mr. Harriss was there the whole time. 40

41. Q.—Had anybody spoken to you before that with regard to giving evidence? A.—No, I do not think the question was raised.

42. Q.—If it had been, who would it have been who would have raised it? A.—If it had been raised by anybody, it would have been raised by Mr. Lund.

43. Q.—When would that have been? A.—That might have been perhaps a week prior.

44. Q.—Did he tell you that anybody before that had asked him to depose? A.—I do not know that he had been asked, but I believe he had some knowledge that the case was coming along.

45. Q.—Did he speak to you as to whether you could say anything? A.—No, I do not think so. I cannot remember at all, because I do not think it was imagined I could say anything really, not as far as he was concerned.

10 46. Q.—May I take it, then, that the first time you knew you were going to give evidence was when a gentleman from Messrs. Linklaters saw you? A.—Yes.

47. Q.—When did you know in fact that there was this probate action going on. When did you first know that? A.—I first knew definitely when Messrs. Linklaters' representative called upon us.

48. Q.—Had not you heard about it before? A.—I believe I had an idea. I believe Captain Lund said he had heard that there was likely to be a case.

49. Q.—This action was started a long time ago, was not it? This action was started in 1923. Had not you heard at all then? A.—I only heard of it recently.

20 50. Q.—Had not anybody told you there was an action going on? A.—I believe I heard there was an action going on on the other side, but I had not heard that anybody from the office was going to be called to give evidence.

51. Q.—When did you first hear that there was a Will in 1914? A.—I would not like to say. I cannot remember the point of the Will at all.

52. Q.—You knew it was an action about a Will? A.—Yes, I knew there was an action.

53. Q.—When did anybody tell you? Do you know now there was a Will in 1914? A.—I cannot say the date.

30 54. Q.—Do you know now there was a Will in 1914? A.—I believe there was a Will in 1914. I cannot say I had any particular interest or paid any particular attention to that.

55. Q.—Do not you know you are giving evidence in support of a will in 1914? A.—In support of a will; I do not say I knew it was in 1914.

56. Q.—When do you think it was? A.—I cannot say I know the date at all.

57. Q.—He died in 1915, did not he? A.—Yes.

58. Q.—Try and think. Somebody must have told you when it was you were going to give evidence in support of a will? A.—No, I cannot remember when the question of the date was raised.

40 59. Q.—Was it raised this year or last year? A.—It would be this year if at all, but I do not remember the question of any date arising.

60. Q.—Did not you know last year? A.—No, I knew nothing of this last year.

61. Q.—Nobody spoke to you about it? A.—No.

62. Q.—When did you first see Mr. Walker in 1913? A.—Somewhere in the early part of June.

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igny
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amination,
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63. Q.—Where did you first see him in June? A.—It would be in the office.

64. Q.—Who, was present? A.—I could not say.

65. Q.—Do you remember? A.—No, I could not say; I should say Mr. Lund would have been there.

66. Q.—Who else? A.—I could not say anybody else; Mr. Harriss would probably have been there.

67. Q.—Was the widow, Mr. Walker's wife, there? A.—No, I could not say definitely. He might come into the office casually. He might come alone, or sometimes Mrs. Walker would be with him.

68. Q.—What I want is the first occasion you saw him in 1913. Was his wife present? A.—As far as I can say I believe so.

69. Q.—The wife, Mr. Lund, Mr. Harriss and yourself? A.—Yes, but I am only saying probably Mr. Lund and Mr. Harriss. He might have come into the office when both were out.

70. Q.—Did he come into the office for a cup of tea? A.—He might have come into the office in the ordinary way to have a cup of tea or a talk or a look at the papers.

71. Q.—Is that what he would come into the office for? A.—To give any instructions or to see any letters.

72. Q.—Or look at the papers or have a cup of tea? A.—I will not say he had not a cup of tea; he might have had a cup of tea once or twice.

73. Q.—How often did he come to the office in June, 1913? A.—It is difficult to answer; I should say several times.

74. Q.—Are there any records in the books of the office to show how often he called in June, 1913? A.—I am afraid not.

75. Q.—Are there any books that would show? A.—I do not think so. If I might be permitted to say so, we should have a lot of difficulty in producing any books, because we moved during the war.

76. Q.—I have heard all that before. Do you say that the books for June, 1913, are or are not in existence? A.—That I could not say.

77. Q.—Have you looked to see? A.—No, I cannot say I have.

78. Q.—Therefore the answer is that you cannot tell me how often he was there in June? A.—I cannot, definitely.

79. Q.—If the books are in existence, they might be material? A.—They might. We used to keep call books, but books like that, after a number of years, would not be kept.

80. Q.—It would be very material to know the dates? A.—Yes.

81. Q.—Do you mean to say you have not looked? A.—No, I have not.

82. Q.—To find whether he called in June, 1913? A.—No, I have not.

83. Q.—Are you quite sure he did? A.—I am sure he did.

84. Q.—Quite certain? A.—Perfectly certain.

85. Q.—Will you tell us yourself whether he called there more than once? I want you to be careful? A.—I am not prepared to pledge myself.

86. Q.—You will not swear he called more than once? A.—No, I will not swear he called more than once.

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87. Q.—How long do you say he called for? A.—How long he would have stayed?

88. Q.—Yes? A.—He might have stayed half an hour.

89. Q.—With the exception of the office, did you see him anywhere else? A.—No, I think not.

90. Q.—Can you say you have known him for some 30 years? A.—I would not say I have known him for that number of years. I cannot remember when he first came over, but he had been in the habit of visiting England for a number of years.

10 91. Q.—For how many years have you known him personally? A.—I should think about 20 years.

92. Q.—Will you tell me how old you are? A.—48.

93. Q.—So you have had a good opportunity of judging right through the sort of mental capacity of the late Mr. E. C. Walker? A.—I came into contact with him.

94. Q.—You did come into contact with him? A.—Yes.

95. Q.—Would you say on the one occasion you have pledged yourself to, in June, that at that time he was as mentally capable as he was when you knew him 20 years previously? A.—Yes, I should say so.

20 96. Q.—What do you say about him physically? A.—Physically I did not notice any change, except the change when anybody gets older.

97. Q.—Capt. Lund said he might have had a cold; did you notice the cold? A.—It is too far back to remember.

98. Q.—You noticed no signs of physical deterioration in June, 1913? A.—I cannot say I noticed any.

99. Q.—And no signs of mental deterioration? A.—I cannot say I noticed any.

100. Q.—He was just as strong mentally then as he was 20 years back? A.—As far as I know.

30 101. Q.—Do you know whether he had any doctors in England? A.—I could not say. I came more into contact with him on the question of his accounts and things like that.

102. Q.—Did not you notice any vagueness in his talk? A.—Not at all.

103. Q.—You did not notice that he could not concentrate? A.—No.

104. Q.—Did you notice whether he was influenced at all easily? A.—I should not have much opportunity of noticing that, should I? He would give me instructions.

105. Q.—Did you notice it? A.—No.

40 106. Q.—So you are quite certain that in June, 1913, he was just as fit mentally and physically as he was 20 years back? A.—Quite, as far as I am able to judge.

107. Q.—Did you see him when he came back to London in October? A.—I do not think I did.

108. Q.—Just try and refresh your memory about that? A.—I could not say definitely.

109. Q.—If you did see him, did you notice any change? A.—No.

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igny
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110. Q.—He was just as mentally and physically strong then as he was in June? A.—I cannot say I noticed any change in the whole period I knew him.

111. Q.—You cannot say whether you saw him in October? A.—No.

112. Q.—Capt. Lund had gone abroad? A.—Yes.

113. Q.—Perhaps he did not come to the office in October? A.—That I am not quite sure; I could not say.

114. Q.—Do you think he did? A.—I cannot say; it is difficult to remember whether he came in October.

115. Q.—Are you sure you saw him at the office in 1913 at all? A.—Yes, because he gave me instructions with regard to a valet he engaged, with regard to making arrangements for paying the man. 10

116. Q.—Was that in June? A.—Yes.

117. Q.—Not in October? A.—Not in October.

HIS LORDSHIP: It is a strange thing that Mr. E. C. Walker would take up a thing like that (the trade-mark), when he had an office in London to do it.

(Mr. Walker reads the evidence in chief of Gilbert Sylvester Harriss.)

MR. GILBERT SYLVESTER HARRISS, Sworn. Examined by MR. WILLES:

No. 38
G. S.
Harriss
Examina-
tion-in-
Chief.
19th May,
1924.

1. Q.—I think you are in the employ of the Company of Walker & Sons Limited? A.—Hiram Walker & Sons. 20

2. Q.—And have you been in their employ for several years? A.—Since 1901.

3. Q.—Throughout the period in which you have been in their employ, have you been employed in their London office? A.—Yes.

4. Q.—From time to time has the late Mr. Edward C. Walker come to England? A.—Yes.

5. Q.—And have you seen him? A.—I have.

6. Q.—Have you had personal dealings with him as a servant of the Company? A.—You mean taking his instructions as to anything he wanted done? 30

7. Q.—That is what I mean? A.—Yes.

8. Q.—In the course of the time, about how often did you see him when he came over? A.—It is a difficult question to answer after a lapse of years.

9. Q.—As far as you can remember, about how many times on the average a year did you see him? A.—That I could not answer. I could not tell you how often he came over.

10. Q.—What was the last year that you can remember you saw him? A.—In 1913.

11. Q.—Down to that date did you have in your position in the office and in your dealings with Mr. Walker an opportunity of determining his mental capacity for business? A.—All my experience of him was that he was perfectly mentally capable of attending to any sort of business. 40

12. Q.—You saw nothing to the contrary? A.—Nothing whatsoever.

13. Q.—Throughout the period in which you saw him, down to the last time when you saw him, did you see anything which suggested to you any deterioration in his mental capacity? A.—Nothing whatsoever.

14. Q.—Did your Company sell, or have anything to do with the sale of a brand of whisky called "Epicure"? A.—"Epicure" whisky was a special brand of malt whisky which was distilled by the firm in Canada, and which was not actually put upon the market here. It was a special line, a special fancy of the late Mr. Edward Walker's. He took a great interest in it. You would not call it a hobby, but it was one thing he concerned himself particularly in the production of.

15. Q.—Do you remember whether you ever yourself had any communications with the late Mr. E. C. Walker about "Epicure" whisky? A.—Actual communications, none I should say. In 1913 he would have discussed it, probably, and there was some discussion as to a label.

16. Q.—Did you have a discussion, do you remember? A.—It is looking back a bit too far. His business discussions would have been with my principal, Capt. Lund.

17. Q.—Were you present when he came to the office as a rule, or not? What was your position? Your present position is secretary? A.—Yes.

20 18. Q.—What were you in 1913? A.—In 1913, as far as I can remember, I was shipping clerk.

19. Q.—Would you be in the same office as Mr. Lund; I mean in the same room? A.—Not in the same room; Mr. Lund would have a room of his own, and I was in the general office.

20. Q.—Do you remember whether you were ever present with Mr. Lund and Mr. Walker in 1913? A.—Yes, obviously, but I could not state any specific instances.

30 21. Q.—To the best of your recollection you would be present, but you cannot remember them all? A.—There would be probably an interview of some sort, or some business talk or something that arose out of this particular question.

22. Q.—Did you have a trade mark for "Epicure"? A.—No trade mark was actually registered to the best of my belief.

23. Q.—Was there ever one suggested? A.—It was discussed with the Trade Mark Owners Association, I think; the question of a label.

24. Q.—Do you know where the design which was discussed came from? A.—The actual design was not discussed as far as I can remember. It was put up to the Trade Mark Owners Association as to whether we could register such and such a mark or such and such a design in England, or such and such a label.

40 25. Q.—What I want you to tell me if you can is this: Who designed the trade mark that was put up? A.—As far as my recollection carries me, the actual design was not put up. The question of the label was put up only. I remember making some rough drawing of a design for the label, which was shown

MR. BUCKNILL: That must be hearsay.

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26. MR. WILLES: You made a design yourself, and it was offered? A.—
Yes.

27. Q.—A pencil design, and I think some rough designs were shown to
Mr. Walker?

(Question objected to.)

A.—That I could not tell you; it would have been in the company of the
principal.

28. Q.—You cannot remember yourself? A.—I cannot remember actu-
ally giving them.

29. Q.—You actually made the design? A.—I actually did draw out a 10
design; whether any notice was ever taken of it I do not know.

30. Q.—You cannot remember whether you ever showed it to Mr.
Walker? A.—I cannot remember.

MR. McCARTHY: All that evidence in regard to mental capacity is ob-
jected to.

HIS LORDSHIP: This witness is a shipping clerk, what does he know
about it?

(Mr. Foster reads the cross-examination.)

CROSS-EXAMINED by MR. BUCKNILL:

31. Q.—Was the label ever copyrighted? A.—I think not, because the 20
whisky was not put on the market here.

32. Q.—Was it copyrighted anywhere? A.—I could not tell you that.

33. Q.—When did you see Mr. E. C. Walker in 1913, if at all? A.—Up
till June I would say, when he left for Paris. I think it was June he left for
Paris, and possibly in the month he left for Canada. I cannot swear absolutely
to having seen him in October.

34. Q.—First of all let us take June. Where did you see him first in June,
1913? A.—That would have been at the London office, 20 Cockspur Street.

35. Q.—How often will you pledge your oath that he went to the London
office in June, 1913. I want you to be careful? A.—That is a question I cannot 30
answer. My memory is not sufficiently good to carry me back 10 years.

36. Q.—I want you to be careful about this: Will you swear he went
there more than once? A.—I will not swear to that.

37. Q.—Will you swear he went there once? A.—It is a difficult question
to answer, because it was so regular that one was in the habit of seeing him
every time he came to England and every time at the office.

38. Q.—That is probably what I thought; because he had in the past been
to the office, you assume, do you not, that he was there in June of 1913? A.
—Not necessarily; I cannot say that.

39. Q.—If that is not so, what other guidance have you that he was in 40
fact at the office in June of 1913? A.—My guidance is as my memory guides
me, but my memory is not good enough to tell me.

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40. Q.—I ask you whether you will swear he was there more than once?
A.—I will not swear.

41. Q.—If you did not see him at the office in June, did you see him anywhere else in 1913? A.—I could not carry my memory back as far as that.

42. Q.—How long had you known him? A.—I have known Mr. Walker as long as I have been with the firm, taking it from the first time he came over after I joined, and that I cannot tell you.

43. Q.—How many years would it be you have known him, about? A.—I joined the firm in 1901. If he came over in 1902, I knew him then.

10 44. Q.—You have known him for 10 years? A.—I have known him for over 10 years.

45. Q.—At any rate, you have known him for 10 years? A.—Yes.

46. Q.—If you saw him—I do not admit you did—in June of 1913, do you say in June of 1913 he was as mentally capable as he was 10 years previously? A.—Yes, I should say so.

47. Q.—Without doubt? A.—Without doubt.

48. Q.—Did you see any signs of any vagueness? A.—Not the slightest.

49. Q.—Or that he was unable to concentrate? A.—Not the slightest.

50. Q.—Did you see any signs of physical incapacity? A.—I did not.

20 51. Q.—I mean by that, bodily? A.—No.

52. Q.—Did he appear in June of 1913, if you saw him, quite a keen, capable, fit man? A.—Yes, I think so.

53. Q.—No signs of getting tired, or anything of that kind? A.—No, I did not see anything to that effect. He was not as young as a man is 10 years before.

54. Q.—I am afraid one never is. Do you think you saw him in October? A.—As I told you, I cannot swear whether he actually did come to the office, or whether it was only just for communications with regard to his passage and things.

30 55. Q.—At any rate, your belief is, if you did see him, that in 1913 he was as fit physically and mentally as he was 10 years previously? A.—Yes, I should say so.

RE-EXAMINED by MR. WILLES:

56. Q.—If you did not see him in June of 1913, is there any other time that you had any discussion about the whisky business, the label of "Epicure"? A.—No; therefore it is pretty obvious I must have seen him at the office. It shows very little doubt I saw him at the office in 1913.

FURTHER CROSS-EXAMINED by MR. BUCKNILL:

40 57. Q.—Did you realize the purport of having only one witness at a time in the room when this evidence was being given? Did you know the point of asking that? A.—No, but I imagined when we all came into the room it was rather strange.

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58. Q.—Did not you think it was because each of you should not hear what the other was saying? A.—I assume so.

59. Q.—After Capt. Lund gave evidence, did he speak to you? A.—He came out in the office.

60. Q.—Did he talk about the evidence? A.—No, not the slightest; he was only there five minutes.

61. Q.—What was he talking about? A.—He simply said: "You will not be long before you are here."

62. Q.—How long did he take to say that? A.—About two or three seconds. 10

63. Q.—Do you remember this gentleman (indicating) coming out? A.—No.

64. Q.—Perhaps you did not see him. Were you talking to Capt. Lund when the second gentleman, Mr. Jackson, came out? A.—As far as I remember I was casually speaking to him saying I was hoping it would not be long. I cannot carry my mind back so far.

65. Q.—You were not talking about the evidence? A.—He did not discuss his evidence.

66. Q.—What were you talking about? A.—That I cannot tell you. He said: "You will be a certain time," and there was a question whether he would go back to the office or whether he would have to wait. 20

FURTHER RE-EXAMINED by MR. WILLES:

67. Q.—Was any suggestion of any kind made to you by Capt. Lund either as to what he had said or as to what you were to say in giving evidence in this case? A.—Absolutely nothing whatsoever.

HIS LORDSHIP: Fancy asking a shipping clerk to give such evidence, it is absurd.

MR. MCCARTHY: He is asked to give evidence as to Mr. Walker's mental capacity.

HIS LORDSHIP: This counsel does not seem to care whether he asks questions that hurt his side or not. 30

(Court adjourned at 5.30 p.m., Monday, May 19th, 1924, until Tuesday, May 20th, 1924, at 10 a.m.)

Tuesday May 20th, 1924, 10 a.m.

MR. WALKER: I will read the evidence of Edward George Cundle.

MR. MCCARTHY: Before my friend proceeds I want to take the objection that no more evidence can be given, under Section 10 of the Evidence Act, because where a party intends to call witnesses for the purpose of giving opinion evidence, he is limited to three, unless before he calls the witnesses permission is asked of your lordship. Now, the last three witnesses, and possibly some others, have offered an opinion as to E. C. Walker's mental con- 40

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dition, which evidence comes within the section I have referred to. Therefore, I must object to any further evidence being given, which might be called opinion evidence.

HIS LORDSHIP: What do you say as to that, Mr. Osler?

10 MR. OSLER: I say that relates to opinions of expert witnesses who qualify as experts and who undertake to give opinions as such; it does not relate to witnesses who have been testifying as to the facts which are in issue, and where you have a witness who has come in contact with the testator and is giving your lordship his account of what the condition of the testator was, he is not necessarily an expert, or anything of that kind. I submit that this evidence does not come within the scope of that legislation at all.

HIS LORDSHIP: An expert witness is one whose opinion is valuable because it is an opinion which the court cannot be expected to have, on account of the technical character of the evidence. It does not seem to me that this shipping clerk comes within that category.

20 MR. MCCARTHY: Your lordship will note the wording of the Act, it is very peculiar, and I have had similar rulings, where people undertook to express an opinion, and their evidence was inadmissible. Take the illustration which your lordship has just used, the evidence of the shipping clerk, which my friend has just tendered; they asked him his opinion of E. C. Walker's mental condition. I contend he then comes within the meaning of the Act.

"10. Where it is intended by any party to examine as witnesses persons entitled, according to the law or practice, to give opinion evidence, not more than three of such witnesses may be called upon either side without the leave of the judge or other person presiding, to be applied for before the examination of any of such witnesses."

30 If that evidence is admissible as opinion evidence, I object to it being given on the ground that they were not competent to express an opinion. But my friend has put in the evidence and cannot say now this is not opinion evidence; it is what the section terms opinion evidence, not expert evidence.

HIS LORDSHIP: It seems to me that the passing of the statute some years ago was an attempt to remove the practice of having a vast cloud of witnesses, which was found to be oppressive or inconvenient, that is, it had been the practice to call witnesses by the score who had technical knowledge, and the passing of the statute was an attempt to put a stop to this, and I think I shall follow that idea.

MR. MCCARTHY: Your lordship will note my objection on the ground that more than three witnesses have now been called.

HIS LORDSHIP: Quite so.

40 MR. MCCARTHY: I can give your lordship authority on the subject if it is desired.

HIS LORDSHIP: I do not think so. You will have the benefit of your well stated objection.

MR. MCCARTHY: I do not wish to have it said I did not call your lordship's attention to all of them. There is a decision in the old Queen's Bench or Divisional Court, in which case a number of men were asked to give an opinion

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on some well digging operation, and his lordship held they did not have to qualify as experts in order to come within the meaning of the section, but the mere fact that they were asked to give evidence was sufficient. And that authority was followed some time ago by Mr. Justice Teetzel in the case of Galusha v. Grand Trunk, and the same ruling obtained and has been followed since.

MR. HELLMUTH: The well digging case, and the other case were cases in which men who were accustomed to well digging were giving opinion evidence in regard to the matter in which they were concerned, and, therefore, it was, in a sense, expert evidence. 10

HIS LORDSHIP: Yes.

MR. HELLMUTH: But in a case in which the question is as to a man's mental capacity, or mental competency, the statement of the witnesses that in their dealings with him, in fact, they found him normal, and not at all, in any way, being incapacitated, or confused, is evidence directed to that issue, and I submit that is not expert evidence, although it is the opinion of those who had attended him, and the medical view as to competency or incompetency would be classed above that. I would be willing to concede to my learned friend his point if we were asking three or four medical men to give expert evidence without having obtained your lordship's leave in the first instance. 20 But I submit that we are entitled to call laymen who are speaking as to the actual condition and conduct of the gentleman in question, who are speaking as to his normality, because it is not medical evidence which they are giving. If my friend is right, he has erred himself, because he called three doctors and then called Mr. Robins to speak about E. C. Walker's mental competency.

MR. McCARTHY: But you did not object.

MR. HELLMUTH: Whether we objected or not, my friend did not think it was necessary to ask your lordship, at all events, and my learned friend is astute enough to have asked your lordship's permission at the opening of the case if he thought he was entitled to call additional witnesses. 30

HIS LORDSHIP: There are so few judges who have engaged in well digging, they might well take the expert opinion of those who have done so.

MR. McCARTHY: Your lordship will realize, in this particular case, that the witness was asked was he in a position to form an opinion, for instance, the last witness, as to the mental capacity of E. C. Walker to do business, I submit, as long as my friend qualifies the witness, and then asks the question, he then comes within the section, and he is barred. The witness I just referred to had been qualified.

In regard to what my friend says in connection with the well diggers' case, it was not necessarily the opinion of a well digger, it was the opinion 40 of a man who had worked on the job and saw what was done, and was then asked his opinion. They were not qualified in the sense of experts. There are numerous other cases with which I have come in contact, and the decision to which I have referred has been maintained.

HIS LORDSHIP: The decision of this eminent judge cannot be disregarded by me; I think I will make a distinction between those cases and this.

MR. McCARTHY: If your lordship does, may I ask you to rule out this

evidence? If you do not regard that as opinion evidence, they have no right to express opinion evidence, they are not qualified.

HIS LORDSHIP: In a case of this kind it is so difficult to distinguish between an opinion given generally, and an opinion as to an impression made at the time by the person in question. I do not see that it puts them in the class of opinion experts.

MR. MCCARTHY: The section does not say the opinion of experts, but opinion evidence.

HIS LORDSHIP: I know it does not; I think that is what it means.

10 MR. MCCARTHY: My friends proceed at their peril.

HIS LORDSHIP: Oh, yes, and it has been clearly objected to.

(Mr. Walker proceeds with the reading of the evidence of Edward George Cundle.)

MR. EDWARD GEORGE CUNDLE, Sworn. Examined by MR. WILLES:

MR. BUCKNILL: I think perhaps I had better take a formal objection to this witness being called, as we have not had notice of his name.

(The Commissioner offered to adjourn the examination if necessary.)

20 1. MR. WILLES: (To the witness): Are you in the employ of Messrs. Thomas Agnew & Sons, of Old Bond Street? A.—That is so.

2. Q.—Are you employed by them as a salesman of pictures? A.—Yes.

3. Q.—Were you employed by them in 1912 and 1913? A.—Yes, for the last 35 years.

4. Q.—Did you ever know Mr. Edward C. Walker? A.—Yes.

5. Q.—Did you ever deal with him for your master? A.—Yes.

6. Q.—Can you tell me whether you had dealt with him in 1912? A.—1912 was the first time, I think.

7. Q.—Do you remember about what date? A.—I think it was some-time in May.

30 8. Q.—Did you see him personally? A.—I did.

9. Q.—Where did you see him? A.—At 43, Old Bond Street, in one of our galleries.

10. Q.—Do you remember the transaction? A.—I cannot. I think he bought at that time in 1912, three pictures. They were a Hogarth, Reynolds and Gainsborough, as far as I remember.

11. Q.—Did you discuss the price with him? A.—Yes, as far as I remember. He said: "Well, what is the lowest price you can deliver these free in Walkerville?"

40 12. Q.—Do you remember whether you sold him any pictures in 1913? A.—Yes.

13. Q.—Do you remember when in 1913? A.—That was in June.

14. Q.—Did you see him personally? A.—I did.

15. Q.—At your premises? A.—At our premises.

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16. Q.—Do you remember what you sold him then? A.—First, I think it was a portrait of Romney.

17. Q.—Do you remember about what sort of price he was giving for this picture? A.—Something over £2,000 for the Romney.

18. Q.—And did you discuss that price with him? A.—Yes, as far as I remember he said: "What is the lowest price you can deliver that free in Canada?"

19. Q.—Did you sell him any other pictures in the month of June? A.—I think I sold him a small drawing which was not sent out to Canada at the same time; and I shewed him at the same time another picture which he decided on, a crome, which he came in and bought a day or two later. 10

20. Q.—He did not decide to purchase it when you first shewed it to him? A.—No, not when I first shewed it to him.

21. Q.—Had you, in the course of such dealings with the late Mr. E. C. Walker, an opportunity of determining his business capacity? A.—Certainly; nothing except that he was a very fair judge of pictures and took an interest in them.

22. Q.—Had you an opportunity of determining from your dealings with him whether he was a man capable of managing his own affairs? A.—I should certainly say so. 20

23. Q.—Did he appear to have a good memory? A.—I should say so.

24. Q.—And a knowledge of the value of money? A.—Most certainly.

25. Q.—And of pictures? A.—Yes, and of pictures.

26. Q.—Had he an artistic sense? A.—Yes.

MR. BUCKNILL: I do not know what that means.

27. MR. WILLES: Did he discriminate between good pictures and bad? A.—Yes, I should say so.

MR. MCCARTHY: I object to the last 6 questions.

(Mr. Foster reads the cross-examination.)

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28. Q.—How do you define artistic sense? You said he had an artistic sense. What do you mean by it? A.—I am interested in the older artists; I am not interested in the modern school of art.

29. Q.—You say he had an artistic sense. I want to know what you mean by that? A.—I mean he could judge of good composition and atmosphere effect in a picture.

30. Q.—Is that a sign of sanity? A.—I should say so.

31. Q.—There are known artists, are not there, who have been insane? A.—Yes, certainly there are.

32. Q.—Good artists? A.—Yes, good artists. 40

33. Q.—They would have a good artistic sense. It is not a criterion of sanity, is it? A.—No, I do not say it is.

34. Q.—Of course, in the course of your business you see a great number of people? A.—Yes.

35. Q.—Do you have other collectors who are not quite normal? A.—I cannot say I do. Over 35 years ago I do remember one before I was at Thomas Agnew & Sons. He was a collector of pictures who was not normal mentally, that is to say he bought a number of drawings, and then we were told afterwards he was not normal.

10 36. Q.—He was a man who apparently, as far as pictures were concerned, was quite capable; I mean the person you are speaking of? A.—I should not like to say that; it is a great many years ago. Since I have been at Messrs. Thomas Agnew & Sons I do not know of a single man who came to buy pictures who was not perfectly sane.

37. Q.—How long had Mr. Walker been collecting? A.—1912 was the first time I saw him, and I rather think that was the first time he had been to Thomas Agnew & Sons, but I think in previous years he had bought elsewhere.

38. Q.—Casting your mind back, do you remember who introduced him? A.—He came in; nobody introduced him as far as I know.

20 39. Q.—Did he come in by himself? A.—I think his wife came in with him; in fact I am sure his wife came in with him, and as far as I remember he wished to see some pictures of the British School.

40. Q.—Did either of his brothers ever come in? A.—No, I have never seen them to my knowledge.

41. Q.—When you say he wished to see pictures of the British School, you mean the older ones? A.—Yes, the 19th century or later part of the 18th century.

42. Q.—That was in 1912? A.—Yes, in 1912.

43. Q.—When you saw him in 1913, did he appear to have as good acumen then with regard to pictures as he did in 1912? A.—Quite as good.

30 44. Q.—You are quite sure? A.—Quite sure; my remembrance is that he was not very well as far as health goes, and I believe he told me he was going to the south of France.

45. Q.—Was his wife with him at the time? A.—His wife was with him at the time.

46. Q.—He was, in fact, going to the south of France. I do not know what he told you, but do you remember what was the matter with him? A.—I could not say that; he seemed a little feeble bodily, I think.

47. Q.—In what way did it exhibit itself? A.—I think in his walk. He was rather tired. I know he sat down.

40 48. Q.—How long did the interview last in 1913? Did you only see him the once then? A.—No, twice; he came about the Crome.

49. Q.—Do you remember how long the first interview lasted? A.—I should say probably half an hour to three quarters of an hour.

50. Q.—Did he sit down on that occasion? A.—Clients generally do.

51. Q.—You say he exhibited physical weakness? A.—To a certain extent.

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52. Q.—What made it appear to you that he was not quite so strong. Did he sit down more quickly? A.—I think his walking into the place, and his saying that he had not been very well.

53. Q.—She was with him? A.—Yes, his wife was with him. Whether she was with him on the second occasion when he came in to say he had decided to take also the Crome, I will not be certain, but I am certain she was on the first occasion when he came in in 1913.

54. Q.—I suppose the conversation was something of this nature: "Have you anything for me to see?" A.—Yes, I recognized him again when he came in; he was very pleasant.

55. Q.—I suppose he asked if you had anything for him to see? A.—Yes.

56. Q.—You shewed him a Romney? A.—Yes, the Romney in 1913.

57. Q.—And he said what was the cheapest you could deliver it at free in Walkerville? A.—Yes.

58. Q.—And did he say: "I will take it"? A.—Yes.

59. Q.—That was all that? A.—Yes, that was all that, and I sold him a little cheap drawing which he sent to some friend.

60. Q.—Did his wife take part in the choosing? A.—I think he asked if she liked it, too, but I dealt with him.

61. Q.—Did he appear to take her advice? A.—I do not think she influenced him.

62. Q.—I was not asking that; only whether he was pliable to her advice? A.—I think in some cases.

63. Q.—Take this particular Romney; do you think if she had said: "I do not like it," he would have bought it? A.—I do not think he would have.

64. Q.—Or if she had said: "I do not like this coloured print," do you think he would have bought it? A.—Probably not.

65. Q.—I am getting at what your judgment of the man was; you think he would not have? A.—No, I think most people would not.

66. Q.—That depends on whether you have an artistic taste, does not it? A.—Yes.

67. Q.—You think he would not have bought them if she did not want them? A.—No.

68. Q.—Did you see him in October? A.—Not to my remembrance; I do not think so; in fact I feel almost certain.

69. Q.—You have never seen him since, of course? A.—No, I never saw him after that time in June, when he said he was going to France.

RE-EXAMINED by MR. WILLES:

70. Q.—When you saw the late Mr. E. C. Walker with his wife at the shop, did you ever see anything between them which enabled you to determine whether she exercised any influence over him, other than the ordinary influence of affection? A.—No, certainly not.

71. Q.—There was nothing to indicate anything more than affectionate influence between them? A.—No.

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MR. OSLER: I will put in the evidence taken on commission, in England, of the witnesses, Albert Lund, Alfred Eugene Florigny, Edward George Cundle and Gilbert Sylvester Harriss, as Exhibit No. 33.

EXHIBIT No. 33—Filed by Defendant. Commission evidence taken in England.

JOHN A. McDOUGALL: Sworn. Examined by MR. OSLER:

Q.—What is your occupation, Mr. McDougall? A.—I am Managing Director of the Walkerville Land & Building Company, and Walker Sons Limited.

10 Q.—How long have you been associated with the Walker company? A.—Some 24 years.

Q.—Where were you first employed? A.—In various parts of the United States.

Q.—When did you come to Walkerville? A.—In 1912.

Q.—Were you acquainted with the late Mr. E. C. Walker? A.—I was.

Q.—Had you known him before you came to Walkerville in 1912? A.—Yes, I had known him practically—in fact I had met him before I was ever with the Walkers.

20 Q.—Then in what capacity did you come to Walkerville in 1912? A.—Ultimately I was appointed secretary of Walker Sons Limited; Mr. Radford, my predecessor, was in very poor health, and they didn't expect him to get better. I came on, and he died a month or so afterwards.

Q.—Who were on the active staff under Messrs. Walkers themselves? A.—I don't know as I understand you, Mr. Osler.

Q.—Who were the active men in the office, apart from Mr. Frank Walker? A.—Mr. E. C. Walker, and Mr. J. H. Walker.

Q.—And who else? A.—In Walker Sons?

30 Q.—In the distillery, when you came to Walkerville? A.—Well, Mr. Robins was still there when I came, and Mr. Ambery, and Mr. Isaacs, and men who have been with them for many years.

Q.—Who replaced Mr. Robins? A.—Mr. Ambery.

Q.—Is he still living? A.—No.

Q.—When did he die? A.—I do not recall the year.

Q.—How long ago? A.—I can't recall.

Q.—Was it before or after Mr. E. C. Walker died? A.—Strange, I am not certain about that. It is several years ago, it is somewhere between 15 and 20, I cannot recall whether 16, 17 or 18.

40 Q.—After you came to Walkerville what were your relations with Mr. E. C. Walker, and to what extent did you come in contact with him? A.—Well, when I came on to Walkerville I found Mr. E. C. Walker's books were kept in the private office of Walker Sons Limited, by Mr. Radford, at that time, I merely took them over before he died, in fact, I kept them for him.

Q.—You took over Mr. E. C. Walker's books? A.—Yes, his private books.

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Q.—In that connection did you have occasion to communicate frequently with him? A.—Yes, when the opportunity offered.

Q.—And did you have anything to do with the payment of his accounts? A.—Yes. I received and opened his mail, except his private mail, and received his invoices and presented them to him for payment, and when he certified that they were correct I had cheques drawn and presented to him for his signature.

Q.—For how long did that continue? A.—Oh, up to the time he died; up to the time when he went to Washington.

Q.—I have here a number of cheques which I would like you to look at, Mr. McDougall. I show you a cheque dated June 17, 1912? A.—Yes. These were in payment of club accounts, the Windsor Club, Detroit Club. That was a loan. 10

Q.—That is a cheque dated June 28th, 1912, to F. M. Delano, \$1,000.00? A.—Yes.

Q.—Have you looked through all of these cheques I have in the bundle before me, Mr. McDougall? A.—Yes, I have looked through most of them.

Q.—And by whom are they signed? A.—Well, so far as I can judge, I mean by that they are signed by E. C. Walker, "Edward C. Walker," is his signature. 20

Q.—Where the signature is "Edward C. Walker," whose signature is that? A.—Mr. Edward C. Walker's.

Q.—And in some cases, I observe there were cheques signed by Mr. Harrington Walker as attorney for Mr. E. C. Walker? A.—Yes.

Q.—Where did Mr. E. C. Walker sign these cheques? A.—At the office.

Q.—How did it come that some were signed by Mr. Harrington Walker as attorney? A.—As near as I can remember it was always because Mr. E. C. Walker was not at the office.

Q.—We have a further bundle of cheques in the year 1913, and a further bundle of cheques in the year 1914. 30

Now, for instance, we have in this bundle a number of cheques in the month of January, 1914, Mr. McDougall? A.—Yes.

Q.—Will you look at them as I turn them over. Signed in every case by Mr. E. C. Walker himself? A.—They are.

Q.—And then we have a number of cheques in March, 1914, and then February. A.—There may be some February cheques in there.

Q.—And signed in every case by Mr. E. C. Walker himself? A.—Yes.

Q.—February 25th, 1914, E. C. Walker by J. Harrington Walker attorney? A.—Yes. 40

Q.—February 27th, 1914, E. C. Walker by J. Harrington Walker attorney? A.—Yes.

Q.—And with the exception of the two cheques I have referred to these cheques are all signed by Mr. E. C. Walker himself? A.—Yes.

Q.—And some cheques in April, 1914, and they speak for themselves as to signature? A.—Yes.

Q.—You have examined all these cheques? A.—Yes, I have gone through them.

Q.—And where you find the signature “Edward C. Walker,” whose signature is it? A.—Edward C. Walker’s.

Q.—And there are cheques in June, 1914, in July, and August, 1914, in September, 1914, in October, 1914, in November, 1914, in December, 1914, in January, 1915, and apparently one cheque in February, 1915? A.—Yes.

10 HIS LORDSHIP: All Edward C. Walker’s? A.—There may be some, I am not certain, because I have not gone through them lately, but I think the majority of them are—it can easily be ascertained.

MR. OSLER: The cheques bear on their face the signature, and where they are signed by J. Harrington Walker it refers on the face of the cheque to the power of attorney? A.—Yes.

Q.—From whom did you receive instructions to make out these cheques, Mr. McDougall? A.—Where any instructions were given to me I received them from Mr. Walker; there are some where I knew the bills were correct, or ascertained they were correct, and had the cheque made out for his signature.

20 Q.—Did you yourself submit them to him for signature? A.—I believe I did.

Q.—And during this period, Mr. McDougall, did Mr. E. C. Walker carry considerable sums at the bank? A.—Yes.

Q.—Against which these cheques were drawn? A.—Yes.

MR. MCCARTHY: How are you putting these cheques in?

MR. OSLER: I think I will put them in in a bundle; they can be listed if you prefer I will put these cheques in as Exhibit No. 34.

EXHIBIT No. 34—Filed by Defendant. Bundles of cheques.

Q.—Did I ask you where these cheques were signed, Mr. McDougall? A.—You did. In his office.

30 Q.—When you say “in his office,” where do you mean? A.—In his private office, usually.

Q.—At the distillery company’s? A.—Yes, in the distillery building, private office.

Q.—Did he always sign the cheques mechanically as you presented them to him? A.—No, frequently he would ask me to leave the cheque with him, leave it on his desk, and he would sign it when he got around to it.

Q.—I notice all these cheques are apparently signed as “Edward C. Walker,” and apparently in the earlier years he sometimes described himself as “E. Chandler Walker.” A.—Yes.

40 Q.—Do you know anything about the change? A.—Merely what I have heard.

Q.—Not what you have heard. Did you hear it from him. A.—No.

Q.—During the time that you were with him how did he sign his name? A.—“Edward C. Walker.”

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Q.—That was the signature he had adopted at that time? A.—Yes.

Q.—Did you have any correspondence with Mr. Walker? A.—I did.

Q.—Upon what subjects? A.—Well, it was only when he was abroad, and I cannot recall without referring to the letters. It was usually in connection with some personal matters of his own. He also asked to be kept posted, and I used to write to him occasionally. He wanted to know something about the affairs while he was gone.

Q.—Then, you were one of the witnesses to the will of 1914, Mr. McDougall? A.—I was.

Q.—I show you the original will, part of Exhibit No. 5; whose signature is that on page 20? A.—Mr. Walker's. 10

Q.—Edward C. Walker's? A.—Edward C. Walker's.

Q.—Whose are the signatures as witnesses? A.—The first one is mine, and the other is Mr. Daniels'.

Q.—Tell me the circumstances in connection with the signing of that will? A.—The day on which the will was signed Mr. J. H. Walker requested me to speak to Mr. Daniels and ask him to come up with me to Mr. Walker's house to witness his will. We went up in the afternoon, Mr. Harrington Walker drove us up. My recollection is very distinct that when we went into the house Mr. Walker was waiting for us, fully dressed, and sitting at a table, waiting to sign his will. And he signed it in our presence, and the four of us were in the room all at the same time. 20

Q.—That is, Mr. Harrington Walker, Mr. E. C. Walker— A.—Mr. Daniels and myself.

Q.—Did you see Mr. E. C. Walker sign it? A.—I did.

Q.—Who was there when he signed it? A.—Mr. J. H. Walker, Mr. Daniels and myself.

Q.—Who was there when you signed it? A.—The same parties.

Q.—On the same occasion? A.—On the same occasion.

Q.—And when Mr. Daniels signed it? A.—The same people. 30

CROSS-EXAMINED: BY MR. MCCARTHY:

Q.—Now, you were not connected with the Walkerville end of the business until 1912? A. I don't know which business you mean.

Q.—Any of the Walker business? A.—Oh, yes.

Q.—Not in Walkerville? A.—Not in Walkerville.

Q.—What was your job up till 1912? A.—For six years before that I managed Hiram Walker & Sons' Chicago office.

Q.—Was that immediately preceding your coming here? A.—Yes.

Q.—And you were brought here by whom? A.—Well, I received the first request from Mr. J. H. Walker. 40

Q.—And when you came to Walkerville had you any position in the distillery, were you with Walker & Sons. A.—Walker Sons Limited.

Q.—What was your position? A.—I was secretary.

Q.—What were your duties in connection with that? A.—It was to have

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general supervision of their farms, planing mill, and insurance—their business outside of the distillery business.

Q.—Where was the office? A.—The offices were in the same building, at the west end.

Q.—The western part of the distillery building? A.—Yes.

Q.—You said, at that time, Mr. Radford looked after Mr. E. C. Walker's affairs? A.—And Mr. F. H. Walker's.

Q.—And J. H. Walker's too? A.—No.

10 Q.—Mr. Radford looked after Frank Walker's and E. C. Walker's affairs. About what time did you take over the private accounts? A.—Almost immediately.

Q.—What time in 1912 would that be? A.—That would be in January.

Q.—Almost immediately you took that work over? A.—Yes.

Q.—What did that involve, as far as bookkeeping is concerned? A.—Not very much; they are private accounts, private books. I was not an accountant.

Q.—You were not an accountant? A.—I am not an accountant.

Q.—Did that mean simply paying the house accounts? A.—No, I kept two sets of books; one for F. H. Walker.

20 Q.—Quite so; we are only dealing with E. C. Walker; did that involve paying E. C. Walker's house accounts? A.—He had an account called "Willistead" in the Canadian Bank of Commerce, and frequently he would draw a cheque and deposit it to the credit of that account, and then have accounts paid out of that. I think Mrs. Walker usually paid the house accounts.

Q.—What accounts would you pay? A.—Some important bills that hadn't reference to the household expenses.

Q.—You say you opened Mr. E. C. Walker's mail? A.—I would unless it was private, or had the ear-marks of being private. I had that authority.

30 Q.—If it hadn't the ear-marks of being private you would open it? A.—Yes.

Q.—If they were accounts which you knew were private accounts you would make out the cheques and leave them on his desk to be signed? A.—Yes.

Q.—Now, who was responsible for the production of these cheques? A.—I was.

Q.—Is this all you produce? A.—Well, I really can't say.

Q.—When did you produce, or get, them? A.—Oh, from time to time; it is months ago, not recently.

40 Q.—Who selected the cheques that were to be produced here? A.—When we heard about this case coming on I was asked to produce any cheques.

Q.—By whom? A.—I can't recall very well, I think it was Mr. Benfield.

Q.—He asked you to look up Mr. Walker's cheques. Did you hand the cheques to Mr. Benfield? A.—Some of them; I can't say whether I handed all of them to him or not.

Q.—Have you looked since to see whether there were any others? A.—I am quite certain there are other cheques but they date away back.

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Q.—Covering the period these cheques cover? Because I see there are certain omissions, if I can judge by the numbers? A.—So far as I know, they are all there.

Q.—What cheques were you asked to produce, for what years? A.—I don't think I was asked to produce any special year.

Q.—Were you asked for the cheques in 1914? A.—I don't think that was specified. I was asked for any cheques that Mr. Walker had signed in the last 4, 5 or 6 years of his life.

Q.—You were asked to produce any cheques signed by Mr. Walker in the last 4, 5 or 6 years of his life? A.—Yes. 10

Q.—You produced those to Mr. Benfield? A.—Some of them. It has been going along for several months.

Q.—Would you have any reason for taking any cheques out? What I mean is this: I am just looking at them at random, for instance, I find in a bundle of cheques here which are pinned together, and which begin at No. 381, that for some reason or other there is a skip from 381 to 387. Where would the cheques from 382 to 386 be? A.—I haven't the remotest idea.

Q.—Did you hand them to Benfield? A.—I can't say.

Q.—You would have no reason for taking those out? A.—No, Mr. Mc- 20
Carthy.

Q.—Where did you get them, from the bank, or Mr. Walker's files? A.—They have really never been out of my possession until that time.

Q.—They were in your keeping, in his files? A.—Yes.

Q.—Did you say all these cheques were signed at the office? A.—That is to the best of my belief.

Q.—On what do you base that belief? A.—I didn't go to the house, I rarely went to the house on business—we waited. It was not necessary that it should be done so promptly and I could always wait until he came down to the office. I can't recall one instance where he signed a cheque at the house.

Q.—And do I understand your practice was to open any mail that was not obviously private, and you would make out the cheque and leave it on his desk to be signed if he were there? A.—That was the custom. 30

Q.—Most of the cheques were made out on the typewriter, who would do that? A.—The stenographer in the office.

Q.—It was not done by you, you would hand it to someone else? A.—I would have it typed.

Q.—Now let me have a look over these cheques; how far they go back, and how I can identify them. I am sorry if I have to take some time, but I have never seen these cheques before. I wish to have a chance to look over them. We will take the cheques of 1912 first, Mr. McDougall. We have been handed apparently six bundles, or six sets of cheques for the year 1912, representing the months of June, July, August, October, November and December. And I note that there are three cheques for the month of June signed "Edward C. Walker," and numbered 130, 138, 139, and the first one is dated the 17th of June, and the last one on June 28th, 1912. Obviously there were other cheques issued during that month? A.—Quite possible. 40

Q.—Not only is it “quite possible”—are those the only cheques you could find for the month of June, 1912? A.—Mr. McCarthy, those cheques have been, I may say almost “pawed over” for several years for different purposes, and it is nearly ten years ago.

Q.—What do you mean by “pawed over?” A.—We had occasion to look up certain accounts before this suit was commenced, and they were often referred to.

Q.—You observe the numbers do not run consecutively; 130, 138, 139, and no cheques before June 17th? A.—May be.

10 Q.—Where are the other cheques Mr. Walker signed, if he signed any during that time? A.—I can't tell you, I will turn up the cheque book and see if any other cheques were issued.

Q.—Will you bring us the stubs? A.—I will try.

Q.—Did you hand Mr. Benfield all the cheques for June, or did you select those cheques? A.—I handed him all the cheques I had in my possession.

Q.—And now we have these produced to us. A.—I do not mean going back years behind this.

Q.—Quite so. I am only dealing with what we have here. I want to confine ourselves to that.

20 Possibly for convenience we had better mark these three cheques numbers 130, 138, 139, dated June 17, 26th and 28th, 1912, as “A.”

Then we will take July, 1912: I find the same thing; cheques are produced as follows: No. 140, dated July 2nd. No. 148, dated July 12th. No. 149, dated July 12th. No. 150, dated July 18th. No. 151, dated July 19th. No. 152, dated July 24th. No. 153, dated July 29th.

Then July 4th, No. 142. July 9th, No. 143. July 10th, No. 144. July 12th, No. 145. July 12th, No. 146. July 12th, No. 147.

I notice in the July cheques there is \$30 paid to Dr. DeLaforte. Is that right? A.—Yes.

30 Q.—Who is he? A.—A Detroit doctor. I think I saw in the paper that he died yesterday.

MR. OSLER: You would have known him better if he had not died last Sunday night.

MR. MCCARTHY: Was that doctor attending Mr. Walker? A.—I can't say. The presumption is that he was.

Q.—Anyway you paid an account of \$30 on July 12th, 1912.

40 Then, are there any more July cheques that you handed to Mr. Benfield which are not in this packet? A.—Mr. McCarthy, if you would allow me, I would like to explain that I have given all the cheques that I had in my possession.

Q.—To Mr. Benfield? A.—To some person or other within the last three or four months in connection with the case, except some away back.

Q.—Never mind, we are only dealing with the years you have given, I am speaking of those entirely. If there were other cheques from the 12th of July to the end of the month you handed them to whoever you handed them to? A.—I did. There is no attempt to keep out any cheques whatever.

Q.—They are not in the packet which we will call “B.” A.—There fre-

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quently discrepancies in the numbering of cheques, sometimes cheques are cancelled, and some might be lost inside of ten years.

Q.—Then in this package, which we will call "C" we have cheques from No. 155 to No. 166, covering from August 2nd to August 19th. If there were any other August cheques which you had you handed them to whoever you did hand them to in connection with this litigation, is that right? A.—I should say that is so. I gave up all the cheques I could find in that time. I would say I am not holding any cheques back for any purpose.

Q.—There are no cheques here for September, 1912, at all. Do you know whether he issued any cheques in September, 1912? A.—I can't say without referring to the stub. Some might be lost. 10

Q.—You will get us the stubs? A.—Yes.

Q.—One cheque issued October 22nd, 1912, or one produced. Whose handwriting is that in? A.—That is Mr. Walker's own handwriting, the entire cheque.

Q.—That will be "D."

We pass on to November, 1912, and we have cheques produced in that month from No.'s 168 to 174 inclusive, and covering the dates of November 12th to November 28th, 1912, and they are all signed by Mr. Harrington Walker as attorney. Do you know where Mr. E. C. Walker was at that time? A.—No, I don't. 20

Q.—That will be "E."

Then we have a bunch of cheques in December numbered from No. 175 to No. 192, with the exceptions of cheques No.'s. 176 and 185, which are not included, and running between the dates of December 2nd and December 21st, 1912, apparently signed by Mr. Edward C. Walker. In which I find a cheque for \$100 to St. Mary's Church. Do you know whether he was a regular subscriber to that church? A.—No, I don't know.

Q.—That will be "F,"

Now, you produced all the cheques you had for the year 1912, and to whoever you produced them, and you say, if they are not here then that gentleman has them. 30

In 1913, we have a bundle of cheques for the following months. February, March, April, May, June, July, August, September, October, November and December. None for January. A.—January may be in 1914, Mr. McCarthy.

Q.—No, it is included with the February lot. There are cheques here for January, beginning with No. 193, and apparently ending with No. 340 in December. And I find on January 6th, 1913, another payment to Dr. De- 40
Laforte, for \$12.

I see a number of cheques here to Mr. Delano.

The January cheques, 1913, run from the 3rd until the 29th, and include the Nos. 193 to 210, with some omissions; some cheques which are not included in their consecutive order. They will be "G."

HIS LORDSHIP: The cheques to Mr. Delano, there would be no voucher, probably, how would you get the information to draw those cheques? A.—From Mr. Walker.

Q.—Verbal instructions to draw a cheque for Mr. Delano, for so much?
A.—correct.

MR. McCARTHY: From February 1st to February 27th. No's. 211 to 226 inclusive, with some of the numbers not included, a few odd cheques missing. That will be "H."

March, 1913, from the 4th until the 26th, covering Nos. 227 to 239. And I find a cheque issued to another doctor. Do you know who Dr. Henry C. Corns was? A.—A Detroit dentist.

Q.—Some cheques during that period are apparently missing too. The ones produced are apparently signed by Edward C. Walker. A.—The intention was to produce them, Mr. McCarthy. My office has been moved twice in the last ten years, once when I was away, several years ago.

Q.—The March cheques will be "I."

April: We have the cheques produced from the 8th until the 26th of April, and No's. 241 to 249 inclusive, all signed by Mr. Edward C. Walker. They will be "J."

Cheques from May 1st to 26th, covering No's. 250 to 270. There are several signed by "Edward C. Walker," and after that by Mr. J. Harrington Walker, attorney. That will be "K."

20 In June the cheques are drawn, on the Canadian Bank of Commerce, in London, and all signed by "Mary E. G. Walker." A.—Might I look at those, Mr. McCarthy?

Q.—Yes. A.—Those must have been drawn on her personal account.

HIS LORDSHIP: Evidently, if there is no attorney.

HIS LORDSHIP: Well, we can exclude those. There is no particular object in putting them in?

MR. OSLER: No, my lord, they were included in the bundle, I did not notice them.

30 MR. McCARTHY: What I want to point out is that in June all the cheques that were drawn upon the Bank of Commerce, Walkerville, and are signed by Mr. J. Harrington Walker, and all the London chèques that are produced are signed by Mrs. Walker.

MR. OSLER: Of course, they were away in June, 1913, and that would account for Mr. Harrington Walker signing them.

MR. McCARTHY: At any rate, I think probably it is important to show that Mrs. Walker was signing all the cheques for the hotel bills.

HIS LORDSHIP: She managed the trip all right; she bought the tickets.

MR. McCARTHY: These cheques are all signed by Mrs. Walker, except the ones issued in Walkerville; which are signed by Mr. J. Harrington Walker: To Hiram Walker & Sons, Ltd., Krieger Electric Carriage Syndicate,
40 Thomas Agnew & Sons, Claridge's Hotel, and Dr. Ironside.

The June cheques will be "L."

In July, four cheques are produced, from July 4th to the 21st, and are all signed by Mr. Harrington Walker. That will be "M."

In August, 1913, there are four cheques too, signed by Mr. Harrington Walker. They will be "N."

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In September there are three cheques, all signed by Mr. Harrington Walker, No's. 287 to 289 inclusive. They will be "O."

In October there are four cheques signed by Mr. Harrington Walker, No's. 290 to 293. And on October 8th, 1913 one cheque apparently signed by Mr. Edward C. Walker, on the Canadian Bank of Commerce in London, and paid charged to the Walkerville account. And on October 14th and 16th there are two more cheques apparently signed by Mr. E. C. Walker—that is Mr. Walker's signature, isn't it? A.—Yes, Mr. McCarthy.

Q.—They will be marked "P."

In November, 1913, there are cheques No's. 295 to 315, produced, and the first four are signed by Mr. Harrington Walker, and the balance for that month, from 300 to 315—314 being omitted—are signed by Mr. Edward C. Walker. 10

They will be marked "Q."

MR. OSLER: I suppose he had returned from Europe at that time.

MR. MCCARTHY: The December cheques are numbered from 316 to 340, with some omitted, and are all signed by Mr. Edward C. Walker. They will be "R." That is the end of the 1913's.

Now we come to 1914. A bunch of cheques have been handed in for January, 1914, No's. 344 to 360 inclusive, with some omissions, apparently all signed by Mr. Edward C. Walker. They will be marked "S." 20

Now, turning to February, 1914, we have cheques beginning at February 5th. Apparently there are seven cheques beginning at Nos. 362, 363, 364, 365 is not produced, and we pass on to 366 and 367. Three cheques signed on the 5th by Mr. Edward C. Walker; one on the 13th by Edward C. Walker, to the Detroit Museum of Art; and on the 25th and 27th, two cheques which are produced are both signed by Mr. Harrington Walker, as attorney, one for \$1,715 payable to "ourselves," and the other dated February 27th, 1914, No. 367 for \$6.25. A.—To "ourselves," is the Canadian Bank of Commerce.

Q.—That will be "T." 30

Then we pass on to March of 1914, and we have cheques produced from the 2nd of March to the 31st of March, being No's. 368 to 385, with some omissions, some cheques apparently not here in numerical order, what cheques are here are signed by Edward C. Walker. There are some more cheques in March. They will be marked "U."

Then, in April, 1914, from the 1st to the 24th, No's. 387 to 397. The cheques produced are all signed by Mr. Edward C. Walker. They will be "V."

The next are May, from May 1st to May 14th, No's. 399 to 607 inclusive, and signed by Mr. Edward C. Walker. First is No. 399, then it jumps to 602, then 604, 605, 606, 607. They will be marked "W." 40

Then June, 1914, from the 1st to the 30th, No's. 608 to 620; signed by Edward C. Walker. And among them we find under date of June 13th, a cheque for Dr. Shurly for \$500, odd, signed by Edward C. Walker, cheque No. 615. They will be "X."

And in July, 1914, from the 11th to the 24th, No's. 621 to 624, there

are four cheques, which are signed by Mr. Edward C. Walker. (These are marked "Y.")

And three cheques in August, 1914, No's. 625 to 628, signed by Edward C. Walker. (These are marked "Z.")

Then we have, in September, 1914, two cheques produced No's. 629 and 630, dated September 10th and 21st, and both signed by Mr. Harrington Walker, as attorney. I will put these in as "A-1."

In September, one cheque is produced, No. 632, signed by Mr. Harrington Walker. (These are marked "A-2.")

10 In October a few cheques are produced, from October the 3rd to the 27th, No's. 633 to 648, one of which, namely, one on October 3rd is signed by Mr. Edward C. Walker, and the balance are all signed by Mr. Harrington Walker. ("A-3.")

(A-4.) November: We have cheques from November the 3rd to the 27th, numbered from 649 to 667 inclusive; all, with three exceptions, as far as I can make out, signed by Mr. Harrington Walker.

(A-5) December: From December 4th to the 30th; numbered from 670 to 690 inclusive; all signed by Mr. Harrington Walker as attorney, with three exceptions. One cheque is signed by Edward C. Walker on December 10th, 20 in favor of St. Mary's Church. I see another cheque signed to Dr. David Inglis, do you know who he was? A.—Excepting he was a Detroit physician.

HIS LORDSHIP: Is it a large amount.

MR. McCARTHY: \$100.00.

And that completes the 1914 cheques.

These are the cheques which are produced for the year 1915, beginning with January the 8th, to January the 25th, from No. 691 to 714. Some are signed by Mr. Edward C. Walker, in a very shaking signature, and some are signed by his attorney.

30 Q.—Who is Mr. Emil Smith, do you know? A.—A man nurse. He is dead, I understand.

Q.—Was he in attendance on Mr. Walker at that time? A.—I think so.

Q.—There is another cheque to Dr. Shurly on the 23rd of January for \$121.00, signed by Mr. Harrington Walker.

These will be marked "A-6."

Then there are the February cheques, from the 5th to the 19th, 23rd, 25th, 25th and 24th; signed by Mr. Edward C. Walker. (Marked "A-7.") Did you make these cheques out? They are all apparently to the household, and to Mr. Emil Smith? A.—I should say so, or ordered them made out.

40 Q.—They are all typewritten? A.—Yes.

Q.—As you have told me before, all the cheques you could find, covering the years 1912, 1913, 1914 and 1915, were handed to someone for production in this litigation? A.—All the cheques I have.

Q.—You will produce the stubs? A.—If I can. Mind it is years afterwards.

HIS LORDSHIP: Will there be any explanation of cheques to two doctors

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issued in the same period of time? Do you know anything about that, Mr. Osler?

MR. OSLER: No, I am instructed that Dr. Inglis is dead.

HIS LORDSHIP: Dr. Shurly is not here.

MR. OSLER: They took Dr. Shurly's evidence on commission.

HIS LORDSHIP: What I want to know is, as to the consultation between doctors, was he going around to some other doctor trying to get relief?

MR. OSLER: I haven't heard of any consultation.

HIS LORDSHIP: As a rule, doctors do not give special personal attendance if there is another doctor who is the doctor. I do not suppose Dr. Shurly would mind having anybody else around. 10

MR. OSLER: I do not recollect that Dr. Shurly mentioned it in his evidence.

MR. MCCARTHY: I notice, Mr. McDougall, that the cheques for March, 1914, are all signed by Mr. Edward C. Walker, with the exception of the one in payment of Mr. Lash's account for drawing the will, did you notice that? A.—You say so; I may probably have noticed it.

Q.—I show it to you. A.—Yes, that is so.

Q.—I see that Edward C. Walker signed cheques the day before and the day after; cheques No. 368 and 370, but this particular cheque, on the 4th of March, was signed by Mr. Harrington Walker. Now, it was Mr. Harrington Walker who told you to get Mr. Daniels and come up to witness the will? A.—Yes. 20

Q.—I think you said that Mr. Harrington Walker drove you there? A.—Yes.

Q.—And when you got there you say you found Mr. E. C. Walker sitting in front of a table, fully dressed? A.—I did.

Q.—Whereabouts? A.—I am not certain of the room it was, excepting it was not the bedroom.

Q.—You are not certain which room it was? A.—No. 30

Q.—He was sitting there. Was there anybody else in the room with him? A.—I can't recall that.

Q.—About what time of the day would it be? A.—It was sometime in the afternoon, I am not certain what time.

Q.—Was Mrs. Walker present? A.—I believe not.

Q.—What happened when you went into the room? A.—Why, I asked him, or said, "How do you do, Mr. Ed.?" And I asked him how he was, and my recollection is that he said, "Pretty well, pretty well."

Q.—What else was said? A.—I don't recall anything else except that. We proceeded to the business for which we were asked to come there. 40

Q.—You don't remember anything else except you proceeded to the business you came for? A.—No, at this time I don't recall anything further.

Q.—You don't recall any conversation between his brother and himself? A.—I do not.

Q.—Or any conversation between you and he, except what you have referred to? A.—No.

- Q.—Do you remember whether Mr. Daniels spoke? A.—I can't say.
- Q.—Where were you at the time Mr. E. C. Walker signed the will?
A.—In the same room.
- Q.—Whereabouts? A.—Where I could see him sign it.
- Q.—Where was Mr. Harrington Walker? A.—In the same room.
- Q.—Whereabouts was he standing, about? A.—I don't recall.
- Q.—Was it Mr. E. C. Walker or Mr. Harrington Walker that asked you to be a witness? A.—Mr. Harrington Walker.
- 10 Q.—And how long were you there altogether? A.—I suppose 10 or 15 minutes, perhaps not so long.
- Q.—It was simply a case of walking in, and saying, "How are you, Mr. Ed.," and you stood in a position where you saw him sign, and he signed the will? A.—Very true.
- Q.—That is the only conversation you had with him? A.—Practically, as far as I recollect.
- Q.—You can't recall anybody else having any conversation with him?
A.—No, not distinctly. Undoubtedly Mr. Daniels asked him how he was.
- Q.—Undoubtedly Mr. Daniels asked him how he was; but you can't remember anything else? A.—No.
- 20 Q.—What sort of table was he at, do you remember? A.—Not distinctly.
- Q.—About where were you standing, on the same side of the table as he was sitting? A.—No, I was standing in front of him, that is my recollection.
- Q.—Who signed first, you or Mr. Daniels? A.—I did.
- Q.—Was the will passed over to you to sign? A.—I can't recall exactly, I think it was turned around so I could sign it at the table.
- Q.—Which would indicate you were on the opposite side of the table from him? A.—That is my recollection.
- Q.—It would be turned around so you could sign it? A.—Yes.
- Q.—The will was not read over in your presence? A.—No.
- 30 Q.—Then did all three come away together? A.—Yes.
- Q.—Mr. Harrington Walker did not stay? A.—No.
- Q.—What happened to the will? A.—I haven't any idea.
- HIS LORDSHIP: Did he thank you for coming? A.—I can't recall.
- Q.—Did he shake hands with you when you left? A.—No; I very rarely shook hands with him.
- Q.—That was not his characteristic? A.—He would if invited specially to the house to dine with him, but he would not otherwise.
- MR. MCCARTHY: Was anything said about signing the individual pages of the will? A.—Not to my knowledge.
- 40 Q.—This was the only document in front of him at that time, was it? A.—So far as I know.
- Q.—And your recollection of the incident is that the three of you went into the room together, you asked him how he was, and you think Mr. Daniels did the same, you stood on the opposite side of the table, and he signed a document which you identify, I believe, as this, do you, or you identify your signature? A.—I identify that, that is the document I signed.

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Q.—And then you and Mr. Daniels, and Mr. Harrington Walker walked out. You don't know whether Harrington Walker took the will or left it there? A.—I don't.

Q.—You apparently only saw the one sheet which you signed? A.—That is true, it was attached to the other.

Q.—If I might elaborate; it was in the form in which I have it now, was it? A.—I really can't say, Mr. McCarthy.

HIS LORDSHIP: It is lying with its last sheet open to him, that is the way it is lying.

MR. MCCARTHY: What I meant, Mr. McDougall, was this: that it was lying in that position when you signed? A.—I can't recall. I believed, and still believe, I was signing the will; and that is my signature. 10

Q.—That is your signature? A.—That is true; as witness.

HIS LORDSHIP: This evidence is admitted as to the general case, not as to the execution of the will, because that is precluded by the probate.

MR. OSLER: We put this in so your lordship would have the benefit of the evidence of those actually present when the will was signed.

MR. MCCARTHY: I notice you did not ask him about the things you asked the people in London.

MR. OSLER: Surely. 20

HIS LORDSHIP: I will allow it in re-examination.

MR. MCCARTHY: What about the vouchers for the cheques? A.—I do not understand.

Q.—Where are the vouchers? A.—Frequently we do not have any. You mean receipts?

Q.—Or accounts? A.—Invoices. There are many of them in the old files, I presume.

Q.—They have not been disturbed? A.—Yes, they have, in looking at his papers they have been disturbed many times in the last ten years, for one reason or another. 30

Q.—Why did you give the cheques to Mr. Benfield? A.—Because I was asked to do so.

Q.—By whom? A.—Mr. Benfield.

Q.—He asked for them, did he? A.—Yes.

Q.—Now then, who had charge of Mr. Walker's private files, had you? A.—Not all of them.

Q.—What ones hadn't you charge of? A.—I had only charge of such files as had reference to his own business, nothing about his private affairs whatever.

Q.—What do you mean by "his own business," as distinguished from "private affairs?" A.—His accounts—his personal expenses, personal and household expenses. 40

Q.—You hadn't charge of those? A.—I had charge of those.

Q.—And the personal household expenses? A.—Not Wilistead, but apart from business.

Q.—What I want to get at is this: There were files, I am told—I think

Mr. Benfield told me—in the office known as the “Mr. E. C. Walker’s files.”

A.—Yes.

Q.—Where his correspondence was kept? A.—Yes.

Q.—And you looked after his correspondence? A.—I looked after some.

Q.—Who looked after the rest? A.—I don’t know, I never had a private letter from Mr. Walker in my life.

Q.—I don’t just know the distinction you make between “private.” A.—For instance, anything with reference to this case.

10 Q.—You didn’t know the case was coming up, at that time? A.—That is the kind, anything in connection with a family matter.

Q.—Tell me where the letters of January 28th, and February 16th, 1914, came from? A.—I don’t know.

Q.—Did you ever see them? A.—I am a little bit in doubt about it because I have heard something about them, but my impression is I haven’t seen the letters.

Q.—Have you never seen them? A.—I am not absolutely certain.

Q.—What file would they come from? A.—That I can’t tell you.

Q.—Who did any filing for E. C. Walker besides you? A.—It was done on the other side of the office.

20 Q.—Who would do it? A.—I don’t know, it was not my business to know.

Q.—Who opened his letters, did you? A.—Not private letters.

Q.—I didn’t say private letters. Would a letter from Messrs. Blake, Lash and Cassels be regarded as a private letter? A.—It might possibly. I certainly never opened any letters from Messrs. Blake, Lash and Cassels.

Q.—Had he any other files, except the ones you looked after? A.—I understand he had another file in another vault in Hiram Walker & Sons’ office. Mr. F. H. Walker had one too, and they kept their private files. I think most were kept privately in their own desk.

30 Q.—Who did he dictate his letters to? A.—That I can’t say.

Q.—Did you ever know him to dictate a letter? A.—Not in my time, not to a stenographer; I think he may have done so. He gave me instructions verbally.

Q.—You never knew of him to dictate a letter to a stenographer in your time? A.—Not on my side of the office.

Q.—You have not known of him doing it, in your time? A.—No. I was only there four years; he may have done it many times before I came there.

Q.—I quite agree; I am only speaking of your time. How would he answer letters? A.—That I cannot say either.

40 Q.—Did he never instruct you what to say in reply? A.—Oh, yes.

Q.—What would you do? A.—I would write the letter.

Q.—Would he dictate it? A.—No, he would give me ideas, and I would dictate the letter to a stenographer.

Q.—He used to give you his ideas, and you would dictate the letter and bring it back to him to be signed? A.—No, I usually signed it as his secretary.

Q.—Looking at these letters, which apparently require an answer; do

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you recollect ever having instructions to answer either of those letters? A.—How can I, when I am not sure I have ever seen them?

Q.—Look at them again and be sure? A.—Well, it is the best of my recollection.

Q.—What is the best of your recollection? A.—I am not familiar with the letters, whether I have seen those letters, or merely heard discussion that there was such a letter.

Q.—You heard that discussed by whom? A.—I can't say that I heard them discussed.

Q.—You can't say whether you saw them, or heard them discussed? A. 10
—I can't.

Q.—Did you keep a list of everything you handed to Mr. Benfield? A.
—No.

Q.—Are there any letters still on the file, of E. C. Walker's? A.—Oh, there may be.

Q.—Did you keep copies of those you dictated?? A.—I believe I did.

Q.—Where are they? A.—They should be in the office, unless they have been lost, although some may be in some files here in this court-room.

Q.—Were they copied in a letter book, or loose leaf system? A.—Loose 20
leaf system.

Q.—And kept from year to year? A.—Yes.

Q.—So, if by any chance you did answer these letters of January 28th and February 6th, 1914, copies of the letters would be in the files? A.—Should be.

Q.—Do you know of anybody else who took dictation, or instructions for dictation, from E. C. Walker, besides yourself? A.—No, personally, I don't.

Q.—Did you search the files to see whether answers were ever made to these letters? A.—I am pretty well satisfied those letters were never answered from our side of the office.

Q.—How did you pretty well satisfy yourself? A.—Because we were 30
not in the custom—

Q.—I do not want the "custom"—how did you satisfy yourself? Did you search your files to see whether they were there? A.—Not exactly.

Q.—Will you do it? A.—If I am ordered, yes.

MR. MCCARTHY: I ask your lordship to have the witness search the files.

HIS LORDSHIP: I will not. Has he been subpoenaed?

MR. MCCARTHY: By the other side.

Q.—You have been subpoenaed? A.—Yes.

Q.—What does your subpoena call upon you to produce? (A subpoena is handed to Mr. McCarthy.) This is the subpoena served on you by the plain- 40
tiff? A.—Yes.

Q.—What does the subpoena served on you by the defendants call upon you to produce? A.—I haven't got one.

Q.—You were not subpoenaed by them? A.—No.

Q.—You were served with a subpoena and asked to produce papers, letters, copies of letters, and other writings and documents in your custody,

containing any entry relating to the matter in question in this action, and particularly those mentioned: "any correspondence, notes, memorandums, or instructions relating to the will in question, or to the will made on the 21st day of December, 1901, or relating to any codicil or codicils thereto."

What do you produce in answer to that subpoena? A.—Well, I produced such documents as, to the best of my belief, had connection with the case.

Q.—You only produce the cheques, as a matter of fact? A.—No, there is some correspondence there.

10 Q.—Did you produce Mr. Lash's letters, Exhibits No's. 8 and 9? A.—I think not.

Q.—Then, after getting this subpoena, Mr. McDougall, did you search in Mr. E. C. Walker's files to see if there were any copies of letters written about the time of this will, and said to have been written in January and February, 1914? A.—I ordered it done, and everything that could be found.

Q.—You ordered it done? A.—Yes.

Q.—Who did you order to do it? A.—The stenographer.

Q.—What did you order the stenographer to do? A.—To find anything in the files of Mr. E. C. Walker that had any connection with this case.

20 Q.—Do you think that is a stenographer's job? Everybody seems to have delegated—

HIS LORDSHIP: The stenographer would know more about it than this man would.

MR. MCCARTHY: Would she know if it had anything to do with the action? A.—Yes.

Q.—Why? A.—Because she is quite intelligent, and knows what is going on.

Q.—Did you leave her to judge as to what was relevant to the action, and what was not? A.—I did not.

30 Q.—Who passed on that? A.—My recollection is that she placed what she found either before me or Mr. Daniels, or possibly Mr. Benfield.

Q.—She placed what she found possibly before you, or before Mr. Daniels, or possibly before Mr. Benfield? A.—Yes.

Q.—And why do you say "possibly?" Has your recollection failed you? A.—I happened to be away when some of this correspondence was produced.

Q.—This subpoena was served on the 5th of May?— A.—This was long before that.

Q.—What did you do in answer to the subpoena?? A.—I introduced further search..

Q.—Who did? A.—I have a stenographer.

40 Q.—You have a stenographer? A.—Well, I told the stenographer.

Q.—What did she lay before you? A.—I can't recall.

Q.—This is the 5th of May? A.—I know. There have been so many things come up in this case, and we have been delving into the archives for a good while.

Q.—Can't you produce anything in reply to this particular request in connection with this subpoena? A.—I produced everything I have.

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Q.—As soon as you got this subpoena what did you do? A.—I produced the file of letters, and I have the books ready.

Q.—Where is the file of letters you produced? A.—I think they are on the table there.

Q.—Would you mind getting them for me, please? (The witness gets the productions.) In what respect do you say this correspondence has anything to do with the will in question? A.—I never said it had anything to do with the will in question.

Q.—Didn't you know what this enquiry was about? A.—Absolutely, yes. 10

Q.—What has that to do with the will in question? A.—It hasn't anything to do with the will in question.

Q.—Then did you produce all the letters you have? A.—These are all I have; there may be numerous other letters.

Q.—You know that you were asked to produce all letters which had to do with this will? A.—I can't produce what I haven't got.

Q.—Just a moment! Answer my question; you knew that? A.—Yes.

Q.—Are these letters you have in your hand the only letters? A.—I have no letters in my possession in connection with the will.

Q.—Are these letters in your hand the only letters? You are not devoid of intelligence. A.—These are produced for an absolutely different purpose. 20

Q.—I thought so. A.—I don't know anything about it.

Q.—Answer my question; what letters were laid before you by the person who made the search? A.—These are some of them.

Q.—Where are the rest? A.—They are all I have.

Q.—You pledge your oath these are the only letters produced in answer to this request? A.—No, I can't do that.

Q.—What will you pledge your oath to? A.—I will pledge my oath I haven't any letters in reference to that will.

Q.—When did you part with them? A.—I never had them. 30

Q.—How do you know? A.—As you said, I am not entirely devoid of intelligence.

Q.—Perhaps I was flattering you. A.—I have no knowledge of them.

Q.—What letters were placed before you to enable you to exercise your intelligence? A.—I do not understand the question.

Q.—It is very simple. You have told me now that you sent a woman, or man, stenographer, whichever it was, to make a search. A.—Several times.

Q.—Just a moment, please, do not interrupt. You did make a search in answer to this subpoena, and had laid before you certain correspondence? A.—Yes. 40

Q.—On which you had to exercise your judgment, or intelligence, as to whether it was relative to this will, or not, is not that so? A.—If you put it that way, yes.

Q.—I don't want to put it that way at all, if it is not so. A.—I believe there was nothing in the correspondence with reference to this.

Q.—Did someone make a search of E. C. Walker's files? A.—Yes.

Q.—So as to enable you to answer this subpoena? A.—Yes.

Q.—What did they place before you? A.—Such things—

Q.—Never mind “such things.” What did they place before you. You realize you are on oath? A.—I do.

Q.—Is this all they placed before you? A.—May be other things.

Q.—May be other things. A.—I can't answer that question exactly. I will answer it this way, Mr. McCarthy: there was nothing there in reference to this case.

10 Q.—There is nothing here. No one said there is anything here. It is very obvious—even you can realize it—that there is nothing here in reference to this case. Is that all that was laid before you? A.—Well now, you are getting it down very accurate—

Q.—You are on oath and are supposed to be accurate. A.—I can say I have nothing in reference to these letters you speak of.

Q.—What letter do you say I speak of? A.—Mr. Lash's letters.

Q.—How do you know? You said you hadn't seen those before. A.—I said I have nothing in my files.

20 Q.—You said you did not ever see those before. Had you seen these, or not? A.—I said, to the best of my belief I hadn't. I also said I didn't know whether I had seen them, or whether I had heard about them.

Q.—Heard about them from whom? A.—That I can't say.

Q.—When? A.—And that I can't say.

Q.—You cannot say when or how you heard about them? A.—No.

Q.—And the best of your belief is that you never saw them? A.—I should say I haven't seen the letters.

Q.—Do you know where they came from? A.—No.

Q.—Do you know who produced them? A.—No.

30 Q.—Have you searched to see whether there are any answers that were made to them? A.—Not especially, Mr. McCarthy, because that is not in my department.

Q.—I do not care whether it is in your department, or not. What is your department? A.—Walker Sons, Limited, and the Walkerville Land & Building Company.

Q.—What was your department in E. C. Walker's life time? A.—The same thing.

Q.—You looked after his affairs too? A.—To some extent.

Q.—Did anybody else share that duty besides you? A.—They may have shared his private affairs.

40 Q.—Who would you suggest? A.—I don't know.

Q.—You were there with him four years? A.—Yes.

Q.—And do you mean to tell me, in four years, someone else may have been doing private work for him and you knew nothing about it? A.—Yes.

Q.—Are you serious about that? A.—Absolutely.

Q.—You are? A.—Yes, I did not know what Mr. Walker did in his private office.

Q.—Were you not there every day? A.—Yes.

Q.—Didn't you attend to the letters every day? A.—As a rule, yes.

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Q.—Did anybody else ever attend to the letters except you? A.—I can't tell you, I was away for months at a time.

Q.—Of course you can't tell, when you were away, who did it when you were away? A.—I don't know.

Q.—Were you away in the months of January and February, 1914? A.—No, I think not.

Q.—Do you remember letters coming from Messrs. Blake, Lash & Cas-sels, lying on his desk? A.—No.

Q.—Were there any? A.—I haven't any idea.

Q.—If you didn't open them, who would? A.—That I can't say. 10

Q.—Who took any directions in regard to dictation except you? A.—I don't know.

Q.—Do you know of anyone doing it? A.—I don't personally.

Q.—Did you ever hear of anybody doing it? A.—I have no personal knowledge.

Q.—Did you ever hear of anybody doing it, except you? A.—No.

Q.—And there was a mass of correspondence produced to you for you to look over, in answer to this subpoena? A.—Oh, no, not a mass.

Q.—How much? A.—I can't say.

Q.—How many letters would Mr. Walker dictate to you every day when 20 in town? A.—Several some days, and some days not any.

Q.—And you would file them away under different heads, the answers? A.—Yes.

Q.—And any letters which you wrote to Mr. Lash, where would you file those? A.—I never saw any.

Q.—You never saw any in the entire time you were there, you never saw a letter from Mr. Lash to Mr. E. C. Walker? A.—No.

Q.—And you never took a letter from Mr. Walker to Mr. Lash? A.—No.

Q.—You pledge your oath to that? A.—Yes. 30

Q.—You are clear on that? A.—As far as my memory goes, I think that is true.

Q.—You have searched your memory to find it? A.—I have.

Q.—You are quite clear that in the four years you were there you never saw a letter by Z. A. Lash to E. C. Walker, and you never got instructions to answer one? A.—To the best of my recollection.

Q.—So if these letters did come, either you weren't allowed to see them, or somebody else got them. You cannot suggest anyone else who would get them besides you? A.—No, but it is quite possible.

Q.—How did you mark the correspondence that you attended to? A.— 40 Filed it away in alphabetical order.

Q.—Had you a system of marking letters when they came in? A.—Date? Yes, I have a stamp.

Q.—And all letters were stamped as they came in? A.—Should be; that was the custom.

Q.—They were filed in alphabetical order. A.—Yes.

Q.—In the ordinary way? A.—The most modern filing system, with a drawer and little envelopes.

Q.—For each letter? A.—Yes.

Q.—And any letter addressed to Mr. Lash would be under "L." A.—Yes.

Q.—Did you search the file under "L" to see if there were any letters addressed to Mr. Lash? A.—Not personally.

Q.—Who did you tell to do it? A.—A stenographer.

Q.—Who was the stenographer? A.—Miss Johnston.

10 Q.—Did you tell her what to look for? A.—For any correspondence in connection with these matters.

Q.—What matters? Tell me what you said to her. A.—I gave her a number of instructions about it, from time to time we have made search to endeavour to find anything pertaining to the case.

Q.—What did you tell her to do? A.—I asked her to go down to the basement and make a search through E. C. Walker's files for any letters in connection with the case.

20 Q.—Of course, there would be no letters in connection with the case at that time, at the time of Mr. Walker's death, because the case had not started? A.—No.

Q.—Did you ask for any letters in connection with Mr. Walker's will? A.—I don't know as I specially told her that.

Q.—Did you take the letters under the letter "L" in the file of 1914, to see if there were any letters to or from Mr. Lash? A.—No, she was to bring everything up to me.

Q.—That she thought to be important. That is what you did in answer to your subpoena. How did you mark the letters to show that you had attended to them? A.—No mark.

30 Q.—Once Mr. Walker handed you a letter to be attended to, how did you mark it after you had attended to it? A.—I wrote the letter.

Q.—Did you make any mark on the one you had to attend to, that you had attended to it? A.—No.

Q.—You swear that? A.—Yes.

MR. OSLER: Your lordship said I might ask the witness about the condition of Mr. E. C. Walker.

HIS LORDSHIP: Yes.

MR. OSLER: I think it would be sufficient to have the witness speak as to Mr. Walker's condition at the time he witnessed the will.

40 HIS LORDSHIP: It seems to me much more important to get the condition of Mr. Walker at the time he made his will, than when he was in London, England.

MR. McCARTHY: It will be subject to objection, as far as opinion evidence goes?

HIS LORDSHIP: Yes. Keep away from the opinion—get the facts.

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MR. OSLER: What do you say as to the capacity of Mr. E. C. Walker to transact business, and to make this will?

MR. McCARTHY: That necessarily must be a matter of opinion.

THE WITNESS: I should say he was quite capable at the time I saw him.

MR. OSLER: There is another question I should like to ask, with your lordship's permission, which I should have asked in chief, but forgot.

Q.—Do you know where Mr. F. H. Walker was at the time of the making of the will in February, 1914? A.—Some place abroad; he was out of the country.

10

MR. McCARTHY: How did you satisfy yourself of that? A.—Which question, Mr. McCarthy?

Q.—That Mr. F. H. Walker was abroad? A.—I have letters from him.

Q.—Where are they? A.—Here is a letter written to me.

Q.—This is a letter written on January 30th, 1914, from New York? A.—Yes, he was on his way en route then. Here is another letter of March 4th, 1914, which shows that he was away.

Q.—Where did these come from? A.—From my private file.

Q.—Did you look after Mr. F. H. Walker's private file too? A.—Some 20 of them. He had public files also.

Q.—Of course, he had public files, they put every letter on some file; who looked after the different files? A.—I can't say. He looked after his business matters.

Q.—What distinction do you make? A.—This was not a business matter.

Q.—Those letters were not business matters? A.—I always kept him thoroughly informed.

Q.—These matters were not business matters, these letters you produce now? A.—They were written in reply to letters I had already written him.

Q.—Not on business though? A.—He asked always to be kept posted about our dairy business, and other things when he was away, and we kept 30 up a regular correspondence. He asked me to send him his monthly bank statement, and all that sort of thing.

Q.—You did the same with Mr. E. C. Walker? A.—Yes, when necessary.

Q.—You only did with Mr. Frank when necessary too? A.—Well, we had much more correspondence.

Q.—You looked after E. C., the same as Frank? A.—Yes, only Mr. Frank was a much more active man in the business.

HIS LORDSHIP: Put those in.

MR. McCARTHY: It fixes the date; I do not need to put them in.

MR. HELLMUTH: The 30th of January, 1914, from New York, and the 40 4th of March, 1914, when I understand Mr. Frank was abroad.

MR. McCARTHY: Did you ever read this will? A.—Never.

Q.—Do you think you would understand it, if you did? A.—That is a matter of opinion.

Q.—Do you think you would? A.—I believe I would.

Q.—You believe you would? A.—I believe I would.

Q.—Did you notice the different options which had been given—you never read it, so you can't tell? A.—I never read it.

Q.—So that unless you had read the will you are not in a position to form any opinion as to who could understand it or who couldn't? A.—Well, I am of the opinion that Mr. Walker could understand that will, from what I have heard of it.

Q.—You pledge your oath to that without ever having seen the will? A.—I have heard of it.

10 Q.—Never mind what you have heard of; without ever having seen the will, or the phraseology, or technicalities in it, you are prepared to pledge your oath, without having read the document, that a man could, or could not, understand it? A.—I will qualify my answer by saying, from what I know of the man, I believe he could.

Q.—You were there in his room frequently? A.—At the office. He usually came into my office when he came down.

Q.—You didn't go into his? A.—Sometimes I went into his.

Q.—Did you notice any difficulty in speech? A.—A little bit, towards the very end.

Q.—Mr. Coburn noticed it. A.—I heard his testimony.

20 Q.—Did you ever notice attacks of aphasia? A.—I didn't know them under that name.

Q.—You don't know what aphasia is? A.—No, I can't say I do.

Q.—Sort of a fainting spell? A.—Well, I have seen him have one or two attacks of aphasia. I never saw him have a fainting spell.

Q.—You have seen him have one or two spells of aphasia? A.—One.

Q.—When was that? A.—I can't state exactly the year, it must have been somewhere in 1913.

Q.—You knew, of course, that Gilbert used to bring him down to the office and take him home? A.—I knew some person did.

30 Q.—You knew they had a rail put up, going down the steps, for him, did you not? A.—I don't recall it. There is a rail.

Q.—You knew he was pretty weak on his pins at that time? A.—Sometimes, periodical.

Q.—Inclined to drag his feet? A.—I never noticed that.

Q.—What did you notice? A.—He had difficulty in walking sometimes.

Q.—Did you ever notice him walk up the corridor where he would have to put his hand against the side of the wall? A.—I have never seen that.

40 (Mr. McDougall was recalled on Wednesday, May 21st, 1924, and his evidence given as follows.)

MR. OSLER: My learned friend asked Mr. McDougall to make some searches. He has found one book of stubs.

I also want to ask Mr. McDougall with reference to the agreement. I should have asked him before.

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JOHN A. McDOUGALL: Re-called: Re-Examined by MR. OSLER:

Q.—I want to ask you, Mr. McDougall, with reference to the agreement, and power of attorney, so, with your lordship's permission, I will ask you the question and let Mr. McCarthy deal with that. Your lordship asked about the partnership of E. C. Walker and Brothers, which was mentioned in one of the letters, I think?

HIS LORDSHIP: Yes. It was apparently some sort of successor of Walker Sons.

MR. OSLER: Walker Sons. Not necessarily the successor. I have the partnership agreement before me and I think I should put it in. 10

HIS LORDSHIP: All right.

MR. OSLER: Mr. McDougall, will you look at this agreement dated the 1st of June, 1914, between Mr. Edward Chandler Walker, Franklin Hiram Walker, and James Harrington Walker. The first paragraph reads as follows:

"The parties hereto agree to become co-partners under the partnership name of 'E. C. Walker & Bros.' for the purpose and upon the terms hereinafter stated."

It had originally been written "Walker Bros.," and then it is written in ink "E. C. Walker & Bros." and initialled. Tell me whose signatures those are? 20
A.—Edward C. Walker's, F. H. Walker's, and J. Harrington Walker's, and my own as witness.

Q.—Do you know the circumstances in connection with the execution of that document?

MR. FLEMING: My lord—

HIS LORDSHIP: I would not like any private affairs to be made public, unless it was essential.

MR. FLEMING: I do not see how it relates to the issue in question.

HIS LORDSHIP: Except there was a reference to the E. C. Walker Brothers Limited, as a partnership; it has already been referred to, but I should not think it proper to divulge any details of the Walker business. For all I know, they may have no objection, but I should not like other persons' affairs to be brought into this case. 30

MR. OSLER: That is all. I think there is no objection to that agreement being put in, my lord.

HIS LORDSHIP: All right.

EXHIBIT No. 37—Filed by Defendant. Agreement dated June 1st, 1914, between the Walker brothers.

RE-CROSS-EXAMINATION: By MR. McCARTHY:

Q.—This is the cheque book, or the stubs of the cheque book, beginning with May 2nd, 1914, down till March 8th, 1915? A.—Yes, that is the last book I have. 40

Q.—And I see that he had a nurse, one Edwin H. Smith, from the 4th of

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October; and then changed to Emil Smith, up to the time he left; according to this? A.—I never knew exactly, Mr. McCarthy, whether that man's name was Edwin Smith or Emil Smith.

Q.—You think it is the same man? A.—I believe it is the same man.

Q.—Did you write the stubs? A.—I think not.

Q.—Up to the first of the year he is called Edwin Smith, and after January he is called Emil Smith. A.—I have never satisfied myself about that, I think they are one and the same man.

10 Q.—It does not make any difference. I notice also a charge here of Dr. Shurly's, a cheque dated January 23rd, for services from October 1st to January 1st, 1915, \$121.00. And did you know he was getting a special chair from Hartz? I see a charge for special chair \$112.00. A.—I may have known at the time.

Q.—That account was paid in January, 1915.

HIS LORDSHIP: That is probably a few days after it was purchased. Hartz & Company are manufacturers of medical supplies.

20 MR. MCCARTHY: They are, my lord. I put that in, it has a bearing. Then I have another stub covering Dr. Shurly's services from November 13th to June 1st, 1914, for \$596.00. And another covering Dr. Shurly's services from the 7th of June to the 19th of October, for \$327.00. That connects up Dr. Shurly's services for the year, up to the time he left. (The Stub Cheque Book is EXHIBIT No. 38.)

Then I see a bill from Dr. Dewar for \$28, November 13th, 1914. Also an account for \$100 for Dr. David Inglis, dated December 14th, 1914. Do you know who Dr. David Inglis was? A.—I think he was a Detroit physician. I don't know whether he is living or not.

Q.—What other cheques have you, Mr. McDougall? Are they during the same periods? A.—No, some I discovered in out of the way places, some were in 1911, and some 1915. It shows the confusion.

30 Q.—We do not want to go back as far as 1911. A.—There is the same thing with regard to Mr. F. H. Walker, which shows the confusion. When the National Trust Company took over Mr. E. C. Walker's affairs I had to turn over the books, and everything of that kind, and after they audited my accounts my responsibility ceased so far as these sort of things were concerned, and I have not paid very much attention to them since.

Q.—I understood from one witness that 99½ per cent. of Mr. E. C. Walker's things were destroyed by Mr. Harry Walker? A.—Well, that I know nothing about.

40 MR. MCCARTHY: These are the only ones that appear to me to be of consequence, my lord. I will put them with a bundle of cheques already in; there is a mixed bundle of cheques covering portions of January and February, of 1915, and the only significance I attach to them is that none are signed by Mr Walker, but by Harrington Walker under his power of attorney. (These cheques put in with "A-6.")

Q.—Going back to Dr. Inglis' account, he was a very famous nerve specialist in Detroit, was he not? A.—I can't say.

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Q.—Were you responsible for the accounts put in in connection with the Succession Duty? A.—No, if I understand your meaning; perhaps I don't.

Q.—Look at this document with respect to E. C. Walker's assets owned in entirety; do you know anything about that? A.—Except I knew what assets he possessed according to his books.

Q.—The value placed against them you mean? A.—No, I had nothing to do with the fixing of the value, except my opinion may have been asked about certain things, by the Trust Company.

Q.—Was it on your recommendation that the shares of Hiram Walker & Sons were valued at par? A.—No, indeed, I knew nothing of that. 10

Q.—And the value of the P.M. bonds, at 25 cents on the dollar? A.—I had nothing to do with that.

Q.—How did £6,000 worth of Barcelona get into this inventory? A.—That was his share of the brothers' purchase of the bonds, as I remember it.

Q.—Are you right about that? Didn't the three of them get £2,000 worth each? A.—No, my recollection—

HIS LORDSHIP: This witness is just guessing about this.

MR. MCCARTHY: I do not want to waste time.

THE WITNESS: My understanding is there was \$90,000 or \$100,000 worth of bonds taken by the Walkers. 20

Q.—If you do not know, do not give us your understanding. A.—Well, I don't know. Let it go at that.

Q.—Well, there is no use wasting time.

ROBERT L. DANIELS: Sworn. Examined by MR. OSLER:

Q.—Mr. Daniels, what is your occupation? A.—I am secretary-treasurer of Walker Sons Limited, and The Walkerville Land & Building Company.

Q.—How long have you been employed with the Walkers? A.—For a period of 22 years this August.

Q.—Just tell me what you did at first, and how you proceeded to your present position? A.—When I first came there I came as office boy, and messenger. After being there a few years I did stenography work and book-keeping. I became cashier about five years after, that could be 1907. In 1911 I became accountant. After Mr. Walker's death in 1916 I was secretary-treasurer of Walker Sons Limited, and The Walkerville Land & Building Company. 30

Q.—Did you know Mr. E. C. Walker? A.—Oh, yes.

Q.—Let us come to these particular matters. A.—When I first came there I used to answer his calls that came into our office. I used to write cheques for him. 40

Q.—Do you remember the occasion when you were asked to witness his will? A.—Yes.

Q.—Just tell us what occurred? A.—Mr. McDougall came into my office and said that Mr. Walker wanted us to go up to witness Mr. E. C. Walker's will. Mr. J. Harrington Walker drove us up, and we parked the car outside

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Willistead, and walked up to the house . After we were admitted into the house, we were shown to the room just off the main hall, and Mr Walker was sitting there.

Q.—Who was there? A.—Just Mr. E. C. Walker, and Mr. J. Harrington Walker, and Mr. McDougall and myself.

Q.—Then, he was sitting you say where? A.—Well, he was toward the east end of the room.

Q.—How was he dressed? A.—Fully dressed.

10 Q.—Well then, what took place? A.—Well, I can't remember the conversation that was said. I think we all spoke to him and asked him how he was. Some mention was made of the will, the signing of the will. And he signed it, and Mr. McDougall witnessed it, and then I witnessed it.

Q.—Do you remember what mention was made of the will, who spoke? A.—I think Mr. Harry Walker addressed it to him.

Q.—Do you recognize this document that I show to you? A.—Yes.

Q.—The signature on the twentieth page, it is now attached to the probate papers, Exhibit No. 5. A.—I recognize that signature there.

Q.—You recognize the signature on page 20? A.—Yes, that is my signature there.

20 Q.—Whose is the signature above it? A.—Mr. McDougall's.

Q.—Whose is the signature on the opposite side of the paper? A.—That is Mr. E. C. Walker's.

Q.—Just tell me, were you all in the room at the same time when the signatures were attached to this document? A.—Yes.

Q.—Then what occurred afterwards? A.—Well, we didn't stay very long; we came out, and came back to the office.

Q.—Had you ever witnessed a will before? A.—Not that I recollect.

Q.—That is, a will such as Mr. Walker's? A.—No.

Q.—You did witness a codicil? A.—Yes, I did witness a codicil.

30 Q.—Had you ever been asked to leave your office before to witness a will? A.—That codicil before was signed in Mr. E. C. Walker's office, and I was told to come in there.

Q.—His office where? A.—In the office building.

Q.—What do you say as to Mr. Walker's business capacity? A.—Well, Mr. Walker always appeared to me to be perfectly normal; I never knew him to be otherwise.

CROSS-EXAMINED: BY MR. MCCARTHY:

Q.—You were asked by Mr. McDougall, or Mr. Harrington Walker? A.—By Mr. McDougall.

40 Q.—He told you what? A.—That Mr. Harry wanted us to come up to Willistead to witness Mr. Walker's will.

Q.—That Mr. Harry wanted you to go up. Mr. Harry took you up in his car? A.—Yes.

Q.—You parked the car outside, and went in? A.—Yes.

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Q.—And found Mr. Walker sitting around a table? A.—He was sitting in front of the table.

Q.—It was on the ground floor? A.—Yes, on the ground floor.

Q.—You went in, and your recollection is that both you and Mr. McDougall saluted Mr. Walker in the same way? A.—Yes.

Q.—You asked him how he was. Who told you where to sign? A.—Why, I think Mr. Harry Walker told me where to sign.

Q.—Mr. Ed. Walker didn't ask you to sign, it was Mr. Harry Walker? A.—I can't say as to that.

Q.—Mr. Harry Walker was in charge of the proceedings, was he? A.—I can't say that exactly. We all went up there to sign.

Q.—After you had signed, you all went away? A.—Yes.

Q.—There was no conversation with Mr. E. C. Walker, except what you have told us? A.—Not that I can remember any account of.

Q.—He didn't leave his position while you were there? A.—I can't remember that.

Q.—Mrs. Walker was not there? A.—I don't believe she was.

MR. McCARTHY: Do I understand the case for the National Trust Company is closed? 20

HIS LORDSHIP: Would you think it was proper to bring the witnesses on in that way?

MR. OSLER: Our case is not closed.

HIS LORDSHIP: (Mr. Saunders having risen, gave rise to Mr. McCarthy's question.) Is Mr. Saunders examining your witness?

MR. OSLER: Yes, my lord.

MR. McCARTHY: If it is the case that Mr. Saunders is examining, I should like to know. I think it is important.

HIS LORDSHIP: Is this Mr. Saunders' witness, or Mr. Osler's witness; declare? 30

MR. OSLER: I do not know whether I am under any obligation to declare.

HIS LORDSHIP: Usually, when a party's case is closed, another counsel examines. Do all counsel represent Mrs. Walker? Are you giving him a special retainer now?

MR. OSLER: Yes.

MR. McCARTHY: Your lordship will note my objection; I am entitled to know whose witness he is; in view of my other objection.

HIS LORDSHIP: The witness must be your own, Mr. Saunders, that is assented to? All right.

WILLIAM LESLIE: Sworn. Examined by MR. SAUNDERS: 40

Q.—Mr. Leslie, what was your position in the Walker establishment?

A.—I was footman.

Q.—That was at "Willistead." A.—At "Willistead," yes.

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Q.—During what period? A.—From the end of February, 1914, to Mr. Walker's death.

Q.—And did you remain after Mr. Walker's death? A.—Practically two years.

Q.—Then, do you remember the occasion on which you went there? A.—I think it was Sunday morning.

Q.—When was it you first saw Mr. Walker? A.—The following morning at breakfast.

10 Q.—Do you remember anything in connection with your first meeting him? A.—Nothing more than Mrs. Walker told him who I was, and he looked at me, and said, "How do you do?"

Q.—Where was he having breakfast? A.—In Mrs. Walker's sitting room.

Q.—How was Mr. Walker dressed? A.—Fully dressed, in a gray morning suit.

Q.—He was fully dressed? A.—Fully dressed.

Q.—Was that the practice during the time you were there?

MR. McCARTHY: What was the practice? Do not suggest.

MR. SAUNDERS: He said he was fully dressed.

20 Q.—What was Mr. Walker's practice with regard to dressing for meals, while you were there? A.—I don't get your question.

Q.—You say, on this occasion, Mr. Walker was fully dressed? A.—I mean he had all his clothes on, dressed like an ordinary person.

Q.—Was that his practice, or was his practice otherwise while you were there?

MR. McCARTHY: Ask him what his practice was.

THE WITNESS: I never seen him any other way, unless in the bedroom in the morning, or night time.

30 MR. SAUNDERS: You never saw him any other way unless he was taking his meals in his bedroom? A.—I never served him any meals in his bedroom.

Q.—Did he get up every morning for breakfast? A.—Unless that he was very sick, which I think happened about three times in the whole year; that means two or three different spells of sickness.

Q.—During these spells of sickness, what was his practice then? A.—I took a tray up to the door, and someone else officiated with him in the bedroom.

Q.—You only actually saw him at breakfast when he was fully dressed? A.—Yes.

Q.—And that was his practice unless he was actually sick? A.—Yes.

40 Q.—That was for breakfast. Now, unless during these sick spells, where did he take his lunch? A.—Down in the diningroom on the ground floor.

Q.—That is, he came downstairs? A.—Yes.

Q.—What about the evening meal? A.—Well, the evening meal was generally served downstairs, or up in the sun-room outside Mrs. Walker's bedroom, or in the sitting-room upstairs.

Q.—Do I understand, except for the sick spells, he was always up and dressed for his meals? A.—Yes, sir.

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Q.—And the lunch was taken down stairs? A.—Yes.

Q.—Breakfast in the sitting-room upstairs? A.—Yes, sir.

Q.—And dinner sometimes downstairs, and sometimes upstairs? A.—
Sometimes.

Q.—Now, during that time, what did you notice about Mr. Walker's
physical condition, his bodily health? A.—I don't get that, again.

Q.—When did you go there? A.—I went there in February.

Q.—What did you notice in regard to his physical, bodily condition, while
you were there? A.—Well, I noticed weakness sometimes.

Q.—Was he more weak after you were there for a time than when you
first went? A.—No, sir, he was better towards the end of the time. 10

Q.—When you first went it was about the beginning of March, 1914? A.

—Yes.

HIS LORDSHIP: Mr. Saunders, excuse me, with regard to Mr. Walker
being fully dressed, I suppose that is on the basis he might have been considered
teratic? I have heard no suggestion of that in this case.

MR. SAUNDERS: No, it was to show he was able to get up, and was not
an invalid, the whole time in his dressing gown.

MR. MCCARTHY: Do not tell the witness.

HIS LORDSHIP: It has been stated he was slovenly in his dress. This 20
servant does not say so.

THE WITNESS: He was the very opposite, he was very neat and tidy.

MR. SAUNDERS: Do I understand your answer to the last question was
that he rather improved in health? A.—Yes.

Q.—During the time you were there? A.—From the beginning of Feb-
ruary until March, the time they went away.

Q.—You mean the Fall? A.—It was in 1915, two or three days before
he went away; he improved very much.

Q.—That was before his last visit to Washington? A.—Yes.

Q.—In what way do you say he had improved? A.—He could walk 30
around better, and could do without anyone to help him around. He had to
have someone to help him during his last sickness.

Q.—During what last sickness? A.—Well, the sickness before New
Years, starting the beginning of January.

Q.—The beginning of January, 1915? A.—Yes.

Q.—He was taken sick, and then had to have assistance? A.—He gradu-
ally got better until the time he went to Washington.

Q.—It was during that sickness you say someone helped him in getting
about? A.—A special man nurse.

Q.—How long was that nurse there? A.—I think two or two and a half 40
months.

Q.—And the nurse went away, and he was able to get about by himself?
A.—The nurse didn't go away, the nurse was there, he said he would rather
do without the nurse and go around himself.

Q.—And he did get about without assistance? Now, do you remember
his taking any walks at this time by himself? A.—On the day before he went

away he walked up the catalpa walk by himself, that walk runs from the conservatory door to the back entrance to "Willistead."

Q.—What distance would that be? A.—200 yards.

Q.—How far did he walk there? A.—He walked up and back again.

Q.—Before his going away, did he have any talk with you, did he say anything about himself, or his condition, and the proposed journey? A.—He just passed the remark three nights before he went away, he didn't like to take the trip to Washington, as he thought the trains were draughty and it wouldn't do him any good.

10 Q.—Had you any talk, Mr. Leslie, with Mr. Walker about pictures, or did he speak to you rather? A.—I can remember three special times during the year. One time it was about a picture in the main hall, a picture of "The Three Faces" by Rembrandt.

Q.—What did he say about that? A.—I can't remember the detail, but he explained the subject of the picture, and he also told me at that time how he picked it up some place over in Europe, I can't remember the place, time or date. And he said it was a rare subject.

20 Q.—You say he spoke to you about the subject. Did he speak to you about the painter? A.—No, only it was a Rembrandt. He spoke about another painter by the name of Whistler, and he showed me a picture in the billiard-room of a red-haired woman, and he told me that was a specialty for Whistler to pick red-haired women all the time.

Q.—Before we get away from the Rembrandt picture, you say he spoke to you about that, where he picked it up, did he tell you about the subject of the picture? A.—"Three Faces" was the subject of the picture, and he told me it represented three faces in human life. I can't remember the detail.

Q.—Was there any other picture he discussed with you at all? A.—He just brought out a photograph about 12 x 14.

Q.—Where was that? A.—Hanging outside Mr. Walker's bedroom.

30 Q.—What was it a photograph of? A.—Of the pyramids in Egypt, showing a camp Mr. Walker had there at one time. And there were five people on them, he told me who they were but I can't recollect any names. He showed me the camp. And he told me how they climbed the pyramids, and he demonstrated to me, by raising his foot, how high the blocks were he had to climb. That is all I can remember about that.

Q.—What was his character with regard to speaking? A.—Well, his character in regard to speaking was, he would stop and think what you had asked him, and then he would answer you very precisely.

Q.—And to the point?

40 MR. McCARTHY: Do not suggest.

THE WITNESS: Well, he would stop, and then would tell you straight out what he thought. He was a little bit slow in speech, may be, but with clear and precise words.

MR. SAUNDERS: Was he slow in bringing out his answer, as well as slow in speech?

MR. McCARTHY: That is a suggestion.

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THE WITNESS: I don't know. It was his usual habit of talking; I never heard him talk any different but slow.

MR. SAUNDERS: Did you observe any difference in his manner of speech, with regard to friends and strangers? A.—Yes, with his friends he would start to talk right away, without sizing them up. Or he would let them do the talking for a while. There were some people he liked very well, and he would sit around with them with a smile on his face, for one thing, and the manner in which he would start to talk, he would take up a subject right away and talk in the usual manner, whereas, if it was someone he didn't like, he would be very reticent, he wouldn't talk to them very much. 10

Q.—During that time you were with him had you an opportunity for seeing what Mr. Walker's capacity was for understanding and forming a judgment upon any matter he was discussing?

HIS LORDSHIP: I forgot to look at the time.

MR. McCARTHY: The question is objected to anyway.

(Court adjourned at 12.50 p.m. until 2 p.m.)

AFTERNOON SESSION. Tuesday, May 20th.

Examination of WILLIAM LESLIE resumed by MR. SAUNDERS:

Q.—Mr. Leslie, from what you saw of Mr. Walker during that year that you were there, what do you say as to his being normal, or abnormal, with regard to his mental condition? 20

MR. McCARTHY: That is objected to, of course.

HIS LORDSHIP: Yes.

MR. SAUNDERS: What do you say? A.—Well, I say he was practically the same mentally from the time I went there until the time he died.

Q.—What was that condition? You say he was the same mentally? A.—Well, I knew of no change from the time I went there until the time he died.

Q.—Did you, or did you not, ever know him to indicate he didn't understand or appreciate anything you said, or expressed himself different from what he intended? 30

MR. McCARTHY: I object to that: it is leading.

MR. SAUNDERS: I say did he, or did he not?

MR. McCARTHY: The suggestion is clear.

HIS LORDSHIP: He puts it in two ways, and he can answer either way.

THE WITNESS: No, I never seen any possible sign.

CROSS-EXAMINED: BY MR. McCARTHY:

Q.—What are you doing now, Mr. Leslie? A.—I am branch manager for the Fuller Brush Company.

Q.—Where is that? A.—Hamilton, Ontario; I am the branch manager at Halifax for the Fuller Brush Company of Hamilton. 40

Q.—How long have you held that position? A.—I have been branch manager for practically a year. I have been with the company for practically three years.

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Q.—Where did you go after you left “Willistead?” A.—With the Ford Motor Company of Canada.

Q.—In what capacity? A.—A steam-fitter.

Q.—Was that your trade? A.—No.

Q.—And how long did you remain with them? A.—One year in that capacity.

Q.—Yes, and then where did you go? A.—Well, I went to the Windsor Theatre.

10 Q.—As what? A.—Moving-picture operator, which I was before I went to “Willistead.”

Q.—That is your trade, is it? A.—Yes.

Q.—How long had you followed that trade before you went to “Willistead?” A.—I was practically back and forward for 12 years.

Q.—12 years in the moving-picture business? A.—Yes.

Q.—Where did you live? A.—I lived in Windsor, Ont.

Q.—You were out of a job, were you, when you took this position at “Willistead?” A.—Never out of a job once.

Q.—How did you come to take the position at “Willistead?” A.—I saw the job advertised in the paper and I applied.

20 Mr. P. Moir Byers, Lickleley Head, Castle, Scotland.

Q.—Have you been an indoor servant before? A.—Yes, five years with

Q.—In what capacity? A.—As footman.

Q.—Just footman? A.—Just footman.

Q.—He didn't keep two? A.—No.

Q.—Then you came out here and lived in Windsor, as a moving picture operator? A.—Not to start with, no.

Q.—What were you, to start with? A.—I worked in Toronto for a little while, with the Swift Canadian people.

Q.—Then you came to Windsor? A.—Yes.

30 Q.—Then to “Willistead?” A.—No, I was with a moving-picture show on Wyandotte street, for one year, and then to “Willistead.”

Q.—I think you said you were 12 years in the moving-picture business? A.—Back and forth, my license covered me for 12 years.

Q.—How much time did you spend in the moving-picture business? A.—I was at different places working with moving-pictures; I quit at 4 o'clock at the Ford Motor Company's, and I went to a moving-picture show and got an evening's work in.

40 Q.—Who were the other servants at “Willistead?” I mean, while you were there? A.—Charles Snudden was valet, Charlie Mignault, assistant valet; Patrick Byrne was butler; and do you want the maid servants?

Q.—Yes. A.—It would be very hard to remember them, some stayed two months, and some stayed two weeks.

Q.—Don't you remember any of them? A.—The older ones, I remember one or two.

Q.—Give me the names of any you remember? A.—One was called “Bridget,” that is the only name I remember her by, she was there quite a while.

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Q.—What was her capacity? A.—Scullery maid.

Q.—Who was the cook? A.—I can't remember her name.

Q.—Then, when were you first subpoenaed to give evidence here? A.—
I have never been subpoenaed.

Q.—When were you first spoken to about giving evidence? A.—Exactly
three weeks ago.

Q.—By whom? A.—Mr. Chipman, a lawyer in Halifax.

Q.—He didn't give you a subpoena? A.—No, sir.

Q.—What did Mr. Chipman and you have to say? A.—He just asked for
a statement of what I knew about Mr. E. C. Walker, and I gave it to him the
same as I gave it to that gentleman over there. 10

Q.—Did you give him a statement? A.—Not a statement, I just told him
what I knew.

Q.—Did he take it down? A.—He put it down on a piece of paper, notes,
shorthand, or something.

Q.—Did you sign anything? A.—No, sir.

Q.—What is the next thing you heard of it? A.—The next I heard of
it, I had to come here on the 12th.

Q.—Who made the arrangement with you? A.—Mr. Chipman said on
the 'phone, "You better go to Windsor for the 12th." 20

Q.—The next arrangement was over the telephone? A.—Yes.

Q.—What arrangements did you make? A.—No arrangement, simply I
was to go to Windsor.

Q.—What about expenses? A.—He said the expenses would be paid.

Q.—Did he advance you anything to go? A.—He gave me my train
fare.

Q.—When did you get to Windsor? A.—Saturday evening last.

Q.—Who did you see? A.—I seen nobody but Mr. — I don't know
him at all—the gentleman sitting at the table here. (It is Mr. J. H. Rodd.)

Q.—And you gave him a statement? A.—Yes, sir. 30

Q.—Now then, you say you went to "Willistead" at the end of Febru-
ary, 1914? A.—Just about that date.

Q.—At that time was Mr. Walker confined to his room? A.—Not en-
tirely, no.

Q.—Were there any nurses in attendance at that time? A.—Just his
valet and assistant valet.

Q.—And not a nurse from the Harper Hospital? A.—No, sir.

Q.—You are quite sure about that, when you were there? A.—Abso-
lutely.

Q.—Did you see a doctor in attendance at all? A.—Once I did. 40

Q.—Only once in the entire time you were there? A.—As far as I can
remember, yes.

Q.—What doctor was that? A.—Dr. Shurly.

Q.—You only saw him once during the year you were there? A.—I saw
him twice in attendance on Mrs. Walker.

Q.—But Mr. Walker? A.—Once.

Q.—Did you learn when you got there that Mrs. Walker had been ill all during the month of February? A.—No, I didn't.

Q.—Where did you first see Mrs. Walker when you engaged to go there? A.—In the conservatory.

Q.—When? A.—On the Wednesday morning before I went there.

Q.—And you went there on Sunday? A.—Yes.

Q.—And she interviewed you? A.—Yes.

10 Q.—You didn't see Mr. Walker at all? A.—No, not till the following Monday morning. I went there on Sunday morning and I didn't see him until Monday morning.

Q.—And you told us that was at breakfast, or in Mrs. Walker's sitting room which was upstairs? A.—Yes, sir.

Q.—Did you always serve breakfast? A.—Yes, it was part of my duties.

Q.—Do you say Mr. Walker was always there? A.—Barring the few times he was ill.

Q.—What do you mean by "barring the few times he was ill?" A.—Except the times he would be ill.

Q.—How often would that be? A.—As far as I know there was three periods of sickness.

20 Q.—When were the three periods of sickness? A.—Two short periods.

Q.—When? A.—I can't really tell you the real time.

Q.—I don't want the real time, I want it as near as you can tell me? A.—I can't tell you very close.

Q.—Tell me the best you can? A.—I had been there about four months the first time.

Q.—How long did that illness last? A.—Three or four days.

Q.—And was the doctor there? A.—Not that I know of.

Q.—What was the matter with him? A.—I don't know.

Q.—You didn't see him for three or four days? A.—No.

30 Q.—He was said to be ill? A.—Yes.

Q.—When was the next time? A.—Just about three months again.

Q.—What was that? A.—The same thing, I suppose, internal trouble.

Q.—How long was he ill that time? A.—About the same time again.

Q.—Three or four days? A.—Yes.

Q.—And the next time was how long? A.—In January.

Q.—How long was he ill then? A.—I really can't tell you, I only remember there were three nights he was very sick and had to have somebody sit up with him, I sat up one night, and the rest of the time was divided between Snudden and the other man.

40 Q.—What was the trouble the night you sat up with him? A.—I can't tell you.

Q.—What were you told to do? A.—Just stay there and when he woke up to give him what he wanted.

Q.—Did he wake up when you were there? A.—No.

Q.—So you didn't know what he wanted? A.—No.

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Q.—You never acted as valet during the time you were there? A.—No, sir.

Q.—Did you know that he had lost control of the bowels, did you know that while you were there? A.—I can't say that, I wouldn't know if he told me whether it was true or not.

Q.—Did you hear that? A.—No, sir.

Q.—Do you say, except on the three occasions you mentioned, he was down to every meal? A.—Practically.

Q.—What do you mean by "practically"? A.—Well, he was there very regularly. 10

Q.—For breakfast? A.—For breakfast.

Q.—For lunch? A.—For lunch.

Q.—And for dinner? A.—Not dinner.

Q.—Not dinner? A.—Sometimes dinner was served upstairs.

Q.—You say he was there regularly for breakfast and lunch? A.—Yes.

Q.—Was he on a diet? A.—There were a certain few things he was not allowed to eat.

Q.—Were not his meals all specially cooked for him? A.—No, I can't say that they were.

Q.—Did you wait on them at dinner time? A.—Yes. 20

Q.—With the butler? A.—With the butler.

Q.—Was there much entertaining going on that year? A.—I can't remember.

Q.—What were your duties as footman? A.—To help the butler at meal time.

Q.—That was all? A.—That was all.

Q.—Then do you recollect if he had any difficulty in moving about? A.—Not that I can remember.

Q.—Do you remember whether he used a stick? A.—Yes, he used a stick sometimes. 30

Q.—In the house? A.—Yes.

Q.—Do you remember the difficulty he had in getting in and out of the chair at meals? A.—A slight difficulty.

Q.—Do you remember the difficulty he had sometimes in feeding himself? A.—Yes, I think he did.

Q.—Did you know that the valet had to shave him? A.—Absolutely, yes.

Q.—And had to dress him? A.—Well, help him to dress, I wouldn't say that he dressed him.

Q.—He helped to dress him? A.—Yes.

Q.—And he spent most of his time upstairs, didn't he? A.—I wouldn't say that, no. 40

Q.—Luncheon was served, as a rule, upstairs? A.—No, in the dining-room.

Q.—Would you help him downstairs? A.—I never helped him at all.

Q.—Who helped him? A.—I don't know.

Q.—Did the valet help him? A.—The valet had to bring him down to the table.

Q.—There was only one man in the household? A.—Yes, sir.

Q.—He was the only man? A.—Unless there were guests.

Q.—He had two valets? A.—I have known others who had more than two valets.

Q.—I dare say you have, some people need three and four, and sometimes don't call them valets. He had two valets. Was there anybody staying there while you were there? A.—Oh, yes, we had visitors sometimes.

Q.—Can you mention anyone who stayed there during the time you were there? A.—Col. Brewster and wife.

10 Q.—When? A.—On several occasions, I can't give the dates.

Q.—They are connections? A.—Yes, brother-in-law of Mr. Walker's.

Q.—From Detroit? A.—From Washington, D.C.

Q.—Do you remember when Mr. and Mrs. Brewster were there last? A.—Yes, just a little while before they went to Washington.

Q.—Then, you would never see him in his room except on the one occasion when you sat up with him all night? A.—That is right.

Q.—Any other duties you had to perform was work such as taking meals to his room, and any others of the party? A.—Yes.

20 Q.—During that year, had he any nurse in attendance? A.—He had a nurse from January, for about two months.

Q.—That was Emil Stone? A.—No, Mr. Smith.

Q.—There was another nurse there too, was there not? A.—Not that I know of.

Q.—What is Smith's name? A.—John Smith, as far as I know.

Q.—John Smith, was he? A.—I think so.

Q.—That is two months from January, 1915? A.—Yes.

Q.—When was Mr. Emil Stone there, he must have been there during your time? A.—I can't tell you.

Q.—Don't you remember any such person? A.—No.

30 Q.—Mr. McDougall told me, when I was looking over the cheques, and found some payable to Emil Stone, he was a nurse. You don't remember him? A.—No, sir.

Q.—Do you remember any nurse coming there for massage, or anything like that, from time to time? A.—Not that I know of.

Q.—You don't remember anybody of that name? A.—No, sir.

Q.—You do remember that John Smith was with him? A.—Yes.

Q.—Emil Stone must have been there before, because the cheques were in December, and January, if I recollect rightly. And was Smith a trained nurse? A.—He was supposed to be, I guess.

40 Q.—He was there as well as two valets? A.—No, Charlie Mignault had gone before that.

Q.—Did you notice any difficulty in speaking, in articulation? A.—No, sir, he was the very same from the time I first went there until the last day I seen him. He was always slow, clear and precise, and thought very clearly before he answered you.

Q.—You didn't hear the evidence in this case. Do you remember Mr. Co-burn, did you see him there at all? A.—I was out, I guess.

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Q.—Mr. Coburn said he dined there twice. A.—I had off time.

Q.—You didn't hear what Mr. Coburn said about it; he said he dined there twice, that must have been in your time? A.—Oh, yes, Mr. Coburn was there for luncheon when I was there, I remember that.

Q.—You don't remember the difficulty in articulation that Mr. Coburn noticed? A.—May be Mr. Coburn was not so used to him.

Q.—He knew him 20 years before you did. A.—I met him every day, he met him once or twice.

Q.—You didn't see as much of him, as a valet would? A.—Not quite.

Q.—You told us of three conversations you had with him. By the way, 10
you said the third day before he left he walked up the catalpa walk by himself and back? A.—Yes.

Q.—That was quite an event? A.—Yes; I didn't think it was very much either.

Q.—You thought that he was improved before he went away in February? A.—Yes.

Q.—Do you know where John Smith came from? A.—From the United States some place.

Q.—And you noticed this particularly because he walked without assistance? A.—Well, I know he walked that way, for I seen him myself. 20

Q.—It was remarkable because he walked without assistance? A.—Nothing remarkable as far as I know.

Q.—It made an impression on your mind. What impressed it on your mind? A.—Nothing, I just saw him walk out and back again, the day before he went away.

Q.—You saw him walk up the path and back again? A.—If he had been sick for two months, and walked there, wouldn't it be an event?

Q.—He had been sick for three months? A.—Yes.

Q.—What three months do you refer to? A.—From January on.

Q.—Until when? A.—Until the time he improved. 30

Q.—January, February and March. Do you say he was sick for three months? A.—He was not really sick.

Q.—You said he was; which is true? Was he, or was he not? A.—He was sick for two months, and improved after that.

Q.—You told me he was sick for three months? A.—I never did.

Q.—You said he was sick for two months? A.—Yes.

Q.—And the walk up the catalpa walk would be in March, would it? A.—About the end of February, or March.

Q.—And was there snow on the ground? A.—No, sir.

Q.—No snow? A.—Not that I remember. 40

Q.—Well, you would remember it? A.—I don't know if I would, it is a long time ago.

Q.—It might be dangerous to walk on the snow, if it was slippery? A.—It would be.

Q.—Do you remember what he wore? A.—No.

Q.—Did you actually see him at all? A.—Yes, sir.

Q.—You told us about the pictures. Did he discuss his works of art with the other servants? A.—I don't think it was his habit, just simply it struck his fancy, when walking along the hall.

Q.—What were you doing there? A.—Just walking along the hall.

Q.—Were you helping him along? A.—No, sir.

Q.—You were just walking along? A.—Yes, sir.

Q.—About when was this that he mentioned the Rembrandt? A.—About October.

Q.—October of 1914? A.—Yes.

10 Q.—What was the occasion? A.—Well, I really can't tell you—no occasion at all.

Q.—You don't remember what you were doing at the time? A.—I guess I was working in the main hall.

Q.—You guess you were working in the main hall? A.—Sure.

Q.—Had he never mentioned this picture to you before? A.—No, sir.

Q.—What was he doing at the time? A.—Walking from the dining-room to the billiard-room.

Q.—And seeing you, while you guess you were at work in the main hall, he began to discuss a work of art with you. Did you ever tell him you had
20 an eye for fine pictures? A.—No.

Q.—Did you know anything about them at all? A.—I know a fairly good picture if I see it.

Q.—Did you ever tell that to him? A.—No.

Q.—So there would be no reason for him picking out the footman to discuss a work of art with, was there? A.—No.

Q.—Would you call that quite normal? A.—Well, I would say so.

Q.—When he spoke about the Whistler to you, where was it hanging?
A.—In the billiard-room.

Q.—How did you happen to be there? A.—That was my duty, to keep
30 the billiard-room.

Q.—When did this discussion about the Whistler happen? A.—About two months after the other one.

Q.—That would be December, and that was just before he was taken ill, was it? A.—I guess so.

Q.—How did he come to mention Whistler? A.—I don't know, just looking at the picture, and got talking.

Q.—Who started looking at the picture? A.—Well, I looked at the picture, and he looked at the picture.

Q.—He went in the billiard-room and saw you looking at the picture, is that the idea? A.—Well, I guess that was it.

40 Q.—Was that the only picture in the billiard-room? A.—Oh, no, there were lots of them.

Q.—How did you happen to select this one, had you ever heard of Whistler before? A.—No.

Q.—Without any rhyme or reason, he began to tell you, "This is a Whistler," and that Whistler had a penchant for painting red-haired women?

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A.—Yes, and the reason I remember, I went around the house looking for all the Whistler pictures, and found four with red-haired women.

Q.—You were not looking for pictures, you were looking for red-haired women? A.—That is right.

Q.—And you found three other red-haired women in the house besides this one? A.—Three or four.

Q.—How did you know they were all by Whistler? A.—I saw his name on them.

Q.—In regard to the photograph outside the bed-room showing the pyramids, that was the occasion when he was describing the climbing of the pyramids to you? A.—Yes. 10

Q.—How high up did he put his foot, to show you how he put them up on the blocks? A.—He didn't have to put it up at all; he just raised his foot to give a demonstration of what he meant; it was a high block to step up.

Q.—He raised his foot to give you a demonstration that it was a high block to step up? A.—Yes.

Q.—Have you any idea of the height of the blocks of the pyramids? A.—From what he said, I would say twice as high as the ordinary step, or three or four times. I knew they were big, the way he talked, anyway.

Q.—I suppose you didn't know they were a good deal higher than his head, or yards high? A.—May be. 20

Q.—At any rate, he raised his foot to show how high he had to step up on the blocks of the pyramids? A.—Yes.

Q.—What was the occasion of that conversation? A.—Well, the occasion was Mrs. Walker was not ready for breakfast, and we had to wait until she was ready, and the picture hung outside, between the two doorways.

Q.—He was not allowed to go, until she was ready, is that the idea? A.—That is right.

Q.—Now you say you never heard him when he had difficulty in articulating? A.—No. 30

Q.—What conversation did you have with him, because we are told he was a very reticent man? A.—The only conversation we would have would be, "Good-morning, Leslie," or "Good-afternoon," whatever time it was, and that is all there would be to it.

Q.—Any other conversation you heard was while you were waiting on table? A.—Waiting table.

Q.—And we are told he spoke very little? A.—Well, to certain people, yes.

Q.—What people do you refer to? A.—No person in particular, anyone that Mr. Walker liked he could talk to them as fluently as you could. 40

Q.—Anybody he liked? A.—Yes.

Q.—I think you said he was always slow, and always precise? A.—Of course he could talk, just ordinary talk.

Q.—You said he was always slow, and always precise, and now you say he was as fluent as I am. A.—I mean ordinary talk.

Q.—I think you said he was always slow, and precise, and he always chose his words? A.—Yes.

Q.—You wouldn't call that very fluent? A.—Ordinary talk.

Q.—You wouldn't call that "fluent?" A.—I wouldn't say "fluent," just plain talking.

Q.—You did say "fluent;" you made a distinction between people he liked, and didn't like; with those he didn't like he was reticent, and with those he liked he was fluent. Was he ever fluent? A.—He would get in conversation very quickly with people he liked, and he would do the listening with people he didn't like.

10 Q.—That is the way you knew the people he didn't like? A.—And by his face.

Q.—Can you give me any instance of people he didn't like? A.—Not in particular. I can tell you one he really liked.

Q.—What was the expression in his face you spoke of? A.—He always wore a smile.

Q.—With people he didn't like? A.—No.

Q.—You can't give a description? A.—No, it was the facial expression.

Q.—You said you could always tell by his face as to those he liked and didn't like? A.—Yes.

20 Q.—I want to know how you could tell those he didn't like? A.—Well, he just wouldn't smile, or anything like that.

Q.—He was not a man who talked much anyway, was he? A.—Not very much.

Q.—Did he seem to be suffering much? A.—No, not that I knew of.

Q.—And he spent most of his time in his room, did he not? A.—No, sir.

Q.—Eh? A.—He was out quite a bit.

Q.—Out where? A.—Outside.

Q.—What doing? A.—Just walking around.

Q.—Did you ever see him go outside the grounds at all? A.—Not unless he was in the car.

30 Q.—And the grounds at "Willistead" are quite extensive? A.—About 14 acres, I believe.

Q.—I think you said the only conversations he had with you were; "Good-morning," or "Good-night;" and anything else you had to judge by was when you were performing your duties of waiting at the table? A.—Yes.

Q.—Mrs. Walker ruled the establishment, didn't she? A.—Well, I would say she did, as far as household duties were concerned.

Q.—That is what I am speaking about, the household duties? A.—Yes.

Q.—You took your instructions from her? A.—From Mrs. Walker.

Q.—So did the other servants? A.—I guess so.

40 JOSEPH FITZSIMMONS: Sworn. Examined by MR. HELLMUTH:

Q.—Mr. Fitzsimmons, did you know the late Mr. E. C. Walker? A.—
Yes, sir.

Q.—When did you first become acquainted with him? A.—In June, 1885.

Q.—And what was the occasion of your meeting him, or seeing him? A.

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RECORD

In the
Supreme
Court of
Ontario

Defendant's
Evidence.

No. 44
J. Fitz-
simmons
Examina-
tion-in-
Chief.
20th May,
1924.

—continued

—Mr. G. R. McMillan said he wanted me to go over and see him, or to go over and see him, that he wanted a steward for his yacht.

Q.—The Walkers had a yacht? A.—Yes.

Q.—Were you engaged as steward of his yacht? A.—Yes, he wanted me to go on at that time, I told him I couldn't go.

Q.—Did you see Mr. E. C. Walker himself? A.—He was the only one I saw; first I met the old gentleman, and he said, "I guess it is Mr. Ed. you want to see."

Q.—You saw Mr. Ed. A.—Yes.

Q.—Then when was it that you did go on the yacht, if at all? A.— 10
About two weeks after that.

Q.—Very shortly after that? A.—Very shortly after that.

Q.—How long were you on the yacht as steward? A.—Until we laid her up in 1910.

Q.—So, from 1885 until 1910 you were steward on the yacht? A.—
Yes.

Q.—Did you meet Mr. E. C. Walker frequently then, or seldom? A.—
Very often.

Q.—Was he a sailor himself? Or did he let somebody else do the sailing? A.—No, he had another man to do the sailing. 20

Q.—Was he frequently, or seldom on the yacht? A.—He would go on her about four or five times a week.

Q.—That is, in the yachting season? A.—Yes.

Q.—And was the yacht one that went just on the river, or did it go outside? A.—With Mr. Ed. Walker it never went outside of Lake St. Clair.

Q.—It was in Lake St. Clair? A.—Yes.

Q.—And in the river? A.—In the Detroit river, and Lake St. Clair.

Q.—Was it a sailing yacht, or steam yacht? A.—Steam yacht.

HIS LORDSHIP: What draught? A.—About 6 feet, and 7 feet when loaded full of coal. It was only 110 feet long. 30

MR. HELLMUTH: Do you remember about when Mr. Walker was married? A.—Yes, sir.

Q.—About what year was that? A.—I can't recall that year, it was about 1896, I would say, somewhere about there.

Q.—Did you know Mr. Walker casually, or fairly well? A.—Oh, I knew him very well.

Q.—Well now, at that time, what do you say as to whether he was a reticent or talkative man, or what? A.—He never was a talkative man.

Q.—He never was a talkative man? A.—No, sir, very reserved.

Q.—When did you come to Walkerville? A.—I moved over to Walker- 40
ville on the 22nd of February, 1889.

Q.—And how long did you remain? A.—Mr Walker asked me if I wouldn't come over and live in the cottage.

Q.—Is that the cottage he had? A.—Yes, he used to stay over here frequently during the week, at that time, he would go home Friday or Saturday and come back on Monday or Tuesday.

Q.—“Willstead” was not built then? A.—No, it was before Mr. Walker was married.

Q.—And this cottage was his cottage. Were you a married man? A.—Yes, sir.

Q.—And you and your wife lived in the cottage? A.—Yes, sir.

Q.—And Mr. Walker came over and stayed there during the week, and at the week end? A.—Went over to his father’s.

Q.—At Detroit? A.—In Detroit.

10 Q.—Did you remain all along on the yacht, or did you go abroad with any members of the family? A.—Oh, I went abroad very frequently, I used to go abroad nearly every winter

Q.—The yacht would only be used in the summer? A.—That is all, the yacht would be laid up anywhere from the middle of October until the 1st of December.

Q.—While the yacht was in commission, or being used, did you, or not, have any conversations with Mr. E. C. Walker about the yacht? A.—Yes, very frequently.

Q.—How did you find him then?

20 HIS LORDSHIP: Is this in 1889?

MR. HELLMUTH: Yes, in 1889, I am speaking of.

HIS LORDSHIP: I think we have now got to the limit, almost 40 years ago.

MR. HELLMUTH: I want to show, as far as I can, what his character was right from that time to when he died.

HIS LORDSHIP: His character? There is no aspersion on his character, or any suggestion that he was not perfectly sane, until very much later than that. How on earth can I allow evidence to go in as to his character in 1885?

MR. HELLMUTH: I do not think it will be very long.

30 HIS LORDSHIP: Suppose this case goes up, and they have to read Mr. Hellmuth’s question about this comparatively young man, in 1885, they will wonder what you were talking about.

MR. HELLMUTH: I do not think they will do that, if I can show by the same witness that Mr. Walker was the same man in 1915, in his characteristics. That is the object of this examination.

MR. MCCARTHY: It is unfortunate my friend had to state it to the witness.

HIS LORDSHIP: Mr. Hellmuth didn’t mean to do that.

MR. HELLMUTH: No, his Lordship would acquit me of that.

MR. MCCARTHY: I say it is a shame you had to do that.

40 MR. HELLMUTH: Mr. Fitzsimmons, did you—and my friend will not mind if I lead—manage a poultry farm for F. H. Walker? A.—Yes, sir.

Q.—Where was that, and about what year? A.—In 1913.

Q.—And where was that poultry farm? A.—About 4½ miles back of Walkerville.

Q.—While you were manager of the poultry farm did you have occasion to see Mr. E. C. Walker, and where? A.—He came out there, just before he went to Washington.

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Q.—He came out there just before he went to Washington? A.—Yes, sir, that was in 1915, I think.

Q.—Did you have any talk with him there? A.—Yes, sir.

Q.—That is in 1915, before he went to Washington? A.—Just before he went to Washington, and he died there.

Q.—Just before he went to Washington he came out to the poultry farm? A.—Yes, sir.

Q.—Did you have any occasion then to have any discussion with him, or talk with him? A.—Yes, he came in and told me—

Q.—First, how did he get there? A.—Both he and Mrs. Walker drove out there, someone drove them out, they motored out. He said he came out, that he wanted to see me before he went away, and he brought out three pictures with him, he said, "I want you to have two dear old friends of mine." 10

Q.—That is, the pictures? A.—Yes. He said, "You know them, and I want you to have them." I thanked him. I said, "There is a good place I can put them up, right over the piano." Two of them were water colours, and one was a lady's head. I said, "Where can we put the head?" He looked around for a while and he said, "A beautiful woman is never out of place, no matter where you put her."

Q.—Was there anything else you can remember that was said, or talked about, on that occasion? A.—He just sat there before the fire, and Mrs. Walker said, "Well now, come on, Ed., we must go." He said, "Oh, I am very comfortable here." And he looked around; I had one of my photographs on the wall, he said, "Joe, when did you get that taken?" I told him. He said, "Why haven't I got one?" I said, "Well, I don't know, I never thought you would care about one." He said, "I do, I want you to get me one. Can't I have one?" I said "Yes." 20

Q.—How was his physical condition at that time, in 1915? A.—His physical condition was not very good, he was not very strong. But he spoke all right, mentally he seemed to be all right, but physically he was not very strong you know. 30

Q.—Now, let me ask you; did you see him between 1911, or did you see him during the years—I don't mean when he was abroad and you were not? A.—I never went abroad with Mr. Ed. Walker.

Q.—Did you see him when he was in Walkerville in the years between say 1911 and 1915, did you see him at the office, or anything of that kind? A.—Yes, I met him in the office in 1911, we were not going to run the yacht as it needed some very extensive repairs on her, and I recommended not to run her.

Q.—Who did you recommend that to? A.—To Mr. Frank Walker, and Mr. Frank said, "Well, the best thing to do—" 40

MR. MCCARTHY: You cannot go into that.

MR. HELLMUTH: No. Had you any talk with E. C. Walker in reference to it? A.—Yes.

Q.—Come to that. A.—We were not going to run her that season, because Mr. Frank didn't want to lay out the money on the yacht, and Mr. Ed.

sent for me to come down and see him. He said, "Joe, is there any reason why I can't run that boat this season?" "None at all," I said, "that boat is all right for your work." He didn't care about going out on the lake with her. I said, "It is plenty good enough for you to go out around the river." My idea was that Mr. Frank wanted to go out on the lake in all kinds of weather, and a boat must be in first-class condition. He asked me if I would figure it out, and I said I would. He said, "I don't want to change your plans for going to Europe with Mr. Harry. Have her fitted out, and have a good crew."

Q.—Did he use her that season? A.—Yes, sir, he did.

10 Q.—Did you see him at all during 1912, 1913 and 1914? A.—Yes, in 1913, I was very busy working at the poultry farm, we put up quite a plant there. In 1912, in the Spring, I went down to Magnolia and looked after the house that Mr. Harry Walker was having built there, and he came to Detroit and asked me to stay there.

Q.—Who did? A.—Mr. Harry did, to look after that. When I came home I seen E. C. several times during 1912.

Q.—What do you say about 1913 and 1914? A.—Well, in 1912, I would say he was just the same as he was in 1911, but he was gradually going down a little.

20 HIS LORDSHIP: In what way? A.—He didn't seem to have the same strength as he had before.

MR. HELLMUTH: What do you say as to his speech, or his mind? A.—I never seen a great deal of difference in that, only the last time I seen him he just seemed to be rather weak, that is all.

Q.—I asked you, mentally? A.—Mentally, there was no difference.

Q.—But physically he was weak? A.—He was weak physically.

HIS LORDSHIP: Well, Mr. Hellmuth, I point out to you that you have not made the slightest comparison between 1885 and 1911.

30 MR. HELLMUTH: What do you say as to him, mentally, his ability to understand?

HIS LORDSHIP: I did not mean that you should go on and examine him again; I just point out that you have not made the comparison by going back some 40 years as you proposed to do.

MR. HELLMUTH: I thought I did. In order to make it clear, I will ask you what you say as to his mentality, and his ability to understand, or express himself, as when you knew him in 1885 and 1915? A.—The mentality seemed to be the same about any question you put up to him in regard to spending money. I never could see any difference in him.

40 HIS LORDSHIP: He was not going to pass on anything unless he knew what it would cost? A.—No, he wouldn't pass on anything until he found out the whole cost. When I wanted anything done I had to submit everything to him.

Q.—In money matters? A.—Yes.

CROSS-EXAMINED: BY MR. MCCARTHY:

Q.—When was it in 1915 you last saw Mr. Walker? A.—I think in the week before he went to Washington.

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Q.—That would be February or March, sometime there? A.—He died in March, it must have been the last of February I saw him, I can't remember the date at all.

Q.—He drove out, on that occasion, with Mrs. Walker? A.—Yes, sir.

Q.—And stayed at your place how long? A.—He was there probably about half to three-quarters of an hour.

Q.—You were rather shocked by his appearance? A.—Yes, his physical appearance.

Q.—He had visibly gone down hill since you had last seen him? A.— Yes. 10

Q.—When had you seen him before that? A.—Well now, he was out there once before, I can't remember the date, with Mr. Frank.

Q.—You had been at this chicken farm since 1913? A.—Yes.

Q.—That was quite an elaborate farm? A.—Quite a nice place.

Q.—And it was Mr. Frank's hobby? A.—Yes, sir, it was his hobby.

Q.—You were put in charge on his instructions? A.—Yes.

Q.—And you remained there for how long? A.—I am still there. I bought it.

Q.—That was part of Mr. Frank's estate? A.—Yes, part of Mr. Frank's estate, Mr. Franklin's. 20

Q.—And in 1913 you started it, and you remained pretty steadily on the job? A.—Yes.

Q.—And did you, during 1913, have occasion to see Mr. E. C. Walker at all? A.—Yes, I saw him several times in Walkerville.

Q.—Just casually? A.—Going to his house. I think I met him when I took some eggs or chickens there.

Q.—It was just a casual visit of that kind? A.—That is all

Q.—In 1913, 1914 and 1915, when he went out there, you were more or less shocked at his physical condition? A.—Yes.

Q.—Was his speech very slow at that time? A.—Just a little slower than 30 before, but very little.

Q.—On that occasion did you notice any difficulty in articulation, in speech? A.—No.

Q.—You didn't notice the difficulty Mr. Coburn spoke about? A.—You mean carrying on a long conversation?

Q.—No. Difficulty in forming his words, and mouthing his words? A.—No, I didn't.

Q.—Mr Coburn has spoken of difficulty in articulation, you didn't notice that?

MR. OSLER: He said thickening. A.—No, I didn't notice that. 40

MR. MCCARTHY: And the entire conversation that he had with you was in regard to the pictures, was it? A.—Yes, that is, he casually asked me about the chickens, how they were getting on, and if I was making any money out of them.

Q.—He asked you if you were making any money out of them, and so on— A.—Yes.

Q.—They stayed there about half an hour? Was anybody with them besides Mrs. Walker? A.—No, I think the chauffeur came in, and brought a parcel.

Q.—Did you notice whether he had to help him in and out of the car? A.—Yes.

Q.—They had to help him in and out of the car. You spoke about the conversation in 1911, was that early in the year 1911? A.—Yes, sir.

Q.—And on that occasion— A.—That was in April.

Q.—You were thinking of laying the yacht up for repairs? A.—Yes, sir.

10 Q.—Was Mr. Frank going to England that year? A.—No, sir.

Q.—Did you go with him? A.—I went with Mr. Harry, Mr. Harry wanted to go to Europe and I went with him.

Q.—You always went with them up to the time you started the poultry farm? A.—Yes.

Q.—Mr. E. C. Walker asked you whether there was any reason why the yacht couldn't go in its present condition? A.—Yes, sir.

Q.—Having in mind the fact he never went beyond lake St. Clair or the river? A.—Yes, sir.

Q.—You told him there was none? A.—I told him there was no reason
20 whatever.

Q.—Did you fit her out that year with a crew? A.—Yes, sir.

Q.—And you went with Mr. Harry? A.—Yes, sir.

Q.—You weren't with him on the yacht that year? A.—No, I didn't go, I didn't get home, we were to be here on the 15th, and didn't leave London until the 15th of October.

Q.—So you were abroad with Mr. Harry all summer? A.—All summer long.

Q.—And you wouldn't see Mr. Ed. at all? A.—No.

Q.—You had not been about the yacht at all, you merely fitted her out?

30 A.—That is all.

Q.—In 1912, was the yacht in commission? A.—No, sir, I sold her.

Q.—Were you abroad again with Mr. Frank in 1912? A.—No, sir, the last trip abroad I made was in 1911.

Q.—What were you doing in 1912? A.—In the spring of 1912 I was down at Magnolia, Mr. Harry was building a house.

Q.—How long did you remain in Magnolia? A.—Until June.

Q.—And then? A.—Then I came home and went to Mt. Clements, with Mr. Frank, later. He went that Fall. No, he didn't go to Europe until January that year.

Q.—He went to Europe in January, 1913? A.—Yes, sir.

40 Q.—That is the year you started the chicken farm? A.—Yes, sir.

Q.—In 1910, was the yacht going? A.—Yes, sir.

Q.—Was Mr. Ed. out in it at all? A.—Yes, I think he was, I can't recall all the years. There were some years Mr. Ed. would go away, and be away nearly all summer.

Q.—At St. Andrews? A.—Down to Nova Scotia, he had a place down there.

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Q.—He would be at St. Andrews quite frequently in the summer time?
A.—In the Spring of the year we had what we called a booking book, each one would have their days to go out with the yacht, and, if one couldn't go, I would call up one of the others and get him to go out.

Q.—The boat was divided in that way, as to days, among the three?
A.—Yes, sir.

Q.—Each one had his days, and would take his own party? A.—Yes, sir.

Q.—Did Mr. E. C. Walker take many out? A.—Yes.

Q.—Or Mrs. E. C. Walker? A.—Mrs. E. C. Walker would take quite a lot, and he used to take quite a lot. 10

Q.—Did you know he had trouble with his bowels? Did he take a man servant out in the yacht? A.—Yes, I knew about it.

Q.—When did you first know about it? A.—Mrs. Walker told me about it.

Q.—When was that? A.—Somewhere about 1910, 1911 or 1912.

Q.—Did that restrict his movements, or did he get about the yacht a good deal? A.—He never was very lively on the yacht. Along in 1885 he was much livelier. He was very fond of sailing in those days, he would take it out on the lake and stay all afternoon, and just sail around.

Q.—It was a combination? A.—Yes, sir, schooner-rig. 20

Q.—Latterly he was not very lively on the boat. Did he always take a valet with him? A.—No, sir.

Q.—In the later years did he? A.—I don't know what he did in 1911, I was not there. In 1910 he didn't.

Q.—Was he out very much then? A.—I can't recall that year.

Q.—It is pretty hard for you to go back to 1908 and 1909? A.—They usually used the yacht in the summer time when home. Mr. Harry used to go away, and, if Mr. Frank couldn't use it, I would call up Mrs. Ed. Walker and she would say, "All right, I will get a party up and we will go out."

Q.—Would you always be on it? A.—Yes. 30

Q.—When you were steward on the yacht you didn't go away with Mr. Harry? A.—No, that was when we laid the boat up that I went away with them.

Q.—During the years 1913 and 1914 you would only see him very casually? A.—Yes, that is all.

Q.—You knew of this illness, of course, in 1913, did you? A.—Yes. I never knew he was that seriously ill.

Q.—Speaking of February, 1914? A.—No, I knew at that time he had been sick, when he came out there I noticed he had been sick, just before that.

Q.—That was 1915? A.—Yes, that is the year he died. 40

Q.—You didn't know of his illness the previous year, at that time? A.—I heard them say he was sick.

Q.—You never saw him during that time? A.—No.

Q.—Are you still in the Walkers' employment? A.—Yes, sir.

Q.—In what capacity? A.—I am superintendent of the Walkerville & Detroit Ferry Company.

Q.—Did he ever ask you for a photograph before? A.—No, he didn't.

Q.—You had known him for a great many years? A.—Yes, ever since I went there.

Q.—Have you been in court all the time since this trial commenced? A.—I was here yesterday for the first day.

Q.—During the time you knew him did you ever know him to have these attacks that are called aphasia, or faintness? A.—No, never did.

Q.—He never had them when on the yacht? A.—Never had them.

Q.—Did the yacht seem to agree with him? A.—Yes, he was very fond of the yacht.

HIS LORDSHIP: I see Dr. Armour in court. Dr. Armour, will you give me the medical definition of aphasia, give its derivation?

DR. ARMOUR: It is "phemi," to speak.

HIS LORDSHIP: You describe it.

MR. MCCARTHY: Do you not think it is anticipating?

HIS LORDSHIP: Well, if you say so. I should have thought a medical definition of the word would do no harm. Oh, I think so. In a medical dictionary what would "aphasia" be called?

DR. ARMOUR: Inability to express one's thoughts, or to receive communications.

Q.—That is, "a" is "not," and "phemi" is speak? A.—Yes.

MR. MCCARTHY: I do not accept Dr. Armour's definition at all. A man might or might not speak and yet have aphasia; if my understanding is correct.

Q.—Mr. Fitzsimmons; did you ever know him when he had difficulty in expressing himself, as if the words didn't just come to him? A.—No, I never noticed him.

Q.—Would you see him at all in his office from time to time, except the casual visits? A.—Yes, I would say Mr. E. C. Walker never was a very fast talker, he was a man who weighed his words with a great deal of thought before he would express himself.

Q.—When you saw him in the office from time to time? A.—Yes.

Q.—Just casually going in and saying, "How do you do?" A.—Yes.

Q.—You wouldn't have business with him? A.—No, I wouldn't go to visit him at all.

Q.—In the house, I suppose, the same way? A.—He often used to ask about the children.

Q.—In the house you would see him the same way, you would casually go in and say, "How do you do?" A.—Yes, before that he used to come to the yacht and have lunch.

Q.—Who subpoenaed you? Have you got a subpoena? A.—No, I was never subpoenaed; they asked me to come here, that is all.

FREDERICK H. COOPER: Sworn. Examined by MR. HELLMUTH:

Q.—Mr. Cooper, did you become connected with the Walker firm or institution? A.—Yes, sir.

Q.—When? A.—1894.

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tion-in-
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Q.—And are you still connected with them? A.—I am.

Q.—What was your first connection with them in 1894? A.—As farm paymaster for Mr. Hiram Walker.

Q.—How long did that last? A.—Until he retired—one year.

Q.—And after that what did you become? A.—Assistant superintendent for Walker Sons & Company, as it was at that time.

Q.—You became assistant superintendent of Walker Sons & Company, it was then, that would be 1895? A.—Yes, sir.

Q.—How long did you remain there as assistant? A.—Until the death of Mr. Kirby, which occurred in January or February, 1896. 10

Q.—What did you become then? A.—I took Mr. Kirby's position.

Q.—As superintendent? A.—As superintendent.

Q.—What position do you hold now? A.—Manager of the insurance department.

Q.—When did you first work in the insurance department? A.—In 1896, while Mr. E. Chandler Walker was out of town on account of his wedding trip.

Q.—So Mr. E. C. Walker was married in 1896, and you say then you were taken into the insurance department? A.—Yes.

Q.—Were you there permanent or temporary? A.—Temporary, until Mr. Walker returned. 20

Q.—What then? A.—When he returned they made it permanent.

Q.—Did you come in contact with Mr. E. C. Walker after 1896? A.—Very frequently, sir.

Q.—In connection with what? A.—In connection with the insurance business, the insurance part of the business.

Q.—Tell me, what were Mr. Walker's characteristics, was he a voluble or reticent man? A.—He didn't have very much to say, sir.

Q.—Did you have any business relations with him in regard to the insurance? A.—Yes, because he took practically the entire charge of that department. 30

Q.—That is, Mr. E. C. Walker took practically the entire charge of the insurance department? A.—Yes.

Q.—Were there many policies, or few? A.—Quite a number of policies for a business of that kind.

Q.—What was there in regard to the policies that would in any way, if at all, be complicated or difficult, or as to the times during which the policies would run? A.—I don't just understand that.

Q.—Were the policies on the buildings or contents; were the contents permanent or shifting? A.—They had a general policy which was dated from the 11th of February, and during the year when there were a lot of changes in connection with the policies as the stocks were removed from one warehouse to another it would be necessary to transfer the insurance from one place to another, so it would be properly taken care of. 40

Q.—Tell me how you arranged the transferring, daily or weekly? A.—We transferred daily, I think at that time the reports came in from the book-

keeping department late in the afternoon, probably 5 or 5.30, then it would be necessary to be sure it was properly covered. Mr. Walker was always very anxious that it should be properly covered, and impressed that on my mind continuously.

Q.—He impressed it continuously on your mind? A.—Yes.

Q.—Now, how long did that continue, that you and Mr. Walker continued in that department, you being the official, up to about what year? A.—Well until the time of his death, in fact, because every time he would come in the office he would ask me if there was anything new, or anything special. Sometimes I would report to him of some conditions I had found in the building that might be changed.

Q.—You say that continued up to the time of his death? A.—Actually.

Q.—You saw him how shortly before he went to Washington? A.—I practically saw him every time that he came to the office, because he would pass my desk, or drop into the office that I occupied, or he would call me into his office; it is hard to say just as to the dates.

Q.—Do you remember at all the fact of his going off to Washington, and dying, do you remember? A.—Yes, I do, sir.

Q.—And you say it was months or years before that you had seen him?

20 A.—I say I saw him shortly before he left, that is, practically every time he was in his office I saw him.

Q.—Well tell me, did you, or did you not, have any discussions or talks with him; we will not call it discussions, but talks with him, about insurance, or insurance matters, shortly before he went? A.—Yes, Mr. Walker asked me to use considerable of my time in the matter of fire prevention, to see that the mill, and different parts of the distillery were in good shape, as it were. So, while they had a fire inspector there, I just would go around to see if there was any improvement could be made in the fire doors, or different things, for the prevention of fire.

30 Q.—You say Mr. Walker asked you to see about it? A.—Indeed, yes.

Q.—You say this was shortly before he went to Washington? A.—Yes, I should think the previous summer. It is hard just to get the time.

Q.—That would be the summer of 1914? A.—Something like that.

Q.—During those talks with him and up to the time you mention, which we will say is the summer of 1914, what, if any, changes did you notice in his capacity to discuss and talk about these matters? A.—I noticed no change, sir.

Q.—Then had you any other connection, or did you do any other work for Mr. Walker? A.—Quite frequently.

40 Q.—What? A.—He would ask me to do things for him. It is hard to explain, whenever there was anything wanted he would ask me to do it, or see about having it done.

Q.—Can you give me an idea of any of these things? A.—Taking care of making customs entries for anything he would purchase abroad, or in the United States.

Q.—Personal affairs? A.—Yes, personal affairs.

Q.—Up to how late did you do anything of that kind? A.—Well really,

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—continued

it is such a usual thing; any time he or Mrs. Walker, or both of them, went to the Old Country there was always a lot of things purchased.

Q.—You would put them through the customs? A.—I would put them through the customs.

HIS LORDSHIP: Do you remember them going separately to Europe? A.—I don't remember them going separately.

Q.—It does not mean when either Mr. or Mrs. Walker went? A.—When they went to the Old Country.

MR. HELLMUTH: Did you have any talk about them going through the customs, and ascertaining what duty, if any, was to be paid? A.—Mr. Walker always either gave me the invoices, or they would be handed to me with instructions to clear the goods. Sometimes the invoices would come to me before they would come home, or as the goods would come over I would make the entry. 10

Q.—Did you ever speak to him about that? A.—Oh, yes, he was always very particular that the duty should be paid.

Q.—You say he was very particular, what do you mean by that? A.—He insisted on all the duties being paid, even when he went to the United States and purchased things that came in from Detroit. You probably don't know, but some people make a practice of not paying all the duty that is necessary. 20

MR. MCCARTHY: I don't think the witness should give it as evidence against us. A.—Mr. Walker was always anxious that the duty should be paid on everything he brought over from the other side.

MR. HELLMUTH: Do you know anything about the Fire Department in Walkerville? A.—Yes, sir.

Q.—Can you tell me whether Mr. Walker had any connection with that? A.—Yes, sir.

Q.—What was his position? A.—He was chairman of the Board of Fire Commissioners. 30

Q.—Up till about when? A.—I believe 1910.

Q.—Had you any connection with that? A.—I did.

Q.—What was your position? A.—Secretary to the Board of Fire Commissioners.

Q.—In relation to matters that came before that Fire Department would you have any occasion to discuss them with Mr. Walker, or not? A.—At the meetings, yes. There would be a general discussion of any things necessary for the management of the department.

Q.—Do you know anything at all about the schools of Walkerville? A.—Yes, sir.

Q.—Had you anything to do, under instructions from Mr. Walker, in reference to any of those schools? A.—In connection with the schools I was instructed by Mr. Walker to purchase some pictures for the schools. 40

Q.—What year would that be? A.—1914.

Q.—Perhaps you will tell me what were the names of those schools? A.—The King George school, in 1914, we purchased some pictures for it.

Q.—Under whose instructions? A.—Under Mr. E. C. Walker's instructions.

Q.—You purchased, under his instructions, some pictures? A.—Yes, sir.

Q.—What did you do with them? A.—Had them framed, and put up in the school.

Q.—Did Mr. E. C. Walker know anything of your family? A.—Oh, yes, he invariably asked after them, he asked after my wife, and daughter Gladys. He always asked about Gladys practically every time he met me as he came in in the morning, he would say, "How are you? How is Mrs. Cooper, and Gladys?"

Q.—How was that in the latter part of 1914? A.—I didn't notice any difference whatever.

Q.—Now what about his being particular, or careless, in regard to matters in the office? A.—He was always very particular in connection with these matters, sir.

Q.—Can you give an illustration? A.—In little items, in the way you folded letters, or the way the stamps were put on the envelopes. Things of that nature. If the light was left lit in the vault, he would tell us to be sure to put it out. And things of that nature.

Q.—Did that stop, or continue, during later years? A.—We tried not to give him occasion to tell us twice about those things. We felt he had his eye on it.

Q.—Did you observe anything in regard to any physical ailment or trouble? A.—I appreciated he was getting older, and his physical condition was not as good as it had been.

Q.—What do you say in regard to his mental condition as compared with when you had first known him? A.—I didn't see any difference.

Q.—What about his slowness, or his rapidity, in making up his mind as to anything? A.—He always took time.

Q.—I am speaking now of in the early years, did he then take time? A.—He did take his time then.

Q.—What, if any, change was there in that respect in the later years? A.—I didn't notice any appreciable difference.

Q.—Now, as to his speech, what do you say as to whether, as far as you saw or noticed, he was confused in his speech? A.—I never saw an occasion when there was confusion in his conversation.

Q.—What do you say as to articulation, whether it was clear, or tricky, or what? A.—Always distinct, and, as far as my knowledge goes, grammatical.

40 CROSS-EXAMINED: BY MR. MCCARTHY:

Q.—In 1910 he gave up the Chairmanship of the Fire Commission? A.—Yes, sir.

Q.—And it was in the same year he ceased to draw any salary from Hiram Walker & Sons? A.—I don't know anything about his personal business.

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In the
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Defendant's
Evidence.

No. 45
F. H. Cooper
Examina-
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—concluded

No. 45
F. H. Cooper
Cross-Ex-
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No. 45
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—continued

Q.—That is not personal. I mean the Walker Company. A.—I don't know anything about his salary.

Q.—You are employed by Hiram Walker & Sons, or Walker Sons? A.—Walker Sons.

Q.—You don't know about the Hiram Walker & Sons business? A.—No.

Q.—You are employed by Walker Sons? A.—Walker Sons Limited, is the name at the present time.

Q.—Did you people insure your own properties? A.—Yes.

Q.—You have your own insurance company? A.—No, as agents. 10
Walker Sons Limited, are agents for some 21 fire insurance companies.

Q.—Walker Sons are agents for 21 different companies? A.—Yes, sir.

Q.—How many on your staff? A.—Just myself.

Q.—When you speak of the head of the insurance department, you are also the foot? A.—Yes, you might say so.

Q.—You have one policy covering all your properties? A.—A general policy form, yes.

Q.—A general policy form which is renewable every 11th of February? A.—Yes, sir.

Q.—Every year? A very simple matter to renew that? A.—Oh, yes. 20

Q.—That is a general policy, as to the stock there are others? A.—Yes, there is individual or specific policies on the stocks.

Q.—You have one general policy covering the buildings? A.—A general policy form.

Q.—You have general insurance on your buildings, on which you pay the premium once a year? A.—There is a general policy form used which is applicable to 21 companies.

Q.—I don't care about the form you use. A.—It is insurance for us in 21 different companies.

Q.—You are the agent? A.—Yes, sir. 30

Q.—And you have one form which covers all the agencies? A.—We have one form which is attached to all policies issued in our agency.

Q.—You have one form which you attach to each policy, but that simply covers the buildings? A.—No, it covers the buildings and stocks.

Q.—What changes have you to make from time to time? A.—The difference in the value of the stocks in the warehouses makes the change necessary.

Q.—That means fluctuating in quantity from time to time? A.—Yes.

Q.—Some days you have more, and some days less? A.—Yes.

Q.—Some days it might be in one building, and some days in another? 40
A.—Well, at the present time it is not done—

Q.—I am not asking you about the present time, but when Mr. Walker was alive. A.—Even later, in his time.

Q.—I want to know the difficulty, Mr. Cooper, because I cannot understand why you should consult Mr. Walker over a simple matter of that kind.

A.—Mr. Walker was always interested.

Q.—In what? A.—In the business, in the insurance business.

Q.—How do you mean, interested in the insurance business? A.—In the old days we issued interim receipts in connection with our agency, now we issue the policies.

Q.—What I am trying to get at is, what possible necessity there would be for you to communicate with him in regard to a very simple matter of keeping your goods covered by insurance? A.—Just general oversight, Mr. Walker was interested in it, he wanted to know what was done.

10 Q.—Did he ever want to know any more than if you had everything fully covered? A.—He wanted to know if it was properly done.

Q.—Did he ever go into the items to see if it was properly done? A.—When the agency was started, Mr. Walker wrote the applications.

Q.—How long ago is that? A.—In 1890.

Q.—We are not bothering about 1890. A.—You asked me to go back there.

Q.—I didn't ask you to go back there; I asked what was the necessity for Mr. Walker to be bothered with the details if there was a competent person to look after the insurance? A.—Just his own interest.

Q.—Take from 1905 on, you ran the whole thing, didn't you? A.—Yes.

20 Q.—Made up the general policy which was renewable each year? A.—Yes.

Q.—And had policies on the fluctuating stock from time to time? A.—Yes, but besides the distillery property there was considerable other business.

Q.—You looked after that? A.—I did, yes, but Mr. Walker wanted to know—

Q.—Did he want to know anything more than that you had all the property covered by insurance? A.—I would say that he did.

30 Q.—Was there anything more than he would say, "Cooper, is everything all right, is the property all covered?" A.—It wouldn't be my business to know whether the property was all covered or not.

Q.—I thought you were the head of the insurance department? A.—I was under instructions from the bookkeeping department of Hiram Walker & Sons Limited to place this business, they would hand the business over to me. I would not know if it was all covered.

Q.—You wouldn't know if it was all covered, or not, but he wouldn't have asked you if he would have to find that out from someone else? A.—Just what he would want to know was if the work was done in a proper way.

Q.—Let us understand each other, Mr. Cooper; you covered the property which the bookkeeping department handed to you? A.—Yes, sir.

40 Q.—And that was your job? A.—Yes.

Q.—If the bookkeeping department made a mistake and didn't tell you of certain property, you couldn't have covered it? A.—I might not.

Q.—Your job was a very simple one? A.—Yes.

Q.—Do you mean to tell me that the president of the company would be bothering about the details of a simple business such as insurance? A.—He would.

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—continued

Q.—Really? A.—Indeed he did, he was very much interested.

Q.—Interested in what? You haven't yet told us what he was interested in. A.—Interested in the working of the department.

Q.—When you say interested in the working of the department, you mean yourself, as the department, interested in your work—you were the department? A.—Well, the insurance department.

Q.—Which was you. A.—There was a stenographer as well who wrote the policies.

Q.—It is growing; you had a stenographer even to write the policies. What interest did he take? I am trying to find out from you what interest he took, because it seems incredible. A.—It is hard to say just what interest he took, only, in a general way, to know that the business was going along in the proper manner. 10

Q.—What do you mean by "the business going along," that everything was covered by insurance, that was the business? A.—Yes, and if there was any complaint of any of the companies.

Q.—Complaint of any of the companies about what? A.—Some of the insurance companies might not want to take as much business as we could give them, or some would want more business.

Q.—That would be your job to divide it between them? A.—If we wanted 20 to.

Q.—A very simple matter? A.—Yes.

Q.—What I want to know is, did he take any more interest than when he happened to be passing your room in the morning he would ask you, "Is there anything new?" A.—There was the interest he took generally.

Q.—Did he ever say anything more than, "Is everything covered?" Or, "Is there anything new?" A.—Yes, he did.

Q.—Tell us what he said? It seems to be incredible, if he had a competent person looking after that, why he should want to look after it. I should think he would try to relieve himself of the anxiety? A.—In fire insurance matters you are looking after things that come up in the way of protection, fire prevention, and things of that kind, which he was anxious to know whether they were in proper condition. 30

Q.—That was your job? A.—It was part of my position.

Q.—I thought you had a special fire man? A.—We did.

Q.—Was it the special fire man who would look after the fire apparatus? A.—Yes, and it was a nice thing to catch that fire man if we could.

Q.—How do you mean, "catch him?" A.—To find he didn't have some fire buckets filled with water, we would ask him why. Just to see that he was doing his duty. 40

Q.—You acted for the insurance company? A.—In a way.

Q.—You were the agent for the insurance company? A.—We were the agent for the insurance company.

Q.—One clause in the policy was that the buckets had to be kept filled? A.—That is one reason the rules are made such as they are.

Q.—Do you mean to suggest that the president of the company would ask

whether the fire man was keeping the buckets filled with water? A.—Yes, he would want to know about the business to the minutest detail sometimes.

Q.—When would these conversations take place? A.—When he would come down to the office.

Q.—Do you mean he would go into the question of the filling of the buckets? A.—Yes, he would.

Q.—What else? A.—The fire extinguishers.

Q.—Who is responsible for them? A.—The same party.

Q.—What is his name? A.—At the present time, John Taylor.

10 Q.—Notwithstanding the fact he had John Taylor, who was responsible, he would discuss the fire extinguishers and the water buckets with you? A.—Yes, sir.

Q.—How long did he continue to do that? A.—It is hard to say how long he would do it. It was not a continuous affair, but he would bring it up incidentally.

Q.—He resigned from the Fire Commission in 1910? A.—Yes.

Q.—Did you have as much to do with him after that as you had before? A.—Well, probably not as much, but I saw him continuously.

20 Q.—You didn't see him continuously, because he was abroad considerably? A.—When he was in the office.

Q.—I am told he ceased to draw a salary from Hiram Walker & Sons in 1910, and he was not as continuously at the office? A.—I don't know anything about that.

Q.—Where was your room as compared with his? A.—I was at the end of the corridor, at the front of the office, and he was right back at the river front end.

Q.—Did he have to pass your room coming and going? A.—Yes, sir.

Q.—During the years 1912, 1913 and 1914, when he came to the office, someone always came with him, didn't they? A.—Not always.

30 Q.—Most times? A.—He has come quite frequently without any one.

Q.—We are told, by the gentleman that he always used to drive down with him, stay and wait outside, and take him home again? A.—I have seen that done.

HIS LORDSHIP: Is that Gilbert?

MR. MCCARTHY: Gilbert.

Q.—And he would assist him out of the car, and up the steps? A.—Yes, sometimes.

Q.—And they had a rail on the steps, didn't they? A.—That was rather a dangerous step, it should have had a rail put on when the building was built.

40 Q.—However, they did put it on? A.—The rail was put on, there are three steps in rather a dark place in the office.

Q.—And they put the rail on quite recently, shortly before his death? A.—Yes, as I remember, it was not very long before he left.

Q.—Then you also seemed to attach some credit, or importance, to the fact that you passed his goods through the customs? A.—I didn't take any credit for it.

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In the
Supreme
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Defendant's
Evidence.

No. 45
F. H. Cooper
Cross-Ex-
amination,
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—continued

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*In the
Supreme
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Defendant's
Evidence.

No. 45
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—continued

Q.—There seems to be some point attached to it. Does it mean any more than he had instructed you to always pay the duty on things that came through the customs? A.—That is the idea.

Q.—I don't know how we can get them through without paying? A.—You don't live in this district.

Q.—There are ways of doing it? A.—Ask Mr. Fleming.

Q.—I will ask you, you seem to know more about it than anybody else. He found it necessary to instruct you to pay the duty? A.—It is hard to understand just your meaning.

Q.—The question is simple enough. Did he find it necessary to instruct 10 you? A.—I don't know whether he found it necessary or not.

Q.—He did instruct you to pay duty? A.—He instructed me to pay duty.

Q.—And if you got notification from the customs that there were some things in bond, you would go down and pass them? A.—Yes.

Q.—Would you not, in some cases, not see him at all, you would just find a memorandum on your desk? It wouldn't require any mental effort to pass goods through the customs? A.—No.

Q.—It would not require any mental effort for him to send a post-card to you? A.—No.

Q.—I am told, when you refer to the dark place in the office, there is both 20 a window and door there? A.—There is, of course, at the time that stairway was there there was a door there, with a window in it, but then it was a dark place, darker than the other part of the office, going down the other corridor.

Q.—You say he was very particular about having the lights put out?

HIS LORDSHIP: "Particular," he said.

MR. MCCARTHY: Particular about putting the lights out? A.—Yes, sir.

Q.—Did that continue up till the time he stopped attending the office? A.—The idea is, he would come in the door, and he would see the light lit and draw our attention to it.

Q.—He would come in the door, see the light lit, and draw your attention 30 to it, and he was the president of the company? A.—Yes, sir.

Q.—He was also particular as to the way the stamps were put on? A.—Yes, he wanted the letters folded properly and the stamps put on the envelopes properly, he was particular in having them put on straight.

Q.—Particular about having the stamps put on straight? A.—Yes.

Q.—Is your reference to the firm's letters, or his own? A.—To the firm's letters, if he would see anyone putting the stamps on crooked.

Q.—He would superintend the putting on of the stamps? A.—No, he was very observant, he would see it as he would go by.

Q.—Where would he see it? A.—Probably on the mailing desk as he 40 would go by.

Q.—As he was passing the mailing desk, he even noticed the way the stamps were put on, did he? A.—Yes, sir.

Q.—Apparently little things seemed to impress him as he got older? A.—Not necessarily as he got older, as far as I remember, he was always that way.

Q.—He was always that way? A.—I can tell you that back in 1895 he was that way.

Q.—He was that way then. Do you regard that as rather extraordinary that a man of his position as president of the company, should do that? A.—No, I didn't, I thought it was perfectly all right.

Q.—You thought it was perfectly all right that the president of the company should even notice the way the stamps were put on the envelopes, or the way the paper was folded? A.—Yes.

Q.—Or the way the light was left in the vault? A.—Yes.

Q.—He would ask you about the details of a matter which you could see almost with your eyes shut? A.—I might say he was very particular in all these things.

Q.—He would ask you about things you could practically see with your eyes shut. You knew the insurance business from the top to the bottom? A.—Yes, sir, I studied it up. I don't say I know it all.

Q.—You knew it was your duty to keep everything covered by insurance? A.—Yes.

Q.—You were told day by day that the stock fluctuated? A.—Yes.

Q.—And your duty was to cover the fluctuations by insurance? A.—Yes.

Q.—And there was no necessity for consulting him, or anybody, as far as you were concerned? A.—No, he just showed his interest.

Q.—He just showed his interest in small things, like the stamps and the lights. He told you to go out and buy pictures for a school, in 1914? A.—Certain pictures.

Q.—Had he ever been in the school? A.—Not that school because it was just constructed.

Q.—That school had just been constructed, and he told you to go and buy pictures for it? A.—He had done so in connection with the other school.

Q.—Not a great deal of mental effort required for that? A.—I wouldn't consider it was a great mental effort, I thought it was a very nice thing. You understand Mr. Walker was a very nice man, and these things would be done instinctively with him.

Q.—Your meetings would be on the occasions when talking insurance with you, or fire protection? A.—Yes, and casually.

Q.—When he was passing he said to you, as apparently he did to everybody else, "Good-morning, is there anything new? Is everything all right?"

A.—That was his expression.

EDGAR LADORE, Sworn. Examined by MR. HELLMUTH:

Q.—Mr. Ladore, when did you, if at all, become connected with the Walker institution? A.—In 1888.

Q.—Are you still with them? A.—Yes, sir.

Q.—What position do you occupy now? A.—Assistant Secretary.

Q.—Did you know the late Mr. E. C. Walker? A.—Yes.

Q.—When did you first come in contact with him? A.—Well, I knew of him before I went with the firm.

RECORD

In the
Supreme
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Ontario

Defendant's
Evidence.

No. 45
F. H. Cooper

Cross-Ex-
amination,
20th May,
1924.

—concluded

No. 46
Edgar
Ladore
Examina-
tion-in-
Chief.
20th May,
1924.

RECORD

In the
Supreme
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Defendant's
Evidence.

No. 46
Edgar
Ladore
Examina-
tion-in-
Chief.
20th May,
1924.

—continued

Q.—When did you first speak to him, or become known to him? A.—Why, I imagine it was perhaps during my first year's connection with the firm.

Q.—As far back as 1888? A.—Yes, sir.

Q.—Did you see him off and on after that, or not? A.—I did.

Q.—Did you ever do anything for him? A.—Not in the early years.

Q.—When can you say you first did anything for him? A.—As a matter of fact, Mr. Walker did not take any particular interest in the work I was doing.

Q.—What was the work you were doing? A.—In the shipping depart- 10
ment, except to ask occasionally how we were getting along.

Q.—Did you do anything for him outside of the business of the firm, or distillery? A.—Well, I recall one instance, that was in 1910, I think it was, or 1911.

Q.—What was that? A.—Mr. Walker had offered some pictures for exhibition purposes to the Detroit Museum of Art, and he called me in and asked me if I could arrange to have these pictures taken across the river, and returned. I told him I knew Mr. Smith, the deputy collector of customs, very well, and I thought there would be no difficulty in arranging the matter. I then said I would call up Mr. Smith and do so. However, he insisted I should go over and see Mr. Smith personally. He appeared to be very anxious to have the matter prosecuted in a manner that could not be questioned. 20

Q.—That is in regard to? A.—Taking them over, and bringing them back.

Q.—Did you arrange that? A.—I did.

Q.—After that did you see him, during 1910 or 1911, on any occasions besides that to talk to him? A.—Well, not to speak to him very often, no.

Q.—Did you see him in a social way at all? A.—Yes, I remember being at one or two receptions at "Willistead."

Q.—Did you see him there? A.—I remember one occasion particularly, 30
yes.

Q.—In regard to talking to him? A.—Well, only a few words.

Q.—Now, you had seen him, and casually talked to him, as far back as 1888? A.—Yes, sir.

Q.—How soon, or how late up to the time of the trip to Washington, and his death, did you see him, or talk to him? A.—Well, I don't think I spoke to him for perhaps several months before that; although I saw him, I didn't have occasion to speak to him.

Q.—About how many months before he went to Washington was it, can you say? A.—No, I can't recall.

Q.—But when you did see him on the last occasion, to speak to him, what, if any, change did you notice in him, from when you had first known him? I am speaking of mentally. 40

MR. MCCARTHY: That is objected to, of course.

THE WITNESS: Well, I never noticed any change in him mentally.

MR. HELLMUTH: What about physically? A.—I did notice a physical change.

Q.—What was his manner of speech when you first knew him, was it rapid, or deliberate, or what? A.—Very deliberate.

Q.—That is when you first knew him. And what was his manner of speech when you last came across him? A.—I didn't notice any difference. Exactly the same.

Q.—What do you say as to any time you saw him, as to his speech being confused so you couldn't understand the words, or he couldn't make himself understood? A.—I never experienced anything of that sort with him.

10 Q.—What do you say in regard to his articulation, as to whether it was clear, or distinct, or thick, or indistinct? A.—Well, I would say it was quite distinct, any time I spoke to him.

Q.—What, if any, change did you ever notice in that respect? A.—None whatever.

Q.—Did you notice his handwriting at all? A.—Yes.

Q.—What change, if any, did you see in that? A.—I couldn't see any change.

CROSS-EXAMINED BY MR McCARTHY:

20 Q.—You were in the shipping department up to the time of Mr. E. C. Walker's death? A.—No, sir.

Q.—You were in the shipping department? A.—Well, yes, up to 1915.

Q.—A department in which he took very little interest, if any? Is that right? A.—Correct.

Q.—And your opportunities of meeting him were very limited? A.—Yes.

Q.—Who subpoenaed you to come here? A.—Nobody.

Q.—They just declared a public holiday at Walkerville, or closed the distillery, which?

MISS MARY MILAN, Sworn. Examined by MR. OSLER:

30 Q.—What do you do, Miss Milan? A.—I am in the employ of Hiram Walker & Sons, in their private lunch room.

Q.—Did you know the late Mr. Ed. Walker? A.—I did, sir.

Q.—For how long? A.—36 years.

Q.—When did you first know him? Where was he when you first knew him? A.—In his cottage, what they called the "Cottage."

Q.—Before he was married? A.—Yes, about five years before he was married.

Q.—Who were keeping house for him? A.—Mr. and Mrs. Joseph Fitzsimmons.

Q.—What were you doing? A.—I was assisting, helping them.

40 Q.—After the marriage, what took place? A.—We still continued there for a while.

Q.—Then? A.—They came back and wanted the cottage, and we moved across the road.

RECORD

In the
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Ontario

Defendant's
Evidence.

No. 46

Edgar
Ladore
Examina-
tion-in-
Chief
20th May,
1924.
—concluded

No. 46

Edgar
Ladore
Cross-Ex-
amination,
20th May,
1924.

No. 47
Mary Milan
Examina-
tion-in-
Chief.
20th May,
1924.

RECORD

In the
Supreme
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Defendant's
Evidence.

No. 47
Mary Milan
Examina-
tion-in-
Chief.
20th May,
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—continued

Q.—Then what did you do? A.—I was in the lunch room of Hiram Walker & Sons.

Q.—From that time on you have been in the lunch room? A.—Yes, sir.

Q.—Now, did you have opportunities during that time that you knew Mr. Walker of seeing and speaking to him? A.—Several times, sir.

Q.—What do you say as to his general character and habits? A.—I found him always all right.

Q.—What about his speech? A.—His speech—I never saw any difference at all. He might have been physically weaker later on. I saw nothing the matter with his speech, he was perfectly all right to me. 10

Q.—Did you ever find his speech confused? A.—No, sir.

MR. MCCARTHY: That is suggestive, of course.

MR. OSLER: Did you, or did you not, notice any signs of his being unable to express himself clearly? A.—Well, of course, he was not in my capacity very much, but what I saw of him I found him all right.

Q.—Any difficulty about pronouncing his words? A.—No, sir.

Q.—When did you last see him? A.—In 1914, just before he went away to Washington.

HIS LORDSHIP: Did he go to lunch there? A.—No, sir, not at the time. I was at his house. 20

Q.—Did he often go to lunch in the building? A.—Yes, sir. Not the latter part may be, but three or four years before he died he came occasionally.

MR. OSLER: During the last three or four years you say he went occasionally? A.—Yes, sir.

Q.—And before that? A.—Most always there.

Q.—Now, at the time he stopped going there almost always, and went occasionally, did you notice any change in his manner of speaking? A.—No, sir.

Q.—You were just going to tell me about the occasion when you last saw him? A.—Well, I found him, of course, physically weaker, but mentally I considered him all right. 30

MR. MCCARTHY: I object, of course, to that.

MR. OSLER: Where was this? A.—In "Willistead."

Q.—How did you happen to see him in "Willistead?" A.—I knew he was going away, and I went to make a call before they went.

Q.—How long did you stay? A.—Not more than 20 minutes, at the most.

Q.—Who was there? A.—Just Mr. and Mrs. Walker.

Q.—Do you remember what was talked about? A.—Just asked, "How do you do?" to him. And I wished him a pleasant journey on his trip. And all like that. That is about all.

Q.—You think the interview lasted about 20 minutes? A.—Just about 40 twenty minutes.

Q.—Was that the occasion when you saw he was physically weaker? A.—Yes, sir.

Q.—How did you find him mentally on that occasion? A.—I saw no change in him whatever, as far as that is concerned, to me.

MR. MCCARTHY: That is objected to, of course.

CROSS-EXAMINED by MR. MCCARTHY:

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Q.—When you went to the lunch-room of course you wouldn't see much of Mr. Walker, except during the time he had lunch there? A.—No, sir.

Q.—You say, during the last three or four years, he did not lunch there very often? A.—Not very often.

Q.—If at all? A.—I can't say how many times.

Q.—When he had lunch there what would you see as to his mentality? A.—I would wait on him.

Q.—That is the extent of what you saw? A.—Yes.

10 Q.—He would be in there with the other members of the family? A.—Yes, sir.

Q.—Would you see him on any other occasions, except going in and out of the building, if you could see him? A.—No, sir.

Q.—On the occasion you spoke about, when you went there, it was simply to say good-bye because you knew he was going to Washington? A.—Yes, sir. I occasionally went there anyway.

Q.—You knew he was a very sick man? A.—No, I didn't.

Q.—Did you always go to say good-bye, that is, on a special occasion? A.—Yes.

20 Q.—They were just going to Washington, they were not going to England? A.—They were going further, to Europe; weren't they?

Q.—I understood they were going to Washington; and he died there? A.—Well they did go to Washington.

Q.—You went there simply to say good-bye to him? A.—Yes, sir.

Q.—Did it take 20 minutes to say good-bye? A.—No, I sat and talked a little while.

Q.—Was Mrs. Walker with him? A.—Both together.

Q.—He was there? A.—Yes, sir.

30 Q.—You were rather shocked at his physical condition, were you not? A.—No, I was not.

Q.—Mr. Fitzsimmons seemed to be shocked? A.—He looked pretty good to me that day.

Q.—Where were they sitting when you saw them? A.—In the reception hall.

Q.—And he looked pretty good to you that day? A.—Yes, he did; he always did, for that matter.

Q.—You were not subpoenaed, or were you? A.—No, sir.

Q.—You just joined the holiday throng.

40 MR. WALKER: I will read the evidence taken on commission of Frederick M. Delano.

HIS LORDSHIP: We have heard of Walker Bros. & Company Limited, who is Edward C. Walker & Bros?

MR. WALKER: That, I understand, is a partnership of the three brothers.

HIS LORDSHIP: It has nothing to do with the limited company?

MR. WALKER: No.

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(Mr. Walker reads the evidence of Frederick M. Delano).

The deposition of Frederick M. Delano, taken on behalf of the defendants in the above entitled cause before George Donaldson, a Notary Public in and for the County of Wayne, State of Michigan, at Office No. 1502 Ford Building, in the City of Detroit, Wayne County, Michigan, pursuant to notice and order hereto annexed.

APPEARANCES:

The plaintiff appeared in person.

O. E. Fleming, K.C., Attorney for plaintiff.

J. H. Rodd, K.C., Alfred Lucking, Esq., H. Van Auken, Esq., Attorneys for the defendants.

10

FREDERICK M. DELANO was thereupon called as a witness on behalf of the defendants, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION by MR. LUCKING:

1. Q.—What is your name? A.—Frederick M. Delano.

2. Q.—Where do you live, Mr. Delano? A.—1787 Parker Avenue, Detroit.

3. Q.—Where is your office? A.—I have my letters come to 526 Ford Building, and I have just taken up with the Northwestern Finance Corporation, 526 Ford Building.

4. Q.—How long have you resided in Detroit? A.—Well, let me see: 60 years.

5. Q.—In the interim, have you resided anywhere else? A.—Fifteen years in New York.

6. Q.—Do you remember about when those years were that you were away? A.—Yes. We came here from Rochester, N.Y., in 1847, when I was five years old, and I lived in New York City 15 years. Fifteen and five are twenty. The rest of the time I lived in Detroit.

30

7. Q.—That is about 60 years, yes. But I was wondering when the 15 years were? A.—It was from 1875 to 1890.

8. Q.—Did you know the late E. C. Walker? A.—Very well.

9. Q.—Of Walkerville, Ontario? A.—Yes.

10. Q.—I do not ask you for exact dates, but about how long had you known him? A.—Oh, at the time of his death, I should say over 40 years.

11. Q.—Had you known him quite intimately? A.—Very.

12. Q.—And had you had business dealings together? A.—Yes, sir.

13. Q.—Had you known him socially? A.—Yes.

14. Q.—Met him socially? A.—Oh, yes.

15. Q.—Did you know him while his father was alive? A.—Oh, yes. I used to visit him down there at the old Walker House.

40

16. Q.—You did? A.—Oh, yes, at the corner of Fort street and Shelby.
MR. FLEMING: Visited who, E. C., or the old gentleman?
17. Q.—(By Mr. Lucking) That is while the old gentleman was alive?
A.—Yes.
18. Q.—Whose guest would you be, or whom would you visit there mostly? A.—The boys, Ed. and Harry and Frank, and their sister Lizzie, who is now Mrs. Theodore Buhl.
19. Q.—And you knew all of the family? A.—Very well.
- 10 20. Q.—During the forty odd years that you knew Edward, how friendly were you with him? A.—I remember Mr. Walker sending for me one day; he had some stock he wanted to sell; he was at dinner, and I stood looking out of the window, and he came in, and he said, "Fred, what are you looking at, what are you thinking about?" And I said, "I was trying to reckon up the number of miles I have danced in these rooms; there were a good many, but I do not know how many."
21. Q.—Who was it that spoke to you? A.—Hiram Walker.
22. Q.—The old gentleman? A.—The old gentleman.
23. Q.—That was when you were acting as a broker? A.—Yes.
24. Q.—Had you started as a broker here in Detroit at that time? A.—
20 Yes, that was about in 1890.
25. Q.—And that was after you came back from New York? A.—Yes.
26. Q.—Had you been engaged as a broker a considerable portion of your life? A.—Why, nearly all of my business life. I was an organizer for the American District Telegraph Company. I organized 42 companies for them, until they sold out to the Western Union. Then I went out for the Bell Company, and I organized some of the best companies that the Bell Company has here in the States. And I organized in Mexico. We built a large number of exchanges in Mexico, and in the West Indies Islands. I have always been a seller of stock and investment securities.
- 30 27. Q.—Do you still do something along those lines? A.—Yes, sir.
28. Q.—Do you remember about the date that Mr. Edward Walker died? A.—Yes, I remember it.
29. Q.—Were you at his funeral? A.—Yes, I was at his funeral.
30. Q.—Were you living here then? A.—Yes, sir.
31. Q.—Are you able to remember the year of that? A.—Not exactly, but I should say it was in the neighborhood of nine or ten years ago.
32. Q.—I can give you that date. It was in the month of February, 1915.
MR. ROBINS: Wasn't it March, Mr. Lucking?
MR. LUCKING: It may have been March.
- 40 MR. ROBINS: I think it was the 11th of March, 1915.
33. Q.—(By Mr. Lucking): Now, had you had any business transactions with him previous, say within three years? A.—Prior to his death?
34. Q.—Yes, before his death? A.—Yes, sir.
35. Q.—You did have business transactions? A.—Yes, sir.
36. Q.—Can you name one of some importance within a year or so before his death? A.—Why, I was asked by Mr. Gustave Zanger to help him in selling

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some West Gate Improvement Company stock. The West Gate Improvement Company owned land out in the neighborhood of Dearborn, and Mr. Zanger had taken this up for the company, and it looked to me as though it was a good thing, because it was pretty generally understood at that time that Henry Ford was going out there to establish a plant, and in the event of his doing so, the property around there would be valuable. So, I looked into this stock; I went out and visited the property, and satisfied myself that it was safe, and would be a profitable proposition. I told Mr. Zanger that I would undertake to help him. Among others that I went to was Mr. E. C. Walker. I presented the matter to him, and went into details about it, and he expressed himself as being quite interested. He said at the time that he would think it over; and I was to come back again. 10

37. Q.—Where did you see him? A.—In his office, over in Walkerville. I went back again, and we talked it over, and he asked me some questions concerning the statements I had made during my previous visit; I answered them apparently to his satisfaction. And, after three or four meetings he said, "Well, I will tell you what I will do"—I cannot remember the exact words, but I will give them to you as near as I can, because it is a long time ago; he said, "I like the appearance of this thing, and I will take \$5,000 of this stock now." He said, "You can bring the stock over, and I will give you my check." I went back to Zanger and got the stock, and took it over, and got his check. I do not know, but I think the check was payable to the West Gate Improvement Company; I won't be sure about that; but it was Ed. Walker's personal check. 20

38. Q.—How many different interviews do you think you had with him on the subject before he agreed to take anything? A.—First, I think he wanted to make some inquiries on his own account; and I should say there were, I guess, four interviews, probably.

39. Q.—Running over a period of how long, to your best recollection? A.—Oh, somewhere between two and three weeks.

40. Q.—Were they conversations on the subject of selling him that stock with anybody but himself? A.—No, sir; no one present but himself, at any of our interviews. 30

41. Q.—Do you know of your own knowledge, of his consulting any person in his office, or leaving it to anybody in his office? A.—I have no reason to think he did. I think he went on his own judgment.

MR. FLEMING: I do not think that is proper. I object.

42. Q.—(By Mr. Lucking): Do you know of his talking with anybody in his own office about it? A.—No.

MR. FLEMING: You may note my objection to that as evidence.

43. Q.—(By Mr. Lucking): Your interviews with him, you have said, were with him personally, and with nobody else? A.—With nobody else. 40

44. Q.—Did you ever interview him at any place, on this subject, except in his office? A.—Why, it seems to be that he said one day, "Come up and take lunch with me, and we will go on talking about this thing." And I did, and we talked some about it at lunch.

45. Q.—Was any person present at the lunch except the servants and

yourselves? A.—No, sir, no one but himself. Mrs. Walker was out to Grosse Point to some social function.

46. Q.—To what extent did he go into the prospects of the land, the total capital, and all of that kind of thing, of the company, the West Gate Company?

A.—Well now, I think, as I remember it, he asked the questions that naturally a good conservative investor would, about the capital stock, the par value of the shares, whether there were any bonds, whether there was any preferred stock, whether it was all common, the indebtedness of the company, if any, and the land they held, and what mortgages there were on it, and what rents there
10 might be on the land, and why I believed it was going to be valuable, and such questions as that. He asked the questions that you yourself would ask if you were making an investment.

47. Q.—And how about the location of the lands or maps? A.—I showed him all of that. I had a map with me I went over all of that. In fact, I am pretty sure that he kept the map between two interviews. He went over it himself.

48. Q.—Then the stock was actually issued to him, was it? A.—The stock was certainly issued to him, to E. C. Walker himself.

49. Q.—And who took it to him? A.—I took it to him and got his check
20 signed by E. C. Walker.

MR. LUCKING: I here request the Commissioner to mark for identification the check which I produce.

(A document was thereupon marked "Defendant's Exhibit 1.")

MR. LUCKING: I show this Exhibit 1 to the witness, and I will ask him if he recognizes and can state whether this had anything to do with that transaction (handing Exhibit 1 to the witness)?

A.—That is the identical check that was given for the stock. The writing is in the hand of J. McDougall, I think.

50. Q.—And the signature? A.—The signature is "Edward C.
30 Walker."

51. Q.—Is that his own personal handwriting? A.—Yes, sir.

(Defendant's Exhibit 1 was handed to Counsel for plaintiff.)

52. Q.—(By Mr. Lucking): Witness, are you able, from this check, to fix the date of the delivery of that stock, and the acceptance of the check? A.—Well, I think my recollection is that they followed one very closely upon the other. I think it was only the day before, perhaps the day before that, that I got the stock from Zanger and took it over and got his check.

53. Q.—When did you get that check, what date? A.—Why, I think it was this date.

40 54. Q.—The date that is shown on the face of the check? A.—Yes, I think so.

MR. LUCKING: With your permission I will read into the record the check. In red ink at the top it says "Savings Account."

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RECORD ECW

No. 387

Walkerville, April 1, 1914.

In the
Supreme
Court of
Ontario

Pay to the order of West Gate Improvement Co.
Five Thousand Dollars.

Defendants'
Evidence

To Edward C. Walker
The Canadian Bank of Commerce,
Walkerville, Ontario."

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tion-in-
Chief.
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MR. LUCKING: On the left end, printed across the check is: "Payable without charge at the Peoples State Bank, Detroit, if desired." It is stamped on the face, "Canadian Bank of Commerce, paid."

The date is stamped out. Then it says, "Second Teller, Walkerville, Ont." 10

Endorsed on the back: "West Gate Improvement Co., Inc., M. F. Victor, Secretary and Treasurer." "G. W. ZANGER" is underneath that. Then it is stamped with the "Paid" stamp of the Merchants Bank of Canada on April 14, 1914, Walkerville, Ontario. Underneath that again is the stamp of the Merchants Bank of Canada, in red ink, "prior endorsements guaranteed," and then the stamp "The Peoples State Bank." And underneath that is still another "The Peoples State Bank" in red ink. Then at the very end of it, in the right hand back part it says, "Pay to the order of Merchants Bank of Canada. F. M. Scarff, Manager Windsor Branch."

MR. LUCKING: Now, while on that subject, we will mark as Exhibit 2, 20 a photostat copy of the check, and of the endorsements.

(Which said photostat copy was marked Defendants' Exhibit 2).

MR. LUCKING: I produce, and ask to have marked for identification, what is apparently a certificate of stock.

(The stock certificate was thereupon marked Defendants' Exhibit 3.)

55. Q.—(By Mr. Lucking): I show you defendants' Exhibit 3, and ask you what that is, please? A.—That is the original certificate that I delivered to Mr. Walker, for which I got that check.

MR. LUCKING: We will pass that to Counsel for the plaintiff.

(Handing defendants' Exhibit 3 to Counsel for the plaintiff). 30

57. Q.—Now, witness, that appears to be dated the 31st day of March, 1914. Are those the signatures of Mr. Zanger and Mr. Victor, respectively on there? A.—Yes, they are.

58. Q.—Who was Mr. Victor? A.—He was the secretary and treasurer of the company, and I think he married a sister of Mr. Zanger's wife and he was formerly secretary of Frank and Al Fletcher at Alpena.

MR. LUCKING: We now offer this in evidence, and submit for the stenographer's and Commissioner's notes the photostat copy, with the consent of Counsel on the other side. The photostat copy may be marked "Defendants'

Exhibit 4, and the photostat copy of the endorsements on the back may be marked Exhibit 5.

(The photostat copy of the stock certificate was marked "Defendants' Exhibit 4," and the photostat copy of the endorsements thereon was marked "Defendants' Exhibit 5.")

MR. LUCKING: On the back of this Exhibit 3 is an assignment of the shares to "E. C. Walker & Bros.," dated June 4, 1914, signed "Edward C. Walker by J. Harrington Walker, Attorney," "in the presence of J. A. McDougall."

10 59. Q.—Did you personally have anything to do with that transaction at all? A.—No, I don't know about that.

60. Q.—That is all that is necessary, if you do not know about it. Now, who was Mr. Meginnity? A.—David Meginnity?

61. Q.—Do you know David Meginnity, who will be mentioned here in a moment? A.—Yes, he used to be a collector of internal revenue, and he was a partner of Zanger in this West Gate business.

62. Q.—Do you know anything about what, if anything, became of that stock certificate of Mr. Walker's, E. C. Walker's, finally? A.—I sold it for him. Beyond that, I do not know. I sold it for him several months thereafter. I do not know exactly how long.

20 63. Q.—Was that after his death? A.—Yes, after his death, I sold it for the estate.

64. Q.—To whom was that sale made? A.—I sold it to Zanger.

65. Q.—And how much? A.—How much did I get for it?

66. Q.—Yes? A.—\$10,000.

67. Q.—For the \$5,000 investment? A.—Yes, I got a check for \$10,000, a certified check.

68. Q.—That was turned over, in some form, to the Walker estate? A.—That was turned over to the Walker people.

30 MR. FLEMING: Does he know that?

MR. LUCKING: He said he did it himself.

69. Q.—Did you do that yourself? A.—I did it myself.

MR. FLEMING: How does he know? Well, never mind, I will go into that myself.

70. Q.—(By Mr. Lucking): That was a few months after his death, you say? A.—Yes.

71. Q.—Now, I see, finally, that this stock that is already in evidence was assigned to E. C. Walker & Bros. And then later on it will appear that it was assigned by E. C. Walker & Bros. to David Meginnity. You say he was the partner of Mr. Zanger? A.—Yes.

40 72. Q.—With whom did you hold your transactions in selling the stock? A.—Zanger.

73. Q.—Zanger himself? A.—Yes, sir.

74. Q.—But he took it in the name of Meginnity? A.—I don't remember now. This certificate I delivered and got \$5,000 for it, which I took Zanger. Then Mr. Zanger bought the stock back and I took over his certified check for \$10,000 and got the \$5,000 certificate and took it back to Zanger.

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75. Q.—Do you remember what person you handed the \$10,000 to? A.—
J. A. McDougall.

76. Q.—J. A. McDougall? A.—Yes.

77. Q.—Did you have any other dealings with Mr. E. C. Walker concern-
ing the West Gate Improvement Company stock? A.—Yes. Later on, while
he was still living and in good health, apparently good health, and good mental
condition, I had an offer, if I would raise \$50,000 on a first mortgage on land
valued, appraised, at \$120,000, that I would receive therefor, that is, that the
borrower would pay 6 per cent. interest, and pay me a five per cent. commis- 10
sion for making the loan, and would also give me \$50,000 of the stock of the
West Gate Improvement Company. He needed the money very much.

78. Q.—Who was it that needed the money? A.—Zanger. He needed
that money very much, and because I was very close to him, he made that pro-
position to me. I immediately went to Mr. Walker and laid it before him, and
it pleased him very much. He said, "I will take this up with you and we will
look into it. I am very favorably inclined." And I went back to him on the
matter, and he asked me some questions, and I showed him on the map where
the land was; and he was ready to take this mortgage for \$50,000 on which he
would receive half of my commission, two and a half per cent., and receive 20
interest at the rate of 6 per cent. per annum, and he would have received \$25,-
000 of the stock of the West Gate Improvement Company, and I would receive
\$25,000 of it. We were to just split 50-50. And then, he was taken ill. That
was the end of it.

79. Q.—Before you closed it, before it was closed at all, you did negotiate
with him for it? A.—I negotiated with him for it. He would have taken it if
he had stayed alive and had been able to do business, and we would have cleaned
up \$100,000 out of it.

80. Q.—That is, the stock became worth two for one, did it? A.—Yes.
That was what I sold the other for.

81. Q.—Now, I will ask you if you can remember any other dealings that
you had with Mr. Walker, within two or three years of his decease? And, Mr. 30
Rodd suggests that we try to place the other transactions in point of time a little
nearer. It appears here that this transaction in which you sold him \$5,000 of
stock took place, so far as the closing of it was concerned, on April 1st, 1914,
which was about 11 months before he died? A.—Yes.

82. Q.—Now, I think you have already said it was after that time that
you took up the negotiations for the \$50,000? A.—Yes.

83. Q.—Could you give us some idea of about when? A.—Yes, I think
that it was along in September. This other was in April, and it must have been
along in September. I should say pretty confidently that it was in the month
of September. 40

84. Q.—That is your best recollection, is it? A.—Yes.

85. Q.—Have you tried to fix that date at all? Have you investigated
any documents to see? A.—No, I have not thought about it.

86. Q.—That is your best recollection, is it? A.—Yes.

87. Q.—Simply from recollection? A.—Yes.

88. Q.—You know it was some months after? A.—Yes.

89. Q.—In the fall? A.—Yes. You are speaking of the \$50,000 transaction now?

90. Q.—Yes, speaking of the \$50,000 transaction? A.—Yes, I should say it was in September.

91. Q.—Do you know whether Mr. Zanger got that loan anywhere else? A.—I don't know that. He can tell you.

92. Q.—You don't know positively yourself? A.—No, sir. I don't know whether it was finally necessary. My recollection is that he dealt with Mr. Ford very soon after that, and I guess turned things over to him.

93. Q.—Wouldn't it be when you bought the stock back for \$10,000? A. Yes.

94. Q.—Then, if necessary, we can ask Mr. Zanger about that, in order to fix the date, although I do not think it is very important. But, you know it was some months after this other deal? A.—Yes.

95. Q.—I will ask you again whether you remember some other transaction prior to this other one, but within two or three years of his death? A.—Yes, I do. Do you want me to tell what it was?

96. Q.—Yes? A.—Well, Cameron Waterman came to me about an electric truck that Rudolphus Fuller had invented. They had a company called the Fuller Electric Company. Cameron Waterman was the president of it, and Fuller was the secretary and treasurer. They wanted to raise money to develop and exploit this electric truck. They had a specimen truck in operation. They took me up to see it, and I saw it work, and it looked all right. I do not remember the amount of money they wanted to raise, but I think it was \$25,000. After investigating, and feeling sure that it was a good proposition I went to Mr. Walker with it, and laid it before him, and told him what they were doing, and what they wanted the money for.

97. Q.—Was this E. C. Walker? A.—Yes, E. C. Walker. I think he said that he and "Cam" Waterman were schoolmates together; anyway, they were very good friends; and he said he would like to help "Cam" Waterman. He said, "I would like to make sure that they are going to raise this money." They wanted a little money then. He said, "If you will give me a letter protecting me, I will take \$5,000 of that stock now, and give you a check," which he did. And my recollection of the letter that I brought, signed by Cameron Waterman, was that in the event of all of the money not being raised, that Waterman, personally, was to return this money to Ed. Walker. Now, it is a long time ago, and I am giving you my best recollection, but I think that is just about right.

98. Q.—With whom did you deal, in making that sale of stock? A.—Mr. E. C. Walker.

99. Q.—Anybody else, for him? A.—No, sir.

100. Q.—How many times did you visit him before he agreed to take that? A.—I don't know, I should say three or four times probably.

101. Q.—Three or four times? A.—Yes.

102. Q.—What was the name of that company? A.—The Fuller Electric Company. They are still in existence, I think. I think they are out here on the

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corner of Brush and the Boulevard. I think you will find Mr. Fuller out there.

103. Q.—About when was that? Have you made some inquiries to find out? A.—I think somewhere, probably, a year and a half, or two years, perhaps; before this other transaction, I should think.

104. Q.—Who is now running that company? A.—As far as I know, Fuller is.

105. Q.—When did you first mention this transaction to anybody connected with this case? When did you first mention the fact that there was this other deal with the Rudolfus Fuller Company? Do you recollect when you first mentioned it to any of us? A.—I guess to-day is the first you have heard of it, isn't it? 10

106. Q.—Yes, you mentioned it to me this morning, or this noon. Now, was some inquiry made about the date? Did somebody in the office try to help you fix the date, by the records of the company,—by a telephone message, or something of that kind, to Fuller? A.—Oh yes, yes, Fuller did; yes, I asked him:

107. Q.—Who was it that telephoned to Mr. Fuller? A.—I telephoned to Mr. Fuller.

108. Q.—Have you got the date that he gave you, when this stock was issued to Mr. Walker? A.—No, I left that with Mr. VanAuken. 20

109. Q.—Mr. VanAuken is here in the room? A.—Yes.

MR. LUCKING: Mr. VanAuken, have you got that date?

MR. VAN AUKEN: Yes. The subscription was paid March 26, 1913.

THE WITNESS: When?

MR. VAN AUKEN: March 26, 1913. Certificate was issued July 14, 1913.

MR. LUCKING: That will be verified by competent testimony later. It is just to fix the date here now.

THE WITNESS: I guess they did not have the stock book ready, when they gave the temporary receipt, you know, for the subscription.

110. Q.—Do you remember getting a check for that? A.—Yes. 30

111. Q.—Where did you pass it to Mr. Waterman, or to whomever you gave it? Do you remember the place where he gave you the letter? A.—I think the check was passed—seems to me the transaction took place over here in the Normandie Hotel.

112. Q.—Have you, since that date, ever seen the letter? A.—No, sir.

113. Q.—You have just now given your recollection of the transaction I first mentioned, today? A.—Yes, I have forgotten just how the letter reads, but that is my recollection of it. You can unearth that letter probably.

114. Q.—Well, we never have. The first we heard of it was to-day. That was a \$5,000 transaction, wasn't it? A.—Yes. 40

115. Q.—In making that deal, did anybody at all act for Mr. Walker except himself? A.—No, sir.

116. Q.—What inquiries, or to what extent did Mr. Walker go in acquainting himself with the nature of it? A.—He was very thorough about making his inquiries. He knew Cam Waterman. He did not know Fuller. He asked considerable about him. And I told him that he was a good electrical

engineer. Then he asked about the mechanism, and if I had seen the truck, and I said "Yes." And he asked me a good many questions about the operation of the truck, and what it would do in the way of backing up, and what it would do in the way of going through mud, and how it would carry a load, and all of that sort of thing. He was very thorough in his investigation of the thing.

117. Q.—How was he as to rushing into things, or deliberating thoroughly? A.—He seemed to very careful. He would take time to deliberate on a thing, and make up his own mind. Oh yes, I never knew him to jump in and do a thing right off the bat. It always took an interview or two to get down
10 to brass tacks.

118. Q.—Now, it appears here that, if this information over the telephone is correct, that some time in March of 1913, you had a \$5,000 transaction with him in the sale of, the conditional sale, anyway, of this truck stock? A.—Yes.

119. Q.—And in March, or the 1st of April, 1914, you had this other \$5,000 transaction with him? A.—Yes.

120. Q.—And it appears here that his will, what purports to be his last will was made on the 25th or 27th day of February, 1914. Now, I want to ask you Mr. Delano A.—Before this last transaction?

121. Q.—That was before the last transaction, and after the one before;
20 it was before the West Gate matter, and after the truck transaction? A.—Yes.

122. Q.—And you had known him intimately for 40 years? A.—Yes, fully that.

123. Q.—Will you state whether you discovered, in those two deals that have been gone into

MR. FLEMING: Pardon me just a minute. I think that is rather leading. I think it ought to be put in a little different way. There has been a lot of leading done here. It has been to lead it up that I have allowed it. At this point I object.

By MR. LUCKING:

30 124. Q.—Witness, state whether you saw, in Mr. Walker, any evidence

MR. FLEMING: Just a minute.

MR. LUCKING: Wait a minute, you can make your objection afterwards, if you like.

125. Q.—(By Mr. Lucking): State whether you discovered a failing mentality, from a business point of view?

MR. FLEMING: I object to that. That is leading. That is very objectionable.

MR. RODD: All you can do is to take it subject to the objection.

40 MR. FLEMING: I think you will agree with me. That is very leading, that is very improper.

MR. RODD: I don't know how you can get his opinion on his mentality in any other way.

MR. FLEMING: You could ask what was the condition of his mind and mentality in connection with business transactions.

MR. RODD: You can put it that way.

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MR. LUCKING: Just answer this question, and then we can put it that way.

MR. FLEMING: I do not think that is proper.

MR. LUCKING: Well, the question is withdrawn. I do not care.

126. Q.—State what was his mental condition as to business transactions during this time that you have described, in your business transactions with him? A.—You mean what was his mental condition?

127. Q.—Yes? A.—Why, I should say it was first rate, that he was a level-headed chap. He knew what he was talking about, and understood what I said to him.

MR. RODD: I think that other question might readily follow this one now. 10

128. Q.—(By Mr. Lucking): Were there any signs that you could tell us about here, as a matter of fact, anything in his conversation or conduct, or anything of that kind, that indicated that he was not of sound mind? A.—No, sir, I did not see anything like that. It never occurred to me.

129. Q.—Or, that he was failing mentally, I mean; that he was failing mentally, was there any sign of it at all? A.—There did not appear to be.

130. Q.—What would you say, in your opinion, as to his competency to transact business? A.—It was as good as anybody's. It was as good as I ever saw.

131. Q.—Now, you had had previous dealings with him, years back, had you? Had you had different dealings with him? A.—Yes, little things, I sold him a little stock; I don't remember exactly, but I had little inconsequential deals. 20

MR. LUCKING: Take the witness, Mr. Fleming.

MR. FLEMING: It is understood the same objection is taken here as was taken on the examination, as to the mental condition, as to failing mentally, and competency to do business.

(Mr. Foster read the cross-examination.)

CROSS-EXAMINATION by MR. FLEMING: 30

132. Q.—Tell me one other transaction; tell me some other transaction that you had with the late Mr. E. C. Walker? A.—Well, it was years ago, I sold some Second National Bank stock for him, I think; I think I sold some Second National Bank stock for him.

133. Q.—For him, or to him? A.—For him.

134. Q.—About what time would that be? A.—Oh, it must have been away back in the early nineties.

135. Q.—Is that the last transaction that you had with him, prior to the one in about 1913? A.—The last transaction I had with him was this West Gate transaction.

136. Q.—Yes, but the one prior to that was in 1913? A.—About a year 40 and a half before.

137. Q.—The Fuller Electric matter? A.—Yes.

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138. Q.—And prior to that what was the last transaction, the one you have referred to in connection with the bank stock? A.—It was a long time before that, I don't remember; it was a long time before that. My recollection is that I sold some Second National Bank stock for him.

139. Q.—Can you tell us of any other transaction besides the Second National Bank transaction? A.—No, sir, I cannot.

140. Q.—Can you tell us the particulars of the transaction relating to the Second National Bank? A.—No, sir. I just have a vague recollection that that was what the stock was, and that I sold it for Ed. Walker.

10 141. Q.—You apparently had quite a good recollection in reference to the Fuller Electric transaction? A.—Yes.

142. Q.—How is that? How do you account for that? That happened now 11 years ago, and another one was more than 30 years ago? A.—You mean, how do I have such a good recollection?

143. Q.—Yes, of a transaction 11 years ago, for instance? A.—I don't know. It seems to have impressed itself upon my mind, that, and the West Gate business.

144. Q.—Did you talk over the West Gate transaction with anybody before you came here today? A.—I told Mr. Lucking what I knew about it.

20 145. Q.—And your recollection was assisted by the documents produced, I suppose, is that right? A.—Yes, I suppose so.

146. Q.—In talking to Mr. Lucking, you had before you the checks and stock certificates? A.—He showed those to me after I made the statement.

147. Q.—How much of a statement did you make? A.—I could not give the dates, but I remembered the transaction; and then he asked me if that was the check, and I said "Yes," and if that was the stock, and I said "Yes."

148. Q.—Now, as I understood you, you knew the Walker family for 50 years? A.—Yes, I should think so.

30 149. Q.—That is, the late Hiram Walker and his sons? A.—Yes, 40 years anyway.

150. Q.—And you have been in the promotion business all of your life? A.—Why not exactly all of my life, no. I spent ten years railroading and steam-boating, but the best part of my life has been spent in dealing in investment securities.

151. Q.—Promoting, and selling securities and stocks? A.—Yes.

152. Q.—You have no regular office of your own? A.—No, sir.

153. Q.—I looked in the telephone book for your office, or your house number and I could not find them. You have no telephone? A.—No. I live with my nieces, and the telephone is in their name.

40 154. Q.—And I looked in the City Directory, and I could not find your name in that? A.—I doubt whether it is there because I have been out of the world, virtually, for some time, because I have been ill.

155. Q.—How long have you been ill? A.—Oh, about, I think I can say five or six years. I spent a winter in the hospital, and I have had two serious operations.

156. Q.—And you are living with your nieces now? A.—Yes, sir.

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157. Q.—Can you tell me when you last saw the late E. C. Walker?

MR. LUCKING: Alive, you mean?

MR. FLEMING: Oh, yes, alive.

MR. LUCKING: He said he was at his funeral, you know.

A.—I don't know. I would have to guess at that. I don't remember. No, I could not give the date.

158. Q.—(By Mr. Fleming): Well, you are an intimate acquaintance of his? A.—Oh, yes.

159. Q.—And have been for years? A.—Yes, sir.

160. Q.—He had every confidence in you? A.—Apparently.

161. Q.—And he relied on your statements in reference to investments? A.—He had confidence in me, but he liked to prove my judgment himself.

162. Q.—Yes, but he had confidence in you? A.—Apparently, or he would not have listened to me.

163. Q.—And because he had confidence in you, you were able to do business with him? A.—Well, first, because he had confidence in me, and second, because I was careful to present him with good things; and he, on his own judgment, approved or disapproved of a thing.

164. Q.—Yes, but he was always quite anxious to help an old friend, wasn't he, in a business way? A.—Yes.

165. Q.—And he looked upon you as one of his old friends? A.—Yes.

166. Q.—Now, he was a generous man? A.—Very.

167. Q.—And one of his characteristics was that he was very deliberate in anything that he did? A.—I have always found him so.

168. Q.—Now, can you tell me when it was that he discussed with you the question of that big bonus that you were going to get in connection with the \$50,000 transaction? A.—I think it was in September.

169. Q.—September of what year? A.—It must have been—well now, when did I make that sale?

170. Q.—That was the 1st of April, 1914?

MR. LUCKING: For the West Gate stock?

MR. FLEMING: Yes.

A.—I won't say it was in September, but it was soon after that, it was soon after that sale.

171. Q.—(By Mr. Fleming): Well, then, when was it that you got the \$10,000 for him, in return for that stock?

MR. RODD: That was after his death.

A.—That was after his death.

172. Q.—(By Mr. Fleming): Oh, that was after his death? A.—Yes.

MR. RODD: He sold it for the estate.

MR. FLEMING: Oh, I did not understand that.

173. Q.—Was it after his death? A.—Yes, sir.

174. Q.—Can you tell me how long after September of 1914 it was that you presented this \$50,000 transaction to him? A.—I do not believe it was after September. It was either in September, or it may have been a little before, I don't remember, but I remember going to his office with him and talking to him about it, and he thought well of it.

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175. Q.—Is that as far as you got with it? A.—Yes, sir.
176. Q.—Now, why didn't you go further with it? A.—Because he was taken ill.
177. Q.—He had already purchased \$5,000 of the stock? A.—Yes, sir.
178. Q.—And he was to make a loan of \$50,000 at 6 per cent. interest, is that it? A.—On a tract of land. But he did not make it.
179. Q.—But that was the proposition? A.—That was the proposition.
180. Q.—And a bonus of \$25,000, of that same stock? A.—A bonus of \$50,000 of stock, which I agreed to split with him 50-50.
- 10 181. Q.—That is, he was to make a loan on a block of land of \$50,000, and you were to get a commission of five per cent. on that? A.—Yes.
182. Q.—And you were to split that with him? A.—Yes, sir.
183. Q.—And you were to get in addition to that, a bonus of \$50,000 of this stock issued by the West Gate Improvement Company? A.—Yes, sir.
184. Q.—The same stock as he paid par for? A.—Yes, sir.
185. Q.—And he was to get \$25,000 of that, for making the loan? A.—That is right.
186. Q.—That was the proposition that was put up to him? A.—That is my recollection of it.
- 20 187. Q.—What was the condition of his health when you made that proposition to him? A.—He was not in very good health, but, mentally, he seemed entirely sound; that is my recollection.
188. Q.—Did you explain to him why he could get \$25,000 of that stock as a bonus, the stock that he had just previously paid \$5,000 par for? A.—Yes.
189. Q.—Did you explain that to him? A.—Yes.
190. Q.—What was your explanation about that? A.—Mr. Zanger wanted this money, wanted \$50,000, and he agreed to give me that stock, and the commission, if I would raise the money.
- 30 191. Q.—Was the security which was offered for that loan of \$50,000 good security? A.—It was land worth, I should think, \$120,000, and probably now worth a great deal more.
192. Q.—Well, at that time it was worth that much money? A.—Yes.
193. Q.—Who was Mr. Zanger? A.—Gustave Zanger.
194. Q.—Who was he? A.—G. W. Zanger.
195. Q.—Is he any relation of yours? A.—No, sir.
196. Q.—Any relation of Mr. Walker's? A.—No, sir.
197. Q.—No connection with him at all? A.—No, sir.
198. Q.—You were not able to put over any such lucky deals as that yourself, were you? A.—No, sir, not lately. I have made some pretty good deals in my life.
- 40 200. Q.—Well now, when did you lunch with the late Mr. Walker? A.—Well, I don't remember.
201. Q.—Was it before or after you closed the purchase of the \$5,000 of stock?

MR. LUCKING: There were two purchases of \$5,000. You had better mention which one. You mean the West Gate matter?

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MR. FLEMING: The West Gate, yes.
A.—I think it was before I sold him the West Gate. I do not remember. I do not like to make a statement like that.

202. Q.—Was it about the time that you were negotiating for that? A.— I should think so.

203. Q.—And where did you lunch with him? A.—At his house, in Walkerville, up near the church.

204. Q.—At Willistead? A.—Is that the name of it?

205. Q.—Yes? A.—Named after his brother Willis?

206. Q.—Yes? A.—He died, you know.

207. Q.—Well, that was where you lunched with him? A.—Yes.

208. Q.—Noonday lunch? A.—Yes.

209. Q.—You had met him at the office before going up? A.—Oh, yes.

210. Q.—Now, at that time, did I understand you to say that he was in perfect health? A.—Why no, Ed. Walker had not been in very good health for some time; but I was speaking of his mentality, I believe it was sound.

211. Q.—No, but I understood you to say that he was in good health. Now, was he in good health at that time? A.—No, I do not think he was in the best of health, but mentally he seemed to be

212. Q.—I understand.

MR. RODD: Let him finish. Finish the answer, please. Mentally what?

MR. LUCKING: What is the answer?

A.—He seemed to be fairly sound.

213. Q.—(By Mr. Fleming): When you want to sell a man something, and get some of his money, he would be perfectly sound if he would give you the money you want, and took your certificate; that would be the measure, wouldn't it? A.—Well, that is rather

212. Q.—However, that is the way you judge that? A.—No, that is not fair to me. I am here simply, I believe, to establish, as far as I know, Mr. Walker's sound mentality, am I not?

215. Q.—I do not know what the other side called you for. That is what I am trying to find out.

MR. LUCKING: Have you any interest, witness, in this case? A.—No interest, no, not a particle, no, nothing except to set right the memory of an old friend.

216. Q.—(By Mr. Fleming): That is your object, that is your purpose? A.—I want to testify in behalf of his memory and character.

217. Q.—Yes. Now, in connection with the sale of the \$5,000 of West Gate stock, did you produce to him a plan and prospectus of the properties? A.—I produced to him a plan and some statements; I do not remember just what the statements were.

218. Q.—But you did furnish him with that material? A.—Yes.

219. Q.—And he took that and kept it for consideration? A.—I think he kept the map over one interview. That is my recollection.

220. Q.—And what about the statements? A.—I don't remember. Probably he kept those too.

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221. Q.—You don't remember whether he did or not? A.—No, sir.
222. Q.—Would you consider the West Gate shares a good investment, in the face of the fact that you were going to get twenty-five thousand or fifty thousand as a bonus? A.—As long as the \$50,000 that was obtained on the mortgage would save the property, I would think so; yes, why not?
223. Q.—You would think it was still a good security, in view of the fact that he was willing to give up fifty thousand? A.—Yes. I have had lots of stock, in my days, that has cost me nothing, except the work on it, and that has turned out as good as stock that I had paid money for. I used to get 33 per cent. of the stock of the Bell Telephone Company that I organized, and it was worth just as much as what the other fellow paid par for.
- 10 224. Q.—You knew the other brothers, that is, Mr. J. Harrington Walker? A.—Yes, sir.
225. Q.—As well, or as intimately as the late Mr. E. C. Walker? A.—No, I would not say that I did.
226. Q.—You were on very good terms with him? A.—Very.
227. Q.—And the late Mr. Frank H. Walker? A.—Yes.
228. Q.—If that proposition for a loan of \$50,000 was so good, why didn't you offer it to them, or either of them? A.—I had been doing business with Ed. I did not try them, I had been doing business with Ed.
- 20 229. Q.—But your friend, Mr. Zanger, was desperate for money, apparently? A.—I have told you just exactly how.
230. Q.—It is a fact, he was desperately hard up? A.—He needed money.
231. Q.—Why didn't you present it to either of the other brothers? A.—I couldn't tell you. I did talk with Frank about it; I remember, I did talk with Frank about it.
232. Q.—You did talk with him? A.—Yes.
233. Q.—And what was the result? A.—Well, nothing was done.
234. Q.—He refused to entertain it, is that right? A.—No, I think he did entertain it. I think he made some investigations. I am giving this now, and this is not under oath, but I think he made some investigations.
- 30 MR. RODD: The witness should understand that it is under oath.
- MR. LUCKING: He meant that he could not be positive. A.—Yes, I presented it to Frank Walker.
235. Q.—(By Mr. Fleming): And he turned it down? A.—After an investigation I think he turned it down.
236. Q.—And you did not offer it to Mr. J. Harrington Walker? A.—No, sir.
237. Q.—Can you tell me how long the late Mr. E. C. Walker was ill, how many years before he died? A.—No, I could not tell you.
- 40 238. Q.—Did you know that he had been ill and ailing for a matter of ten years? A.—No, sir.
239. Q.—You did not know that? A.—No, sir.
240. Q.—How long before you made the sale of the bonds or the stock had you seen him before that? A.—Oh, I don't know, from time to time; I don't know, several times.

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241. Q.—Had you any business propositions to put up to him? A.—No, sir, not what you would call a business proposition.

242. Q.—Just to say “Good day” to him, or something of that sort? (The question was not answered).

MR. LUCKING: Were there any other stocks that you offered him, that you know of? A.—He made me some personal loans at different times; that was all of the business I had with him.

243. Q.—(By Mr. Fleming): How long before the West Gate transaction, did this occur? A.—I don't know; there were several personal loans that he made me. 10

244. Q.—Amounts of what size? A.—Oh, from \$100 up.

245. Q.—Did you give any security for them? A.—I gave him some security, some stock in the—I don't remember the name of the company, the Lake Erie & Western—the Lake Erie Land Improvement Company, I think, was the name of it, something like that.

246. Q.—Where was that? A.—It was a Cleveland company.

247. Q.—Some stock you got as a commission, or had you bought it? A.—Well, some of it I had bought right out and out.

248. Q.—Did he ever make you a loan without getting security from you? A.—For what? 20

249. Q.—Did he ever make you a loan without getting security? A.—Yes. In fact, he did not regard the security as worth much, and I did not either, but it was all I had, so I put it up.

250. Q.—And how often would those loans occur? A.—I could not say how many there were of them, I do not know.

251. Q.—But whenever you were hard up, you always found a friend in Mr. Walker? A.—I am glad you asked me the question. It was just like this: He knew that I was hard up, and when I would ask him to make me a loan, and he made it, and then he made me another, and I put up security, I would tender all I had to offer, and I said, “I cannot tell you much about it, it may turn out first rate, and it may not, but that is all I have got.” The long and short of it was, he said, “I will back you up occasionally, when you need money, and something will turn up where you can make me some money and pay me back.” 30

252. Q.—It was the act of an old friend? A.—Yes.

253. Q.—That was pretty much true in connection with all of your transactions with him? A.—No, sir. The West Gate Improvement Company matter, and the truck business were distinctly business propositions.

254. Q.—You were promoting something, or helping to promote it? A.—I was selling investment securities; that is different from a promotion. 40

255. Q.—You got the commission on that, I suppose? A.—Yes.

256. Q.—These matters of loans about which we have spoken, occurred prior to either of those transactions? A.—Yes, prior to either of them, some of them prior to either of them, and I think some of them afterwards.

257. Q.—I understood you to say to my learned friend that you had three or four different interviews with the late Mr. Walker before he finally decided to take the \$5,000 of stock.

MR. LUCKING: The West Gate stock, you mean?

MR. FLEMING: The West Gate stock, yes? A.—Yes.

258. Q.—Was that a large transaction for Mr. Walker? A.—No.

259. Q.—Well, at these interviews did he ask you further questions, or practically the same questions about the security? A.—Oh now, that was 10 years ago. I could not answer that definitely, I remember we talked about it, and he asked the questions that a business man would, concerning a thing that he expected to invest in.

10 260. Q.—He had not asked all of the necessary questions at the first interview, then, is that right? A.—Apparently not.

261. Q.—And others occurred to him, and he wanted some more information at the second interview? A.—Yes.

262. Q.—And the same thing happened on the third interview, is that what you say? A.—That is about it. The questions were just about what you would ask, and then take time to consider, and then think of something else, and then ask them on another interview.

263. Q.—That is, you think I would ask them. You don't know what I would ask? A.—I would take you for a level-headed business man.

20 264. Q.—I thank you. You did not try to interest the other brothers in these shares of stock? A.—No, sir.

265. Q.—I mean in the West Gate Company? A.—No, sir.

266. Q.—You had other shares to sell in this company? A.—Yes, sir.

267. Q.—How much had you to sell altogether? A.—What I could sell.

268. Q.—No limit? A.—As long as the stock lasted, I could sell it.

269. Q.—Did you sell the stock to anybody else? A.—Oh, made a trade with Father Van Dyke, yes. He had some stock that did not suit him, and I found a market for it, and he put that in, and a little money, and took some of this West Gate stock, and I sold that for him at a profit.

30 270. Q.—How much of the West Gate stock did he take? A.—I don't remember. Not much, perhaps a thousand dollars.

271. Q.—You don't know what the stock that you sold for him was, do you? A.—No, I do not. I think it was a mining stock, but I won't be sure about that.

272. Q.—Did you sell any other blocks of West Gate stock? A.—I don't remember any others. It does not occur to me.

273. Q.—Mr. Cameron Waterman is a very wealthy man, isn't he; that is, he is considered to be a wealthy man? A.—No, "Cam" kind of lost his money, I guess.

40 274. Q.—Well, about this time, ten years ago, ten or twelve years ago, wasn't he? A.—No. If he had been a wealthy man he would not have got outside of himself for money.

275. Q.—Was he selling stock, Mr. Waterman, I mean? A.—No, he wanted me to sell it, he was the President of the company.

276. Q.—Had he put money into the company himself? A.—Yes, sir.

277. Q.—Well, as a matter of public knowledge he was supposed to be a man of means? A.—Well, you have to ask somebody about that who knows

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more about him, at the time. There was a time when Cam Waterman was supposed to be pretty well off, but I think it was before this.

278. Q.—Did the late Mr. E. C. Walker ever refuse to buy any investments that you had offered him? A.—Yes.

279. Q.—What? A.—I had a contract with the Bell Telephone Company by which I had, with my associates, all of Ohio, Pennsylvania, New York and two other States, I think it was Indiana and Ohio, except a little bit of occupied territory; and they were on their "uppers" at the time; it was the national Bell Telephone Company then, and they were fighting the Western Union, and they needed money; and they gave us this contract, provided we would raise \$10,000 for expenses to carry on the business and organize these companies. I went to Ed. Walker and asked him to subscribe to that proposition, and he did not do it, because, the reason he gave was that we were fighting the Western Union, who were exploiting the Edison Telephone, and he did not think the Bell would come through. 10

280. Q.—When was that? A.—That must have been in 1877 or 1878, I do not remember exactly.

281. Q.—1877 or 1878? A.—Yes.

282. Q.—Since 1900, say, did you ever offer him any securities which he turned down in the last 24 years? A.—I am very sure that I did offer him something that he turned down. I think I offered him two things that he turned down, but I don't remember what they were. 20

283. Q.—When would that be? A.—I don't know that either. I don't remember the exact date. It was before I went to him on the truck proposition.

284. Q.—Some time before?

MR. RODD: Some time before he went to him on the truck proposition?

MR. FLEMING: Yes.

A.—Yes, some time before, probably.

285. Q.—(By Mr. Fleming): Two or three or four years before? A.—Perhaps so.

286. Q.—You cannot remember what they were? A.—No, sir, I don't remember. I think they were some local stocks, but I do not remember. 30

287. Q.—Now, getting back to that \$50,000 mortgage loan transaction again, did you offer that to any person else? A.—I am under the impression that I presented it to Alex MacPherson.

288. Q.—He was the president of the A.—Of the Old Second National Bank.

289. Q.—The Old Detroit National Bank? A.—The Old Detroit National Bank.

290. Q.—And what happened to that? A.—Nothing doing.

291. Q.—Turned it down, is that right? A.—Yes, sir. 40

292. Q.—Did you offer it to anybody else? A.—No, sir.

293. Q.—Do you know what became of Mr. Walker's stock in the Fuller Electric Company? A.—No, sir.

294. Q.—Do you know whether he ever got any dividends on it? A.—I do not think he did, but I do not know.

295. Q.—What was the largest personal loan you got from the late Mr. E. C. Walker? A.—I think it was \$1,000.

296. Q.—That was on your own note? A.—Yes, sir; I don't know whether I gave him a note for it or not, but I think I did.

297. Q.—You are 77 years of age now? A.—I am older than that.

298. Q.—How much older? A.—Four years.

299. Q.—I figured up your age wrong. You are 81? A.—Yes, sir.

10 300. Q.—And you are in pretty fair health? A.—Yes, pretty fair now, but I have been sick for five or six years.

301. Q.—On and off? A.—More on than off.

302. Q.—I suppose, naturally so? A.—I had two very serious operations, and it took some time to get over them, but I am all right now.

303. Q.—You are not expecting to drop off shortly just now, are you? A.—No, I do not.

304. Q.—You are not looking forward to death; you have no particular reason for that? A.—No, sir, not that I know of, except years.

305. Q.—Exactly. No more than any other man of your age would? A.—Do you mean, have I got some chronic ailment that might carry me off?

306. Q.—Yes? A.—No, not that I am liable to die at any moment.

20 307. Q.—You are liable to live for ten years yet? A.—Oh, lord, to be 91 years old, I hope not, that is too long.

308. Q.—You are an optimist then? A.—When a man gets to be 81, he ought to be pretty near ready to go.

MR. FLEMING: That is all.

MR. LUCKING: That is all.

(Sgd.) *Frederick M. Delano.*

(Mr. Walker reads the examination-in-chief of William O'Leary, taken in Detroit, on the 7th March, 1924).

30 The deposition of William O'Leary, taken on behalf of the defendants in the above entitled cause before George Donaldson, a Notary Public, in and for the County of Wayne, State of Michigan, at Office No. 702 Majestic Building, in the City of Detroit, Wayne County, Michigan, pursuant to notice and order hereto annexed.

APPEARANCES:

For Plaintiff

O. E. FLEMING, K.C.

For Defendant National Trust Company, Limited

J. H. RODD, K.C.

DEAN LUCKING, ESQ.

40

For Defendants Mrs. E. C. Walker, Lillie Brewster and Mary W. Cassell

HAROLD W. HANLON, ESQ.

D. W. SAUNDERS, ESQ.

RECORD

In the Supreme Court of Ontario

Defendant's Evidence.

No. 48

F. M. Delano
Cross-Examination.
20th May, 1924.

—concluded

No. 49
Evidence of William O'Leary (taken on commission)

RECORD

In the
Supreme
Court of
Ontario

Defendant's
Evidence.

No. 49
William
O'Leary
Examina-
tion-in-
Chief.
20th May,
1924.

WILLIAM O'LEARY, a witness being first duly sworn, testified as follows:

DIRECT EXAMINATION by MR. RODD:

1. Q.—Mr. O'Leary, where do you live? A.—In Detroit,—my home—do you want the street number?

2. Q.—No, not particularly. And how long have you lived in Detroit? A.—Born here and lived here ever since.

3. Q.—Yes, and that means how many years? A.—63, this coming July 10—62 now.

4. Q.—Yes. And you have been carrying on business in the city? A.—For 37 years for myself, and 10 years previous to that.

5. Q.—So that you have had 45 years of business experience? A.—Yes, sir.

6. Q.—In Detroit? A.—Yes.

7. Q.—And what is your business? A.—Fine Arts business, engravings, etchings, and so on.

8. Q.—Yes. And where is your place of business at the present time? A.—At the present time 2540 Woodward Avenue.

9. Q.—Yes. That is the principal thoroughfare of the city? A.—Yes, always been on Woodward Avenue. 20

10. Q.—You have always been on Woodward Avenue, yes. Did you know Mr. E. C. Walker—E. Chandler Walker? A.—Yes, I know him.

11. Q.—You knew him. You were acquainted with him in his lifetime? A.—Very well.

12. Q.—Yes. And how long have you known him? A.—Well, I really knew him before I went to work.

13. Q.—I see? A.—And I knew him intimately all the time I was in business. 30

14. Q.—Up to the time of his death? A.—Not quite.

15. Q.—Up to what period? A.—Oh, maybe, 1914.

16. Q.—Up to 1914? A.—Maybe later than that.

17. Q.—He died in March, 1915, so that A.—Well, I saw him the latter part of 1914.

18. Q.—Yes. How frequently generally speaking, or how often during your business career would you come in touch with him? A.—Oh, I used to see him at least once a week.

19. Q.—And where would you see him? A.—When he came to my store, or I might go to Walkerville. We had a lot of business together, and I used to go over there once in awhile. 40

20. Q.—What was the nature of your business? A.—Selling him pictures.

21. Q.—He was quite an art lover, I believe? A.—Yes, in my judgment he was the best judge of pictures in this vicinity.

22. Q.—Then, you say you had many business deals with him during this period, or during your period of business? A.—Yes.

23. Q.—Yes. Now, in the last few years of his life, say, from 1900 on, what was the situation in that respect? A.—I didn't see him so much, but I saw him occasionally.

24. Q.—Yes. Did you see him during the last two years of his life, 1913 and 1914 frequently? A.—Well, I have had occasion to look that matter up, and I found that the last sale I made to him, a direct, personal sale, doing any business with him, was 1914.

25. Q.—What period of 1914? A.—I have the date here.

10 26. Q.—Yes. You may look at that to refresh your memory? A.—I want to save time, but so far we have not—the date was October 27th, 1914.

MR. FLEMING: October what?

27. Q.—October 27, 1914, yes. And what is the entry you produce, Mr. O'Leary—your journal? A.—Yes, our day book.

28. Q.—Your day book? A.—Yes.

29. Q.—And under that date you find an entry there? A.—\$1,534.27.

30. Q.—Just read what the entry says? A.—“One original oil painting by DeNeuville, framed, for \$1,500.”

31. Q.—Yes. And did he see the picture—did he interview you more than once with reference to the picture? A.—Oh, yes, he had been looking at
20 this picture for some time.

MR. FLEMING: Oh, now, you should not lead the witness.

32. Q.—You say he saw you a number of times about it? A.—Oh, yes, he had seen the picture several times before he decided finally on it.

33. Q.—And what would take place when he would come into your store? A.—Whv, he admired it very much and thought he would like to have it, and finally he came over and bought it.

34. Q.—Yes. Did you talk about it? A.—Yes, sure. He liked it, every time he saw it.

35. Q.—Yes. And what was the extent of the talk about the picture?
30 A.—Well, Mr. Walker was not a very communicative man, but he liked it, and thought it was good quality, and sometime he would like to possess it, and then he came and bought it.

36. Q.—Yes, I see. And how long a time did these visits and conversations with reference to this picture extend? A.—Well, the last time, as I remember, he came in and said, “I have decided to take that little picture by DeNeuville.” So I was glad to hear that. As I remember, that might have been—or rather, it was a greeting he always gave me when he came in the store.

37. Q.—Yes as old friends? A.—Yes.

38. Q.—Yes. Then, do you remember when you saw him after that now
40 or not? A.—Well, I could not swear to seeing Mr. Walker after that, but I think I did on two or maybe three occasions.

39. Q.—Yes? A.—I believe I saw him. I don't think he was in the store. To my knowledge he was not in the store after that.

40. Q.—After that, no. Prior to that time on an average, how often would he come in? A.—Oh, in that time—I might say now, along as far back as maybe 15 years, 10 or 15 years, he would be disappointed if he didn't come there once in two weeks.

RECORD

In the
Supreme
Court of
Ontario

Defendant's
Evidence.

No. 49
William
O'Leary
Examina-
tion-in-
Chief.
20th May,
1924.

—continued

RECORD

In the
Supreme
Court of
Ontario

Defendant's
Evidence.

No. 49
William
O'Leary
Examina-
tion-in-
Chief,
20th May,
1924.
—continued

41. Q.—Yes, I see? A.—Sometimes oftener.

42. Q.—That is, to the store? A.—To the store, yes.

43. Q.—To the store. And when he would come in, what would be done?
A.—A greeting "What have you got now", or "I want to buy a wedding present."

44. Q.—Yes? A.—Well, "Have you got that same little picture here?"
He was always interested in pictures.

45. Q.—Oh, yes, I see. And have you an extensive stock? A.—I beg
your pardon.

46. Q.—I have not the pleasure of knowing your store. Have you a con- 10
siderable stock. Do you carry a large stock? A.—Yes, we are the largest
dealers in this vicinity.

47. Q.—Yes. Then, when was the price fixed for this DeNeuville pic-
ture? A.—Originally when I first showed it to him.

48. Q.—Yes? A.—I might add we always adopted that method of busi-
ness. Everything is marked in plain figures and that means one price.

49. Q.—One price? A.—We have never, to my knowledge, made two
prices on anything.

50. Q.—No, one price, yes. And, so he knew what the price would be at
the first interview with you? A.—Yes, yes, yes, sir. 20

51. Q.—Yes. Do you know if there was any discussion over that? A.—
Why, I don't think so.

52. Q.—No? A.—He was not much of a hand to shop or Jew down.

53. Q.—Was that amount paid by him? A.—No, sir—I cannot tell you
that definitely, but as a rule—that was the 27th of October, and the first of the
month or the last of October we would send out bills, and in his case it was
usually paid by the 10th of the next month. My impression is this was paid
early in November following.

54. Q.—Did he come over and pay it? A.—Sometimes, but not

MR. FLEMING: Now

A.—I don't think in that case. 30

55. Q.—Do you recall how this was paid? A.—I think by mail, a check
in the mail.

56. Q.—A check, yes. Have you had any other business, actual business
dealings—of course you had, I know, but how recently before had you had one
of these business dealings that you spoke of sometime ago? A.—Oh, let's see—
that was in the fall—October—do you want to see this (indicating)?

MR. FLEMING: Yes, we want to see it.

57. Q.—Yes, alright, Mr. O'Leary. I was asking about prior deals? A.
—Prior deals.

58. Q.—Yes? A.—Well, when he built the Mettawas Hotel, when he 40
built that, he selected about somewheres in the neighborhood of \$20,000 worth
of pictures for the hotel, and himself.

59. Q.—Yes? A.—But I don't remember what date that was.

60. Q.—That is at Kingsville? A.—At Kingsville, yes, he bought all the
pictures for that.

61. Q.—And then, between times he bought them? A.—Yes.

62. Q.—Wedding presents, as you have mentioned? A.—Yes, we sold him many pictures.

63. Q.—Yes. And that continued, I assume, up to the time of his death? A.—I beg your pardon.

64. Q.—That continued up to the time of your last transaction? A.—That continued, yes, practically.

65. Q.—And when he didn't pay cash, I assume you would enter it on your books? A.—Well, whether he did or did not we would enter it in the book, if it was a painting sale, in order to make a record.

10 66. Q.—I see, you did that for a matter of record? A.—He seldom paid cash.

67. Q.—Now, then, during all these business deals, your visits and his visits to your store, up to the time, or at the time you sold this picture in the fall of 1914, was there anything in the conduct of Mr. Walker which indicated, or which would indicate to you

MR. FLEMING: Now

68. Q.—Pardon me for a minute—which would indicate to you that he was not mentally capable of understanding what he was doing?

20 MR. FLEMING: Well, now I object to that as positively improper and a leading question.

69. Q.—Well, then, note the objection and it will be stricken out, if that is so. What is your answer?

A.—On the contrary, I never discovered anything but the clearest mind, and the nicest fellow in the world. That is how he always impressed me.

70. Q.—Yes, I see. Did you ever have any difficulty in all your dealings with him in making him understand the situation and the bargaining that was had? A.—No, sir.

71. Q.—No? A.—No, sir.

Q.—That is all.

30

(Mr. Foster reads the cross-examination).

CROSS-EXAMINATION by MR. FLEMING:

72. Q.—Now, Mr. O'Leary, we will just refer to the book that you have produced? A.—It is our regular day book, yes.

73. Q.—Now, I will ask you to tell me, is that your regular book covering all the period—what period? A.—This is from January 2nd, 1914.

74. Yes? A.—To September 25th, 1916.

75. Q.—Yes. And at what page is the reference made to the transaction in question? A.—The page and the date?

40 76. Q.—Yes? A.—The page is page 95 under date of Tuesday, October 27, 1914.

77. Q.—Yes. Now, is that book all in your handwriting? A.—This happens to be, yes.

78. Q.—Well A.—Not all the book.

RECORD

In the
Supreme
Court of
Ontario

Defendant's
Evidence.

No. 49
William
O'Leary
Cross-
Examina-
tion.
20th May,
1924.
—continued

79. Q.—Not all the book? A.—No, sir.
80. Q.—Is that the original entry? A.—Yes, sir.
81. Q.—Of that date? A.—Yes, sir.
82. Q.—And in your handwriting? A.—Yes, sir.
83. Q.—Well, now, will you read to the stenographer the full note that you have made in connection with this 'sale? A.—A sale made to Mr. E. Chandler Walker of Walkerville, "One original oil painting by A. DeNeuville, framed in gold leaf and box \$1,500." The title of the picture is "The Cuirassier," some military officer. That was \$1,500, and at the same time: "To boxing and packing and express paid on a framed painting to Mrs. A. W. Brewster, 2330 Massachusetts Avenue, Washington, D.C., and repairing and re-gilding two 8 x 24, 6 inch circle gold frames, and cleaning pictures by Bunner." That charge is extended at \$28.50, and at the same time there was an order to box and pack and prepay a box to Chicago to Mrs. Elizabeth Clarke, 1525 Astor Street, Chicago. That all went in as one order at the time, and makes a total of \$1,534.27. 10
84. Q.—Mr. Walker paid that amount, did he? A.—I think by check, if I remember right.
85. Q.—Yes. Have you any record to show that? A.—Our cash book will show it, yes, sir. 20
86. Q.—Yes. Now, who is Mrs. Brewster? A.—Mrs. Brewster is,—I think that is Mr. Walker's sister.
87. Q.—And who is Mrs. Clarke? A.—I don't know.
88. Q.—You don't know? A.—It might have been for a wedding present or something of that kind.
89. Q.—Yes. Now, do you recollect this occasion any more than from the entry you have got there? A.—Very well.
90. Q.—You recollect it? A.—Yes, sir.
91. Q.—And who was with Mr. Walker? A.—Mrs. Walker.
92. Q.—Yes, and anybody else? A.—No, not at that time. 30
93. Q.—Not at that time. Now, how many days prior to this date, had Mr. Walker been in to see you? A.—How many days?
94. Q.—Yes? A.—I couldn't tell you.
95. Q.—How many weeks? A.—I couldn't tell you that.
96. Q.—How many months? A.—Well, I would say it was months.
97. Q.—Well A.—Sometime before, certainly within a few months, I think.
98. Q.—Yes? A.—I saw him so often, you see.
99. Q.—Well I am asking you now, when did you last see him prior to this date? A.—I couldn't tell you that. 40
100. Q.—You couldn't tell me that? A.—I could by looking; if you want to know, I will go to the trouble to look through my ledger and find out.
101. Q.—Have you gone through this book to find out whether there were any other purchases by Mr. Walker? A.—No, sir. I was only interested in the last charge.
102. Q.—Who asked you to look that up? A.—Mr. Lucking.

103. Q.—Mr. Lucking. And did he ask you to look up any other? A.—
No.
104. Q.—That is the only one? A.—The last one.
105. Q.—Yes. And will you say that you had any transaction with Mr. Walker within a year previous to this date? A.—I should think so, yes.
106. Q.—Well, now you say you think so? A.—Well, I couldn't tell you definitely, no.
107. Q.—You have not taken the trouble to look it up? A.—No, sir, I have not.
108. Q.—And all you are interested in is this one entry? A.—All I was requested.
109. Q.—Yes. Now, this picture was sent to Mrs. Brewster at Washington, was it? A.—I don't think so, no, sir. That set of pictures, the two boxes are separate charges, you see.
110. Q.—Well, now, your recollection is quite good on A.—No, it did not—my recollection is particularly good on that.
111. Q.—Yes? A.—For the reason that they took that with them, that picture, and the separate charge was for something that was ordered to be done.
112. Q.—Well, then, in what sort of a conveyance did they take it? A.—I think it was a limousine.
113. Q.—Well, now, is that a guess, or is it from your recollection? A.—Well, they came in a limousine.
114. Q.—How do you know? A.—Because I happened to be in the store, in front, and they came in, and we wrapped it up and sent it out to them. I didn't take it out to them.
115. Q.—Your recollection is quite clear that they came in a limousine? A.—Yes.
116. Q.—Well, what were the other things there charged for? What was that? A.—Why, something that was in the store to be cleaned and fixed up. These two pictures by Bunner I had sold them years ago, and they were brought over to be re-gilded and cleaned, and when they were done, why we had instructions to ship it.
117. Q.—Yes. Now, wasn't Mrs. Brewster present at that time? A.—No.
118. Q.—You are quite certain of that? A.—Positive about that.
119. Q.—Positive. Well, now, is this your day book (indicating)? A.—That is our day book.
120. Q.—Well, then, you post from this to a ledger? A.—Yes.
121. Q.—Where is that ledger? A.—In my safe.
122. Q.—This posting, then, is to page 174 of your ledger, I take it? A.—Yes.
123. Q.—And why didn't you bring your ledger with you? A.—If you want a direct answer—I was not asked.
124. Q.—No, you were not asked. You are just doing what you are asked to do? A.—Yes.
125. Q.—Yes. Now your ledger would show? A.—If you will come up I will show you the whole business.

RECORD

In the
Supreme
Court of
OntarioDefendant's
Evidence.No. 49
William
O'Leary
Cross-
Examina-
tion.
20th May,
1924.

—continued

RECORD

*In the
Supreme
Court of
Ontario*

Defendant's
Evidence.

No. 49
William
O'Leary
Cross-
Examina-
tion.
20th May,
1924.
—concluded

126. Q.—I am not asking you that question. Your ledger would show any other previous transaction, wouldn't it? A.—Yes.

127. Q.—Or any other subsequent transaction? A.—Yes, it would show on the books.

128. Q.—Yes. Did you go through the ledger? A.—I did not.

129. Q.—Did you go through this book? A.—I did not.

130. Q.—Now, can you tell me what time of the day Mr. Walker called? A.—Oh, I should judge in the afternoon, maybe four o'clock, maybe at this hour.

131. Q.—Yes? A.—That was his usual time to come in, four or five 10 o'clock.

132. Q.—What was that picture boxed for, Mrs. Brewster? A.—By Bunner?

133. Q.—Yes? A.—It was a little painting.

134. Q.—Where did it come from? A.—Well, I suppose it came from Mr. Walker's house in Walkerville.

135. Q.—They brought it in? A.—Oh, no, it had been in some time, to be boxed. You know it takes time to do gold work, and if it was gilded, as this order shows. I think it would be probably in the store for a week or two.

136. Q.—Have you any particular recollection of that transaction? A. 20 —The instructions were at the same time as the purchase of the picture.

137. Q.—Which picture? A.—This picture by DeNeuville.

138. Q.—I see. The instructions were to—ship it? A.—Ship it, yes.

139. Q.—And you had had it before, is that the understanding? A.—Yes, we sold it originally and they brought it back to have the picture cleaned.

140. Q.—You had sold it originally to Mr. Walker? A.—Yes.

141. Q.—What was the price? A.—I couldn't tell you. I could tell you what it was by looking it up.

142. Q.—And was that transaction a year or two years before? A.—You mean the painting, the sale of the painting?

143. Q.—Yes? A.—Oh, it was several years before. 30

144. Q.—Several years before. Now, did I understand you to say to my learned friend that he came in several times to see that picture before he decided to purchase it? A.—Yes.

145. Q.—Well, then, I am asking you again, how many days previous to the date of the sale did he come in? A.—Oh, I should say it would be maybe two or three times, in maybe two months.

146. Q.—Have you any definite recollection? A.—No, sir.

147. Q.—Of that thing happening? A.—No, I haven't.

148. Q.—No. You are just saying that from the fact that that was his practice? A.—Yes. 40

149. Q.—Yes, to admire a picture and look at it several times before buying, is that right? A.—Generally, yes.

150. Q.—Yes. So that outside of the general habit, you have no definite recollection of his having done that in this case? A.—No.

Q.—That is all.

RE-DIRECT EXAMINATION by MR. RODD:

151. Q.—Just a question arising out of that. You said to Mr. Fleming that Mrs. Walker was with him upon this occasion. I ask you now who did the bartering for the picture? A.—Why, Mr. Walker.

152. Q.—Yes. And who gave the instructions to carry out the things which were mentioned? A.—Mr. Walker.

MR. FLEMING: Well now, here

Q.—Yes. That is all.

MR. RODD: No.

10 MR. FLEMING: Yes, I will

RE-CROSS-EXAMINATION by MR. FLEMING:

153. Q.—Is that statement from recollection? A.—Yes.

154. Q.—Yes. And is it as good as all the other recollections in connection with this transaction? A.—I think so.

155. Q.—Yes. And is it based on the fact that he was in the habit of directing the negotiations himself? A.—Well, my impression is, now that you ask it, I think we wrote down the addresses for each one while he was in the store, and put down such things, and I think now, that you call my attention to it, that while the picture was being wrapped up for Mr. Walker to take with
20 him, he gave me the addresses to send these two pictures to, one to Washington and one to Chicago. My impression is that this was three pictures two to either one or the other, and my impression is that he wrote the addresses himself.

156. Q.—Yes. Well, now, are you saying that as a statement of fact? A.—No, I wouldn't want to state it as a fact, because I would have to go back and look it up to see if I have that little slip. If he gave it to me I have it.

157. Q.—And if somebody else gave it, you have it? A.—Yes, certainly, it is a matter of record.

158. Q.—Yes. And during your long period of business relations with him, this thing became a habit with him, did it? A.—Yes.

30 159. Q.—Yes? A.—And I encouraged it, because when we got anything new we would call him.

160. Q.—Now, then, is it from the fact that he had the habit of doing these things that you think he did it on this occasion?

MR. RODD: Did what?

Q.—Gave that memorandum, gave the instructions? A.—Well, I don't know how to answer that exactly. It might or might not be the reason. He didn't do it all the time, but he had done it. I am not sure. You know it is a long time ago, and I would not want to swear to something that I might think. I would want to know, but, in substance, I might say that he had done it on
40 more than one occasion.

Q.—Yes. That is all.

MR. RODD: That is all.

RECORD

In the
Supreme
Court of
Ontario

Defendant's
Evidence.

No. 49
William
O'Leary
Re-Exam-
ination.
20th May,
1924.

No. 49
William
O'Leary
Re-Cross-
Examina-
20th May,
1924.

RECORD

*In the
Supreme
Court of
Ontario*

Defendant's
Evidence.

No. 50
Argument re
Admission
of Evidence
(taken on
commission)
of Mrs.
Mary G.
Walker
20th May,
1924.

Reporter's note: The evidence, taken on commission, of Frederick E. Delano and William O'Leary, is already in as Exhibit No. 7.

MR. OSLER: I will now put in as Exhibit No. 36 the evidence of Mrs. Mary Griffin Walker, taken on commission, at Washington, D.C., U.S.A. Mrs. Walker was examined in New York under the Order made by the local judge, His Honour Judge Coughlin, for her examination as a witness on behalf of the plaintiff. The plaintiff did not put it in.

MR. McCARTHY: I object to that, my lord, for this reason: it is quite true we applied for leave to examine this lady, but unfortunately on the examination she declined to answer the questions. What took place was, Mr. Osler took objection, and Mr. Hellmuth, who appeared for Mrs. Walker, advised her that she should not answer, and the commissioner ruled she must answer and the question of admissibility or non-admissibility be left to the trial judge.

HIS LORDSHIP: Was it a Toronto commissioner?

MR. McCARTHY: No, somebody in the States. He did not attempt to pass on the relevancy of the question, but said the question should be answered. At the end of the examination, I think his ruling is summed up in this way: his remarks will be found following question No. 259:

"THE COMMISSIONER: I think I had better make a restatement as to my understanding regarding objections. It is my understanding that all counsel understand that as to all questions that have been asked by Mr. Fleming and to which the witness has made no reply, that it is understood that an objection was made to such question and that the commissioner requested the witness to reply to the question, over the objection, to which objection was again made to the answering of the question."

MR. HELLMUTH: That is quite correct.

Now, even with that ruling they still declined to have Mrs. Walker answer. We could not use the examination because they refused to have her answer important questions, with the result that it made our examination abortive, and enabled them to get whatever evidence out of her they desired, without her being examined in chief by them at all. I have noted throughout my own copy of the evidence, straight through, the questions that she was permitted to answer, and I have noted throughout certain pages more than half of which is taken up with instructions to her not to answer the question put to her. So your lordship is not in a position to pass upon the admissibility or inadmissibility, the relevancy or irrelevancy, of the question.

HIS LORDSHIP: You applied for the commission, and it proved unsatisfactory because she would not answer the questions?

MR. McCARTHY: On the advice of her counsel.

HIS LORDSHIP: Upon the commission evidence your opponents began to question her and they got certain answers from her. They desire now to put that evidence in. Is not that on a parity of reasoning with the case where you do not get satisfactory answers from a witness, and the examination proves disappointing, is there any difference in principle?

MR. MCCARTHY: A very great difference, because he has the answer, but here the effect would be to ask the court to be a party to a trick by telling your own witness not to answer. Take the case that is done deliberately—and this is done more or less deliberately—where the witness is examined on our commission and told she need not answer the question, the commissioner rules she should answer the question so the court can rule on the admissibility of the answer, in that case the examination-in-chief may be rendered abortive. At the same time, she would answer questions willingly to her own counsel in cross-examination. They cannot take that advantage, and the court would not permit them to take advantage of what is, in a sense, a fraud upon the court proceedings, in that way.

HIS LORDSHIP: They could have got a commission to examine her.

MR. MCCARTHY: Then we could cross-examine her.

HIS LORDSHIP: I do not suppose she would answer then.

MR. MCCARTHY: That is another story.

HIS LORDSHIP: By reason of her refusal?

MR. MCCARTHY: She would not come there to give evidence.

HIS LORDSHIP: I remember a motion made by Mr. Fleming at this court in which he wanted me to compel Mrs. Walker to come here, and I said, for all I knew, she would not come at all. How could I get over that?

MR. MCCARTHY: If a plaintiff, you could dismiss her action; if a defendant, you could strike out her defence.

HIS LORDSHIP: Have I anything really to decide, if it is just a matter of her refusing to answer? Could not they have got her evidence in by making another application to the judge here? Does it make any difference?

MR. MCCARTHY: Yes, because they are now in the position of cross-examining their own witness, a party defendant, and they asked her questions which they could not ask her here in the witness box, but which they did ask her on our commission to examine her.

HIS LORDSHIP: I suppose the commission is supposed to be exhaustive.

MR. MCCARTHY: What I mean is, supposing no commission were taken at all and she were called into the witness box, they could not ask her the questions they did on the cross-examination, because they led her straight through.

HIS LORDSHIP: I do not see why they should not cross-examine her in New York.

MR. MCCARTHY: So they should, if they had allowed her to answer our questions.

HIS LORDSHIP: They put her out of the position of the opponents calling her, and made her their own witness?

MR. MCCARTHY: Exactly. They put her in the position to make us issue the commission to get her evidence, then they told her not to answer the questions, and then cross-examined her. I say that is improper and practically a fraud on the court.

HIS LORDSHIP: I suppose Mr. Hellmuth, who was there, will deny the fraud part of it.

MR. MCCARTHY: It is in black and white in front of us.

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HIS LORDSHIP: That is a serious accusation, that you had to take out a commission to examine this lady and they went before it was returnable and told her she should not answer.

MR. MCCARTHY: No, they told her then and there.

MR. OSLER: My learned friend is very free with his expressions; I do not suppose he means them to be offensive, and I am not going to quarrel with them.

HIS LORDSHIP: No, I congratulate you, Mr. Osler, you seem to smile amid all the adversity.

MR. OSLER: The plain English is that Mr. Fleming took out this commission and contended he had the right to treat Mrs. Walker as a hostile witness, and I took objection to the form in which he put the questions. In the first place, I do not concede I would be bound by what she may have said to anybody; I do not propose to submit myself to that unless I am obliged to do so. 10

HIS LORDSHIP: You were there on behalf of the executors, and Mr. Hellmuth was there for Mrs. Walker.

MR. OSLER: Some of the questions to which I objected, Mr. Hellmuth thought should be answered, and were answered in the face of my objection; others he thought should not be answered and he advised her to refuse to answer, which she did. Mr. Fleming said, on the examination, as he was perfectly entitled to, that Mrs. Walker refused to answer at her peril, because he could move. Mr. Fleming has the right to take proper proceedings in order to compel the witness to answer the question, if it is a proper question to be answered. 20

MR. MCCARTHY: There is no provision.

HIS LORDSHIP: It looks as if it was a run with the hare hunting the hounds.

MR. MCCARTHY: There is no provision, no procedure we could take to compel her to answer. This is not discovery.

MR. OSLER: It is not discovery. My learned friend would have to apply to our Court. 30

HIS LORDSHIP: Why was not something done before the trial?

MR. OSLER: When I left that examination I fully understood we would have to meet a Motion, and was content to do it.

HIS LORDSHIP: There was a Motion made at this court.

MR. OSLER: My learned friend waits until it is too late to do anything, and then asks your lordship to deal with it. I am not going to make any rude remarks.

HIS LORDSHIP: I will make a rude remark: it is diamond cutting diamond.

MR. OSLER: Surely I have the right to take objections to the examination of the witness on commission? That did not preclude my learned friend from making whatever application he might wish to the court for a ruling to the effect that the questions should be answered. 40

MR. MCCARTHY: If my friend will tell me what the procedure is, I will be delighted.

MR. OSLER: He has a perfect right to issue a commission to the New

York Court. With a comity of nations, where these commissions are taken, the commission is sent to New York, and if the witness refuses to attend you can get an appropriate order from the New York Court requiring the witness to attend.

HIS LORDSHIP: I never knew that a comity of nations applied to that. It does in connection with a foreign judgment.

MR. OSLER: It does in connection with a foreign commission.

HIS LORDSHIP: As to commissions?

MR. OSLER: Yes.

10 HIS LORDSHIP: I am astonished.

MR. MCCARTHY: I have never known of such a thing.

MR. OSLER: Where a commission is issued by a foreign court, if the witness attends and refuses to answer, if it is an appropriate case the court will make an order requiring him to do so.

HIS LORDSHIP: If you show me a precedent, I will take it into consideration. I always understood a Comity of Nations did not apply in connection with such a procedure, it is only when there must be something definite done by a foreign court, and there must be no doubt about the amount of the foreign judgment.

20 MR. OSLER: That is as to reversing the judgment.

HIS LORDSHIP: Nations are careful not to enforce anything in their country which is a fake. It is a very nice point, and you might formulate it to-morrow morning. Is it very important?

MR. OSLER: I think it is important. There are two questions.

HIS LORDSHIP: Evidence has been tendered that Mrs. Walker telephoned to Mr. Robins to come to see her in London, and he went to see her, and she told him about breaking the will.

MR. MCCARTHY: Which she denies.

MR. OSLER: She denies it.

30 HIS LORDSHIP: Does she deny she said she had the interview? She had told Sydney Robinson, and others, practically the same thing, why doesn't she come and tell it over again?

MR. OSLER: She denies that took place, she says that what happened was Mr. Robins' daughter was ill, she had been a great friend of Mr. Robins' daughter, and Mr. Robins wrote asking her to go down to see her.

MR. MCCARTHY: He did not state it in evidence.

HIS LORDSHIP: Do you think she is still of a mind not to come to this trial, it will last until Friday, will not she come yet?

MR. OSLER: I do not suppose so.

40 HIS LORDSHIP: Both of you want her.

MR. OSLER: I do not know, my lord.

MR. MCCARTHY: Mr. Hellmuth acts for her.

MR. OSLER: She is living in Washington.

MR. MCCARTHY: May I give an illustration of what took place upon her examination in New York.

"Q.— Did you not complain about the provision that was made for you under the will?

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MR. OSLER: I think that is open to the same objection.

MR. FLEMING: You take the responsibility.

THE COMMISSIONER: In each one of these instances, instead of my saying that the answer will be taken, subject to objection, may it be understood that it is my consistent ruling throughout that the answer will be taken, subject to the objection, and that also will apply to all questions heretofore asked in the record, because I think there were three or four where I did not make such a ruling.

MR. HELLMUTH: There may be other questions where we require your ruling.

(Question repeated by the stenographer).

MR. HELLMUTH: I submit that that is entirely irrelevant, and I will take the responsibility of advising my client not to answer the question."

MR. HELLMUTH: My learned friend reads one particular bit. I told the witness, and it is there, your lordship will find it, that she was to answer any question that Mr. Fleming asked her relating to any allegation, or claim, in regard to undue influence, or mental competency, and I told her she need not answer questions in regard to the arrangement she chose to make with the brothers regarding the settlement, as it had no connection.

MR. MCCARTHY: My friend went much further and made himself the 20 judge of the relevancy: that is what your lordship should be.

HIS LORDSHIP: That is what usually takes place on an examination.

MR. HELLMUTH: Counsel have to do it. I have in mind a case in which a commission went from this country to England, to get the answers of a witness with regard to a will case. The witness attended in England and refused to answer the questions. Rogatory letters were issued by the English court and application made to compel the witness to attend. The witness would not answer the questions, on the ground they were irrelevant. That matter went to the House of Lords and they held he was not obliged to answer. That machinery was provided by our English Courts to compel a witness, in connection with a case from the United States, to submit to examination, and to answer questions, and to produce documents that counsel advised him he was not obliged to produce. That procedure was followed by an application to the English Courts, and letters rogatory were issued.

HIS LORDSHIP: It is time to adjourn the Court.

MR. FLEMING: I will file the amended Style of Cause, pursuant to the Order of The Honourable Mr. Justice Orde.

EXHIBIT NO. 39	Filed by Plaintiff	Amendment to Style of Cause, pursuant to Order of The Honourable Mr. Justice Orde, dated Jan. 26, 1924.	40
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(Court adjourned at 5.40 p.m., Tuesday, May 20th, 1924, until Wednesday, May 21st, 1924, at 10 a.m.)

Wednesday, May 21st, 1924. 10 a.m.

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HIS LORDSHIP: There was a question as to the admission of the evidence of Mrs. Mary G. Walker.

MR. OSLER: My lord, I would suggest, if it meets with your convenience, and that of counsel, that the question should stand over for a time. We have some witnesses who have arrived here this morning.

MR. MCCARTHY: I am quite content, my lord.

DR. HARMON A. VEDDER, Sworn. Examined by MR. HELLMUTH:

Q.—Dr. Vedder, you are a practising physician and surgeon in the city of
10 New York? A.—I am.

Q.—And will you tell me shortly how long it is since you started, or graduated, first? A.—I graduated from the College of Physicians and Surgeons, New York, in 1891.

Q.—Where did you follow that up? Where did you study? A.—And then, during my course at this college, I studied in Edinburgh for some months. After leaving college I was an interne in the New York Hospital from 1891 to 1893—18 months—and then I went to the Sloan Maternity Hospital as an interne. I was then connected with the Vanderbilt Clinic, and Cornell Clinic. And
20 I am surgeon for an Insurance Company, I have been Examiner for the New York Life Insurance Company; and I am Examiner in Lunacy.

Q.—Is that a Government appointment? A.—No, it is not an appointment.

Q.—You are one of the examining physicians? A.—Yes.

Q.—Are you a member of any of the medical societies? A.—I belong to the American Medical Association, New York Academy of Medicine, and the New York County Medical Society.

Q.—Were you connected with any Army Corps? A.—I served with the war as captain of the Medical Corps.

Q.—Now, Dr. Vedder, did you meet the late Mr. E. C. Walker or come
30 across him? A.—I did.

Q.—When first? A.—I first met Mr. Walker in 1906.

Q.—Where? A.—At the hotel Netherland in New York.

Q.—Can you tell me whether at that time you were attending him, or anybody else? A.—I was attending Mrs. Walker at that time.

Q.—Did you see, or talk with Mr. E. C. Walker? A.—I did.

Q.—When did you next see him? A.—I next saw him in 1909.

Q.—And where was that? A.—I don't remember; it was at one of the
hotels.

Q.—In New York? A.—In New York.

Q.—Were you attending him then? A.—I don't think I attended Mr. Walker at that time either, but I saw him.

Q.—You talked to him? A.—I did.

Q.—Then, the next time? A.—In 1910.

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Q.—Where was that? A.—That was also at New York.

Q.—Did you attend him on that occasion? A.—I attended him in 1910.

Q.—Will you tell me what, if any, attendance or examination that you made of him then? A.—I made a very thorough examination of Mr. Walker in 1910.

Q.—Can you tell me what the nature of the examination was? A.—It was a general examination. Mr. Walker was not complaining of anything special, but he wanted a general examination, and that examination was a general physical one, as well as some laboratory examinations that were made.

Q.—What did you do as a result of that examination? A.—Well, the net result of that examination disclosed that Mr. Walker, at that time, had arterio-sclerosis, fairly marked. That was the only positive result; the other examinations were all negative. 10

Q.—Did you make any special test, at that time, or have a special test made in regard to any infection? A.—We did. I thought it was advisable to have his blood examined, what we call the Wassermann's test, and that was a negative report. I also had his urine examined, and that was negative.

Q.—That was in 1910? A.—Yes, in 1910.

Q.—Did you converse and talk with him then? A.—Oh, certainly.

Q.—When did you next see him? A.—I think I saw him in the same year, 20 later on. The first examination was in June of 1910.

Q.—Later on in that year you saw him again? A.—I think I saw him in September.

Q.—Was there any examination made at that time? A.—Not at that time, no, sir.

Q.—Were you doctoring him in any way then? A.—I can't say he ever was under my treatment; I was called in more to examine him and to give general advice.

Q.—Well, after 1910, when did you see him again? A.—I think I saw him a third time in 1910, in the latter part of November, and, at that time, I had a consultation with Dr. Delafield. 30

Q.—Is Dr. Delafield alive? A.—No, he is not.

Q.—What, if any, change was there, in your opinion, as the result of that consultation? A.—There was no change in the opinion. Dr. Delafield agreed with me that his only trouble

MR. MCCARTHY: I object to what Dr. Delafield said.

MR. HELLMUTH: You say there was no change, as a result of your consultation? A.—No change.

Q.—Did you see him again after 1910? A.—I saw him in 1911.

Q.—In 1911, what was it, if anything, that he was troubled with, or suffering from? A.—In 1911, I saw him especially because he was troubled with his bowels, he had a certain amount of prolapse of the rectum, and that had given him more or less trouble, and he came to me to see whether he should have an operation or not. 40

Q.—What was the result? Was the operation decided upon, or not? A.—No, it was decided that an operation was not only unnecessary, but it was not advisable.

Q.—Did you know, in 1911, when you saw him, where he was going, was he returning home, or what? A.—In 1911, no, I don't think there was anything special; I often saw him either when he was on his way to Europe, or on his way home. I think, in 1911, at that time he just came down from St. Andrews, I do not think he was going away.

Q.—Did you see him again after that? A.—I saw him in 1912.

Q.—Did you talk with him then? A.—I did.

10 Q.—Anything special in regard to your examination of troubles of any kind requiring medical attention? A.—No, sir.

Q.—Then did you see him again? A.—In 1913.

Q.—What time in 1913? A.—I saw him the latter part of October or the first part of November 1913.

Q.—Did you know where he had been then, or did you ascertain from him where he had come from? A.—Yes, he had just come back from Europe.

Q.—You saw him about the end of October or the beginning of November of 1913? A.—1913.

Q.—Did you talk with him then? A.—I did.

Q.—Any treatment then? A.—No treatment.

20 Q.—How was he physically then, when you saw him? A.—I don't think that Mr. Walker had changed materially in any way between 1906 and 1913, except possibly he was looking a little older.

Q.—Well now, through those various periods, from when you first saw him in 1906—you didn't see him after November 1913? A.—That was the last time I saw him.

Q.—During those various periods you have mentioned, from 1906 to 1913, what, if any, change did you observe in him mentally? A.—Why he never had any mental trouble at all, mentally.

30 Q.—Mentally, there was no change in him at all, he was just the same. What do you say in regard to his mental condition in 1906—you say there was no change—in 1913 was he normal or abnormal? A.—Well, I would consider he was perfectly normal.

Q.—As to the physical change, if any, what do you say as to that? A.—Well, as I said, I did not think Mr. Walker had changed physically in those seven years, he looked much as he did in 1906, he may have looked a little bit older, sometimes he looked a little more tired than at other times; but physically I should think he hadn't changed at all.

40 Q.—Then, in 1910, 1911, 1912 and 1913, were you attending him—perhaps Mrs. Walker as well—but were you attending him? A.—I attended Mr. Walker specially in 1910 and 1911, and in 1912 and 1913 I was really called in to see Mr. Walker as to his general condition.

Q.—Now, during those periods you saw him, what do you say as to whether there was, or was not, any confusion of thought, first? A.—I never noticed anything of that sort. He was a man who was very courtly, dignified, reserved, and rather a reticent man, he was never very voluble—at times he talked more easily than at others, but I would call him a reticent, reserved, dignified gentleman. He was always very neat in his dress, his clothes were nicely buttoned up, and he had a deliberate manner with him. His speech was per-

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haps a little slow, might call it precise. I might say he was trim. His manner of speech was deliberate. His actions in general were deliberate. But I do not think there was any change in that between 1906 and 1913.

Q.—You say you didn't notice any confusion of thought? A.—Never at all.

Q.—What about any confusion of speech, that is, using the wrong words, or anything of that kind? A.—I never noticed anything abnormal in regard to his speech beyond at times he was deliberate.

Q.—What about any thickness with respect to his articulation? A.—I never observed that.

Q.—Now, you spoke of arteriosclerosis which you observed in the examination of 1910. Can you say whether or not there was any progression in that up to 1913? A.—Of course, arteriosclerosis is a slowly progressing disease, in some people it progresses faster than in others, but it is a slowly progressing disease. Now, as far as I can tell, there had not been any marked change in those years.

Q.—Does, or does not, arteriosclerosis necessarily mean mental disturbance? A.—No, sir.

Q.—Well, generally speaking, what, if any, mental disturbance did you notice in Mr. Walker? A.—I never noticed any.

CROSS-EXAMINED by MR. McCARTHY:

Q.—Are you a physician or surgeon, doctor? A.—I am a physician.

Q.—Specialist? A.—General practitioner, internal medicine.

Q.—Are you associated with anybody? A.—No, sir.

Q.—Did you know Mrs. Walker? A.—I did.

Q.—Do you know how you came to be called in her case? A.—Yes.

Q.—How? A.—She was staying at the hotel Netherland and I was the hotel physician.

Q.—With rooms in the hotel? A.—No, sir.

Q.—You were the hotel physician for the hotel Netherland? A.—I was.

Q.—You were, at that time, in 1906? A.—Yes.

Q.—You were called in at that time to attend her? A.—I was.

Q.—You were introduced to him at that time? A.—I was.

Q.—Was there anything more than an introduction? A.—I was called in to attend him professionally.

Q.—Was there anything more than the usual consultation that would pass between you and he in regard to Mrs. Walker? A.—You know, Mr. McCarthy, that is a good many years ago.

Q.—If you can't remember, say so? A.—That is what I say, I can't remember all these details. I met him, and had a number of conversations, because Mrs. Walker was quite sick at that time.

Q.—You met him again in 1909, you can't say where, but in some hotel. Was it for Mrs. Walker that time? A.—I think, at that time it was for Mrs. Walker too.

Q.—Did you make any notes in regard to the visits in 1906 and 1909? A.—I did at the time.

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Q.—Where are they? A.—They were all destroyed.

Q.—When? A.—I lived at 1074 East 76th Street for years, and I sold that house last Spring and moved to an apartment, and I got rid of a great many records, and destroyed them, all those that were old.

Q.—When did you destroy them? A.—Last year, 1923, in the Spring.

Q.—When were you first spoken to in regard to this case? A.—In October 1923.

Q.—Now, in the next year, 1910, you were called upon to make a thorough examination of Mr. Walker? A.—I was.

10 Q.—Did you ever attend either of his brothers? A.—Never.

Q.—Have you got the notes you made in 1910? A.—No, sir.

Q.—They are destroyed too? A.—They are all destroyed.

Q.—So you are speaking simply from memory? A.—From memory.

Q.—Did you have any history in connection with his case? A.—I did.

Q.—Who gave it to you? A.—Mrs. Walker gave me some of it, and he gave me some of it.

Q.—Tell us, from your recollection, what the history of the case was? A.—In 1910?

20 Q.—Yes? A.—Well, as I remember it, Mrs. Walker spoke to me about the condition of her husband's health, she was not quite satisfied with it, that he had these attacks of indigestion, and was troubled with constipation. And they were also a little worried, both of them, Mr. and Mrs. Walker, in regard to some old history of possible infection.

Q.—They were both a little worried in regard to some old history of possible infection? A.—Yes, sir.

Q.—Did Mr. Walker, on that occasion, tell you that he had specific infection? A.—No.

Q.—He didn't tell you that? A.—He didn't tell me, he didn't know whether he had or not.

30 Q.—He told you he didn't know whether he had or not? A.—Yes.

Q.—Did he tell you whether he had been treated for it or not? A.—No, sir.

Q.—Did he tell you he had been under the treatment of Dr. Hoare here up till, I think, 1907, from 1901 to 1907? A.—I never heard of Dr. Hoare.

Q.—Did he tell you anything about attacks of aphasia? A.—They told me that in these attacks of indigestion, as it were, that sometimes he would not be able to talk.

Q.—Did he tell you how long that had been going on? A.—I imagine he did, but I don't remember that.

40 Q.—Was he able to tell you definitely that he thought he had suffered from this specific infection? A.—As I remember, as a young man, but he didn't know, he was not at all sure.

Q.—Did Mrs. Walker tell you anything about the difficulty they had with Dr. Hoare here? A.—No, sir, I never heard of Dr. Hoare.

Q.—The history of the case, as far as you were concerned, was that there was a possibility of specific infection and there was marked arteriosclerosis? A.—Yes, sir.

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Q.—The history was of indigestion, bowel trouble, and the inability to speak at certain times? A.—Yes, sir.

Q.—All that history, of course, would be consistent with specific infection, would it not? A.—Might be.

Q.—You applied the Wassermann's test at that time, did you? A.—I did.

Q.—Was the Wassermann's test at that time perfected? A.—Yes, sir, I think I can say it was.

Q.—You think it was? A.—Yes, sir.

Q.—The text books vary as to that, don't they? A.—I haven't looked it up, but the Wassermann's test is fairly old now. 10

Q.—But that is 1906? A.—In 1910.

Q.—Are you familiar with Dr. Power's and J. Keough Murphy's book on "A System of Syphilis?" A.—No, I am not.

Q.—You have never read it? A.—No.

Q.—Are you familiar with Burr? A.—No, sir.

Q.—On Nervous Diseases, you never read that either. That is an American work, I thought it might appeal to you. You don't know that. You say you made tests at that time but you have lost the record of the tests which you made? A.—Yes, sir.

Q.—Now, to what extent had the bowel trouble reached at that time? Was he having prolapsus at that time? A.—As I remember, he was. 20

Q.—Which would indicate partial paralysis, if not total paralysis of the sphincter? A.—I would not think so.

Q.—Liable to lead to that? A.—No, not in my opinion.

Q.—What was the cause of that prolapse? A.—Straining.

Q.—Straining only? A.—Well, in his particular case it was straining, in my opinion.

Q.—That is something which follows as the result of specific infection, is it not? A.—I should not think specially.

Q.—You perhaps never specialized in these particular troubles? A.—Not specialized? 30

Q.—Yes? A.—No.

Q.—You spoke of making a laboratory examination too? Was that simply a blood test? A.—That was the Wassermann's test, and urine test.

Q.—You have also destroyed the result of those tests? A.—Yes, sir.

Q.—And again you have to speak from memory. How often did you apply the Wassermann's test? A.—Just once.

Q.—Which is not sufficient, is it? A.—It depends. We got a negative result, and that satisfied us.

Q.—You got a negative result, and that would satisfy you, would it? A.—Yes. 40

Q.—Is that correct? Are you always satisfied with one test that gives a negative result? A.—Not always.

Q.—As a matter of fact, you really require succeeding tests? A.—No, I wouldn't say so; it would depend, Mr. McCarthy, upon the case, and the general characteristics.

Q.—At any rate, you were satisfied with one test which was negative? A.—Yes, sir. This was an indefinite history, and when we got one negative test, why, to my mind, that was sufficient.

Q.—Indefinite history, and when you got that one negative test that was, to your mind sufficient. Had you been told that there had been two occasions on which the patient had been specifically infected would you have gone further?

A.—I don't think so, because this was a very reliable laboratory.

Q.—You did not take the laboratory test yourself? A.—Oh, no.

Q.—What laboratory did you send it to? A.—It is called "Dr. Saunder's Laboratory."

Q.—Is that in existence still? A.—It is.

Q.—Are their tests preserved? A.—I am not sure.

Q.—Did you ask at Dr. Saunder's Laboratory whether they had the results of the tests still? A.—No, sir.

Q.—Did you know what age he was at that time? A.—In 1910? Well, I do now.

Q.—Did you know then? A.—I don't think I did know.

Q.—Did you examine his reflexes at that time? A.—I can't say.

Q.—Did you take his blood pressure? A.—I didn't take his blood pressure. Blood pressure tests, in 1910, was rather a new thing.

Q.—New, in 1910? A.—It was only just coming in then.

Q.—Did you examine his eyes? A.—No, sir.

Q.—Then, that was in June? A.—June 1910.

Q.—And in September 1910 you made another examination of him, you saw him casually? A.—I just saw him.

Q.—You didn't treat him in any way? A.—No, sir.

Q.—I believe you didn't prescribe for him in any way in 1910? A.—I may have prescribed.

Q.—You don't know whether you did, or not; so there is no use asking what you prescribed? A.—I can tell you, I am almost sure I gave iodid potash.

Q.—What is that for? A.—I gave that for the arteriosclerosis.

Q.—When did you prescribe that? A.—I can't say for sure.

Q.—Did he tell you, at that time, what he had been taking? A.—I knew that he had had some treatment both of mercury and iodine.

Q.—You knew that from him, or from Mrs. Walker? A.—I wouldn't be sure.

Q.—From either one or the other you knew he had been treated with iodine and mercury? A.—Yes, sir.

Q.—Which is the recognized treatment for specific infection, is it not? A.—Mercury and Iodine is, yes.

Q.—And, if your diagnosis was right, and there was no specific infection at that time, when you saw him, if he was suffering from arteriosclerosis, and the defects you spoke of, that is, aphasia, and possible paralysis of the sphincter, the damage was already done, was it not? A.—If he was suffering with a specific trouble?

Q.—Even if it had disappeared in 1910, if your Wassermann's test was correct, the damage had been done? A.—If it were a syphilitic affair.

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Q.—In September of 1910 you say you just saw him; what was the occasion, just a social call? A.—Oh, no, none of those were social calls, they were all professional.

Q.—Was it to see him, or Mrs. Walker? A.—I don't remember. They used to call me in both on their way to Europe and on the way home.

HIS LORDSHIP: My note is: "Later, in September 1910, I saw him again, not for treatment." So you didn't see him professionally then? A.—Well, it depends on what you mean by doctoring professionally. I did not see him socially on any of those occasions; I may have seen him professionally and yet not treated him. 10

MR. McCARTHY: Then in November 1910, you spoke of a consultation with Dr. Delafield? A.—Yes, sir.

Q.—What was Dr. Delafield's speciality? A.—He was the best known consultant, as to general medicine, in New York.

Q.—General medicine only? A.—Internal medicine.

Q.—What was the necessity of the consultation with him? A.—Well, as I remember it, they were thinking of going to Europe in 1912—this was in November—and they were thinking of going to Europe, and I

Q.—Pardon me; I think you said they were going to Europe in 1912? A.—In 1911. And I, in my own mind, was not quite satisfied whether Mr. Walker should take the trip of that sort, involving an ocean voyage, and travel, and all that, with the arteriosclerosis he had, and I thought I would like to have Dr. Delafield come in, and get his opinion as to the advisability. 20

Q.—He was simply called in as to the advisability of Mr. Walker taking the trip abroad, having in mind the fact he was suffering from arteriosclerosis? A.—That was my idea.

Q.—And your only idea? A.—Yes, sir, I wanted Dr. Delafield to confirm my diagnosis.

Q.—Were any tests taken at that time? A.—No laboratory tests.

Q.—Or reflex tests? A.—I don't remember whether Dr. Delafield examined the reflexes or not. 30

Q.—Did Dr. Delafield make any report to you in writing? A.—No written report.

Q.—Is it dangerous for people to travel when they have arteriosclerosis? A.—Not necessarily.

Q.—Was his a very advanced case at that time? A.—His arteries were fairly thickened, they were not filled.

Q.—Thickened to such an extent you doubted the advisability of his travelling in that condition? A.—Well, I didn't know whether it was advisable.

Q.—You doubted the advisability, on account of the condition of the arteries, of his taking a trip of that kind? A.—Well, I think that is a little strong. I just felt a little uncertain. 40

Q.—I will put it that way; his arteries were in such a condition you felt uncertain as to the advisability of his taking that trip in 1910? A.—Yes, sir.

Q.—In 1911, you say you saw him again? A.—Yes, sir.

Q.—And my note of it is that you saw him in connection with the trouble

with the prolapse of the bowel, and nothing else at that time? A.—When did I see him in 1911?

Q.—I can't tell you, I just got down the year, not the month? A.—I think I saw him twice. May I refer to a note of mine?

HIS LORDSHIP: Yes.

MR. MCCARTHY: If it is made at the time.

A.—I took it from my records.

Q.—Where are the records? A.—In the record of visits made.

Q.—Have you got it here? A.—Yes, sir.

10 Q.—Is that the original, or a copy? A.—That is the original, just of the visits made; no notes.

Q.—That is the record from which you make your charges, is it? A.—It is.

Q.—Look at that to refresh your memory? A.—I saw him in January, 1911, that was just before he sailed. And then I saw him in June, when he came home. This was after this trip. I was not quite sure. When I saw him in June, his trip had done him good.

Q.—Had done him good in which way? A.—He was better physically.

20 Q.—Was the arteriosclerosis affecting him physically? A.—It slowed him up a little, I think.

Q.—Mentally and physically? A.—I wouldn't say mentally that he was slowed up.

Q.—You wouldn't say he was slowed up mentally? A.—He was deliberate anyway, that is, as far as I could judge, and I did not think he had been slowed up by the arteriosclerosis in that way.

Q.—What I have not got clearly in my mind, doctor, is this; there was something you were uncertain about in regard to his taking that trip to Europe in 1911? A.—Yes, sir.

30 Q.—And the anxiety was caused by the fact that he had—correct me if I am mistaken—rather an advanced case of arteriosclerosis, which had some effect upon him, which you were frightened of? A.—Not frightened.

Q.—What was it? A.—What was in my mind was, he had this arteriosclerosis; now, when a man has arteriosclerosis he is very apt to have a stroke of apoplexy, or hemorrhage, or something of that sort, and I felt a little doubtful whether it was safe for him to be travelling, and taking the strain, and all that. Now, he did take the trip, and nothing happened. He came back, and, as I say, I was relieved of that anxiety.

Q.—Now arteriosclerosis, as you have correctly said, if I am instructed properly, might cause a hemorrhage? A.—It might.

40 Q.—It might also cause plugging, or blocking, of the arteries in the brain? A.—It might.

Q.—Which brings about aphasia? A.—It is a cause of aphasia; it is not the only cause.

Q.—Of course, not, but it gradually leads to degeneration of the brain or cortex? A.—Arteriosclerosis can do such things.

Q.—If you found arteriosclerosis, with a history of aphasia, you would

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naturally say that the arteries of the brain had been plugged or blocked, and at times it would cause this aphasia? A.—No, I wouldn't say quite that; I would expect thickening of the arteries of the brain which might lead to a spasm, not a permanent blocking up.

Q.—I don't mean a permanent blocking up, of course, because if there is a permanent blocking up that would be the end? A.—It might not.

Q.—It might, or might not? A.—I think you might have a little spasm in connection with the cerebral vessels, which might cause that aphasia.

Q.—You call them spasms. That would be a temporary plugging of the blood vessels of the brain which would cause the spasm of aphasia? A.— 10
Plugging, to my mind, is quite a different thing.

Q.—Perhaps we are on the wrong word. On account of the temporary blocking. If you would not say "plugging" would you say temporary "blocking"? A.—Blocking.

Q.—That is what you were anxious about in 1910, when you called in Dr. Delafield? A.—Yes, sir.

Q.—You were a good deal relieved when he got back in June, looking a little better for his trip? A.—That is right.

Q.—When were you consulted about an operation? A.—That was in Sep- 20
tember 1911.

Q.—Did he come back to you in September 1911, or was he passing through New York? A.—I think he came down from St. Andrews, at that time.

Q.—He had been at St. Andrews for the summer, and on the way back stopped at New York in September, and that is when he consulted you in regard to the operation to relieve the prolapsus of the bowel. Did he tell you he had consulted Mayo Brothers in regard to that? A.—I don't remember that.

Q.—Did he mention Dr. Dewar as having attended him for sometime for that? A.—I never heard of Dr. Dewar.

Q.—Did you call anybody in consultation then? A.—I did. 30

Q.—Who? A.—Dr. Brewer.

Q.—As a specialist of what? A.—He is a surgeon.

Q.—You can't tell me what he said, but the result of the consultation was that you were opposed to an operation? A.—The idea was, Mrs. and Mr. Walker both thought when he had these attacks with his bowel coming down, that would be the time when he had trouble with his speech, that he would not be able to talk, and all that. Now, I thought there might be two causes for that; one, the cerebral endarteritis. Even that I thought might be caused from the excitement of the prolapsus. It didn't seem very serious to my mind, but, in their minds it was a great accident, as it were, and it would excite him and put him in a sort of panic. I concluded that these attacks of difficulty in talking, 40
which I had never seen, and only heard described, were probably due, not to the cerebral endarteritis but to the panicky condition he got into when his bowel came down. Therefore, I wanted a consultation to see whether that could be relieved by an operation.

Q.—And the surgeon advised against an operation? A.—Yes, he advised against an operation.

Q.—So the symptoms he had were consistent with cerebral endarteritis?
A.—If you call it aphasia; I never saw him then.

Q.—From what you were told? A.—Yes.

Q.—Or it might possibly, in your opinion, be accounted for by what I might call "panic" caused by the prolapse of the bowel? A.—That is right.

Q.—And if caused by the prolapse of the bowel, and the panic as a result, I suppose the proper thing would be to remove the bowel? A.—Perhaps. It would depend on the general condition, and what we thought about it. Mr. and Mrs. Walker both, in my opinion, took pretty good care of themselves, that is,
10 Mrs. Walker took every care of Mr. Walker, and Mr. Walker took very good care of himself. Some people can overdo that.

Q.—I think I understand the situation there. Now, let us get to 1912; look at your note doctor and tell when you saw him then? A.—I saw him in January.

Q.—On the way to England again? A.—I don't know. I don't think he was going to England then.

Q.—Did you treat him then, or examine him? A.—I don't remember much about that. I saw him four times in January, but I don't remember much about it. It was really in consultation with Dr. Brewer.

20 Q.—In 1914 you saw him in the beginning of November or end of October? A.—Yes.

Q.—Mrs. Brewster was there that time? A.—I don't think so.

Q.—Did he tell you of the trouble that he had had at Dinard? A.—I remember that he did say he had been sick at Dinard.

Q.—And did they tell you what he had suffered from there? A.—I don't remember that.

Q.—How long did the interview last on that occasion? A.—Well, I saw him, I think, three times there, twice in October and once in November.

30 Q.—Had he a male nurse with him? He stopped over in New York on the way through? A.—On the way through.

Q.—I think that was in October? A.—I saw him twice in October, I think the last two days of October, and the first of November.

Q.—You don't remember very much about him then? A.—Oh, yes.

Q.—What do you remember about him then? A.—He had just come back from a trip to Europe, and it was on his way up, and at that time I went in to see how he was. He had had an attack in France, whatever it was, and they wanted me to see him, and see what I thought about it. I thought his condition, at that time, was very good.

40 Q.—Was he walking with a stick then? A.—I don't think I ever saw him walking with a stick.

Q.—Did you ever see him outside of his own room? A.—No, I never saw him.

Q.—He was either sitting or standing when you saw him? A.—Yes.

Q.—Or was he in bed? A.—He was in bed when I examined him, but he was usually up and around.

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Q.—I find among the cheques put in, doctor, a cheque payable to Dr. Harmon A. Vedder, that would be yourself? A.—It would be.

Q.—Dated December 5th, 1913, for \$25. That is your charge for the October and November treatment? A.—It must have been, it looks like it.

Q.—By the way, may I ask the doctor: Is Dr. Brewer alive? A.—Yes, sir.

GENERAL ANDRE W. BREWSTER, Sworn. Examined by MR. HELLMUTH:

Q.—General Brewster, what position do you hold in the American Army?

A.—Major-General.

Q.—In what part? A.—I am commanding what is known as The First Corps Area, which comprises the New England states. I command the regular troops in that area. 10

Q.—What relation, or connection, if any, were you to the late Mr. E. C. Walker? A.—Mr. Walker and I married sisters.

Q.—You are a brother-in-law of Mr. Walker's? A.—Yes.

Q.—When did you first know Mr. E. C. Walker, General? A.—In 1886 or 1887, I have forgotten which.

Q.—And up to what time did you see him, how late? A.—The day he died.

Q.—And, during the last years of his life, how often did you see him? A.—The last year of his life, as I recall, I saw him during the Christmas week of 1914-15, at his house. 20

Q.—That is, at Willistead in Walkerville? A.—Yes, at Willistead.

Q.—In the Christmas week of those two years you were staying with him? A.—Yes, I was staying there at that time.

Q.—For a week? A.—I can't tell you whether a week, a fortnight, or ten days.

Q.—Now then, did you see him at all during 1913? A.—I spent a week at Christmas of 1913-14 with him. And I left there, as near as I can recall, on the 5th of January. 30

Q.—Were you in Walkerville at all in the Spring of 1914? A.—No.

Q.—You were there during the Christmas week in 1914? A.—1913-14, and 1914-15 respectively.

Q.—What about 1914? A.—I will try to explain it more clearly, more definitely. I went there in December, 1913, the latter part, and I left in January, 1914. I again went there in December of 1914, the latter part, and left early in January, the first few days of January, 1915.

Q.—In the years preceding 1913, had you seen him in those years? A.—Almost every year, yes.

Q.—Almost every year? A.—Very frequently. 40

Q.—You were away, were you not, in Porto Rico? A.—I moved to Porto Rico, as near as I remember, on the 13th of January, 1914, and left there on the 3rd of August, 1914.

Q.—Well you were in the United States during the years 1911 and 1912, General? A.—Oh, yes.

Q.—Did you see him during those years? A.—Yes, in 1912, as I remember, I spent a month or two with him at St. Andrews, New Brunswick. I was there for a short time in 1911, and for a longer period in 1912.

Q.—Do you mean at St. Andrews? A.—St. Andrews, New Brunswick.

Q.—In 1911, you were staying with him, he had a house there? A.—We had a house, we were staying at the house, and he was stopping at the hotel Algonquin, as I remember; that was in 1912. In 1911, we both stopped at the hotel.

10 Q.—So that you saw him at St. Andrews on two occasions at all events?
A.—Yes.

Q.—Did you see him at all during the years 1909 and 1910? A.—I think I did. I saw him nearly every year.

Q.—Now General Brewster, what do you say as to his habit or characteristic in regard to his speech, was he a voluble man, or reticent, or reserved man? A.—He was very quiet, rather reserved, and a simple man, and very gentlemanly, but like those people he was very firm, he was a firm man and a man of strong conviction.

Q.—Your first acquaintance dates back to 1896? A.—1886, or 1887.

20 Q.—From then on up to the time of his death you were, off and on, in more or less communication with him? A.—Yes.

Q.—Now will you tell me what, if any, mental change or deterioration you noticed in him, and, if so, where? A.—I noticed no mental change, no deterioration. It never entered by head, until this case came up. If it had, I would have advised Mrs. Walker

MR. MCCARTHY: Never mind what you would have done.

MR. HELLMUTH: At all events, you didn't notice anything? A.—No, I noticed nothing.

Q.—Now, in regard to his speech, what, if any, confusion of thought, or speech, did you notice? A.—I never noticed any.

30 Q.—What was the manner of his speech? A.—He spoke slowly, never in a loud tone, rather deliberate. He spoke very clearly, I always understood what he said.

Q.—What, if any, change was there in that towards the later years? A.—I didn't notice any.

Q.—Now, when you were here in December, 1913, and January, 1914, did you have any occasion to go outside with him, out of the house? A.—Yes.

Q.—Tell me what that was? A.—We used to take a very short walk, not always, but some of the days we would take a very short walk.

40 Q.—What, if any, assistance did he have in those walks? I mean who, if anybody, assisted him? A.—He walked by himself, and I walked alongside of him.

Q.—Were you supporting him in any way? A.—No, I never thought of that.

Q.—Will you tell me, if you can bring your mind to it, what topics of conversation, during the later years, you would have with him? Tell me what you would talk about? A.—Well, general topics, he was interested in the world

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politics to a little degree, and he was very much interested I remember when the United States proposed reciprocity with Canada, so-called.

MR. McCARTHY: What year was that? A.—That was in 1911 or 1912, I think, I wouldn't be sure.

MR. HELLMUTH: Yes, 1911? A.—I remember that particularly because he had very strong opinions on that subject.

Q.—Did you in 1913-14, that is, December 1913 and January 1914, discuss matters with him at all when walking with him? A.—Yes, I remember one thing in particular when we sat at the breakfast table, he usually came down before I did, and he had been reading the paper—I can remember this because it resulted in a gift to me that was very useful. 10

Q.—What date is this? A.—I think it was January the 1st or 2nd, 1914. He had been reading the newspaper and he had seen an advertisement of a Ford car. I didn't know anything about automobiles then at all. He asked me if that wouldn't be a very useful thing for me to have in Porto Rico. I was leaving for Porto Rico in a few days. I told him it would, that I would be very glad to have one. And I remember discussing the best way to get it there, and I told him it could be sent, if sent at once, as part of my baggage allowance, and go with my baggage. And he advised me not to do that, that it would be much safer for me, and I would be sure to get the automobile in good condition if I got it from the agent in Porto Rico at San Juan, which I did. 20

Q.—That was in January, 1914? A.—That was in January, 1914.

Q.—Did he ever talk to you about the distillery business, or any of its affairs? A.—Not about its affairs, except he would describe the process, he would talk to me about it and show me the establishment. And I couldn't understand it all, the technical part.

Q.—Why not? A.—Because it was something I didn't know very much about, I didn't understand the technique.

Q.—Tell me what you found, if at all, confused or wanting in expression in Mr. E. C. Walker, at any time? A.—Nothing at any time, he was always very clear in his description of these things. 30

Q.—Were you at the Ford factory with him at any time? A.—I think he took me up in his car, but I am not sure about it, I don't know whether it was at that time or before, it certainly couldn't have been afterwards, I do remember going through there at one time, and I think he took me up in the car, but I will not be sure about that.

Q.—You got your car? A.—I got the car, and it was very useful.

Q.—Do you know how it was sent?

MR. McCARTHY: He got it from the agent in Porto Rico.

A.—I got it from the agent at San Juan, Porto Rico, it was arranged here by someone in the office of Hiram Walker & Sons. 40

MR. HELLMUTH: What, if anything, was there at all of change in Mr. Walker's mental habits, as far as you could judge? A.—As far as I could judge, there had been no change.

Q.—Well now, let me understand, where did Mr. E. C. Walkery die? A.—He died in my house in Washington.

Q.—When did he arrive there, about what time, from Walkerville? A.—I haven't the date, it was sometime in March, he had been there perhaps a week or ten days, when he died.

Q.—How was he when he came to your house, what was his mental condition when he came to your house? A.—He was quite clear.

Q.—Did you talk to him? A.—Yes, I used to talk to him, I was busy a great deal during the day, I was at the War Department on duty, and when I came home I would always talk with him, and we would drive together.

10 Q.—This was in Washington? A.—In Washington.

Q.—Ten days before he died? A.—Yes.

Q.—Was the illness of which he died a sudden attack, or what? A.—Yes, it was a sudden attack, the doctor said

MR. McCARTHY: Never mind what the doctor said.

MR. HELLMUTH: What did you understand it to be? A.—I understood it was a bronchial cold which developed into bronchial pneumonia.

MR. McCARTHY: That must be the result of what the doctor told him.

MR. HELLMUTH: He would know whether it was pneumonia or not.

MR. McCARTHY: Only from what he was told.

20 THE WITNESS: I am not an expert on that. I have seen a great many soldiers die of pneumonia. I think he had pneumonia.

MR. HELLMUTH: When he arrived in Washington to visit you, you say you spoke with him, and drove with him? A.—Yes.

Q.—What do you say as to any mental deterioration then? A.—I didn't notice any at all, I thought he was perfectly clear.

Q.—How was his physical condition then? A.—I thought that he had deteriorated, that he didn't seem strong. I think the last time I can remember any concrete conversation with him was just a day or two before he died, I went up with him to his room, and we were talking. I remember him looking out of my back window and seeing a large building in the distance which he thought was a brewery. it had ventilators on it, and he thought it must be a brewery. I remember that.

Q.—That is the last time you remember speaking to him? A.—I spoke to him after that, I spoke to him while he was ill.

Q.—How was his speech then, while he was ill? A.—Until the last 24 hours he was in pain, he had some trouble breathing, and he was always very polite and made apologies for giving trouble, and that sort of thing. He was clear then.

CROSS-EXAMINED by MR. McCARTHY:

40 Q.—Your wife and daughter are beneficiaries under Mr. Walker's last will, I understand? A.—Yes.

Q.—And they are both defendants in this action? A.—Yes.

Q.—And your wife is away at the present time? A.—In Boston.

Q.—She was up with you on the occasions when you were visiting at Wil-
listead, at the Christmas weeks of 1914 and 1913? A.—Yes, I believe on all occasions.

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Q.—And she was also with Mr. and Mrs. Walker in Dinard when he was so ill in 1913, was she not? A.—She went over there.

Q.—Didn't she come back with them? A.—Yes.

Q.—And is not it a fact that Mrs. Walker sent for her to come to Dinard? A.—Yes, Mrs. Walker wrote and asked her to come. They asked her to go before, to accompany them.

Q.—Where is Mrs. Walker at the present time? A.—As far as I can say she is in Washington, D.C.

Q.—And did you know that she had made an agreement with the National Trust Company, the executors of Mr. Walker's will, in regard to the amount she should get from the estate? A.—Yes, I knew. 10

Q.—And she discussed it with you? A.—Not that concretely, but she talked about the question.

Q.—That is, before she made the agreement? A.—Before the agreement was made.

Q.—Did she tell you at that time that unless the executors agreed to give her an increased allowance, she would upset the will? A.—No, quite the contrary.

Q.—What did she say? A.—She came to me and said, "The will has just been read." 20

Q.—Where was this? A.—This was at Willistead, just after the funeral.

Q.—Who read the will? A.—I don't know, I was not present.

Q.—Yes? A.—And she told me that she was not very well looked after, and was afraid she couldn't stay on at Willistead. And we talked it over, and I advised her to get an attorney, as we call it in the United States, and I advised her to get Mr. Millar, on account of his standing, and the fact he was a friend of the Walker family, as well as her.

Q.—Mr. Millar? A.—Yes.

Q.—An American lawyer of Detroit? A.—Detroit.

Q.—Mr. Sidney T. Millar of Detroit? A.—Yes. 30

Q.—Did she engage him? A.—Yes, I believe she did.

Q.—And after getting his advice, you heard this agreement had been made? A.—I knew she was being advised by him at that time. I had spoken to Mr. Walker—Mr. Harrington Walker spoke to me about it.

Q.—Well then, you knew that Mr. E. C. Walker was more or less an invalid, didn't you? A.—He was not a strong man. Toward the last year of his life he was not as active as he had been, but he had never been a robust man, he had never been strong since I had known him.

Q.—Did he or his wife ever confide in you as to what he feared was the trouble? A.—No, I never heard it brought up. 40

Q.—You never heard it brought up until you heard it to-day? A.—Yes.

Q.—You heard what Dr. Vedder said as to what Mr. and Mrs. Walker told him as to what they feared? A.—I heard some of it, I didn't listen to it all.

Q.—Did you know of the prolapse of the bowel trouble he had? A.—No, I never heard it called that, I thought he had what is commonly known as constipation.

Q.—During the Christmas week of 1914, and January 1915, did you know that he had a nurse in the house? A.—I think he had a nurse in the house in January, 1915.

Q.—And December 1914? A.—Yes.

Q.—He had a trained man nurse in the house? A.—Yes, there was a man nurse, I don't know how well trained he was.

Q.—Did you know what duties he was performing? A.—As far as I could see, he would help him on with his shoes, and clothes, and look after his things.

10 Q.—He had a valet as well, hadn't he? A.—I don't remember if he had one then or not, I think his valet had left and came back, but I don't know.

Q.—You never discussed with him what this nurse was there for, or the difficulties he had in regard to bowel movements? A.—No, I didn't know whether he had the nurse for that purpose or not.

Q.—You didn't know anything about that? A.—No, I didn't know anything about that.

Q.—You never saw him when he had one of those attacks of aphasia, when he couldn't speak? A.—No, I never saw him when he was ill.

20 Q.—You heard what Mrs. Walker told Dr. Vedder about it? A.—I heard the doctor say what he was told.

Q.—Did she never tell you that? A.—No, I have heard her say he had quite an illness, I think it was on two occasions, when he had difficulty in speaking, in talking.

Q.—You heard he had had an illness on two occasions when he had difficulty in talking—when did you first hear that? A.—I think it was after they came home from Dinard.

Q.—That would be in October? A.—I might have heard it at some other time, but I don't remember that now.

30 Q.—Did you hear it as far back as 1905? A.—Oh, no, I said 1886 or 1887.

Q.—Did you know about the difficulty in speech as far back as 1905? A.—No.

Q.—Did you know, on that occasion when he was in Muskoka, that he sent for Dr. Cavan, a specialist, from Toronto? A.—I knew he was ill, I didn't know who they sent for.

Q.—Did you know he had difficulty in speech then? A.—No.

Q.—Didn't she tell you? A.—No, didn't talk about it.

Q.—Did she tell you about the different attacks of what we call aphasia, from time to time? A.—No, I don't remember that.

40 Q.—Attacks when he was unable to speak? A.—Is that aphasia?

Q.—That is one form of it? A.—Yes, that he had difficulty in talking.

Q.—She told you that? A.—Yes.

Q.—How long did that continue? A.—I can't tell you.

Q.—Did she or he tell you of the bowel trouble that he had? A.—I think they both spoke about it.

Q.—And that is as far as A.—He spoke of having trouble with his digestion.

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Q.—And that is as far as they ever confided in you? A.—They never talked much about it to me.

Q.—You never saw him when he had an attack, when he had difficulty of articulation? A.—No, I never saw him when he was ill, except his last illness.

Q.—You mentioned that at Christmas 1913-14, he used to take very short walks some days? A.—Yes, occasionally.

Q.—Never outside the grounds? A.—Yes, we went once outside the grounds, and through a little part of Walkerville.

Q.—He walked very slowly, I am told? A.—Yes, he always walked slow.

Q.—He had some difficulty in the movement of his feet? A.—No, it was slow, but normal. 10

Q.—Well, if slow but normal, what do you mean? A.—Like some people.

Q.—He was a normal, but slow walker, is that what you mean? A.—Yes, he never walked rapidly.

Q.—Did he have a stick with him then? A.—As I remember, he always had a stick. I always carried one.

Q.—And you mentioned the fact of the short walk in 1912, and 1913-14, during the Christmas week, as something that impressed itself on your mind? A.—No, it didn't impress itself on my mind.

Q.—Why did you mention that then? Why mention taking the short walk? A.—I was asked. 20

Q.—I mean there must have been something exceptional to impress itself upon your mind, the fact that he was able to walk? A.—No.

Q.—Was he able to walk in the Christmas week of 1914-15? Did you ever see him outside the house? A.—I never went out with him except about the grounds, and sitting down outside.

Q.—Was it warm enough for that? A.—Yes, it was warm enough for that, the way he was clothed.

Q.—You didn't take a walk with him during the Christmas week of 1914-15? A.—I don't think I did, I don't recall it. 30

Q.—Did he come down to all his meals? A.—As I recall it, he did, he was generally down at breakfast.

Q.—Did you notice any difficulty in eating? A.—No.

Q.—Any difficulty in getting his food to his mouth? A.—No, none at all.

Q.—You never noticed that? A.—No.

Q.—Then, he was not a man who spoke very much at any time, he was silent? A.—He was rather silent.

Q.—You knew him very well? A.—I knew him fairly well.

Q.—And very reticent? A.—Yes, I think so, he was a man who was reserved in his manner. 40

Q.—And during the Christmas week of 1914-15, did you see very much of him, or was he in his room most of the time? A.—No, he was in his room very little of the time.

Q.—He was in his room very little of the time? A.—He didn't stay in his room much.

Q.—Where would he stay? A.—He was sitting in his library, when he was not out.

HIS LORDSHIP: Was he melancholy, or moody, with you? A.—No.

Q.—When he was reticent, he was comfortably reticent, nothing to disturb you? A.—No, not at all, I always felt perfectly without restraint and at ease in his companionship.

MR. MCCARTHY: Do you mean you sat at certain times together without speaking at all? A.—No, we generally talked, unless when reading, I in one part of the room, and he in another, we would talk.

Q.—Did you ever see him in one of the attacks that have been described to you as inability to speak? A.—I never saw him in any attack of that character, or at any time when he had to keep his room, as far as I can remember, except the last illness.

Q.—And when did he get down to Washington in 1915? A.—As near as I remember, it was the first few days of March. I may be mistaken, it may have been in February.

Q.—How long had he been there before he died? A.—I should say ten or twelve days.

Q.—Did you know that he was under the care of a physician before he left? A.—Well, I knew he had been ill.

Q.—Was any doctor called in to look after him at Washington before he contracted pneumonia? A.—No.

Q.—Had he a nurse with him then? A.—No.

Q.—Or an attendant, at any time? A.—He had a valet he had had for some years, a man by the name of Charles, I think.

Q.—Mrs. Walker was pretty much worried about him, was she not? A.—She worried after he was taken sick.

Q.—Before that, she was not a little worried? A.—She was worried to this extent, she wanted to bring him down south, he had had some bronchial trouble and cold during the winter, and she wanted to get him south, so they came to Washington.

Q.—At any time you saw him it was casual conversation you had together, was it? A.—Yes, ordinary conversation between two friends.

Q.—He never discussed any difficult problems? A.—I don't know about difficult problems, we discussed political problems.

Q.—What political problem would you suggest? A.—I remember, at one time, he was very much interested in the Balkan situation, and talked clearly about that.

Q.—How long ago did he talk of the Balkan situation? A.—I don't remember.

Q.—Was that the question as to whether the Turk was a gentleman or not? A.—No.

Q.—Someone said he talked about the Balkan situation, but mostly as to whether or not the Turk was a terrible person.

HIS LORDSHIP: "The unspeakable Turk."

MR. MCCARTHY: Put it either way, "unspeakable" or "terrible"; that was not the subject of the conversation? A.—No.

Q.—What was the subject of the conversation? A.—I remember one sub-

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ject was about the Bulgarians, for whom he hadn't very much use, and I rather took the other side.

Q.—That is; at one time he was discussing as to whether the Turk was an objectionable person, and at this time it was the Bulgarians? A.—I think so.

Q.—Is that right? A.—You may say so.

Q.—I am asking you the question? A.—No, I should not say that.

Q.—That is all you can tell me about the discussion? A.—That is all I remember; I cannot go into the thing concretely.

Q.—You remember the discussion in regard to reciprocity, to which he was very much opposed? A.—He was very much opposed to that. 10

Q.—Both politically and financially? A.—I don't know about financially, I imagine, being a practical business man, that may have had something to do with it.

Q.—His conversation was confined to general topics? A.—Yes; he used to talk of art, he was very much interested in that.

Q.—Was he interested in it at the last? A.—Yes, he was always interested in it, as long as I have known him.

Q.—His interest was kept up, maintained, to the last? A.—Yes.

Q.—He was a generous man, was he not? A.—Yes.

Q.—As you knew him, he was not a man who was likely to be mean about money matters? A.—No, I would never claim he was mean, he was not a spendthrift, he was quite the opposite; he was careful, but generous. 20

Q.—A man who once he made up his mind that a charity was deserving, he was sufficiently determined to stick to his own view? A.—As long as he held those views.

Q.—If he didn't hold them, that would be a different story? And a man who was not easily persuaded? A.—I do not think he was.

Q.—Quiet, reserved, but determined? A.—Yes.

HIS LORDSHIP: Mr. Robins, the plaintiff here, said he was a princely man; does your opinion coincide with that? A.—It depends; he was a prince in some ways, he was a man who had a great consideration for others, he was gentle, he was kind, he was very firm, and he was very careful, I should say, about money matters, expenditures. I do not think he was a prince in the way of prodigality, because I do not think he was. 30

Q.—I do not think that is what Mr. Robins meant? A.—In kindness of heart, he was a prince.

Q.—He was not a prince who, like in the olden days, would throw a purse of gold to the people? A.—He didn't do that.

No. 53
G. Melchers
Examina-
tion-in-
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21st May,
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GARI MELCHERS, Sworn. Examined by MR. OSLER:

40

Q.—Mr. Melchers, what is your occupation? A.—I am a painter.

Q.—And how long have you been painting? A.—Well, I went abroad when I was 17 years old, in 1877, and I have been painting ever since; I painted yesterday.

Q.—Where were you born? A.—In Detroit, Michigan.

Q.—And have you exhibited your paintings? A.—Yes.

Q.—Where? A.—In every capital of the world, I think, practically.

Q.—Where are you living now? A.—At the present moment I am living in Virginia, and my work-shop is in New York.

Q.—Did you know the late Mr. Edward C. Walker? A.—Yes, I knew the late Mr. E. C. Walker very well.

Q.—When did you first meet him? A.—We first met in either 1885 or 1884.

10 Q.—And where? A.—That I can't remember. I met him in Detroit, and I remember the date because it was on my return from Europe after an absence of six years.

Q.—Did your acquaintance become closer? A.—Oh, very close.

Q.—Now, can you tell me in your own words just what opportunities you had of talking to him, meeting him, during the rest of his life? A.—Well, I saw a great deal of Mr. Walker shortly after we met, I mean that year I spent in Detroit, the only year I think I spent here at one time continuously, that was in 1884, and I saw a great deal of him, and we became very warm friends, and on future occasions when I came to Detroit for any particular purpose I
20 always saw him over at his father's house, or in Walkerville, at his own home. When he came abroad he never failed to see me in Holland, Germany, or Paris, we always arranged to meet. We were very warm friends.

Q.—When was the last occasion you saw him? A.—The last time I saw Mr. Walker was in late December of 1914, the year that the war began.

Q.—Before I ask you as to any of the interviews you had with him before that time, will you tell me what manner of man he was? A.—Mr. Walker was always, even as a young man, I refer to 1884 when I first met him, an extremely timid man, very quiet, very reserved, and he seemed, almost painful at times to me a stranger, deliberate. He was very deliberate, and had that quiet
30 manner of speech, and quiet demeanour, that practically kept up all his life, I never saw any change. Nobody ever saw Edward Walker run, he always walked very slowly, he always answered in that deliberate way, he never raised his voice, he was always extremely polite, he never gave a brusque order to the servants. He was a very considerate man, and was as any man as he grew older. I didn't notice any marked change in his appearance or demeanour.

Q.—Was he interested in art? A.—I think in 1884 he was one of the few men in this part of the world already interested in pictures. He had some very good pictures in his house at Walkerville, in the little cottage, and some very good pictures in his father's house. I remember in a casual way there were
40 three or four pictures by Dennis and Sadlier, that is a long time ago, and very few people in Detroit had collected pictures.

Q.—Did he continue to take that interest, in later years? A.—It grew to be a hobby with him, to be interested in pictures.

Q.—Did he know the character and aesthetic value of pictures?

MR. MCCARTHY: That is suggestive of the answer.

HIS LORDSHIP: I think so.

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MR. OSLER: I will withdraw that question.

HIS LORDSHIP: I do not ask you to. With a gentleman like this, it does not matter.

MR. OSLER: What do you say, Mr. Melchers, as to Mr. Edward Walker's knowledge of pictures? A.—Well I think the first thing that is necessary is a love for them, and he had that in a very high degree. And the acquirement of knowledge only comes by experience, of seeing and studying them, which he did very thoroughly. He always made it a point to spend much time examining pictures; and accordingly he learned more about them. Just how much he knew, I am not prepared to answer. A picture is very often a question for debate. 10

HIS LORDSHIP: He could debate? A.—Oh, yes, most seriously.

Q.—He had an appreciative love of pictures? A.—He certainly did, my lord.

MR. OSLER: Was there any change in that respect, or not, the last time you saw him? A.—No, I saw no change. He always kept up his appreciation, and I, being a painter, would be apt to drift to that topic—not entirely so.

Q.—What was his characteristic in talking, when he was among friends? A.—It is very hard for me to know exactly how to answer that question, because he was a perfectly normal, quiet, gentle man; he conversed as everybody else did; he was a very good listener. 20

Q.—Was there not any difference when he was among friends and when he was among strangers? A.—A very marked difference, yes. As I say, when he was with those he didn't know he seemed at times to be painfully timid. That is not uncommon, I don't mind telling you that I feel a little timid myself with perfect strangers.

Q.—Do you know of any purchase of pictures made by Mr. Edward Walker on his visits to Europe? A.—Why, that I don't know. I do recall a visit to New York where they purchased some pictures. I am not at all sure about the trip to Europe, except on one occasion when they were in Dinard, they came to where I was living, and he purchased a picture I was painting. 30

Q.—For what purpose? A.—His intention was, he told me, to present it to the Detroit Museum. I think, at that time, he was President of the Detroit Museum, of the Board.

Q.—Do you remember what year that was? A.—It was in the year 1912, in the autumn.

Q.—Will you tell me what you remember about the picture he bought on that occasion? A.—He came to see me, in my studio, as a matter of fact, he came to stay with us, on the way to Silesia to see a niece of his brother Frank Walker, and he came for the purpose of staying with us, as we were very warm friends. He came to my study. I had a studio consisting of several rooms. 40 My workroom was upstairs, but downstairs I had a large room where I had some of my pictures I was either painting, or had finished painting, and they were standing on the easels. I was upstairs, and he asked to go downstairs, he said, "if you don't mind, while you are working, I will go down in the big studio, and look at the pictures." When he returned he expressed the wish to buy a picture called, "The Fencing Master," for the Detroit Museum. That is

as near as I remember the occurrence, which is many years ago. Of course, I made no note of it, in just a vague way I remember what occurred.

Q.—Which picture did he select? A.—“The Fencing Master,” which he gave to the Detroit Museum.

Q.—Where is it now? A.—It still is in the possession of the Detroit Museum.

Q.—What do you say as to a comparison between that picture and the other pictures from which he made the selection?

MR. MCCARTHY: Well, they are his own pictures.

10 HIS LORDSHIP: Oh, yes, what does that matter?

MR. OSLER: What do you say, Mr. Melchers, as to the comparison between the picture which he selected and the other pictures in your studio from which he made the selection?

MR. MCCARTHY: I object to that. They are all his own pictures.

HIS LORDSHIP: It would hardly be fair for the painter to give an answer; it might be he thought it was his best picture, and that would depreciate the value of the others. I do not want to put him in that position.

MR. OSLER: On the other hand, if the best picture went to the Detroit Museum, that might be the best place his work could go, for increasing the
20 knowledge of the public.

HIS LORDSHIP: You must not embarrass this gentleman who has come all this way.

MR. OSLER: To be serious; I want to know if an outsider, another man, in making the selection, did it haphazardly.

HIS LORDSHIP: In this case, Mr. Melchers, we have heard a great deal of pictures, we have been talking about them for six or seven days, so I will permit counsel to ask the question, did he make a good selection when he chose this picture from among others? A.—My lord, he made a very good selection, and, if I might add, I selected three of my pictures to be shown at the Universal
30 Exhibition in Paris, and one of the pictures I chose was one of these pictures, which I chose for my exhibit in Paris in the American section, which I considered my very best, and one of them was the picture Mr. Walker on that occasion selected, and it was his choice.

MR. OSLER: Then you saw Mr. Walker, you have told us, at the end of 1914; how long before that occasion had you seen him? A.—The last time I saw him was when he was in Germany in October. I came to this country in the following month, in November, because I was connected with the Exhibition in Washington. So we met there. I am not sure, but I have every reason to believe it was Christmas 1912 I spent with my mother in Detroit, as I was in
40 this country during the latter part, November and December, in connection with my work at that Exhibit, and I am quite sure I must have come here in December, 1912, to Detroit. I did not go back to Europe until the Spring. Whether I saw him again after seeing him during the winter, or saw him in New York, I don't remember. As I said, we always saw each other, whether he was travelling, or I was travelling, we always kept in touch with each other and arranged to see as much of each other as possible.

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Q.—You can't remember whether you saw him, in New York? A.—I don't remember. I am quite sure I saw him in 1912, I wouldn't come to this country without spending Christmas with my mother who was, at that time, living in Detroit.

Q.—Throughout the period you have known him, and judging by all the conversation you have had with him, what do you say as to his mental condition, Mr. Melchers? A.—I have never heard Mr. Edward Walker say an irrational thing; he was always quiet, never very effusive. To me, I saw no change at all. Until the last days I saw him he was always the same quiet, deliberate man.

MR. MCCARTHY: No questions.

10

ALFRED JORGENSON, Sworn. Examined by MR. OSLER:

No. 54
A. Jorgenson
Examina-
tion-in-
Chief.
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Q.—Mr. Jorgenson, where do you live? A.—In Detroit.

Q.—And what is your present occupation? A.—I am working for the Fisher Body Corporation.

Q.—Were you employed by the late Mr. Edward C. Walker? A.—Yes, sir.

Q.—About what years? A.—I started to work there in 1901, in the winter, and I left there in 1913, in the middle of May.

Q.—What was your occupation? A.—I was coachman when I first started 20 to work for him, and then I drove his car when we started to get motors.

Q.—When you first went there how many horses had Mr. Edward Walker? A.—When I first started there we only had three coach horses.

Q.—Did he do any riding then? A.—Not when I first started there.

Q.—Did he later? A.—Yes, sir.

Q.—When? A.—Why, about two years or so after I started to work for him he started to ride horseback.

Q.—Did he keep a saddle horse at that time? A.—Yes, we bought two saddle horses to start with, and I rode one of the coach horses, and later on we got another horse, we had three saddle horses later. 30

Q.—Will you tell me when Mr. E. C. Walker began to ride, when he used to ride, and who he rode with? A.—As a rule, Mrs. Walker and him and I always rode, of course, sometimes we had other people with us, but I was always with him when he rode horseback.

Q.—You always accompanied him when he was riding? A.—Yes, sir.

Q.—How late did he continue to ride? A.—He rode up to within about six months or a year before I left there. We had trouble with our horses, they got poisoned in the woods, so he didn't get any more; he didn't ride any more.

Q.—Up to six months or a year before you left, he rode? A.—Yes, sir.

Q.—Did he ride as much in the later years as he did in the earlier years? 40
A.—Oh, perhaps he didn't take quite so long rides, he rode about the same, when the weather was nice.

Q.—Then, did he take you anywhere with him? A.—Yes, sir, I went abroad with him twice, I went across to Europe twice with him.

Q.—In what years? A.—I went across with him the first time in 1907, and the second time in 1911, if I remember right.

Q.—Where did you travel in 1911? A.—In 1911 we left New York and we took the Mediterranean trip, and went to Naples, and then we went to Florence, and Rome, and Genoa, and Marseilles, and Nice, and Paris. I left them in Paris and went home to visit my folks in Denmark.

Q.—How did you come to leave? A.—He wanted me to take a vacation and go home while I was so close to my home.

10 Q.—Did you rejoin them? A.—I rejoined them in London about two weeks after, or a little better, because they were not staying very long in London.

Q.—After, you came back to Canada? A.—Yes, sir.

Q.—Do you know whether he did any business in London? A.—Oh, yes, he done business in London. I know he went down to the office occasionally, and sometimes the manager of the business there used to come up to the hotel and see him.

Q.—What kind of man was Mr. Walker, give us your description? A.—He was one of the very finest, no better, to my knowledge.

20 Q.—Can you tell me a little more definitely about him than that? A.—He was very quiet, he never had such an awful lot to say, although when we used to ride horseback we were talking all the time about one thing and another; outside of that, he was a man that didn't say a great deal.

Q.—Did you see him when he was among strangers? A.—Oh, yes, quite a number of times.

Q.—Was there any difference between the way he would talk when talking to you, and when amid strangers? A.—No, not a great deal, couldn't see much difference.

30 Q.—Who did you get your directions, or orders from? A.—As a general rule, we got our orders over the telephone to the garage from the house. Sometimes when Mr. Walker was riding in the morning, when we would come home he would say "If it is a nice morning to-morrow, we will go"—at such and such a time. But, as a rule, I got orders over the telephone from the house.

Q.—What did you find as to whether appointments he made were punctually kept? A.—They were prompt, right on the minute pretty near, if he said the hour, he would be there that minute.

Q.—What time of the day did you usually ride? A.—Nearly always in the morning, he generally rode before he had breakfast.

40 Q.—Do you know whether he played golf or not? A.—Yes, sir, he played golf. Of course, he was not much of a golf player, but he liked to go out and play golf. I have played with him myself, that is how I know he played.

CROSS-EXAMINED by MR. McCARTHY:

Q.—When did you sell the horses, Jorgenson? A.—They still had horses left when I left. Some of them died, we had trouble with them, some of them got poisoned in the woods.

Q.—When did they die? A.—You mean what year?

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Q.—Yes? A.—Well, it must have been about 1911, or 1910.

Q.—How many died? A.—Two.

Q.—Two saddle horses? A.—Yes, sir.

Q.—Did he ever ride after that? A.—Oh, yes, we still had one horse left, he would take the saddle horse, and I used the carriage horse.

Q.—You rode the carriage horse? A.—Yes.

Q.—How long did you keep the carriage horse? A.—They still had it when I left.

Q.—You left in May, 1913? A.—I left in May, 1913.

Q.—In 1912, did he ride much that year? A.—Not a great deal, not as much as he used to. 10

Q.—Did you always go with him? A.—Yes, sir.

Q.—How long would he stay out at a time? A.—We wouldn't ride very fast, we would stay out about an hour and a half mostly.

Q.—Would you ever go fast? A.—No, not very fast.

Q.—Before breakfast? A.—Yes, sir.

Q.—Always in the summer, never in the winter? A.—Never in the winter.

Q.—Only in the summer, and not very far at a time? A.—Yes.

Q.—In the summer of 1912 he was at St. Andrews? A.—I was not with him. He was in St. Andrews in 1912, I think. 20

Q.—He was in Europe in the early part of 1912, was he not? A.—In 1911. We left New York in January, whether 1911 or 1912, I wouldn't be sure.

Q.—Do you know if you went with him in 1912? A.—I can't remember.

Q.—You got back to New York in June? A.—Yes, sir, at that time.

Q.—You remember it was at this time you saw the doctor—do you remember the doctor calling at that time? A.—No.

Q.—He went to St. Andrews later in the summer? A.—Yes.

Q.—Did he ride that summer at all, after he came back from Europe? A.—I don't remember, I imagine he did.

Q.—You have no recollection of it? A.—No. 30

Q.—And the riding he did take, whenever he took it, was of a very gentle character? A.—Yes, sir.

Q.—Someone always accompanied him? A.—Yes, sir.

SIDNEY G. RANDALL, Sworn. Examined by MR. OSLER:

Q.—Mr. Randall, what is your occupation? A.—I am assistant accountant with the National Trust Co.

Q.—Have you knowledge of the position of the E. C. Walker Estate accounts? A.—Yes, sir.

Q.—Will you tell me how far the administration of the estate had proceeded up to the end of 1921? 40

MR. MCCARTHY: I object to this. It has no bearing.

HIS LORDSHIP: There is a plea by them of laches as a defence. I suppose that is what this is for?

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MR. OSLER: Yes.

HIS LORDSHIP: To show that the estate has been administered.

MR. OSLER: To December, 1921.

THE WITNESS: Assets were realized upon, I would say, to the extent of approximately \$2,000,000. Bequests had been paid to the extent of \$700,000. And succession duty had been paid, the duty amounting to \$700,000.

Q.—To what extent had the bequests provided for in the will of 1914 been paid? A.—They had all been provided for as they should be under the terms of the will. Cash bequests had been paid, and certain bequests in bonds
10 had been set aside in trust.

Q.—How about the annuities? A.—They had all been paid up to that time.

Q.—What about accruing, or future payments of the annuities? A.—They have been provided for. We had paid to the residuary legatees approximately \$1,250,000.

CROSS-EXAMINED BY MR. McCARTHY:

Q.—Who are the residuary legatees? A.—The J. Harrington Walker estate, and the Franklin H. Walker estate.

HIS LORDSHIP: How much is left in your hands unadministered, or not
20 apportioned? A.—The estate now is approximately \$5,000,000. We hold that now, we simply have to pay the annuity to Mrs. Walker, and then the residuary legatees are entitled to the estate after Mrs. Walker is provided for.

Q.—You now have in your hands \$5,000,000.00? A.—Yes, sir.

MR. McCARTHY: May I ask what payments have been made since December, 1921? A.—We have paid to the residuary legatees approximately \$3,500,000.00.

Q.—Since 1921, December? A.—Pardon me, \$350,000.00.

Q.—And anybody else? A.—Certain of the trusts have been handed over under the terms of the will, that is, the bonds set aside have been turned over to
30 the beneficiaries.

Q.—Anything else? A.—Mrs. Walker has received her annuity each year.

Q.—Under the will, or under the agreement? A.—Both.

HIS LORDSHIP: \$75,000.00? A.—Yes, \$75,000.00, it is \$70,000.00 now.

MR. McCARTHY: What do you mean by, it is \$70,000.00 now? A.—That is the payment that is being made since "Willistead" was sold.

Q.—It was \$90,000.00? A.—It was reduced from \$75,000 to \$70,000.

Q.—I thought she got \$90,000 under the agreement? A.—\$75,000.

HIS LORDSHIP: You say "Willistead" was sold; I understand it is a public park? A.—I am not familiar with that, I am simply familiar with the accounts.

MR. OSLER: I think it was a matter of a gift to the public. Everybody
40 who was interested joined in making it a gift.

HIS LORDSHIP: Including Mrs. Mary Griffin Walker?

MR. OSLER: Of course, she was a life tenant.

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MR. OSLER: I wish to read the evidence of Mrs. E. C. Walker, taken on commission.

HIS LORDSHIP: Yes, that was objected to. There were to be some authorities put in, in answer to the objection. I would like to hear those authorities at present, I think. Let me see the order for the commission, made by His Honour Judge Coughlin on the 15th of October, 1923.

What was the date of the examination?

MR. OSLER: The 22nd of February, 1924.

HIS LORDSHIP: Taken out on the application of the plaintiff.

MR. OSLER: Taken out on the application of the plaintiff. The order was made on the 15th of October, 1923. My recollection is that at the time the order was taken out the case had been set down for the November sittings of this court, but the plaintiff had not made anybody parties to the action except the National Trust Company, he began his action against the National Trust Company only, and, when the matter came before Mr. Justice Orde, I rather think, on the plaintiff's application for further direction 10

MR. FLEMING: The plaintiff just called his attention to it.

MR. OSLER: His attention having been directed, not by us but by the plaintiff, to it, the matter was adjourned, and the Order was made directing the adding of several other parties, who were added. As the case was not going to trial at that sittings, of course the commission was not proceeded with. The evidence was taken on the 22nd of February. 20

HIS LORDSHIP: Is there the usual provision in the Order as to the use of the evidence at the trial by both parties?

MR. MCCARTHY: No.

MR. OSLER: I will read from the Order of His Honour Judge Coughlin:

"4. AND IT IS FURTHER ORDERED that upon the execution of the said Commission and the examination of the said witnesses and before the 29th day of October, 1923, the said Commission and the depositions of the witnesses and all proceedings taken under the said Commission, be without delay, after the said Commission shall have been executed, transmitted to the office of the Local Registrar of the County of Essex, and the Supreme Court of Ontario at Sandwich. 30

5. AND IT IS FURTHER ORDERED that upon the return of the said Commission, either party upon giving two days' notice of his intention to do so, may be at liberty to open the said Commission and take an office copy or copies thereof and of the said depositions, Exhibits, or other proceedings returned therewith."

There does not appear to be any express reference to the use to be made of the Commission. But that is in accordance with the usual practice. 40

HIS LORDSHIP: Yes, they always put in the Commission that either party can use it.

MR. OSLER: I do not remember seeing that in such Orders as I have observed. I can only say I do not recollect having seen any such provision.

HIS LORDSHIP: How did you get it here?

MR. OSLER: It is transmitted to the clerk of this court, and he retains the

original commission, but, under the terms, either party, on giving two days' notice to the other, may attend formally and open it, and then take copies.

HIS LORDSHIP: How do you get it in as evidence? Under what authority do you adduce it?

MR. OSLER: We adduce it under the Order which directs the Commissioner to take the evidence as the evidence of the witnesses on behalf of the plaintiff.

HIS LORDSHIP: That is all right.

MR. McCARTHY: Your lordship will realize she was not a party at that
10 time.

MR. OSLER: No, exactly, but she was a party when the commission was executed.

HIS LORDSHIP: That may have some effect. Mr. McCarthy objects to the use of that evidence because it does not fully represent the case for both sides; that she declined to answer certain questions on the advice of counsel; then the commission was returned with these objections in, and, I suppose, the contention of Mr. Fleming, and it comes here and it is proposed that it be used.

MR. OSLER: Yes, after it lies there for nearly three months.

HIS LORDSHIP: Mr. McCarthy says that is the evidence, rightly or wrong-
20 ly taken; that as the answers were not given they, therefore, cannot be enquired into; and I am rather of that opinion. I should like to hear you, Mr. Osler.

MR. OSLER: May I refer your lordship to the quite obvious practice? The rules relating to objections on Examinations are framed in the most plain language. There is an express provision in Rule 338:

"338. Rules 339 to 347 shall apply to the examination of a witness upon a motion or under an order and to cross-examination upon affidavits and to all examinations for discovery."

They are all referred to, and if any person on examination objects to any question, the question should be noted, and the validity of such question decided
30 by the examiner.

HIS LORDSHIP: What did this examiner do?

MR. OSLER: He noted the objection, as he should have done under the Rule (343) which says:

"343. If any person under examination objects to any question put to him, the question and the objection shall be noted, and the validity of such objection shall be decided by the examiner, whose decision shall also be noted."

HIS LORDSHIP: Mr. McCarthy, you mean to say that the question should be answered?

MR. McCARTHY: Yes, the examiner should direct that they be answered.

MR. OSLER: He may rule that they should be answered.

"344. Any direction or ruling of the examiner shall be subject to review upon any motion with respect to such examination without an appeal."

My submission is, if my learned friend intended, as it is quite obvious Mr. Fleming, at that time, apparently intended, to test these questions, an applica-

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tion could have been made for a commission rogatory to the proper court to compel the attendance of the witness to answer what questions the court thought should be answered. That court would decide whether or not those questions should be answered, and this Court would be in a position to decide whether or not the evidence is admissible.

HIS LORDSHIP: What rule?

MR. OSLER: Page 747 of Holmstead & Langton's Judicature Act, which reads:

"In aid of a commission, where the assistance of a foreign Court is necessary in order to compel the attendance of a party for examination for discovery, or of a witness before the commissioner, letters rogatory may be ordered to issue." 10

HIS LORDSHIP: That shows a list of Holmstead's comments upon the rule. What is the rule?

MR. MCCARTHY: I have followed that practice to compel the attendance of a witness on two occasions, but I never could compel him to answer questions if he would not.

MR. OSLER: Rule 277:

"277. Where the testimony of a person who is residing out of Ontario is required for any reason an Order under Rule 271 is not sufficient the Court may order the issue of a commission for the examination of such person." 20

Where a commission is issued, and where the witness attends on the commission, and nothing happens, or if the witness refuses to attend, it is necessary to make an application to the proper court, and that is done by what are called letters rogatory. I take it, if the witness can be compelled to attend, where he refuses to attend, that the same practice must apply if he refuses to answer the questions, because, for instance, supposing a witness attended and said he would not answer any questions, does my learned friend suggest that everybody would be helpless in these circumstances? Surely not. 30

HIS LORDSHIP: I never heard of a case where they refused, because the official in the foreign country who hears the examination not being versed in the practice of the court from which the commission comes would not be able to decide the question.

MR. OSLER: It may be very difficult. My submission is that the witness having refused to answer, the person who wishes to get her answer has a simple remedy, he makes an application to our court for letters rogatory, letters which would be directed by our court to the foreign court, which would declare that the witness had attended but refused to answer such and such a question, and our court would have to decide whether or not the question should be answered. 40 Then our court, having determined that application, would decide whether or not to issue letters rogatory.

HIS LORDSHIP: Having issued letters rogatory, it is then pro forma.

MR. OSLER: It goes before the other court; then that court would say, the Ontario court has ruled, the witness refuses to answer, the Ontario court thinks the witness should answer, and has passed letters rogatory to us asking.

that the witness be compelled to answer, and there would be contempt proceedings if the witness failed to answer.

HIS LORDSHIP: How could there be proceedings with regard to contempt if the person is in a foreign country?

MR. OSLER: I misled your lordship. Your lordship referred to the Ontario court, I took it you referred to the American court. The foreign court could then punish the witness for failure to attend, and failure to answer pursuant to the letters rogatory. As a matter of fact, if any difficulty about the question, the prerogative could be settled by our court so, before it
10 reached the American, or foreign, court, it would be settled.

HIS LORDSHIP: Could not you have done that?

MR. MCCARTHY: I do not think so. Mr. Hellmuth went as far as to say there was an authority.

MR. HELLMUTH: I cannot find it here, I could if I could get in a library.

MR. MCCARTHY: I looked it up myself, and took pains to find out whether it could be done, and there is no question that letters rogatory could be issued for the attendance of a witness, but letters rogatory say nothing about what he shall or shall not say. I know of no officer at Osgoode Hall, Mr. Holm-
20 stead being the most experienced, who knows anything of that kind of practice, and has never been asked to exercise it.

HIS LORDSHIP: Nobody in this court remembers any such case?

MR. MCCARTHY: I can find no authority for a practice which my friend calls so simple. Now the Rules which my friend referred to your lordship, for the examination of a witness out of Ontario, and the provisions of the Rules are that where the testimony of a person who is residing out of Ontario is required, and, for any reason, the order under Rule 271 is not sufficient, the court can issue a commission for the examination of such person.

30 "271. The Court may, in any cause or matter where it appears necessary for the purposes of justice, make an order for the examination upon oath before an officer of the Court or any other person and at any place, of any person, and may permit such deposition to be given in evidence."

If that person is not willing to do that, Rule 277 steps in and says that a commission may be issued, and provides:

"In aid of a commission, where the assistance of a foreign Court is necessary in order to compel the attendance of a party for examination for discovery, or of a witness before the commissioner, letters rogatory may be ordered to issue."

40 The letters are directed to the foreign court within whose jurisdiction the witness whose evidence is desired is a resident, requesting the aid of the court in procuring such evidence.

The form of the letter is in H. & L. forms 781.

"INTERROGATORIES: Where the evidence is to be taken on interrogatories, the applicant frames his interrogatories at the risk of the evidence taken being rejected in whole or in part; the Master in Chambers cannot consider, or interfere with them, on motion for that purpose."

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So, if I issue interrogatories, I cannot go to the Master and have him compel the witness to answer, and it is at my own risk that the answer is taken.

HIS LORDSHIP: He would not know what the questions were until the examination took place, and it looks to me as if your litigation got to the point where if a proper question was asked and counsel advised the witness not to answer it, therefore, it would nullify the effect of the whole issue of the commission.

MR. McCARTHY: Yes, my lord.

There is a provision which I think your lordship can take advantage of, 10 that is where a witness is before a commissioner, I presume by appointment, and refuses to answer questions; if the party is a party to this action she is now within your lordship's jurisdiction.

HIS LORDSHIP: What can I do?

MR. McCARTHY: If she is a plaintiff, your lordship can strike out her claim, and, if a defendant, you can strike out her defence.

HIS LORDSHIP: Supposing I strike out her defence, but she is perfectly indifferent to it?

MR. McCARTHY: Then she becomes in the nature of a witness only. I suggest that my friends have known for some time that we did not intend to 20 use her evidence.

MR. OSLER: When?

MR. McCARTHY: When we closed our case. They had plenty of time to get her here, as they did General Brewster, or the other gentleman from New York. She is in Boston and, if they wanted to use her evidence, the proper way is for her to come here, as a party to the action, and give her evidence in open court.

HIS LORDSHIP: The mere fact of their deciding not to issue the commission surely does not preclude them from using it if they want to.

MR. McCARTHY: Put it in another way; supposing I had subpoenaed her 30 as a witness, and she was in this country, and I did not call her, they would have a perfect right to call her and bring her as their witness.

HIS LORDSHIP: Yes.

MR. McCARTHY: There is no obligation upon me, because I subpoenaed her, to call her. Because I do not call her, as I do not require her evidence, as I did not in this case because, as the matter has turned out, other evidence was discovered since which rendered it quite unnecessary, does that enable them to use her evidence? Is not the proper practice for them to send for her and make her their own witness? I contend they have no right to put in her evidence taken on commission, as she is available to them. 40

HIS LORDSHIP: Only by inference.

MR. McCARTHY: She has instructed counsel, and Mr. Saunders and Mr. Hellmuth represent her; there is no suggestion she is not well enough.

HIS LORDSHIP: She does not want the disagreeable character of the thing.

MR. McCARTHY: That may be. That would not prevent her from being here and giving evidence, as I submit she ought to. As to their right to use her

evidence at all, or not; if they do resort to the tactics which they have in this particular case, I submit they have no right to choke off my examination-in-chief, and then put in their cross-examination, which is in fact leading their own witness throughout the whole examination.

HIS LORDSHIP: You say they "choked off?"

MR. McCARTHY: Even if Mr. Fleming's questions were objectionable—some were leading—and if Mr. Fleming wrongly regarded her as an adverse witness—and she subsequently became a party—and if Mr. Fleming inadvertently took the position she was an adverse witness

10 MR. OSLER: He was warned, it was not inadvertently.

MR. McCARTHY: He was warned by my friend. Whether she was an adverse witness or not—and the rule in regard to an adverse witness is that you cannot cross-examine until they are adverse—and even if Mr. Fleming's questions were leading, even if they were irrelevant, was not the proper practice to allow the questions to be answered subject to objection, and then, when the commission is returned, your lordship would then be in a position to say, No, I will not allow that question, it is leading, or, I will not allow it, it is irrelevant?

20 HIS LORDSHIP: That may be so. I do not know how you can compel them to do that. They take their position and say, "It is your move."

MR. McCARTHY: I think you can compel them. They are asking for an indulgence.

HIS LORDSHIP: I cannot do it now. We will finish the case.

30 MR. McCARTHY: It is a matter of indulgence. Your lordship could say, "I will accept her evidence, but I will not allow the commission evidence to go in because you had an opportunity to call her, and you have not seen fit to do so." It seems to me so absurd, when they have taken a commission to take the evidence of people in London, and Detroit, and have gone to unlimited expense in bringing General Brewster here, and the other gentleman here from New York, and yet will not bring their own client from Boston, and, of all the people who know about this case, it is Mrs. Walker.

HIS LORDSHIP: She is a woman, and women have certain privileges.

(Court adjourned at 12.45 p.m. until 2 p.m.; Wednesday, May 21st, 1924.)

AFTERNOON SESSION—May 21, 1924.

HIS LORDSHIP: Well, we got so far as to discuss the question of the admission of the evidence of Mrs. Walker taken on commission. Who wants to say anything more?

40 MR. McCARTHY: I have said all I have to say, my lord.

MR. OSLER: I am finished.

MR. HELLMUTH: I do not want to say anything.

HIS LORDSHIP: Well, so far as I know, these questions put to the witness, and which she refused to answer, on the advice of counsel, may be or may be

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not properly refused, and the fact that there are a large number of these questions, as alleged, does not seem to me to affect the question, it is not a matter of quantity, it is a matter of quality, and, as the commission is returned under this Order, I think I must receive the evidence for what it is worth, therefore, you may read the evidence.

MR. OSLER: The Commission was executed at New York on the 22nd of February, 1924. Mr. Fleming appeared for the plaintiff, I appeared for the National Trust Company, and Mr. Hellmuth and Mr. Saunders for Mrs. Walker and other defendants.

10

(Mr. Osler reads the evidence of Mrs. Mary Griffin Walker).

Deposition of Mrs. Mary Griffin Walker, taken pursuant to notice prefixed to the original hereof, before Seiforde M. Stellwagen, Esq., at Room 840, No. 200 Fifth Avenue, New York City, N.Y., on February 22nd, 1924, at 11.30 a.m.

PRESENT:

SEIFORDE M. STELLWAGEN, ESQ. Commissioner.

APPEARANCES:

FLEMING, DRAKE & FOSTER,

By O. E. FLEMING, K.C.

GLYN OSLER, K.C.,

I. F. HELLMUTH, K.C., and

D. W. SAUNDERS, K.C.,

For the Plaintiff.

For the National Trust Company,

For Mrs. Walker and other defendants.

20

The Commissioner stated that he had duly subscribed and taken his oath of office as Commissioner herein.

James E. Griffith, a duly qualified shorthand reporter, employed by the Association of the Bar of the City of New York, was thereupon duly sworn as stenographer herein.

30

MARY GRIFFIN WALKER being first duly sworn, was examined and testified as follows:

Direct Examination by MR. FLEMING:

1. Q.—Mrs. Walker, you reside in Washington? A.—I reside in Washington now, part of the time.

2. Q.—And your former home was in Walkerville, Ontario? A.—Yes, sir.

3. Q.—And you are the widow of the late E. Chandler Walker? A.—Yes, sir.

40

4. Q.—Of Walkerville, Ontario? A.—Yes, sir.

5. Q.—He and his brothers, in their life-times, had a large distillery business at Walkerville? A.—Yes, sir.

6. Q.—With other large interests? A.—Yes, sir.

7. Q.—How long had you known your husband? A.—I first met my husband in 1885.

8. Q.—1881? A.—1885.

9. Q.—And you were married when? A.—In 1896.

10. Q.—And your former home was in Detroit? A.—Yes.

11. Q.—You were born there? A.—No, I was born in Rochester, New York.

12. Q.—But you had lived in Detroit for quite a number of years? A.—Some time.

13. Q.—Some time prior to your becoming acquainted with Mr. Walker? A.—Yes.

14. Q.—When you first became acquainted with Mr. Walker, was he in ill health? A.—No.

15. Q.—When did you first notice that he was in failing health? A.—Off and on; at intervals.

16. Q.—Before or after your marriage? A.—Some time before.

17. Q.—And at the time of your marriage to Mr. Walker, he was taking an active part in the distillery business, wasn't he? A.—Yes.

MR. OSLER: I do not want to interrupt you on preliminary questions, but I think my learned friend should avoid leading the witness.

MR. FLEMING: Of course, she is an adverse witness.

MR. OSLER: Oh, no, I do not think so.

MR. FLEMING: Yes, she is a defendant and I think that she can fairly be questioned as an adverse witness.

MR. OSLER: She is a defendant, but the rule is quite clear that the mere fact that a party has been made a defendant does not convert her into an adverse witness. I must take exception to leading questions.

MR. FLEMING: I am just laying down a foundation now.

18. Q.—Then, can you tell us how long he continued to take an active part in the distillery business? A.—I could not say to that, exactly. I think for some time.

19. Q.—Yes, well up to say a period before his death? A.—I think he was consulted about important things always.

20. Q.—By whom? A.—His brothers.

21. Q.—That would be whom? A.—Frank Walker and J. H. Walker.

22. Q.—Up to what time prior to his death? A.—Up to the time of his death.

23. Q.—You think up to the time of his death? A.—Yes.

24. Q.—Some time prior to his death had you any occasion to find fault with his application to business?

MR. OSLER: I must submit that these questions are improper. My learned friend cannot lead the witness in this way.

MR. FLEMING: I am asking her a question that I think is not leading.

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MR. OSLER: I think it falls clearly within a leading question, as suggesting an answer.

MR. FLEMING: No, it does not suggest the answer.

(Question repeated by the stenographer).

MR. OSLER: That is clearly a leading question. Unless the witness is particularly obtuse, the answer is clearly suggested.

THE COMMISSIONER: The objection will be noted and the answer may be taken.

MR. OSLER: I do not wish to submit to this examination going on under conditions where my learned friend may ask all these questions in what is clearly an improper manner and then leave it to me to say to the Court that a great many of these answers ought not to be considered. I object definitely and decisively to the examination being conducted on this footing. 10

MR. FLEMING: This question, of course, I submit, is not a leading question.

MR. OSLER: I understand that you are contending that you have a right to ask leading questions.

MR. FLEMING: I am going to later on, when we get further on with the witness.

MR. OSLER: I think we might as well discuss that now.

MR. FLEMING: The Commissioner can rule. The question just now is whether it is leading or not. I am not suggesting an answer in my question. I am asking for a statement. 20

(Question repeated by the stenographer)

MR. OSLER: My objection is that that clearly suggests that the witness had occasion to find fault. It is putting a suggestion into the witness's mind in the most direct and objectionable way.

MR. FLEMING: Supposing I put it this way: Did you find fault with his application to business?

MR. OSLER: That again is clearly objectionable. My learned friend must ask the witness what the circumstances were. He cannot make these suggestions. 30

THE COMMISSIONER: As I understand it, the question could be phrased, did you or did you not.

MR. OSLER: I would not so understand. If you could bring any leading question within the rules by simply prefacing it with "did you or did you not"—the door would be thrown wide open.

MR. HELLMUTH: I suppose the question could be asked in this way: What do you know in regard to his application to business?

MR. OSLER: I have no objection to such a question.

MR. FLEMING: We will adopt the question as Mr. Hellmuth has put it. 40

(Question repeated by the stenographer)

A.—I never interfered and never discussed that with him. If he wanted to go to the office, or if he went to the office, I never objected.

25. Q.—Did you object to anybody else? A.—Anybody else? How?

26. Q.—Object to his taking so active a part in business? A.—I do not remember that I ever did.

27. Q.—Do you know anything about the business arrangements between the members of the firm, himself and his brothers? A.—No.
28. Q.—You say “No.” A.—I say “No.”
29. Q.—You knew Mr. Robins, with the Walker firm? A.—Yes.
30. Q.—And how long was he connected with the firm; do you know? A.—I only know from hearsay, I think.
31. Q.—Will you put it “Quite a number of years?” A.—It seems to me it was '88 or '89, something like that.
- 10 32. Q.—Up until when? A.—1912.
33. Q.—And do you know of his relationship with your late husband? A.—I know they were friendly.
34. Q.—How friendly would you put that? A.—I think they were always on friendly terms. I never knew of any interruption to that.
35. Q.—What kind of a position did Mr. Robins hold with the Company? A.—Well, I do not remember what office he held. At different times, I could not say.
36. Q.—What were his relationships with the business and with the members of the firm of Walker Brothers? A.—I never knew of any trouble or difference until towards the end.
- 20 37. Q.—I am speaking now more with reference to this position, his connection with the business? A.—You mean as to the office he held?
38. Q.—Yes? A.—I really knew very little about the business. I thought Mr. Robins was secretary-treasurer, manager, perhaps.
39. Q.—Would you say he had a confidential position with the firm? A.—He must have had, I do not know.
40. Q.—I beg your pardon? A.—I do not know. I really do not know. My husband never talked over his business matters with me.
41. Q.—You had occasion to see Mr. Robins yourself? A.—Frequently so.
- 30 42. Q.—Now, just tell us on what occasion? A.—I saw Mr. Robins?
43. Q.—Yes? A.—I could not tell you that.
44. Q.—You called him up? A.—I could not remember. It has been so many years, I could not remember that.
45. Q.—But you have said, I understand, that you had occasion to speak with Mr. Robins about the affairs of the Company? A.—I asked him to come and see me once, I remember; not about the Company, it was about my husband's affairs.
46. Q.—What was that? A.—My husband was concerned about the expenses of keeping up our home. I did not know what my husband's income was. We never discussed those things. I thought that he knew something about it, and I thought if I knew about it I would not worry so much whether I was running over his income or running into it too much. I did not want to ask my husband—I think I remember asking Mr. Robins.
47. Q.—Why did you go to Mr. Robins? A.—I thought he was in a position to tell me something.
48. Q.—That was the reason, because he was in a position to tell you? What was the result? A.—I think he told me.

RECORD

In the
Supreme
Court of
OntarioDefendant's
Evidence.No. 57
Mrs. Mary
G. Walker
Examina-
tion-in-
Chief.
21st May,
1924.

—continued

RECORD

*In the
Supreme
Court of
Ontario*

Defendant's
Evidence.

No. 57
Mrs. Mary
G. Walker
Examina-
tion-in-
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21st May,
1924.

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49. Q.—Were you satisfied?

MR. HELLMUTH: Is anybody ever satisfied with their income?

A.—I think I was satisfied that we were not spending more than we could afford to spend.

50. Q.—Had anybody suggested that you were spending more than you should have spent?

MR. OSLER: I do not think my learned friend should lead the witness.

MR. FLEMING: I am following up a former question.

MR. OSLER: You are following it up by a leading question.

MR. FLEMING: I did not suggest that somebody had suggested that they were spending more than they should spend. I am asking about that. She suggested that somebody had suggested that. 10

MR. HELLMUTH: I do not think that is a correct statement. She said she wanted to know if she was running over her income.

MR. FLEMING: I think she suggested that.

MR. OSLER: No.

Q.—Did anybody suggest that to you?

MR. OSLER: That question is objected to also.

MR. FLEMING: I am entitled to that. That is a direct question.

MR. OSLER: I think that that is also a leading question. 20

THE COMMISSIONER: The objection may be noted and the answer taken.

MR. FLEMING: What is the answer, Mrs. Walker, please?

MR. OSLER: I think I would like a ruling on that, Mr. Commissioner.

THE COMMISSIONER: It has been suggested that a ruling be had at this time. I would like to be apprized somewhat, of the functions of a Commissioner in this proceeding.

MR. FLEMING: You have the same right to rule as to questions and answers as a Court would, and if you are not in a position to be sure of your ruling, then, the practice is, to allow the question and answer to be taken, subject to objection, then the Court can determine. I think that is the practice. 30

MR. OSLER: The practice is also that the witness should not answer and counsel should object. You can quite see that if you adopt that practice the whole of the damage would be done.

MR. HELLMUTH: I would not think that the Commissioner, Mr. Fleming, is exactly in the same position as the Court. For instance, the Court can direct anything to be answered, but as I understand it, the Commissioner is in very much the same position as an examiner would be. I think that is the position he is in, not in the position of a judge.

MR. FLEMING: What is that position?

MR. HELLMUTH: An examiner very often directs a question to be answered. Although I am not taking part in the objection of Mr. Osler, I think if the Commissioner says that the question should be answered and if counsel then says, "I advise you not to answer" the witness declines. Then, if counsel do not agree, he makes a motion to detain the witness, which is the same thing as asking the Court to direct him to answer. 40

MR. FLEMING: I think to expedite the return of the examination, the

Commissioner could direct that the question and answer be taken subject to the objection, and then if Mr. Osler wishes to take the responsibility of advising his client not to answer, that is his responsibility.

MR. OSLER: It is not my client. That is my difficulty.

MR. HELLMUTH: Mrs. Walker is my client. I am not taking the objection. Mr. Osler is taking the objection.

MR. FLEMING: Then Mr. Osler must take the responsibility, because if it takes a week I want the evidence to go in. It seems to me a very unfair objection, when Mr. Osler knows that the witness is not a willing witness.

10 MR. OSLER: I must take exception. I am perfectly willing that you should have the evidence of this witness, but I am not content that you should lead the witness or adduce the evidence in an improper way, and I do not think that you can in any way suggest that the witness is an adverse witness. It has been definitely held, as I understand the authorities, that the mere fact that a witness happens to have been made a party defendant does not constitute that witness an adverse witness. You can readily see how absurd it would be to call a witness and examine him not according to the rules of evidence in chief. You could make a witness a party defendant and then call him and thereby escape the rule.

20 MR. FLEMING: I will ask the question.

MR. OSLER: You assert the right to lead the witness?

MR. FLEMING: Not at the present time, I will later on, probably.

(Question repeated by the stenographer).

MR. OSLER: I think that is clearly a leading question.

THE COMMISSIONER: The answer may be taken subject to the objection.

MR. HELLMUTH: I think perhaps it had better be answered.

A.—I think my husband found fault with the expenses, found the expenses pretty high.

51. Q.—And that was the occasion of your going to Mr. Robins?

30 MR. OSLER: I think we might as well settle this question of leading questions now, because that is only another leading question, immediately.

MR. FLEMING: I will put it this way: Was that the occasion of your going to Mr. Robins?

MR. OSLER: I think that is objectionable.

MR. FLEMING: I do not know, then, how to ask questions. I submit that that is in no sense a leading question.

MR. OSLER: You can ask her why she went to Mr. Robins.

MR. FLEMING: I am asking her now.

40 MR. OSLER: You can ask her, but you must not lead or suggest what you want her to say.

MR. FLEMING: That is not a leading question.

MR. HELLMUTH: Well, put it that way. Why did you go to Mr. Robins?

By MR. FLEMING:

52. Q.—Why did you go to Mr. Robins? A.—I wanted to learn from someone whether we were really spending more than my husband could afford.

53. Q.—And can you tell us when this was? A.—I cannot remember that.

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Defendant's
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No. 57

Mrs. Mary,
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tion-in-
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21st May,
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tion-in-
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54. Q.—How long prior to your husband's death? A.—It might have been four or five years.

55. Q.—What was the state of your husband's health at that time? A.—He was in his usual health, fairly good.

56. Q.—He died in 1915? A.—1915.

57. Q.—Then, do I understand you, that in 1910, or thereabouts, your husband was in his usual good health? A.—Yes, sir.

MR. HELLMUTH: You qualify that by "His usual good health" don't you? That does not mean robust health. You said, "usual"?

58. Q.—Yes. Had he any serious illness? A.—No. 10

59. Q.—At any time prior to that? A.—No, I don't remember any.

60. Q.—Did he afterwards become ill? A.—No.

61. Q.—At any time prior to his death? A.—He was subject to indisposition from intestinal weakness which disturbed him. No organic trouble.

62. Q.—Who was your family physician? A.—We had no family physician for many years.

63. Q.—Did you consult a physician at all? A.—Off and on, every little thing that came up.

64. Q.—From what time? A.—At what time?

65. Q.—Yes? How far back prior to his death? A.—I think we had no regular physician from 1905 or 1906. 20

66. Q.—From 1905 or 1906? A.—From 1905 or 1906, we had no regular physician. In New York City, we knew a doctor whom we used to consult, if we needed him.

67. Q.—Who was that?

MR. OSLER: I object to that. That might disclose the name of a witness.

MR. FLEMING: You object to that?

MR. OSLER: Yes, on the ground that it might disclose the name of a witness.

MR. FLEMING: I asked the witness the name of the physician that they consulted. 30

MR. HELLMUTH: I think that that objection is well taken. It may be that that doctor would have to be called, and I do not think that you are entitled to have the names of witnesses.

68. Q.—Did you consult more than one physician? A.—Well, I cannot remember whether we consulted more than that one doctor.

69. Q.—I mean at any time for ten years prior to Mr. Walker's death? A.—If he was ill and he needed a doctor we called whoever we could get.

70. Q.—I have asked you if there were occasions to call any doctors. I suppose that you, Mrs. Walker, would know? A.—Yes. 40

71. Q.—Yes? A.—Well, I don't remember dates, just all the history of every year, Mr. Fleming.

72. Q.—Would you confine your consultations to one doctor or had you more? A.—The only doctor we consulted was just occasionally this one.

73. Q.—That answer will apply up to the time of his death? A.—No, about a year before he died, we called in a doctor.

74. Q.—The same doctor or another one?

MR. OSLER: I would like you to bear in mind that you should not name the doctors. You can refer to them but do not name them.

MR. HELLMUTH: Mrs. Walker can tell how many doctors there were. You can tell the times, the dates, and how many there were, without mentioning names.

MR. FLEMING: I would like to have it noted, if I am right, that the witness is not disclosing the names of any of the physicians.

MR. HELLMUTH: Who may be witnesses.

MR. FLEMING: I don't know who may be witnesses and who may not.

10 MR. OSLER: We do.

MR. FLEMING: The objection is generally to the disclosing of any names.

MR. HELLMUTH: Of doctors, because they are expected to be witnesses.

THE COMMISSIONER: For the purposes of the record, is it desired to ask the witness to reply to that question, in order that the objections may be made?

MR. FLEMING: Of course, I am not waiving my right to have the names disclosed, but I am submitting to the objection, and I want the witness to answer the question omitting the names.

20 MR. HELLMUTH: I was going to suggest that, if you are right, assuming that you are entitled to have the names, if Mrs. Walker will give you the occasions, as far as you are entitled to them, it might not be necessary to call her back, because we can put the names in, if you are right. Let Mrs. Walker as far as she can, going perhaps backwards, which would perhaps be the easier way, just say how many and for what periods those doctors were called in.

(Question repeated by the Stenographer).

A.—No, it was another one.

75. Q.—And did that other doctor have occasion to see Mr. Walker frequently? A.—Not very often, with the exception of one week, when he had bronchitis. He saw him almost every day for about a week.

30 76. Q.—How long before his death was this? A.—Just about a year and a month, two or three weeks perhaps.

77. Q.—Now, you have mentioned two doctors. Have you had occasion to call in the ten years prior to his death, any other physicians than the two? A.—That I can hardly answer. When we travelled, and if he felt ill and needed someone, we called the hotel doctor or anybody, if he needed somebody. I do not remember that that happened but once. Once I remember we called in a doctor.

78. Q.—Where was that? A.—It was in France.

79. Q.—When was that? A.—In 1913.

80. Q.—What time of the year? A.—The fall, September, I think.

40 81. Q.—What part of France? A.—Dinard, France.

82. Q.—How long were you there? A.—We had been spending the summer there.

83. Q.—When did you reach France? A.—I think we sailed in May.

84. Q.—1913? A.—1913.

85. Q.—Did you visit any other place besides Dinard? A.—We stopped in England, London.

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tion-in-
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86. Q.—Any other place? A.—Paris.

87. Q.—How long did you remain away? A.—I think we returned in October, towards the end of October.

88. Q.—What was the condition of his health while you were away? A.—It was very good up until the time I called this doctor in.

89. Q.—At Dinard? A.—Yes, sir.

90. Q.—That would be about what time? A.—About September, some-time.

91. Q.—What was the trouble then? A.—I think the condition had been brought on that he then suffered from; I think he had over-exerted, over-exercised and over-eaten. 10

92. Q.—Was Mr. Walker at that time a robust man? A.—I think while I knew him, I do not think he had ever been very strong. He had been strong enough except for this difficulty which he had.

93. Q.—Had he some chronic difficulty? A.—He had intestinal trouble which interfered, once in a while, with his health.

94. Q.—How long had he that? A.—He had it for many years. I could not say how long.

95. Q.—Was it incurable? A.—He could have been operated upon for it, but as he objected to that, he dreaded it, we did not urge it. It was never done. 20

96. Q.—Had it any influence on his general health? A.—Why, he was obliged to be careful with his diet. It affected his digestion now and then. He enjoyed travel and did everything he wanted to do. It did not interfere with that.

97. Q.—What was the condition of his health when you returned in October, 1913? A.—Perhaps he was not quite as strong as usual, for a while.

98. Q.—How long had he been complaining about this trouble which you have referred to? A.—I could not say that. I did not know anything about it in the early years of our married life. I did not know anything about it. 30

99. Q.—When did you learn? A.—I think it was around 1900.

100. Q.—About 1900? A.—1899 or 1900.

101. Q.—Was it an incurable trouble? A.—They said not, I do not think it was; if he had not been nervous about having an operation, it might have been taken care of.

102. Q.—What was the state of his health after your return from France in 1913? A.—Why, he was very well. He kept about in his usual health. When we came home he began to get stronger and he was very well. He went to the office, back and forth, when he wanted. He went out all the time; did whatever he was in the habit of doing. 40

103. Q.—Walk or drive? A.—Walked, of course, but rode if he wanted to.

104. Q.—Did that continue up to the time of his death? A.—Yes.

105. Q.—He died in March, 1915? A.—1915, yes.

106. Q.—And you say up to that time he continued to go to the office? A.—Not regularly, no.

107. Q.—How frequently? A.—Frequently enough. I could not say that. I could not say. He went if he wished to.

108. Q.—How frequently; can you tell us? A.—I could not say that.

109. Q.—I suggest a week or two; did he go once a week or once every two weeks? A.—Continuously?

110. Q.—Yes? A.—I think he would have gone that often, yes.

111. Q.—When he was away on his travels, who represented him? A.—I think his brothers.

112. Q.—Which one? A.—Both.

10 113. Q.—In his business affairs? A.—I think so.

114. Q.—Either one brother more than the other? A.—I do not think so.

115. Q.—Have you any recollection about Mr. Walker making a will? A.—Yes.

116. Q.—When was that? A.—In 1914.

117. Q.—Now, what is your recollection? A.—Mr. Lash came up . . .

MR. HELMUTH: Mr. Z. A. Lash?

A.—(continuing) Mr. Z. A. Lash came up to the house and took breakfast with us and he and my husband went to the office immediately after breakfast and Mr. Lash stayed there, had lunch, I think. My husband came home.

20 118. Q.—Came home for lunch? A.—Came home for lunch and went down again immediately after lunch. Then he came up in the afternoon, late, with Mr. Lash, and we had tea and then we had dinner, and Mr. Lash stayed, took dinner with us and spent the evening until his train went to Toronto. He was with us all the time.

119. Q.—Who sent for Mr. Lash? A.—My husband.

120. Q.—I beg your pardon? A.—My husband, I think.

121. Q.—You are not sure? A.—Yes, I am sure.

122. Q.—How did he send for him? A.—I don't know how he sent for him. He told me he was coming.

30 123. Q.—Did he write a letter; do you know? A.—I don't know. He told me he had sent for Mr. Lash.

124. Q.—That is all you know about it? A.—That is all I know.

125. Q.—When did you first see the will? A.—Several days after my husband died, about a week, I think.

126. Q.—About a week after your husband died? A.—Yes.

127. Q.—How did you come to see it them? A.—I don't know whether they asked me if I wanted to see it, or whether Mr. Lash had it and they brought it up. I don't know just how it was. I suppose I had to see it some time.

40 128. Q.—At the time your husband said he had sent for Mr. Lash, did he afterwards tell you that he had made his will? A.—Yes.

129. Q.—Did he tell you what he had done with his estate? A.—No.

130. Q.—Gave you no information about it? A.—He asked me if I thought I would like to continue to live at Willistead.

131. Q.—Any other conversations? A.—I do not remember.

132. Q.—Was that before the will was made or after? A.—It was the day he made the will, when he came out to lunch.

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tion-in-
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133. Q.—What did you say? A.—I said I would certainly want to live there, I was attached to it and certainly would want to stay there.

134. Q.—Was there any other conversation about the will other than that? A.—I do not remember.

135. Q.—Did he discuss any provision for you? A.—No.

136. Q.—Outside of that? A.—No.

137. Q.—When did you first learn of the provisions made for you in the will? A.—When I saw the will, I suppose.

138. Q.—A week or so after your husband's death? A.—Yes.

139. Q.—Were you satisfied with that provision? 10

MR. HELLMUTH: I do not think she should answer that.

MR. OSLER: That is not relevant in any way; I object to that question.

140. Q.—Did you find fault with the will?

MR. OSLER: I object to that question. What this witness's personal views about the will are, has no bearing whatever.

MR. FLEMING: I will follow on. You can take your objection.

THE COMMISSIONER: Do you want in each such case me to ask for the question, subject to objection?

MR. FLEMING: I think that should be done. They must take the responsibility.

MR. OSLER: I do not suppose it is a very heavy responsibility, but my learned friend is attacking the due execution of the will, including the competency of the testator to make a will. What a beneficiary may have thought about the will has no bearing whatever. It is quite irrelevant. My learned friend calls his own witness and he is certainly not entitled to ask such a question. 20

MR. FLEMING: The courts make allowances in cases where you are forced to call a witness from the other side to help make out your case. We will thresh that out later on. We are going as far as we can, but we will come back.

THE COMMISSIONER: The answer may be taken subject to the objection. 30

MR. OSLER: I think the witness ought not to answer that and I am entitled, I think, to ask witness's counsel to advise her not to answer.

MR. HELLMUTH: I think the personal view of this witness is entirely immaterial to these issues here and I shall certainly advise her not to reply. I advise the witness not to answer that question. I am not at all objecting to any of the questions that are relevant, under this will, as to undue influence or incompetence, but I do object to this witness's own personal views, as to whether she was satisfied or not, as that is utterly immaterial to this issue. I advise her not to answer. Therefore, Mrs. Walker, you will not answer.

141. Q.—You did take the provision made for you under the will? 40

MR. HELLMUTH: I do not object to that. She can answer whether she took more or less.

A.—I think I did.

142. Q.—And nothing more?

MR. HELLMUTH: I object to that. Do not ask her that.

143. Q.—Did you not complain about the provision that was made for you under the will?

MR. OSLER: I think that is open to the same objection.

MR. FLEMING: You take the responsibility.

THE COMMISSIONER: In each one of these instances, instead of my saying that the answer will be taken, subject to the objection, may it be understood that it is my consistent ruling throughout that the answer will be taken, subject to the objection and that also will apply to all questions heretofore asked in the record, because I think there were three or four where I did not make such a ruling.

MR. HELLMUTH: There may be other questions where we require your ruling.

(Question repeated by the Stenographer).

MR. HELMUTH: I submit that that is entirely irrelevant and I will take the responsibility of advising my client not to answer the question.

144. Q.—I will put it in a little different form. Did you complain about the provision made for you in the will?

MR. HELLMUTH: I advise my client not to answer.

145. Q.—Did you not consult a lawyer with reference to your provision under the will?

MR. HELLMUTH: I advise my client not to answer.

146. Q.—Did you not . . .

MR. OSLER: (Interrupting): My learned friend must not lead. The question has not yet been put, but it too looks like a leading question.

MR. FLEMING: These questions that are objected to would put me in a different position to ask this question, if they were answered.

MR. HELLMUTH: I am going to take objection to the questions as irrelevant. My friend will make objection as to its being leading, as well.

MR. FLEMING: I want to put the questions and you can have your objections.

147. Q.—I am asking you, then, as I understand, you did object to the provision, and assuming that you did so, what was the result of your refusing to accept the provision under the will?

MR. OSLER: I object to that.

MR. HELLMUTH: I object.

148. Q.—You did refuse to accept the provision made for you in the will?

MR. OSLER: I object to that.

149. Q.—And as a result of that, a settlement was made with you?

MR. HELLMUTH: I advise my client not to answer.

150. Q.—A settlement was made with you by your husband's brothers, Mr. J. H. Walker, and Mr. Frank H. Walker, making more ample provision for you?

MR. HELLMUTH: I object to the witness answering.

MR. OSLER: I object.

MR. FLEMING: You are taking the responsibility, I understand.

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MR. HELLMUTH: Surely. I have done it before now.

151. Q.—Will you produce the agreement which I have asked you to produce.

MR. HELLMUTH: No, we will not produce it unless ordered by some court to do so.

MR. FLEMING: Then the production of the agreement between this witness and the Walker brothers, and the National Trust Company, which I am calling for now, and which calls for additional provision for the widow, is refused?

MR. HELLMUTH: Yes, on the ground that there is nothing in the agree- 10
ment at all that touches in any shape or form the allegations which are made in the statement of claim in regard to this will.

151a. Q.—MR. FLEMING: When was the settlement made?

MR. OSLER: That is open to objection. I object.

152. Q.—Did you consult Mr. Sidney T. Miller, of Detroit, an attorney, and ask him to represent you in connection with your rights under the will?

MR. HELLMUTH: I object to that.

MR. OSLER: I object to that.

153. Q.—Did you consult Mr. Saunders?

MR. HELLMUTH: I object to that. 20

154. Q.—Or any other attorneys?

MR. HELLMUTH: I object and advise the witness not to answer these questions until the foundation is laid that such a consultation was had with reference to some of the grounds that are alleged in the statement of claim. I want to make my position clear. If this witness chose to agree with the brothers, induced them to increase the provision made for her under the will, that is no matter for investigation in this present controversy. If my friend will allege that any of the grounds alleged by this witness for the settlement are the grounds alleged in the statement of claim, I am ready for her to answer.

155. Q.—Had you a conference with Mr. F. H. Walker with reference to 30
the will after you first saw it?

MR. HELLMUTH: I have no objection to that being answered.

A.—Yes, I saw him.

156. Q.—Where did this take place? A.—In my home.

157. Q.—Did you send for him or did he come to see you? A.—He had just arrived from Europe and came to see me, I forget whether I asked him. He had just arrived from Europe and was not at home when his brother died. He had just returned from Europe and came to see me at once.

158. Q.—What was the discussion about?

MR. OSLER: That is clearly irrelevant; I object. 40

159. Q.—I will follow it up. Was the discussion about the will?

MR. HELLMUTH: I have no objection to her answering that, if there was any discussion about the will.

A.—We talked about the will.

160. Q.—What part of the will, what particular part of it?

MR. OSLER: I do not see what bearing this has on the issues of the case.

MR. FLEMING: All right, we will take your objection and bring her back again, that is all.

MR. HELLMUTH: If my friend desires to connect this with any of the allegations in the statement of claim, if he does, he can put a leading question in regard to that. I shall not object if he does, but if he does not do that, then I say it is entirely irrelevant and is inquiring into matters that no court should go into.

10 MR. HELLMUTH: If she made any charges to Mr. F. H. Walker in regard to allegations made in the statement of claim, I am willing that it should be answered.

MR. FLEMING: I am trying to get that answer without leading the witness.

MR. HELLMUTH: I say you can lead the witness on that, if it is material. If it is merely why she thought she ought to have more money, I think it is entirely unnecessary to go into that.

161. Q.—Did you complain about the provision made for you?

MR. OSLER: I object to that.

20 MR. HELLMUTH: I object to that. I advise her not to answer about complaining, unless the complaint is in regard to something that is alleged in the statement of claim. If she thought her husband had not given her enough, that is entirely immaterial, and I advise the witness not to answer.

THE COMMISSIONER: I understood you to say that you were willing that the question asked immediately prior to this one should be answered under certain conditions?

MR. HELLMUTH: Yes.

162. MR. FLEMING: I am going to ask her another question. Did you not then say to Mr. Frank Walker that the will was not your husband's will and that you were not going to accept the provision made for you?

MR. OSLER: I object to that.

30 MR. FLEMING: If we do not get an objection from one side, we will get it from the other.

MR. HELLMUTH: I will let the witness answer that.

MR. OSLER: I object on the ground that what this witness may or may not have said to Mr. Frank Walker is not evidence against my client.

MR. HELLMUTH: It may be used against her.

MR. OSLER: Yes, it may be used against her. I object to it.

MR. HELLMUTH: I shall let the witness answer.

(Question repeated by the Stenographer)

40 A.—I cannot remember just what I said to him. I remember the substance. I remember that I objected to the conditions and that that was what we arranged.

162a. Q.—What do you mean by "the conditions"? A.—There were some provisions that they were to pay the expenses of the up-keep of my house, which I objected to.

163. Q.—Anything else? A.—Conditions in the will, anything else, you mean?

164. Q.—Yes? A.—No other objections?

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165. Q.—Yes? A.—I objected to the provision that was made—I objected to the disposal of the furniture and household things. I thought they should have been left to me.

166. Q.—Any other objections? A.—I think I felt that I should have had more of an allowance, that I should have been allowed sufficient to pay the up-keep myself. That was my contention.

167. Q.—Was any amount mentioned? A.—I think the amount was mentioned.

168. Q.—By you or by Mr. Walker? A.—I think we arrived at it in the agreement. 10

169. Q.—But that is afterwards. At this interview, I am speaking about. MR. OSLER: I object, but, of course, it is understood that my objections cover all this line of evidence.

(Question repeated by the Stenographer)

170. Q.—At that interview, was an arrangement entered into? A.—No.

171. Q.—Well, then, what did you say to Mr. Frank Walker about the will and about the provisions made for yourself?

MR. HELLMUTH: I think Mrs. Walker has answered you very frankly about the whole matter, and I do not think she is at all bound to tell you everything she said at this distance of time. I object to her attempting at this stage to voice everything she said to Mr. Frank Walker. 20

172. Q.—Is there anything else that you can recall with reference to your conversation? A.—No, I cannot recall anything else.

173. Q.—Were you on friendly terms with Mr. Frank Walker? A.—I was.

174. Q.—Always? A.—One time he—I did not feel friendly toward him for a while.

175. Q.—When was that? A.—I forget the time.

176. Q.—Was it in connection with the will? A.—No, had nothing to do with it. It was merely a personal thing.

177. Q.—Prior to that? A.—Yes, some time prior. 30

178. Q.—A year or two? A.—I do not remember. I had not thought much about it.

179. Q.—Now, I will ask this question. Did you not say to him the will was not your husband's will and that you would not submit to it and that you would have the will set aside?

MR. OSLER: I object to that.

180. Q.—I am asking the witness.

A.—Shall I answer?

MR. HELLMUTH: Yes. 40

A.—(Continuing): No, I did not.

181. Q.—At no time? A.—No, I never said I would have the will set aside.

182. Q.—Well, words to that effect? A.—No.

183. Q.—Or that it was not your husband's will? A.—I do not remember saying that.

184. Q.—And that your husband was not, at that time, competent to make a will? A.—I did not say that. I do not remember saying that.

185. Q.—Do you recollect telling Mr. Robinson of Walkerville that you had said that? A.—I do not remember saying that.

MR. OSLER: My friend should not lead the witness.

MR. FLEMING: The evidence so far discloses that she is antagonistic and I have to lead her.

MR. OSLER: I am going to object to having the question put in leading form and Mr. Hellmuth should object.

10 MR. HELLMUTH: I object and the witness should only be cross-examined when called by you, when declared by a judge to be antagonistic.

186. Q.—I will ask you the same form of question. Did you not tell Mr. Robins, the plaintiff in this action, that you threatened to have the will set aside; that it was not your husband's will and that he was not competent to make a will at that time, or words to that effect?

MR. OSLER: I object to that question on the ground that it is leading, and improper in that respect; that it is not relevant; what she may have told Mr. Robins or Mr. Robertson, or Mr. Tom or Mr. Dick, is not relevant and is not a matter upon which she may give any evidence. I personally ask Mr. Hellmuth
20 to advise his client not to answer.

MR. HELLMUTH: I advise the witness not to answer that question.

MR. FLEMING: In any form?

MR. HELLMUTH: In any form whatsoever.

187. Q.—I will follow that up further. As a result of that attitude on your part, was not the agreement that I have asked to be produced the result of the settlement that is set out in that agreement?

MR. OSLER: I object to that.

MR. HELLMUTH: I do not object, if the settlement was the result of a threat of that kind, I do not object. I did not object to her answering that. You
30 understand the question Mrs. Walker?

A.—Yes. The settlement was not the result of a threat.

188. Q.—What was it the result of? A.—Negotiations, to suit my will, I suppose.

189. Q.—Why should they give you \$50,000 a year as long as you lived?

MR. OSLER: I think this is clearly outside the scope of any possible evidence.

MR. FLEMING: We will have the objections noted.

MR. HELLMUTH: Do not answer that. I allowed you to answer the other, but do not answer this.

40 190. Q.—I will ask you if you did not have solicitors engaged to set aside the will if some provision had not been made for you?

MR. OSLER: I object to that.

MR. HELLMUTH: I object also. Do not answer that question, because you have already answered that it was not so.

191. Q.—You saw Mr. Robins in London, England, in April, 1922? A.—Yes, I saw him.

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192. Q.—You sent for him? A.—I do not remember sending for him. I did not send for him. It is my recollection that I did not send for him.

193. Q.—I will ask you if you did not telephone Worthing to have Mr. Robins come up?

THE WITNESS: May I answer that?

MR. HELLMUTH: Yes.

A.—(Continuing): I telephoned to Worthing, to Mr. Robins' daughter, because I had a note from her asking me to telephone to arrange for a visit.

194. MR. HELLMUTH: You said a visit, to or from?

THE WITNESS: I was going to see her. She was too ill to come and see me. She asked me to come and see her. 10

195. Q.—I am asking you now if you did not telephone to the club at Worthing? A.—She asked me to call up the club at Worthing, as they had no telephone in the house, and she said that either her husband or her father would deliver the message.

196. Q.—You did meet Mr. Robins in London? A.—Yes, he telephoned me and we arranged—he telephoned me and asked me if he could come and see me and I said he could.

197. Q.—Where did you meet him? A.—The Hyde Park Hotel.

198. Q.—And you had a conversation with him? A.—Yes. 20

199. Q.—In relation to what? A.—Many things.

200. Q.—In relation to the will? A.—I think we spoke about the will. I do not remember much about the conversation.

201. Q.—I beg your pardon? A.—I do not remember very much about the conversation, what we talked about. We talked about many things.

202. Q.—Yes, I will try to recall to your mind some of them. You told him that the will was

MR. OSLER: (Interrupting): I object to any conversation between Mr. Robins and Mrs. Walker. My learned friend knows that it is not relevant and not a proper subject of inquiry, for this record. 30

203. MR. FLEMING: Mr. Robins says she told him first that he knew about the will of 1901. What do you say as to that?

MR. OSLER: I object to that.

MR. HELLMUTH: I do not object to Mrs. Walker answering that. I do not really see how it can possibly be any evidence as to what took place in regard to anybody but herself. I do not mind her answering it. I appreciate that it cannot possibly be any evidence against anybody else.

THE WITNESS: I cannot remember the conversation about the will. We probably did talk about the will, but what was said I do not remember.

204. Q.—Do you recollect telling him that under the will of 1901, he was provided for to the extent of one thousand shares of distillery stock? A.—I cannot remember telling him any details about that will. 40

205. Q.—Is it that you do not recollect the conversation . . . A.—I do not recollect what we talked about. I said we might have, and perhaps did, talk about the wills, but the thing was ever so many years before. I do not remember just what I said and just what he said.

206. Q.—Have you talked over with anybody the evidence you would give here today?

MR. OSLER: I object to that.

MR. FLEMING: That is a proper question.

MR. OSLER: I do not know how that can be evidence against anybody.

MR. HELLMUTH: I am quite free to confess that I have had several talks with Mrs. Walker about it, but I do not think it is relevant at all. If she has talked to anybody but her solicitor, that is a different thing.

10 MR. FLEMING: I think it is absolutely improper for counsel to say that, knowing the purport of the question that I have asked. I would like to have that noted in the record.

THE COMMISSIONER: Do I understand that that question is not to be answered.

MR. HELLMUTH: I have no objection.

207. Q.—What do you say, Mrs. Walker? A.—I have not talked over this thing with anybody. My sister and I have talked about it a little.

208. Q.—Your sister, Mrs. . . . A.—I saw my lawyer. I have seen Mr. Hellmuth and Mr. Saunders only. As to what was coming up at this time, I have been able to judge only from what I saw in the claims that Mr. 20 Robins made.

209. Q.—Did you see Mr. Robins' examination? A.—Yes, I have seen that.

210. Q.—You have read that? A.—I have read that.

211. Q.—And what have you got to say about it, so far as it relates to you? A.—Do you want me to answer that?

MR. HELLMUTH: Yes.

MR. FLEMING: Please note that the witness asks if she should answer.

MR. HELLMUTH: Of course. She is going to be protected; at least I hope she is.

30 MR. OSLER: This is open to the same objection. I think it is the most extraordinary procedure I ever heard of, to call a witness on such issues as are raised in the pleadings and then to turn it into a gossip party, or attempt to do so.

212. Q.—What did you say, Mrs. Walker? A.—May I object to that? I don't know how I could give any opinion on that.

MR. HELLMUTH: If you cannot give an opinion, that is all. I cannot understand the relevancy of it, of what Mrs. Walker thinks of the statements made by Mr. Robins as to a conversation he had with her.

MR. FLEMING: I qualify my question as relating to her.

40 MR. HELLMUTH: I cannot see what relevancy that has, as to what Mr. Robins says of a conversation he says he had with her, as bearing on this issue at all. She says she cannot answer it.

MR. FLEMING: It was not a conversation. Mrs. Walker has said that she has read the examination of Mr. Robins and he refers to her and number of conversations had with her, and I asked her what she has to say about that. If she hasn't anything to say, she can just leave it.

MR. HELLMUTH: If she hasn't anything to say, it's all right.

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MR. FLEMING: I can understand the witness finding difficulty in knowing what to do under the circumstances, with so many objecting counsel.

MR. OSLER: The real difficulty arises from the interrogating counsel, because I never yet heard a witness asked to say what she had to say of a thirty-eight or forty page examination. I submit that the question is not only irrelevant but absurd.

213. Q.—You are a very unwilling witness, aren't you, in this case, Mrs. Walker?

MR. OSLER: I submit that that kind of a question is not a proper question. We came here to examine this witness as a witness at the trial and my learned friend knows quite as well as we do that the course he has adopted would not be allowed for a moment at a trial. 10

MR. FLEMING: My learned friend well knows that if this was taken before a trial judge, all my questions would be answered.

MR. HELLMUTH: I do not think so, or I would not have taken the objections. I am not accustomed to objecting to questions if I do not think the objections are appropriate. I may be wrong, but to say that I know they would be answered before a trial judge is going a little too far.

214. Q.—What is the witness going to say?

MR. HELLMUTH: Do not answer the question as to being an unwilling witness. 20

215. Q.—I will ask you this question, if part of your unwillingness is not based upon the fact that you have been advised or are of the belief that if the will in question is set aside you may lose the benefit of your agreement?

MR. HELLMUTH: You can answer that, as far as I am concerned.

MR. OSLER: I do not think it ought to be answered. It is certainly evidence against my clients and is not a proper question.

(Question repeated by the Stenographer).

MR. HELLMUTH: I object to that, because she has not answered about the unwillingness. 30

MR. FLEMING: I know she has not, because you won't let her, you have to take the responsibility.

MR. HELLMUTH: I take the responsibility, if I cannot do it in any other way. You must couple it up with something that will show some unwillingness on her part.

(Question repeated by the Stenographer).

216. Q.—How is your health, Mrs. Walker, now? A.—Very good.

217. Q.—You are able to travel around? A.—Yes.

MR. HELLMUTH: Surely these are not questions that should be asked in an examination of this kind. How many meals have you a day? 40

218. Q.—Now, you were always quite friendly with Mr. Robins? A.—We were good friends, I think. I do not remember that we were not.

219. Q.—You had no reason for changing that friendship, had you? No occasion for it?

MR. OSLER: I do not think that that is question that should be answered.

220. Q.—I say, beside these proceedings?

MR. OSLER: I think that I am going to object to my friend turning this

examination into a farcical piece of buffoonry. This is a serious examination on questions raised in the pleadings and I object and I ask Mr. Hellmuth to object and to direct the witness not to answer.

MR. FLEMING: I thought Mr. Hellmuth might be able to judge for himself.

MR. HELLMUTH: Surely the question of friendship has nothing to do with it. She has said they were friendly enough.

221. Q.—Now, I will ask you this question. Before your marriage, had you not occasion, frequently, to call up Mr. Robins about Mr. Walker?
10 (Question repeated by the Stenographer).

MR. HELLMUTH: I object to that.

MR. OSLER: I object to that.

MR. FLEMING: Is that objected to?

MR. HELLMUTH: Yes.

MR. OSLER: Yes, decidedly.

222. Q.—I will put it this way. With relation to his condition of health and your concern about it?

MR. OSLER: I object to that.

223. Q.—Now, you wrote Mr. Robins, frequently? A.—I do not remember writing to Mr. Robins.
20

224. Q.—Don't you remember ever writing to Mr. Robins? A.—I may have written him; I do not remember.

MR. OSLER: Are these letters produced? What are the numbers of the production?

MR. FLEMING: You have copies of them.

MR. OSLER: What are the dates?

MR. ROBINS: Some of them are undated. Some are dated. The first one is undated; then one dated July 29th, 1905, and the next one August 2nd, no year, but I know it was the same year, and then there is one again undated, but it has reference to the same subject and no doubt was the same year, and here
30 is one dated April 6th, no year, but I have no doubt Mrs. Walker can say when it was, because it is from Camden, South Carolina. Then one, August, 1906, and then one no year, but I know it was in 1906, because it is the same subject.

225. MR. FLEMING: The letters that have been enumerated, Mrs. Walker, I submit to be put into evidence, were written by you to Mr. Robins, most of them, if not all of them, speaking of Mr. Walker's health. Do you recollect?

THE WITNESS: I do not remember writing Mr. Robins. I may have written to him. I may have had occasion to write to him about something or other.
40 I do not remember. I may have written.

226. MR. FLEMING: I will tender them as evidence, on that point, as to the question of health. There is one way back in 1905. When was Willistead built?

THE WITNESS: 1904 or 1905.

227. Q.—And prior to that you were living at what was called The Cottage? A.—Yes.

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228. Q.—That was Mr. Walker's home before he was married? A.—
Yes.

229. Q.—Is that a letter written by you to Mr. Robins (handing letter to witness)?

MR. OSLER: I object to these letters. I cannot see what possible bearing they can have.

MR. FLEMING: I say they relate to the question of Mrs. Walker's anxiety about Mr. Walker's health.

MR. HELLMUTH: I do not object at all to the letters. I do not admit any relevancy. You know whether you wrote the letters, Mrs. Walker. A.—That is my writing there. 10

230. Q.—And is that your signature, Mrs. Walker? A.—Yes, sir.

MR. FLEMING: I offer the letter.

(Received and marked by the Commissioner "Plaintiff's Exhibit 1")

231. Q.—I show you a letter dated July 29, 1905? A.—Of course, it involves my husband, at intervals he was not well, off and on, and I had to write to somebody.

232. Q.—That is in your hand-writing? A.—Yes.

233. Q.—And has your signature? A.—Yes.

MR. FLEMING: I offer that letter. 20

(Received and marked by the Commissioner "Plaintiff's Exhibit 2")

234. Q.—I show you another letter written from Muskoka, August 2nd, no year; is that letter in your hand-writing, and has it your signature? A.—Yes.

MR. FLEMING: I offer the letter.

(Received and marked by the Commissioner "Plaintiff's Exhibit 3")

235. Q.—And then another letter, without date; this letter is in your hand-writing? A.—Yes.

236. Q.—And has your signature? A.—Yes.

237. Q.—And it is on two sheets? A.—Yes. 30

MR. FLEMING: I offer that letter.

(Received and marked by the Commissioner "Plaintiff's Exhibit 4")

238. Q.—Here is another letter from Camden, South Carolina, April 6th, no year; is that in your hand-writing? A.—Yes.

239. Q.—And signed by you? A.—Yes.

240. Q.—And is on two sheets also? A.—Yes.

MR. FLEMING: I offer that letter.

(Received and marked by the Commissioner "Plaintiff's Exhibit 5")

241. Q.—There is another letter dated July 12th, 1906? A.—Yes.

242. Q.—And it has two sheets? A.—Yes. 40

243. Q.—Is that letter in your hand-writing and is it signed by you? A.

—Yes.

MR. FLEMING: I offer that letter.

(Received and marked by the Commissioner, "Plaintiff's Exhibit 6")

244. Q.—There is another letter dated August 20th, 1906.

MR. ROBINS: That is my hand-writing, the date.

Q.—I might say that Mr. Robins made that note. It is undated. Is that in your hand-writing? A.—Yes.

245. Q.—And signed by you? A.—Yes.

MR. FLEMING: I offer that letter.

(Received and marked by the Commissioner "Plaintiff's Exhibit 7")

246. Q.—These letters referred to facts that you knew at the times they were written?

MR. OSLER: I object to this as entirely irrelevant and immaterial.

247. Q.—Was there ever any difference between your husband and Mr. Robins? A.—I do not remember any.

248. Q.—What was your opinion in regard to Mr. Robins? A.—We did not discuss Mr. Walker's business affairs.

249. Q.—You did not discuss him with your husband? A.—We did not discuss his business affairs, or staff, or employees, at any time that I remember.

250. Q.—Referring to the questions I have asked with reference to the time when Mr. Lash, you say, came up to see your husband, at the time the will in question was prepared; do you know whether the will was made at that time or not? A.—I really do not know much about that. Probably there had been other preparations, or probably he had been getting ready for that. That is all I know, he came up there to see my husband about it.

251. Q.—Had you seen Mr. Lash at your home prior to that? A.—I had, whenever Mr. Lash came. Usually he came to see my husband.

252. Q.—And would he stay for a meal? A.—Very often.

253. Q.—Then, after the occasion that you referred to, when he had breakfast with you, and then lunch, and then dinner. . . A.—(Interrupting) Tea and dinner.

254. Q.—Tea and dinner. Was he at your home after that? A.—I do not remember. I cannot remember that. As I say, I think he would come when my husband wanted to see him.

255. Q.—Had you any conversation with the late Mr. J. Harrington Walker with reference to the will?

MR. OSLER: That I object to on the same ground that I objected to the previous question with regard to Mr. Frank Walker.

MR. FLEMING: What is the witness going to do?

MR. HELLMUTH: Mr. J. Harrington Walker is dead?

MR. OSLER: Yes, he is dead now.

MR. HELLMUTH: If it is just regarding the same matters as to which you asked regarding Mr. Frank Walker, I direct the witness not to answer. If it is directed to something specific in the statement of claim, I advise the witness to answer? A.—Yes.

MR. HELLMUTH: Inasmuch as Mr. Harrington Walker is dead, whether she had any conversation or not, I do not know how it is relevant.

256. Q.—You said something about your late husband, at the time Mr. Lash was up there—this is as I understand your answer—asking you whether you wished to live at Willstead or something of that sort. Was that before the will was made or after it was made? A.—Is there any objection to my answering that?

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MR. HELLMUTH: No.

THE WITNESS: He asked me—that day when Mr. Lash was preparing the will—when he came out to lunch, he asked me, in case anything happened to him, if I would be satisfied to remain there.

257. Q.—Is that the first you heard of the making of a will? A.—Shall I answer that?

MR. HELLMUTH: Yes.

THE WITNESS: No, he told me that he was making a will. He asked me

258. Q.—(Interrupting) He asked you what? A.—This was something 10
else. It has nothing to do with the other. I was just going to speak about . . .

259. Q.—And the matter of your living at Willistead was not discussed afterwards, I understand? A.—I do not think we ever mentioned the will again.

MR. FLEMING: I think I am through.

THE COMMISSIONER: I think I had better make a restatement as to my understanding regarding objections. It is my understanding that all counsel understand that as to all questions which have been asked by Mr. Fleming and to which the witness has made no reply, that it is understood that an objection was made to such question and that the Commissioner requested the witness to 20
reply to the question, over the objection, to which objection was again made to the answering of the question.

MR. HELLMUTH: That is quite correct.

MR. OSLER: Yes, sir.

CROSS-EXAMINATION by MR. OSLER:

260. Q.—Mrs. Walker, you acquiesced in a question that was put by Mr Fleming with reference to your husband being in failing health. I am instructed that while he was subject to a specific trouble which produced certain effects temporarily and at intervals was considerably protracted, in other re- 30
spects his health was good? A.—Yes.

261. Q.—What was the trouble from which he suffered? A.—Well, he had paralysis of the intestines.

262. Q.—Paralysis of the intestines, and that produced acute physical pain and constant disability? A.—Disability.

263. Q.—While the attack lasted? A.—Yes.

264. Q.—When he was relieved from the attack, did his physical incapacity continue? A.—Oh, no, it cleared up at once.

265. Q.—It cleared up at once, and when the physical disability was there, I suppose he was unable to attend to any business? A.—Yes, it inconvenienced him. 40

266. Q.—And when the attack was relieved, what was his mental condition? A.—Perfectly clear.

267. Q.—Then you told Mr. Fleming that you became aware of this con-

dition, at least that you recall becoming aware of it, I think, about 1900? A.— Yes.

268. Q.—Did the frequency of the attacks increase as the years went on, or did they remain about the same, or did they decrease? A.—I think after we learned how to relieve him, it decreased, he did not suffer so much, so that we took care of his health, so that it did not occur.

269. Q.—Did you have any difficulty in the earlier years in securing a diagnosis of his case, the doctors have difficulty? A.—They had no difficulty, after we found out what the trouble was.

10 270. Q.—When did you find out what the trouble was? A.—I think it was about 1899 or 1900, when I first learned, through his valet, of his discomfort.

271. Q.—When did you learn how to relieve it? A.—Not for four or five years.

272. Q.—After that you did learn how to treat the attacks? A.—Yes, we learned.

273. Q.—Were those attacks frequent? A.—Rather frequent, but as we learned how to watch his diet and his health, they were less frequent.

274. Q.—Were they more or less severe? A.—No, always the same.

20 275. Q.—Down to the time of his death, in more recent years, he suffered less from these attacks than he did in the earlier years? A.—He didn't really suffer very much with these. It was the discomfort more than anything, and it continued just about the same.

276. Q.—But the attacks were less frequent? A.—I think less frequent.

277. Q.—And when you spoke to my learned friend about his having no serious illness prior to 1910, I suppose you meant no illness other than these attacks? A.—No illness that I remember.

30 278. Q.—Then you have spoken of an occasion when Mr. Lash called and took instructions for a will, when he came and took breakfast and went down to the office and then came to tea and dinner. What was the condition of your husband's health on that day? A.—It was very good.

279. Q.—Then Mr. Fleming asked you about the occasion when he came back from abroad, in the fall of 1913, and you consulted a local doctor then? A.—In Detroit.

280. Q.—That was the first time that you had consulted a local doctor in that neighborhood for some years? A.—Yes.

40 281. Q.—Will you just tell me what was the matter with your husband at that time? A.—We did not consult the doctor because there was any special trouble or difficulty. I thought perhaps we should have some doctor, we should know some doctor, who, in case my husband needed some advice, we could get, who would understand his condition of health, and we asked this doctor to come in and know him and make acquaintance with my husband's health, with him and his condition.

282. Q.—Then, some time after that, during the following winter, this doctor attended him fairly frequently, on some occasion? A.—Not the following winter, because that doctor was just called before 1914.

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Defendant's
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Mrs. Mary
G. Walker.
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—continued

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—continued

283. Q.—When did he attend him? A.—He attended him perhaps two or three times, some times not at all, during any month, then again once or twice. One time in August, by husband took a cold, and then I think he was laid up for a week, and this doctor attended him. That was some time in August, 1914.

284. Q.—August, 1914? A.—Yes, that was after the will was made.

285. Q.—Did you have any nurses in attendance? A.—I think we had a nurse at that time, for just a few days. He was only ill for about a week.

286. Q.—Did you have a male nurse? A.—Not at that time.

287. Q.—When did you have a male nurse? Did you ever have a male nurse? A.—Later, in that fall, I think, he took a nurse as a nurse and valet, or a valet who had been a nurse, but not for any special treatment or sickness or anything of that sort, toward the end of 1914. 10

288. Q.—Did your husband have an attack of bronchitis? A.—Yes.

289. Q.—When was that? A.—In February, 1914. I first had the attack. It was acting as an epidemic.

290. Q.—In February, 1914? A.—Yes. He took the bronchitis from me and was laid up. He wasn't as sick as I was. He was in bed for perhaps a week. We each had a nurse at that time.

291. Q.—You were the one more seriously ill? A.—I was.

292. Q.—When he had the bronchitis he was not suffering from the intestinal trouble? A.—No, I do not think so. We started a regular treatment and it was taken care of. 20

293. Q.—Did you have the same doctor? A.—Yes, we had the same doctor.

294. Q.—And was that the one who had been called in locally? A.—The one who had been called in to make the acquaintance of Mr. Walker.

295. Q.—When you got back from your trip abroad? A.—Yes, in December, 1913.

296. Q.—Your husband had bought a considerable number of pictures, as I understand it? A.—Yes. 30

297. Q.—That was quite a hobby of his? A.—Yes.

298. Q.—Continued about how long?

MR. FLEMING: I do not see how this is relevant. I have no objection, if you want to go ahead and encumber the record.

MR. OSLER: I will encumber the record, if you have no objection.

THE WITNESS: He had always collected pictures, had always been fond of pictures.

299. Q.—When you speak of pictures, do you mean cheap pictures or expensive? A.—Oil paintings.

300. Q.—He never had any hesitation about indulging that hobby? A.— He enjoyed that more than anything else he did. 40

301. Q.—I suppose it was a pretty expensive one? A.—Very.

302. Q.—Nearly as expensive as his wife, I suppose? A.—I think so.

303. Q.—Mrs. Walker, excepting for the occasions when he was suffering from the effects of this intestinal disorder, what do you say as to your husband's general mental capacity? A.—I think it was good. I know it was good.

MR. OSLER: That is all.

MR. HELLMUTH: I have no questions.

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RE-DIRECT EXAMINATION by MR. FLEMING:

10 304. Q.—My learned friend has brought out the fact that you had physicians diagnose Mr. Walker's condition; when was that? A.—I do not remember any special time. I think we called in a doctor to attend—yes, once or twice, we did have him examined for that, to see whether he could be relieved. I remember that, but I do not remember the year. It might have been 1908 or

1909, or something like that. It was not at any period of special ill health.
305. Q.—What was the occasion for that particular diagnosis that you referred to? A.—It was merely to know whether a condition of that kind could have been helped by an operation and what would have relieved him. It was just an inconvenience, a disturbance of his health; merely to know whether he could stand an operation and whether he would submit to it.

306. Q.—What was the result? A.—He always objected to an operation and we did not press it.

307. Q.—They advised an operation? A.—They advised one, always.

20 308. Q.—How long had they advised an operation? A.—From the beginning, I think.

309. Q.—When was that? A.—From the time I first learned that he had this weakness.

310. Q.—That would be about, I think, from recollection, about 1900? A.—Yes.

311. Q.—But it was a constant source of trouble and annoyance, always? A.—Yes.

312. Q.—And you learned what was the origin of it, did you? A.—With my limited knowledge of things, I could not have told that. The fact existed, he had that weakness. I could not have told what brought it about.

30 313. Q.—You never inquired from the physicians? A.—I do not know who could have told me.

MR. OSLER: There is one question I should have asked. If you have no objection, I will ask it now.

RE-CROSS-EXAMINATION by MR. OSLER:

314. Q.—You told Mr. Fleming, Mrs. Walker, that your husband had always been friendly to Mr. Robins, as far as you know. Do you know whether they spoke to each other when they met after 1912? A.—I did not know that they had met.

40 (Thereupon, the deposition was concluded).

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I will put in the commission I have just read, and there are a number of

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"Plaintiff's
Exhibit 1"
on the
Commission

letters attached to it, and marked as exhibits on the commission, and put them in as Exhibits 13 and 14 during Mr. Robins' examination, dated July 29th and August 2nd, and one letter not dated.

MR. McCARTHY: There is a memorandum attached to each one showing where they came from. Exhibit No. 14 is two letters dated July 12th, 1906, and August 20th (1906).

(Mr. Osler reads the letter, undated, written from the "Cottage," and which appears at page 41, as Exhibit No. 1, on the commission). The letter follows:

"The Cottage.

10

Dear Mr. Robins,

You would be, after Mr. Walker's brothers, the first one I should call on, and there is much comfort in the knowledge that you are so good a friend and so near at hand. Yes, I am trying to keep Mr. Walker quiet, he is getting on nicely but from past experience I know how much an ounce of prevention is worth, and if we can keep him from taking more cold for a few days, I will be content. He says that he would like to see you, and that he feels well enough. I know it would do him good if you would come in. He says either this eve if you are going out and the weather not too bad, or to-morrow.

My love to your little household.

20

Very sincerely yours,

(Sgd.) Mary E. G. Walker."

MR. OSLER: I take it the red ink underlining is Mr. Robins'?

MR. FLEMING: Yes.

MR. OSLER: The other letter is written from Camden, South Carolina, April 6th. Mr. Robins made a note, "Doubtless 1905."

"Camden, South Carolina,
April 6th.

"Plaintiff's
Exhibit 5"
on the
Commission

Dear Mr. Robins,

Your good letter was most welcome. I have been lazy this winter about letters. My friends have been too good to me, I fear, that is, they have not asked much of me and so I am becoming spoiled. I am afraid you will think us very unappreciative, Mr. Robins, after asking you to look up a chair, then to send you word not to buy it, after we have put you to so much trouble. When your description of it came Mr. Walker questioned me as to its use. I told him I wanted it for a vestibule seat and also for use on verandah in summer. A hooded chair is so comfortable at times and I thought we could use it, as I had in mind a willow or wicker one. He thought the verandah use for it all right but did not see that it would fill any purpose in vestibule. This one would, of course, be too handsome for verandah. I should have consulted Mr. W. more fully about it, no doubt, but will you forgive me for all the bother? To tell the truth, confidentially, Mr. Walker just now is finding Mr. Kahn's estimates for everything much higher than he had agreed to allow them in the beginning and

30

40

(The other
Exhibits on
Commission
were read
as follows:
No.2: p.120
No.3: p.122
No.4: p.121
No.6: p.123
No.7: p.125)

so I do not want to press little things that I can so well do without. I am really so sorry, Mr. Robins. He has asked Mr. Ambery to cable you. I hope you and Gertrude and Margaret are well and enjoying every moment. We are both very well and Mr. Walker is really taking much interest in golf, and I am delighted. Thank you for your cheery letter and the pretty cut you sent me. Your letters are so well worth getting. If I were not sure we would miss you so much I should be tempted to ask you to stay away awhile and write oftener. I wonder what Mr. W. would say to that speech? Our love to the dear girls, and the dear Daddy too, may I add. And I am so sorry Mr. Robins to have
 10 given you so much bother for no purpose. Our kind regards to Mr. and Mrs. Lund.

Very sincerely yours,
 (Sgd.) Mary E. G. Walker."

HIS LORDSHIP: Were the estimates for "Willistead" coming in then?
 MR. OSLER: Yes.

EXHIBIT NO. 36—Filed by Defendant Evidence of Mrs. Mary Griffin Walker taken on Commission at New York.

DR. ROBERT GARDINER ARMOUR: Sworn. Examined by MR. HELLMUTH:

20 Q.—Dr. Armour, you practise in Toronto? A.—Yes, sir.

Q.—How long ago is it since you graduated? A.—I graduated in 1908,
 sir.

Q.—What was your first position, or work? A.—18 months in the Toronto General Hospital, as House Physician, and House Surgeon, in different departments.

30 Q.—Follow it up, please? A.—In the hospital surgery, specializing in ear, eye, nose, throat and nervous cases, and I spent a year with the professor of medicine. Following that I went abroad to England and Germany for a year, and returned to New York in 1911. I stayed there until 1913 in connection with my training in neurology. I was House Physician for a year, and Chief of Clinic for a year. I returned to Toronto to become Fellow of Research in the University of Toronto, where I investigated nervous diseases. I went overseas with the 4th Canadian General Hospital, and looked after most of the nervous cases which were received by the hospital for, roughly, three years. I was returned to Canada towards the end of the war.

40 Q.—Where were you when in Europe? A.—Most of the time in Salonica. I returned to Canada, after my return to England, to be Consultant to the Canadian Army Medical Corps for the Western Provinces, living in Winnipeg for ten months. Then I returned to Toronto and was Consulting Neurologist to the Department of Soldiers' Civil Re-establishment for about two years, I don't

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remember exactly the time. Since that time I have returned to the University work, teaching, chiefly, nervous diseases.

Q.—You have been in court here from the opening day of this trial until the present moment while any evidence was being given? A.—Yes, sir.

Q.—And you have heard all the evidence, both in chief and cross-examination, as well as the commission evidence? A.—Yes, sir.

Q.—Have you, or have you not, been able to form any opinion, as an expert, in regard to the mental competence or incompetence of the late E. C. Walker, from what you have heard? A.—I don't think that I have heard any part of the evidence, or the evidence as a whole which would seem an adequate cause for declaring him incompetent to make a will. 10

Q.—Can you more or less briefly give me your reasons for coming to that conclusion? A.—I think if I were to consider the evidence in the year in which the so-called disabilities were suggested, the first one would be the question of his speech disturbance, which has been called aphasia by some of the medical witnesses, but which is so frequently referred to as difficulty in articulation. Dr. Hoare would seem to suggest that there was aphasia; but aphasia may be of several different varieties, and may be of varying degrees; and I have not heard anything mentioned, specified, or defined which would constitute a bar to the man's mental competency. And admitting aphasia in its general terms, though the description has varied, I am absolutely persuaded it did not exist in a degree which would render him incompetent. 20

Q.—What do you say as to the arteriosclerosis affecting his mentality? A.—Well, not in any way whatever, sir. A man can have a profound degree of arteriosclerosis in one part of the body, say in the leg, sufficient to stop the circulation of that limb entirely, and not affect him appreciably in any other part of his body. I can recall the cases of business men, with a profound degree of arteriosclerosis, who were conducting their business as well as they ever had been in their lives previously, perhaps better, on account of maturity of judgment coming with advancing years. 30

Q.—We have had evidence as to the prolapsus of the bowel, what effect would that have, in your judgment, upon his mentality, in this case? A.—In this case, I think, if anything, it clears up one suggestion which has been made as evidence of his loss of mentality. Dr. Shurly speaks of the incontinence of the bowel as evidence of a disturbed mentality. Well, his description of the incontinence of the bowel is not that of a person who is incontinent from mental deficiency, or mental disease. A patient who is incontinent from mental disability is disgusting, or he is indifferent about his incontinence, and behaviour in the matter of incontinence, and, if that were so, the evidence would not have been volunteered. Whereas it has been shown that Mr. Walker had not only prolapse of the rectum; but Dr. Shurly mentions enlargement of the prostate gland, which is in the immediate vicinity of the rectum, and which would give him a sense of fullness, and lead to straining in the discharge of the urine, and the discharge of feces, and which is a well known cause of prolapse of the rectum, and which is also a well known cause of involuntary straining which may very well lead to occasional incontinence, 40

especiallly in view of the fact, on account of the constipation, more or less vigorous measures had to be taken at times apparently to move his bowels.

- Q.—Are there, and if so what, any other ailments, or symptoms, except those I have mentioned given by the doctors, at all that point, in your opinion, to any mental defect or abnormality? A.—They hardly point, it would seem to me, to mental abnormality but in the way in which they have been suggested as possibly tending in the direction. I think I can account for them and explain their existence without regarding them as evidence of mental disturbance, if I might revert to the question of aphasia, and I cannot help reiterating that many witnesses have mentioned it was difficulty of articulation. Articulation is entirely a mechanical disturbance; it may occur with a disease of the tongue, and it may have nothing whatever to do with his mind. It may be evidence of disease higher up in the brain, or still below the level of what we call the intellectual area. It is entirely mechanical. If we go as far as to say that the man had aphasia—but no witness has said he had to adopt any extraordinary method of communicating with Mr. Walker in getting him to understand something. I believe wills have been prepared by men so aphasic that most ingenious methods have had to be used to convey to them the substance of what people wanted to say, or ingenious methods would have to be devised to ascertain their wishes.
- 20 Now, in the ordinary every day conversation the worst that has been said of Mr. Walker has been that his speech became perhaps a little more slow. And that is not unanimous, as many people have said they noticed nothing in his articulation.

- Q.—Well, assume for a moment that in the days of Dr. Hoare, in 1905 to 1907, Dr. Hoare had observed something that he termed aphasia, what do you say as to evidence of that being recurrent and present in 1913 and 1914? A.—1913, the end of that year would be the time when Dr. Shurly took charge of him. I have read Dr. Shurly's evidence, and he never suggested for an instant throughout the time when he looked after him that he had any aphasia. He does not use the word, and it is a word so commonly in use among physicians that it is hard to understand that a man who looked after a patient should not use the word, or should give evidence in connection with his capacity to make a will and not advance that as one of his reasons. Furthermore, the aphasia was never complete.
- 30

- Q.—Just what do you mean by that? A.—There is no time when he couldn't get as far, I should say, as suggesting the sense of what he wanted to express, to the extent that Mrs. Walker would be able to take up the sentence, where he broke off, and finish it. She must have been able to deduce, from what he had said, the sense of what he did say. Furthermore, he is a man who always talked slowly. He probably spoke more slowly still when he was ill. She was a woman of executive ability, without any speech defect, and possibly her own impatience would have led her to take up the sentence.
- 40

MR. McCARTHY: Is this evidence of what Mrs. Walker may have done?

MR. HELLMUTH: It is an explanation in regard to why he would not continue a speech.

MR. McCARTHY: We have no evidence that she is a woman of executive ability.

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Armour,
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Chief.
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tion-in-
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HIS LORDSHIP: I should think there was; she bought the tickets when going abroad.

MR. HELLMUTH: She ran a very large establishment.

MR. MCCARTHY: We don't know that.

HIS LORDSHIP: There were a great number of servants. The maid servants changed frequently, and the men servants seem to have liked her, and liked to talk with her. That is all executive.

MR. HELLMUTH: I would think so.

MR. MCCARTHY: I would not think it so.

MR. HELLMUTH: An establishment the size of Willistead, and kept up 10 with servants.

HIS LORDSHIP: Dr. Armour thinks she did show, from the evidence, executive ability.

MR. MCCARTHY: My submission is there is no evidence from which he could form such an opinion.

HIS LORDSHIP: Go on.

MR. HELLMUTH: Doctor, you were saying the aphasia was not complete? A.—Well, complete aphasia would be inability to say one word, except perhaps some few odd words, like "Yes" and "No," or some exclamations not having any significance.

Q.—What do you say as to what one might call temporary inability to speak, owing to an attack, or attacks, such as have been spoken of here, and on other occasions—assuming that is true; and his ability to speak and make himself understood to the witnesses who have been giving evidence here, when there were no such attacks? A.—It has been established that the attacks occurred with the prolapse.

MR. MCCARTHY: No.

THE WITNESS: It has been suggested. Mrs. Walker speaks of it as pain, and Dr. Vedder said this morning . . .

MR. MCCARTHY: That is what he was told.

THE WITNESS: . . . his interpretation; or the interpretation which I 30 would make from the excitement, panic, or pain, I think might very well render a man speechless, in its common acceptation, and enable him to speak again in a few minutes. That would be an emotional disturbance, not intellectual. It is emotional, like a fit, excitement, or any other of the common emotions, which have no effect on a man's mentality from an intellectual point of view. It is possible there may have been aphasia of a transitory character. I have been in a room with a patient when aphasia occurred, and the patient would say to me, "I am losing my speech." And I have remained in the room and have seen them come out of it again and regain their speech which they had lost for may be half an hour perhaps. I have seen them lose their speech for several days, 40 several weeks, or even longer, and recover. And, if I might quote a well known man, Pasteur, who was aphasic at one time and did his best work afterwards.

MR. MCCARTHY: I do not think the witness can quote authorities.

MR. HELLMUTH: That is an illustration of a man with aphasia.

MR. MCCARTHY: He said, "I will quote a well known man."

THE WITNESS: I think I said, "If I might." That is one of the sources from which I have learned about aphasia.

MR. MCCARTHY: You can't quote us any gentleman.

MR. HELLMUTH: Are you talking of Dr. Pasteur, or of Dr. Pasteur's aphasia? A.—I don't quite understand.

Q.—Are you talking of Dr. Pasteur's aphasia; was he aphasic? A.—He was aphasic for a short period of his life, when about 40 years of age, and he did some of his best work after his recovery.

MR. MCCARTHY: I object to that. That is not evidence.

10 HIS LORDSHIP: I suppose it is hardly the opinion of this expert that he was aphasic for a while, although he became a very prominent man.

MR. MCCARTHY: He does not know whether he was any better afterwards than before; it must be hearsay.

MR. HELLMUTH: Have you heard of, or seen, any of his works, after the aphasic conditions? A.—His discoveries bear date as to when they were published, and the honours given to him by the French Academy were given on definite dates, which are matters of history. I cannot give them off-hand.

Q.—Were they prior or subsequent to the aphasia? A.—Subsequent to; and the debates in which he indulged in the Academy were subsequent.

20 MR. MCCARTHY: My friend surely knows that the witness is not giving evidence as to Pasteur, but as to this particular person. He may have an opinion as to whether Pasteur's work was better or worse after the aphasia; we don't know what caused him to be aphasic.

MR. HELLMUTH: I submit I have a perfect right to show by this witness that aphasia is not in every instance a progressive disease which must continue, but it may be of a temporary character, and a man may recover completely from it.

MR. MCCARTHY: No one questions that.

30 MR. HELLMUTH: And that can be shown by the fact that one of the greatest of the French discoverers, in a medical way, was an aphasic patient and became completely recovered.

MR. MCCARTHY: It is admitted that a man can be aphasic, and recover, but as that is a matter of history I do not think this witness can give the evidence; we can all read that for ourselves.

HIS LORDSHIP: Some men are so characteristic they are well known.

MR. MCCARTHY: We can all read those in a book; this witness cannot give us his expert opinion.

40 MR. HELLMUTH: I submit I can give what is common knowledge among medical men in regard to a leading character whose troubles or ailments have become world wide and known throughout medical science. That is my submission to your lordship.

MR. MCCARTHY: My submission is that the witness cannot give it because my friend called him as an expert in this case, and to give what he has read, which your lordship can read ultimately, or I can read, is not the duty of an expert at all.

HIS LORDSHIP: I do not think quotations from books are allowable, no

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tion-in-
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matter how eminent the man may be. It seems to me an unnecessary discussion because Mr. McCarthy says nobody disputes your proposition.

MR. MCCARTHY: I do dispute that my friend can ask the witness to give his opinion.

MR. HELLMUTH: What do you say as to aphasia that is not a mere difficulty in articulation, or thickening of speech, but aphasia that shows an entire absence of thought for the time, active thought, what do you say about that being capable, or incapable, of complete recovery? A.—I have known men with entire absence of any evidence that they could express themselves who have recovered. That is to say, I am assuming a conscious man. 10

Q.—Yes? A.—I have known men who could not express one word, who could carry out what you told them to do, and show signs of consciousness, without the power of spoken speech; many of these patients can write, if they cannot write they mumble, and signify by a nod of the head, or by a gesture, or by some other action, and, with proper precautions, one can get from such a patient a certain amount of what one may call "expression of desire," although they have not used one word in speaking, or in writing. But those are extreme degrees that do not occur very commonly.

Q.—What do you find in all the evidence you have heard, or listened to, to show the degree, great or small, of any aphasic condition in Mr. Walker? A. 20
—It is incomplete, transient, not lasting more than 24 hours, I think, when at his worst in 1905 or 1906. Following that, as described by the medical witnesses, there seems to have been difficulty in articulation until when Dr. Dewar ceased to look after him. And Dr. Shurly takes up the case towards the end of 1913, in November, I think, and the word is never used again. There is apparently complete recovery to such an extent that at least two physicians, Shurly and Vedder, following that had no suspicion that we know of. And I am sure, in Dr. Vedder's case, the man had no indication of aphasia.

Q.—What is your opinion about that aphasia? A.—Absolutely gone.

Q.—What indication outside of that from the evidence is there, from a 30
medical standpoint, of any mental want of equilibrium? A.—I think I have disposed of the incontinence. Now from that it is easier to give positive evidence of a good mentality than to find suggestion of poor mentality in either the medical or lay evidence following that.

Q.—You mean, from the evidence it is easier? A.—There is unusually good evidence of the man's intelligent capacity, which is not always easy to find in the cases you are studying. It is unusually good. And I cannot find any satisfactory evidence apart from that unless you take one of the clauses in Dr. Shurly's evidence, which I think has an application here—the clause in which 40
he says that Mr. Walker would accept any suggestion—he does not give an instance—but any suggestion that is ever made to him. I take it he would act on the suggestion of his medical man—he would probably act on the suggestion of those who were looking after him. There is no evidence that any improper suggestion was ever made to him, that undue influence has entered into the case at all, and no extraordinary objective influence has been exercised. Then, when one looks into Mr. Walker's mentality for subjective evidence, there is one instance to show that he was not suggestible to an unusual degree, that is,

with respect to the visit he made to Muskoka. Mrs. Walker writes in a letter that was put in that she had to use her utmost persuasion to keep him from returning to Toronto at the end of the week, as he had mentioned doing. The year he was at his worst, I believe 1905 and 1906, shows his nervous symptoms are at their worst; the question of the Balkan politics came up much later, and his conversation becomes unusually animated, or becomes animated, which is unusual with him, in the discussion about the "unspeakable Turk." He takes a decided stand on the question of the Bulgarian, and it shows he was a man apparently who could make up his mind and stick to it. These are three examples that have
 10 been given. There have been several statements made by witnesses that, having made up his mind, he would abide by it, but those are three examples of it.

Q.—Outside of the suggestion, if you can put it that way, of his transitory aphasia, what evidence have you of any mental disturbance or abnormality in the evidence of what Mr. Walker said and did during the course of the years, we will say from 1905 up to the time he went to Washington in 1915? A.—
 The only evidence that has been submitted is that he became slow. But he always was slow, and I don't think that is sufficient evidence to show that the man was incompetent, from a medical point of view. And I fail to see any other
 20 evidence in what has been brought out here that would indicate mental disease of any kind, or mental deterioration, but, as I say, there is a great deal of positive evidence that he retained his mentality. If you care for me to give some, I think I can recall them.

Q.—You heard read from Dr. Shurly's evidence in regard to the "vegetable"; how far, in your opinion does that characterization of him as a "vegetable" coincide with what you have heard from the evidence, as to activity, or otherwise, during the years? A.—It is a popular term that I have used myself in description of patients. But I would not care to analyse it as a scientific term.

Q.—I am not asking you that, doctor, I am asking you how far the evidence of Mr. Walker being a "vegetable" is borne out? A.—I think it is contradicted, except at the time when he was so acutely ill and was lying in bed, acutely ill with influenza, and it is in his interest to keep quiet during that time. But between the attacks he shows every evidence of mental activity of a high order, as shown by the man's breadth of interest in a great many different directions.
 30

Q.—How far would you say that the diversified interests, that is, not confined to one particular line, would imply he was a man of stationary or stagnant mentality? A.—The man of the greatest intelligence is the man with the greatest width of interests that he can compass in a reasonably efficient way; and the tendency for a man who loses his mind from any cause is to narrow his
 40 interests down, to show what we call "poverty of thought." He is interested in only one or two subjects, and only certain clearly allied associations being retained. But here is a man who strikes at least three different employees as being a specialist in their department. Mr. Hiram H. Walker speaks of him in 1910-11, as taking a special interest in the electrical and mechanical part of the distillery. The chemist refers to the production of a new whisky over the years 1910 to 1914, I think it is, as being his idea, and he gave an instance of Mr.

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Walker's spontaneous suggestion with regard to that. Mr. Isaacs, and also Mr. Cooper, referred to the insurance as having been his specialty.

He has impressed three different men, in three different departments, as specializing in their particular lines of work.

Apart from that, he is interested in the church. He is interested in the school. He is interested in the families of his employees, and it has been said, I think, that if anyone was sick he would show an interest in them. Mr. Cooper mentions his asking concerning his daughter by name. He is interested in his pictures, and apparently anxious that those in his household, either employees or visitors, should be interested in them. He took different individuals up to different pictures. He mentions the artist, speaks of the subject matter of the pictures as being characteristic of the artist, as introducing certain features into all his pictures. Even as late as 1914 he had Mrs. Walker turn the light on a certain picture and walked up to within four inches of it so the man could see it in exactly the right way. 10

He is meticulous in the efficiency of the office, the filling of the fire buckets, of the fire extinguishers, and the neatness of the letters as to being folded, and the putting on of the stamps. He is a man showing a most unusual characteristic for one who is said to be deteriorating, he was a very acute and ready observer; keeping up the standards he had set for himself as a young man, that is, in the orderliness of the mail that went out; he is keeping up the standards of his cleanliness, and proper dress, without showing extravagant tastes, or anything which could be criticized, or that has been criticized at any rate, in the matter of his dress. He is a man who is shown to be possessed of altruism in a moral sense, for instance, his insistence on the customs duties being paid on what came into the country that he purchased abroad. And there was his interest in the welfare of those to whom he, legally, at any rate, owed no duty. 20

Q.—What do you say as to the continuous persistence of a man throughout the period of years, that is, practically during his more or less mature, adult years, until his death, along the same line all the time, that is, in his characteristics, whatever they may be, whether he is quiet or voluble, or anything else, a man who retains both his habits and his interest—how does that apply to a deteriorated mentality, is that consistent, or inconsistent, with deteriorated mentality? A.—Well, if his occupation had been purely mechanical, one that required very little mental effort, there is nothing to be said. 30

Q.—I am speaking of such a case as we have here? A.—This man shows a certain standard, a little bit above, I think, what might be expected with reasonable efficiency; he is keeping up to that standard, he is more improved, taking up new ideas. I believe Mr. Hiram H. Walker was putting in new electrical and mechanical apparatus, and he wants to know how it is getting on. 40

MR. MCCARTHY: When was that? A.—In 1910-11. Later than that certain legislation comes into effect that might affect his business, and he keeps himself posted on it, and, if he is not doing actual work, he maintains his interest in new subjects; he takes in new impressions; which is not characteristic of a deteriorating mind.

MR. MCCARTHY: What does the witness refer to? A.—The Pure Food Act of 1912, I think. That is a new impression he is taking in.

MR. HELLMUTH: Do you mean the "Epicure" whiskey? A.—No, the Pure Food Act, in Washington.

MR. MCCARTHY: That was in 1907? A.—That is subsequent to the time he is said to be at his worst, as far as the nervous system is concerned; in Dr. Hoare's experience, at any rate.

MR. HELLMUTH: What do you say, supposing a man has been taking an interest in a number of subjects, whether it is painting, or whether it is business, or whether it is anything else, and that suddenly ceases, and he drops the things that he had been doing; is the continuance, or the dropping of it and the change, evidence or not? A.—The dropping would be evidence of deterioration, but the continuance is not.

Q.—Did you find any change in the occupation and interest, or characteristics that Mr. Walker had in his earlier years?

MR. MCCARTHY: I object to that. That is not for this witness to say.

MR. HELLMUTH: No, I say, can you say? I want you to give me any evidence that was given by any witness that would lead you to say there was any such change? A.—They complained that he did not look after the house-keeping quite as well.

Q.—Was there any statement that he had looked after the housekeeping?
20 A.—No, sir.

Q.—I asked you what change, if any, you could point out to me in the evidence in regard to what had been an interest, or hobby, of his, or a lessening of that interest or hobby during those years? A.—I don't see any evidence of lessening whatever.

Q.—Assume there has been no lessening of interest, either in his hobbies, of his vocation, or in his punctiliousness, or carefulness—it continued the same—he has not become excitable, he is a quiet man—whatever it may be—do you say that is consistent, or inconsistent, with mental deteriorations? A.—I believe it is absolutely inconsistent with mental deterioration.

30 Q.—That is what I wanted to get; that is what I wanted to get. (Mr. McCarthy laughs, and Mr. Hellmuth says: "My friend is entitled to laugh, nobody objects, but I do not know that it is an amusing incident.")

MR. MCCARTHY: I thought your question, followed by your remark, "That is what I wanted to get," was quite amusing.

MR. HELLMUTH: I wanted to get an answer to my question; I always do want to get an answer to my question, if I can.

40 Q.—Then doctor, I ask you now if you can tell me what evidence there is that in 1914,—you have explained Dr. Shurly's statement—or what evidence is there, if any, that would lead you to assume that he was mentally incompetent to understand such a thing as the dropping, or boosting, of objects of his bounty or the manner in which he intended to distribute that property? A.—I believe there is nothing that would suggest that to me.

MR. MCCARTHY: That is for your lordship.

HIS LORDSHIP: He is suggesting it as a man who has observed deterioration in other cases.

A.—I would not make an affidavit to the effect he was deteriorating, from anything I have heard, in 1914.

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Q.—That is the test, to make an affidavit? A.—If I were asked to do it on that evidence, I would refuse flatly. I would never suggest there was any necessity for it.

MR. HELLMUTH: That is to say that you as a nerve specialist, as a man who has studied that—let me understand, have you had anything to do with the question as to the mentality, temporary or permanent, of returned soldiers? A.—That was my chief occupation.

Q.—Now, bearing that in mind, and assuming you had before you a case such as has been presented here throughout the whole body of evidence, both pro and con, what do you say as to being able to come to a conclusion if that man was competent to understand what was placed before him, let us say, by a lawyer, say Mr. Lash, as to his will, could he understand it? 10

MR. MCCARTHY: How does he know?

MR. HELLMUTH: Any lawyer.

MR. MCCARTHY: Why introduce the lawyer?

MR. HELLMUTH: I think I have a right to ask the question. The lawyer is a man who would understand and be able to explain any terms that might be in the will.

MR. MCCARTHY: There is no evidence that Mr. Lash read this will over to the witness at all. 20

HIS LORDSHIP: There are a couple of letters.

MR. MCCARTHY: We would like to see the answer.

MR. HELLMUTH: It is not submitted that there was any answer to any of them. I press that question, my lord, I think I have a right to ask that question.

HIS LORDSHIP: I think so. Mr. Lash happens to have been a lawyer; it might be anybody.

MR. MCCARTHY: My point is, the question is that the will had been explained to the man by the lawyer; there is no such evidence.

MR. HELLMUTH: Suppose this man had made a will in 1910, and that will had been prepared, as most wills dealing with such a large amount of property are, by a lawyer, and that he had understood that will,—we will assume that the testator understood that will—and that then he had, in 1913, instructed the lawyer to strike out, or alter, or cancel certain clauses in that will, and that then a couple of months later he had had the will sent up in such letters as you have seen here, which embodied changes in the will of 1901, what do you say, from what you have heard here, as to whether he would be capable to understand that? 30

MR. MCCARTHY: I object to that, my lord, because the changes which are indicated in the instructions are not the changes which appear in the will. I object to the question because my friend is not putting a correct case to the witness. 40

MR. HELLMUTH: I should like to put my case.

HIS LORDSHIP: I think so.

MR. MCCARTHY: It is not relevant; it is not in accordance with the facts here.

MR. HELLMUTH: What do you say? A.—I think the 1913 evidence has

shown that he was aware of the death of one Aikman, who was to inherit something. He is aware of a certain change.

MR. MCCARTHY: There is no evidence of this, that he knew about it. A.—Mr. Coburn told us so.

MR. MCCARTHY: Surely the witness must not introduce evidence to fit his own case, he must be bound by the evidence given.

HIS LORDSHIP: Mr. McCarthy claims this was not said.

MR. HELLMUTH: Mr. Coburn said that Mr. Walker was aware of these circumstances.

10 MR. MCCARTHY: I do not think my learned friend will find any such evidence on the record.

THE WITNESS: It is the only possible source I have for having got it.

MR. HELLMUTH: Do not argue with Mr. McCarthy please, I will do that.

Q.—What I want to ask you is; from the evidence that you have heard;— I will not go over this question again—can you say, from the evidence that you have heard whether or not, in your opinion, Mr. Walker was capable of comprehending and understanding such a will—and you have seen the will of 1914? A.—Yes.

Q.—And the will of 1901? A.—Yes, sir.

20 Q.—Was he capable, in your opinion, of understanding what he was doing? A.—I think he was entirely capable.

Q.—In your opinion, he was entirely capable of understanding that will? A.—Yes.

Q.—There is one matter that perhaps I should have asked you something about because the word is used by Dr. Shurly. Dr. Shurly says, or uses the word “senility” in connection with Mr. Walker, will you tell me what senility means? A.—It means ageing.

Q.—And what is “senile decay” and “senile debility”? A.—They are two terms which happen to be on the list sent to doctors.

30 Q.—What do they mean? A.—I do not know, sir. I think they are very loose terms. We will say that a man’s skin gets loose and elastic, it is senile, that is, the muscles shrink in very old men, that is a senile change; the bones become brittle, and that is senile change.

Q.—Is “senility” synonymous with, or indicative of, mental trouble? A.— Absolutely no, sir. If I may say there is evidence of senility in Mr. Walker’s arteries, that is the arteriosclerosis we heard of, but there is no evidence of mental change. There are certain well known symptoms of mental change due to old age, and not one has been mentioned in the court.

40 CROSS-EXAMINED by MR. MCCARTHY:

Q.—Now, you heard a lot of evidence I didn’t hear, and I must have heard a lot that you didn’t. But tell me first, what practical experience you have had since you have been in the university? A.—I am attending physician at the Toronto General Hospital, I have a number of cases under my care in the public ward.

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Q.—A number of cases in the public ward? A.—And in my private practice.

Q.—You have a private practice still? A.—That is what I make my living at.

Q.—Not out of the university? A.—No.

Q.—I assume, if Dr. Shurly knew his job, he would be in a much better position than you are to form an opinion in this particular case, having attended him from October, 1913, until February, 1915? Is that so? A.—I don't know his qualifications in that line.

Q.—I asked you, if he knew his job? A.—I don't know, sir. 10

Q.—Do you mean to say you wouldn't be in a better position to give an opinion in this case if you had actually seen Mr. Walker, and been in attendance on him from 1913 to 1915, than if you had never seen him? A.—I would be, yes.

Q.—I am asking you, if Dr. Shurly knew his job, wouldn't he be in a better position to speak than you are? A.—If you are a specialist in that work . . .

Q.—If Dr. Shurly knew his job? A.—The job is not one in medicine.

Q.—I am speaking of the job in regard to this particular man? A.—His job in connection with this particular man was with regard to influenza, at one time. 20

Q.—You evidently have not read his evidence. If he knew his job as a mental specialist, and a man who diagnosed mental cases, wouldn't he be a better man to pass an opinion than you would be? A.—I did not infer from his evidence that he ever attended Mr. Walker for a mental disease.

Q.—Answer the question, and do not hedge. If he knew his job, wouldn't the fact he had had Mr. Walker under observation for 14 months place him in a better position to express an opinion than you are? A.—Not about his mentality.

Q.—You think not? A.—No, he didn't treat him for that.

Q.—I am not asking you what he treated him for; I asked you in regard to his opinion. You will admit you would have been in a better position if you had seen him? A.—I would be. 30

Q.—But you don't know if Dr. Shurly would be, or not? A.—I don't know if he was interested in that line of work.

Q.—Dr. Shurly was his doctor for that particular period, 1913 to 1915? A.—Yes.

Q.—Have you taken the opportunity of consulting Dr. Shurly? A.—No.

Q.—To find out what Mr. Walker's exact condition was? A.—Just his evidence.

Q.—Have you made any enquiries of Dr. Shurly? A.—I heard him being 40 discussed the other day; that is hearsay.

Q.—You had better not give us that, if you don't know about it. A.—I don't know him by sight or reputation.

Q.—He is a man of a good deal more experience in medicine than you have had up-to-date? A.—I don't know from personal experience—in certain directions, I believe.

Q.—Now, in forming your opinion, what evidence have you been guided by? A.—The evidence that has been brought out in this court.

Q.—On both sides? A.—On both sides.

Q.—If you have followed the evidence that has been brought out by the defendants you would have nothing to base it on, would you, nothing to make up your mind about at all? A.—I don't recall anything.

Q.—Exactly: if you exclude the plaintiff's evidence there would be no reason for calling you at all, would there? A.—Except to take the positive evidence that some of the witnesses gave in favour of his mentality.

10 Q.—Then I say there would be no object in calling you at all if you accept the evidence of the witnesses who have been called by the defendants? A.—Well, I can give evidence, from their positive evidence, in favour of the man's mentality, his mental activity.

Q.—Was there anyone so far called by the defendants who suggest he was not mentally capable? A.—No, I wouldn't expect there would be.

Q.—If you excluded the plaintiff's evidence, there would be nothing for you to base it on, would there? A.—If I hadn't heard . . .

Q.—If you exclude the plaintiff's evidence. That must be very simple? A.—Yes, if I exclude that I say there is no evidence of mental deterioration.

20 Q.—Isn't that so? A.—I said, no evidence of mental deterioration.

Q.—Can't you answer the question? What is the difficulty? A.—It is a question of what I would base it upon.

Q.—I will ask the question, and you will answer Yes or No.

HIS LORDSHIP: Wait a moment. Don't you think I should give some protection to the witness, and tell him he is not bound to answer Yes or No.

MR. MCCARTHY: He need not say Yes or No.

HIS LORDSHIP: Will he say anything else when you rather emphatically dispute with him?

30 MR. MCCARTHY: He is altering my question, and I want it to remain as it is.

Q.—If you exclude the plaintiff's evidence is there anything that has developed in the defendants' evidence which would call for your opinion at all?

A.—I think so.

Q.—What? A.—Evidence that the man is of a high mentality.

Q.—Is that against his mentality? A.—No, it is all in favour of it.

Q.—Some of it you regard as evidence of high mentality? A.—Yes.

Q.—Let us exhaust that for a moment. Where do you get evidence of high mentality in the evidence given by the defendants? What evidence did you hear of high mentality? A.—His choice of Mr. Melcher's picture.

40 Q.—Do you honestly put that forward as evidence of high mentality? A.—He knows more about it than I do.

Q.—Will you answer my questions? A.—I do.

Q.—Do you mean to tell me that a person, as the result of experience, even with low mentality, cannot, as the result of experience, if he has been choosing pictures all his life, know a good picture from a bad picture? A.—If he used judgment, he wouldn't be of low mentality.

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Q.—I say, as the result of experience? A.—Experience is the basis of judgment.

Q.—Not necessarily. If he had had experience over a number of years, would he not be able to tell a good picture from a bad picture, although he might be utterly mentally incapable in other respects? A.—He must have had judgment if his experience enabled him to do so.

Q.—Is that so, or not? A.—I don't believe a man without judgment, with infinite experience, could choose a good picture.

Q.—Might he not be mentally incapable in all other respects and yet, as the result of experience, be able to choose a good picture? A.—I don't think so. 10

Q.—Have you ever known of a man, a semi-idiot, who could pick out a good horse, because he has a good horse in his eye, have you ever heard of such a case? A.—I have not heard of it. I think choosing a horse is on a different plane to choosing a picture.

Q.—Isn't the choosing of the horse the result of experience? A greenhorn couldn't do it, who had never seen a horse? A.—There are men who, by nature, know more about animals than others.

Q.—By nature they know the good points of a horse, do you urge that seriously? A.—I do.

Q.—By nature? A.—By nature certain men have inborn ability to handle 20 animals.

Q.—I am not talking about handling animals, I never mentioned handling? A.—To judge them.

Q.—Do not say "handling," because we know that idiots can handle horses sometimes very good. They say horses are fond of children and fools. Do not introduce words into my question. I am speaking of the case of a man who might be almost an imbecile on all other subjects, yet have an eye for a horse? A.—What does "an eye for a horse" mean?

Q.—The experience to judge a good horse? A.—That is one that will pull 30 well, or run well?

Q.—No, not to pull? A.—That is, the use of the horse?

Q.—Do not hedge with me. I am speaking of conformation.

HIS LORDSHIP: Wait, Mr. McCarthy, I do not want to interfere, but I am going to tell the witness that if he objects to such words he can give it back as hard as he likes.

THE WITNESS: I do not mind, sir.

MR. MCCARTHY: I am not speaking of pulling, or speaking of running, but of conformation; because no man, that I know of, has yet been able to tell the horse's running qualities from looking at him, they generally have to 40 move first. I am speaking of the conformation, with respect to a man who has a good eye for a horse. Is it not well known in your study of nervous diseases, if you know the subject fully, that many a man, although almost an imbecile on some subjects yet has a good eye for the conformation of a horse, and can pick them out as the result of experience? A.—I don't know enough horse dealers to be able to say that.

Q.—You don't have to know horse dealers, but in your own business have you not heard of such a thing, in your own practice? A.—I would grade a

man, for my purpose, by putting that man's mentality on the level of the reasons for which he judged the horse.

Q.—You are not answering my question. I don't know whether you are trying to or not? A.—I am trying to.

Q.—I am not asking you to grade that man's mentality at all. I didn't ask you to do that. I ask you to answer my question whether, in your experience as a professor of nervous diseases, if you had not known of a case where a man—as an illustration—may be utterly incapable of judgment, or mental capacity in one thing, or many things, yet almost an expert at others? A.—I can't answer that without qualifications.

Q.—You can't. Did you ever hear of people judging the weight of cattle, for instance, who are almost imbecile, on the London and Glasgow docks, who can judge the weight of a steer to the matter of a pound almost, just from experience, and probably cannot write a letter? A.—I believe that is so. Illiteracy does not mean mental deterioration.

Q.—It means mental deterioration if never cultivated? A.—It means lack of opportunity.

Q.—Whether you put it as lack of opportunity, or mental deterioration, is one side highly developed and the other entirely undeveloped? A.—His development has taken place along certain lines, and his mentality is better for it. I wouldn't class him in any way as a mental defective.

Q.—He might be mentally defective in other respects? A.—From lack of opportunity.

Q.—I do not care what it is from? A.—We say a man who is capable of learning is not mentally defective in the sense he cannot learn. We will often say of a man that he is not mentally defective because he shows possibilities of learning.

Q.—You suggest that a man may have been mentally capable in other respects, he may have lost his mentality in some respects and yet retained it in others? A.—Yes, that is true, but that depends on how deeply you sound his mentality in other respects.

Q.—Take it a little further, with Mr. Walker, how do you know he was a judge of good pictures? A.—He goes to an artist who is a man of standing.

Q.—How do you know that? A.—He has exhibited in all the European world. He has been invited to send his own selection of pictures to be hung in Paris.

Q.—That doesn't prove anything? A.—An artist of less standing would have to submit a number of pictures to be chosen by the judges. Mr. Melchers was given the opportunity of selecting the pictures for himself that he would like to send.

Q.—Of his own selection? A.—Of his own selection.

Q.—Isn't that the case in all cases? A.—No.

Q.—You think not? A.—No, there are many times pictures are sent that are rejected.

HIS LORDSHIP: You mean there is a selecting committee? A.—Yes.

MR. MCCARTHY: He said he was allowed to select what pictures he

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would send; whether they were hung or not is a different thing? A.—Well, he is a man of enough standing to be invited to send some.

Q.—Will you follow that up? A.—Then Mr. Walker goes down stairs and selects what Mr. Melchers considers his best.

Q.—Supposing he did not select the best, but one of the three best; you don't know what the rest were like? A.—No.

Q.—The rest may have been mere daubs? A.—Yes, it is possible.

Q.—So you can't get very much from that, can you? A.—I would interpret something from it.

Q.—You have to go that far to carry out your theory? A.—A man might 10 have to take longer chances than that.

Q.—What else, besides the ability to choose a picture, indicates he had high mentality? A.—His appreciation of a fair price for a picture.

Q.—Where did you get evidence of that? A.—He would pay rather large sums for pictures.

Q.—What evidence do you refer to? A.—I think Mr. . . . who sold him a picture for £2,000.

Q.—Yes? A.—That is a lot of money to spend for a picture.

Q.—Do you know whether that picture was any good? A.—I don't know.

Q.—So it may have been that he was utterly taken in, as far as you know? 20 A.—I wouldn't attempt to value his pictures.

Q.—How do you know that the picture was worth £100? Have you heard any evidence in regard to what the picture was? A.—No, I don't suppose that picture has been described in court.

Q.—Then you don't know what that picture is worth at all, it may not have been worth £2,000? A.—It is worth what it will bring.

Q.—It is worth what it will bring,—is it worth what it will bring? Many a man has been sold a picture that was not worth what he paid for it. I dare say, if you follow the newspapers, you would see every day that in one of the famous picture galleries of the world, at least four Rembrandt's, said to be 30 genuine, were pointed out as spurious, and yet the public looking at them thought they were genuine. How do you know this was a genuine Romney, or worth £100? A.—I wouldn't, if I saw it.

Q.—He might have been taken in? I am asking you a very simple question? A.—I don't know whether it is worth that, or not.

Q.—You think that helps you to judge as to his high mentality? A.—That is one of the aids I have to take, I admit the handicap.

Q.—If he paid a fair price for it, you would say it is evidence of high mentality, but if he paid much more than it is worth it might be evidence of low mentality? A.—It might be. 40

Q.—We will pass on to something else. What next? A.—I mentioned his moral sense.

Q.—What do you mean by "moral sense"? A.—Well, the sense that when he had opportunities for bringing things into the country without paying duty, he instructed that the duty be paid.

Q.—What evidence do you get of that? A.—Mr. Cooper's evidence.

Q.—That he always looked after his customs for him? A.—That he warned Mr. Cooper.

Q.—He instructed Cooper, sometime ago, to always pay duty? A.—Yes.

Q.—We don't know when those instructions were given? A.—No, that was not ascertained.

Q.—He may have been perfectly capable of appreciating what he was doing when he gave Cooper those instructions? A.—I think he probably was.

Q.—And, because Cooper continued to carry out his instructions, would be no indication of what you call "high mentality"? A.—Yes, I think Mr. Cooper himself also said that in other respects Mr. Walker still kept that up to the standard which he had established in early life.

Q.—Kept what up? A.—Kept his staff up, those working for him.

Q.—Do you know what part Mr. Walker played in the office at all? A.—Apparently on walking through his eye was quick enough to be able to pick up a large number of different details quickly.

Q.—Where would he pick them up, when walking through? Do you know the situation up there? A.—Yes.

Q.—Do you know where the office is that Mr. Walker had? A.—I know there are a number of offices along a corridor.

Q.—Do you know which was Mr. Walker's? A.—No.

Q.—Do you know how many offices he had to pass? A.—Without trying to count them, I would say ten.

Q.—With the doors open or closed? A.—Glass partitions.

Q.—You don't suggest that Mr. Walker, as he walked up the corridor, looked through the glass partitions? A.—No. It has been said by a number of people that he opened the door and said, "Good-morning."

Q.—I think I heard Robins say that, and Robinson said so also, because he had to pass them on the way? A.—No; he goes into parts of the distillery; for instance, he went to Hiram H. Walker and asked him about certain changes that were being made electrically and mechanically; he went to him constantly. Another evidence

Q.—Is that evidence of high mentality? A.—No, not necessarily high, but retained mentality, spontaneity of action.

Q.—What else about the moral sense? A.—His interest in the welfare of those about him.

Q.—Do you call that necessarily "high mentality? A.—I think it is higher mentality than a man who lives a selfish life, and pays no attention to the welfare of those working for him.

Q.—If Mr. Walker always had done that, since the time he was a very young man, would you expect him to have changed, or to have retained that? A.—I would expect, if he deteriorated, he would become more careless about other people.

Q.—That is he would indicate in his will, if this is his last will, that he had become more careless about other people? A.—I don't think careless, I think he did this after consideration.

Q.—Why take money away from the church? A.—Because the church was later built.

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Q.—That has been argued out with you? A.—No, that came out in court.

Q.—Did you read the provisions of the will, that this was an endowment fund, not a building fund? A.—I don't know what you mean by "the provisions of the will."

Q.—I mean the provisions of the first will, that this was an endowment fund? A.—"Provision" is a technical term which I am not sure I understand.

Q.—The provisions of the will? A.—I cannot remember the wording of the first will, but I am taking that interpretation of the bequests in the second will from what I have heard in the court about the church that had already been built, and the necessity was not so great for the larger sum of money. 10

Q.—Did you hear when the church was being built? A.—I don't remember when it was built.

Q.—His will continued in 1914 as it was, without any alteration, notwithstanding the church had been built ten years before. Did you take that into consideration? A.—Yes, I think I can explain, I don't know whether it is in my province to do so, but Mr. Walker had had acute illness, he was suffering more or less from chronic illness, and it probably occurred to him, in 1914, it is time I made another will, or he may have made none at that time.

Q.—You will admit he suffered from chronic illness in 1914? A.—The arteriosclerosis, and general muscular enfeeblement. 20

Q.—As a man's wealth increased you think he would be more likely to deprive charitable institutions of what he had given then ten years before? Would that be high moral sense, or high mentality? A.—I think, in this respect, certain men might think charities would be spoiled by having too much money, and that they should stand on their own feet.

Q.—You think the church would be spoiled by being given too much money? Do you think that is the way he reasoned it out? A.—I assume there is a motive for the changes.

Q.—You have to assume that? A.—I have to assume everything I saw.

Q.—Will you give me evidence of this moral sense? A.—Well, generosity, 30 you might interpret as moral sense; I do not mean to put it under that level; it is an abstract quality of mind, which raises it higher than that level.

Q.—Which decreases or increases as one gets older? A.—It depends on the individual.

Q.—Take this individual. His high mentality, as you have judged it, would you think his generosity had increased or decreased as he became wealthier? A.—He always appeared to be so very generous, I did not hear any complaint in the evidence that he was less generous in his later years.

Q.—What would that indicate to you, that he became more or less gener- 40 ous? If with his increasing wealth he became less generous, what would that indicate, from your standpoint? A.—I would like to know the circumstances of his lessened generosity.

Q.—Just answer the question. I am testing the accuracy of your evidence. If you found a man of Mr. Walker's type becoming less generous as his wealth increased, what would that indicate to you? A.—I would want to know more about why he was less generous, and the circumstances.

Q.—You could not express an opinion unless you knew more? A.—No, I would like to know more about it.

Q.—Give me some more indication of what you call high mentality? A.—His courtesy.

Q.—But he always had been a courteous man? A.—Excuse me.

Q.—Would you expect the courtesy to decrease with his mentality? A.—Yes, as the patient gets mentally lower.

10 Q.—What do you mean by “mentally lower?” A.—I am using a very general term in mental diseases, including lessened mentality with old age, the patient becomes impatient, becomes rude, or might become violent, might become obscene, might become the antithesis of all that characterized him in his earlier days as a cleanly, courteous and dignified individual.

Q.—You say “he may be,” anything is possible? A.—I say usually.

Q.—Is it the case usually that a man with increasing age becomes irascible? A.—I wouldn't generalize to that extent.

Q.—Is not it the contrary, that old age rather softens and makes it a little easier? A.—Not in all cases.

Q.—I did not say “in all cases,” by any means. Is not that the rule? A.—I would have to have it specifically.

20 Q.—I have had a good many examples during my time at the bar of judges who have changed, who have become softened with old age? A.—Yes, and they speak of a crabbed old age.

Q.—Is there any rule you can apply as to old age, whether a man will become softened or crabbed? A.—Either carried to the extreme might indicate mental deterioration.

Q.—Caused by what? A.—Due to old age.

Q.—Mental deterioration due to old age? A.—I am assuming you mean it is due to a man's old age.

30 Q.—I say old age, or mental deterioration due to old age, a man may become either softened or crabbed, in his characteristics? A.—I think so; they will have to get to a certain limit before it is put down as pathological.

Q.—Is it the rule that old men become degenerated? Is it the rule they always change their characteristics that they have had through life, or that they become accentuated? A.—It is a change which may consist of accentuation.

Q.—Or the characteristics which followed them through life may be retained; as a matter of fact, there is no rule about it? A.—There are all degrees of any disease.

40 Q.—Is there anything else you can suggest as to high mental characteristics, or high mentality? A.—I have mentioned his interest in certain different departments of the distillery, that he strikes three different people . . .

Q.—Let us just take those and see what they amount to, so as to get your ideas as to high mentality. We are told he always looked after the insurance end of it, and had given instructions to one gentleman, who was called the insurance department, Mr. Cooper, to see that everything was covered by insurance, and, as the stock fluctuated day by day, or was transferred from one

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building to another, to be sure it was all covered. Would you consider that a very high degree of mentality, when he is passing Mr. Cooper, in whom he took an interest, as he did in other employees, he would say, "Well, is everything all right today? Is there anything new today? Have you got everything covered with insurance?" That is Cooper's evidence? A.—He doesn't say anything very definite one way or the other.

Q.—You can't gather very much from that? A.—Not from Cooper's

Q.—Who else do you suggest? A.—Mr. Isaacs.

Q.—If I remember his evidence correctly, he said he was not able to form an opinion in regard to Ed. Walker at all? A.—I think it was Mr. Isaacs who first said Mr. Walker was interested in the insurance, and he submitted to him this new form of policy, and Mr. Walker didn't simply take it and look at it casually, he apparently took it away to consider it. 10

Q.—You have to assume that? A.—Yes.

Q.—Whether he talked to anybody else about it or not, you don't know? A.—If he talked to anybody else I think it would be evidence of good mentality; taking "good" as a pretty broad term.

Q.—Are you serious about that? A.—I mean "good" as opposed to "bad."

Q.—I don't know what you mean by "good as opposed to bad."? A.—Reasonably sane. 20

Q.—I will accept it as "reasonably sane." Would you think it required any mental effort if, having several forms with the clauses in each form applying to the different articles, that if you could consolidate all those and put them in one form, would it require a great degree of mentality to say which is best? A.—I think probably it would take a better mentality to consolidate a large number of different forms into one, and be sure that one was thorough, than if the clauses were spread over a large number.

Q.—Have you heard any evidence that Mr. Walker was ever able to understand what Mr. Cooper told him at all? A.—No, I am assuming.

Q.—What else? A.—This new whiskey he attempted to produce in 1910, 1911 and 1912—I think from 1911 to 1914—it was his idea in the first place, that is, as comparatively an old man, within three years, or less than three years, of his death, he conceives a new idea. 30

Q.—Are you correct in your evidence there? I am told you are entirely wrong, because I distinctly remember—if you don't mind my introducing evidence—this porter was introduced in 1910? A.—He wanted to introduce new whiskey.

Q.—To substitute rye for malt in porter? A.—It is a new whiskey, not porter.

Q.—He was wanting to change his "Epicure" whiskey from malt to rye? 40

MR. HELLMUTH: My friend is not right. He wanted an entirely new whiskey. My friend is not correct in what he has stated to the witness, this had nothing to do with the "Epicure" whiskey, he was starting a new whiskey.

MR. MCCARTHY: I will say to my friend he is quite wrong, and I will produce the evidence.

Q.—You were starting on the assumption he was starting a new whiskey? A.—That is what the chemist said, that he was going to produce a new whiskey.

Q.—If it turned out it was simply a substitute of rye for malt, instead of the “Épicure” which had been a failure, what would you say? A.—I don’t know what the merits might be, or what logical change. It is a new idea, and at a time when he is an old man, and evidence of a retained mentality—provided they are logical.

Q.—Sometimes old men get new ideas that are evidence of insanity? A.— They must be logical. Defendant’s Evidence.

Q.—How do you know there was ever a drop of that whiskey sold? A.— It was tested and was not old enough to be sold. No. 58
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10 Q.—Was a drop of that whiskey ever sold, and put on the market? A.— It was not old enough to be put on the market. Cross-
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Q.—Was it ever done? A.—The evidence is it was not, because it was not old enough. 21st May,
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Q.—You have taken that evidence; because it was not old enough? A.— That is what I gathered from the evidence on commission. —continued

Q.—You think that is evidence of mentality; an old man trying to produce an impossible whiskey on the market, which he could never sell? A.—What do you mean by “impossible whiskey?”

20 Q.—I do not propose to give you samples, so we cannot get anything out of that, but perhaps impossible from the standpoint of saleability? A.—I think, if he sticks at it, and tries in subsequent years

Q.—You are not answering my question. Please answer my questions, or it will take a very long time. What would you think of the mentality of a man who persisted for years in trying to produce a whiskey that was unsaleable? A.—Of better mentality than one who would give up at the first attempt.

Q.—You think a man with a thing that had proved a failure and would still persist? A.—I think that is a sign of genius.

Q.—It couldn’t be accounted for as stupidity? A.—I am considering this later whiskey.

30 Q.—I did not ask you that, but another question? A.—I think that is what you were discussing.

Q.—I asked you another question? A.—I don’t remember at what point we passed this whiskey.

Q.—I am beginning to wonder what high mentality is? A.—I am trying to show you.

Q.—I have seen no evidence of it so far?

HIS LORDSHIP: That is very rude. He is a very intelligent witness, and is giving well spoken evidence, you can hear every word he says.

40 MR. MCCARTHY: What I asked was this: if you heard of the case of a man who had been trying for years to introduce a whiskey, which was obviously unsaleable, unmarketable, and still persisted, what would you say in regard to that? A.—I haven’t heard of it yet, and I don’t like to give an opinion until I have heard of it.

Q.—I am telling you it. I am here testing the value of your evidence. I am asking you the question; if you do not choose, or cannot answer, say so? A.—I do not think your question is full enough.

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Q.—What more do you want to know? A.—I want to know why it is unsaleable.

Q.—It was too expensive? A.—Nothing is too expensive in whiskey these days, it can be sold at any price.

Q.—We are not talking of nowadays, and you know it. Under normal conditions, do you mean to tell me that whiskey that is not good whiskey is saleable in competition with others? A.—It depends on who you are selling it to.

Q.—Answer the question if you can, if you can't, say so. I am telling you these facts, and asking you what it would indicate in regard to a man's mentality, if a man endeavoured to introduce a whiskey for which there was no sale, 10
by reason of the very high price, or unsuitable qualities, and he persisted for years in trying to force it on an unwilling public, would that be evidence of high mentality? A.—May I substitute tobacco for whiskey?

Q.—No, we will stick to whiskey? A.—From my experience I believe it would not be sufficient to keep it from being saleable.

Q.—I did not ask you that question. Why can't you answer my question? A.—I can't answer that without thinking about it.

Q.—Obviously you don't try, because you put another question at once. It will take a very long time if you don't answer the question? A.—I am trying to form an opinion I am asked to express. 20

Q.—I think you are, and that is your trouble? A.—No trouble whatever.

Q.—I know it is not troubling you, but it may end in trouble if you don't answer them sooner. You will not answer the question for me, so I will ask the reporter to read it to you, and see if you will answer it then.

(The reporter repeats this question.)

Q.—I am telling you these facts, and asking you what it would indicate in regard to a man's mentality, if a man endeavoured to introduce a whiskey for which there was no sale, by reason of the very high price, or unsuitable qualities, and he persisted for years in trying to force it on an unwilling public, would that be evidence of high mentality? A.—He might have had a scientific 30
interest in producing that whiskey, and left it to somebody else to seek the commercial development of it later.

Q.—Do you really think that is an answer? A.—I have known it done.

Q.—Do you think that is an answer? A.—I know it has been done in many cases.

Q.—Is that an answer to the question? A.—I believe it is a legitimate answer.

Q.—You can't answer Yes or No? A.—It is an answer.

Q.—I say, you can't answer Yes or No to my question? A.—To which 40
question, sir?

Q.—The question just given to you. Surely you knew I asked a question? A.—Yes.

Q.—Are you capable of answering it Yes or No? A.—Every question Yes or No?

Q.—This specific question, why don't you answer? A.—I have to split it.

Q.—Why? A.—Because he might be interested in producing a whiskey of a high type for his own interest.

Q.—We will talk about whiskey that is saleable? A.—Is it why they won't buy it?

Q.—I did not ask you to investigate the whiskey, but to investigate the mentality of the man? A.—I have to know why it is not saleable.

Q.—Why? What has that to do with his mentality? A.—Because it is possible he might see a way of overcoming the difficulty of selling it, and if he can see that it is legitimate for me to go on.

Q.—You call that evidence of high mentality? A.—I think if his vision was greater than others, his mentality was higher.

10 Q.—Do you really say that, that anybody who has vision greater than others? A.—Commercial vision.

Q.—Commercial, or any other vision, if their vision is greater than others, they are gifted with high mentality? A.—Yes, they are gifted with high mentality.

Q.—There is no use trying to get an answer to that question, you want to split it. Give me any other evidence of high mentality? A.—I think I would let it rest there, and be satisfied with it.

Q.—All right, if you are satisfied, I am? A.—Leaving the evidence I gave in the examination-in-chief too.

20 Q.—I am satisfied, if you are. Then we come down to this, Dr. Armour, taking the evidence for the defence the only functions you can perform as an expert in regard to it would be to proclaim, or suggest, that the man in question had a high mentality for the reasons which you have given us? A.—Yes, I think I have mentioned the reasons.

Q.—We will go to the other side of the picture, and we will disregard the evidence given for the defence entirely.

Have you taken into consideration, in Mr. Walker's case, the fact that he admitted to two people that he had specific infection? A.—I have taken that into consideration.

30 Q.—Have you taken into consideration the fact that his trouble began with certain numbness? A.—Yes, I wondered that was not developed.

Q.—That the numbness was not developed? A.—That the complaint about numbness was not developed. I do not understand its significance yet.

Q.—Has it any significance to you? A.—Yes, it is a symptom that is rather common.

Q.—Of what? A.—Of a very large number of different diseases.

Q.—Is it not a symptom of specific infection? A.—Oh, no.

Q.—You will say that? A.—No, it is more common in others.

40 Q.—I didn't ask you that. Is it one of the evidences or symptoms of specific infection, this numbness? A.—Not in the primary stages.

Q.—What primary stages? A.—Of the infection.

Q.—You say not? A.—Absolutely.

Q.—What authority do you quote for that? A.—My own experience. Remember, in the primary stages.

Q.—What do you call the primary stage? A.—We divide it into . . .

Q.—What do you call the primary stage? A.—In the first few months.

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Q.—When would you expect numbness to develop? A.—10, 15 or 20 years afterwards, perhaps.

Q.—Not less than that? A.—I say “perhaps” because he wouldn’t necessarily find certain things even with the infection having occurred; first, numbness in succeeding years might not be due to the infection.

Q.—Do not the authorities give numbness as one of the indications of specific infection? A.—I never read it.

Q.—Are you familiar with the work entitled, “A System of Syphilis” by D’Arcy Power and J. Keough Murphy? A.—I don’t know that I am.

Q.—You would not think you were familiar with it? A.—I may have read 10 it some time ago.

Q.—And forgotten it? A.—And, having forgotten it, I would not be familiar.

Q.—That would depend on the low order of mentality? A.—It would depend on the amount I read.

Q.—Is it recognized as a standard work? A.—I would like to know his position, it is shown on the title page, and I can tell you better.

Q.—Have you never heard of him? A.—Not that I can recall offhand. There are a great many books I have read that I have forgotten.

Q.—This in an expert medical publication? A.—They are very good. 20

Q.—This is one volume of, “A System of Syphilis,” one of six volumes, edited by D’Arcy Power and J. Keough Murphy, with an introduction by Sir Jonathan Hutchinson? A.—Hutchinson is one of the best.

Q.—And the other volume I have in my hand is No. 4, by Dr. F. W. Mott. He is a great authority? A.—He is one of the best. I am taking this numbness as apart from any context or symptoms.

Q.—You mean apart from any other symptoms? A.—Merely as an isolated symptom.

Q.—I did not put it that way? A.—Did you say evidence of it, or symptom of it? 30

Q.—I have to ask one question at a time? A.—If it comes to that, I would not care to consider any diagnosis on one symptom alone.

Q.—I didn’t ask you to do that either? A.—You suggested one symptom.

Q.—I can only ask one question at a time. I am saying, is numbness one symptom of specific infection? A.—It is almost impossible to answer.

Q.—You find it impossible? A.—Absolutely, I think.

Q.—Why? A.—Because we look for what we call symptom-complex in disease, we want two or three symptoms going together.

Q.—I said one of them? A.—By that rule, I might take any symptom in the world and say it could be a symptom of this disease. 40

Q.—You could take any symptom in the world, and it might be a symptom of this disease? A.—Yes, because I think Hutchinson himself says this disease will simulate almost any other disease known. It is a disease of infinitely various manifestations.

Q.—If you find it combined with arteriosclerosis, is not that a symptom of specific infection? A.—Not necessarily at all.

- Q.—I didn't say "necessarily", please don't introduce other words. Is it, or is it not, or may it be? A.—At that rate, no.
- Q.—You say it is not? A.—It is not indicative with that alone.
- Q.—I asked "those symptoms," I didn't say "alone."? A.—It could be.
- Q.—Is aphasia a symptom? A.—It could be.
- Q.—I was rather interested in your definition of aphasia as given to his lordship yesterday. How many pure types of aphasia are there? A.—Pure types, four.
- 10 Q.—What are they? A.—Pure motor aphasia.
- Q.—In which case there is an inability to speak, is there not? A.—Partial or complete.
- Q.—Another one? A.—Agraphia.
- Q.—What do you call that? A.—Inability to write, partial or complete. Then sensory.
- Q.—Auditory and visual? A.—Yes. I do not like to call them "pure," I do not believe they exist in a pure state.
- Q.—Do not let us get into a scientific discussion, because the text books call them "pure" symptoms, and, because they do not agree with you, we will not quarrel with them: Would you rather call them four major types? A.—
- 20 Four major types.
- Q.—In the case of the auditory, the difficulty is that what a man hears he does not understand? A.—He does not interpret.
- Q.—And the difficulty in the visual is what he sees he cannot repeat? A.—No, what he reads he does not interpret, or understand. They may read out loud and not understand a word of what they are reading.
- Q.—He does not repeat the meaning of it, he does not attach any significance to it? A.—He cannot make a resume of the thing; it may be partial or complete. These are all matters of degree.
- 30 Q.—You said the only evidence you heard in regard to Mr. Walker was his difficulty of articulation? A.—No, I said I accepted Dr. Hoare's diagnosis of aphasia.
- Q.—I understood you to say the only evidence that indicated aphasia would be the difficulty of articulation? A.—No, I would not use that word because I separate very sharply between the verbal disturbance and aphasia; one is mechanical and the other intellectual.
- Q.—What do you find indicating intellectual aphasia? A.—Confusion and mixing up of his words at a later date, I don't think the attacks were during Dr. Hoare's time, but Dr. Dewar's, that he might use the wrong word, and had certain difficulty in understanding what was said to him and it would have
- 40 to be repeated.
- Q.—And inability to speak at times? A.—That inability to speak was of two types, either a difficulty in articulation, or confusion and mixing of the words, or the use of the wrong word.
- Q.—We have four major types, and we have the evidence that you accept Dr. Hoare's diagnosis of aphasia? A.—In an incomplete form, of transitory duration.

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Q.—That is all he gave evidence of? A.—Yes.

Q.—What do you mean by "incomplete form?" A.—He hadn't total aphasia at that time.

Q.—Would absolute speechlessness be total aphasia, or complete aphasia? A.—I would say that intellectual speechlessness might be due to aphasia.

Q.—If it is due to aphasia? A.—Absolute speechlessness is not necessarily aphasia. I am using it in the full sense used by Dr. Hoare.

Q.—They didn't say visual or auditory aphasia? A.—I use it in their sense.

Q.—You knew what they meant when they called it aphasia. It is not customary among medical men when speaking of aphasia to distinguish between the four different types? A.—It depends on who is dealing with the case, and what the motive is for dealing with the case. 10

Q.—If you were teaching at the university? A.—No, if I am testing a man's mentality, or I am asked to join in a consultation.

Q.—You define it as auditory, visual, or motor? A.—I think I would have to describe it closer, because there is no pure type, I would have to say how much existed of every type.

Q.—As you understood them, it would be what is called "incomplete general aphasia."? A.—No, I think they mean motor aphasia, which is the condition that first led to the use of the word. 20

Q.—You think they mean "motor aphasia?" A.—Yes.

Q.—We will see later. Just to carry that out, so we will understand each other. What is the cause of aphasia, or what brings about aphasia, in cases of specific infection, coupled with the arteriosclerosis? A.—I think probably the thickening of the vessels.

Q.—And what does the thickening of the vessels do? A.—It shuts down the size of the channel through which the blood has to run.

Q.—What effect has that on the cortex? A.—It becomes then a question of the blood pressure. If the blood pressure goes up high enough so it can carry the same amount of blood through the narrowed channel that it did through the wider channel at a lower pressure, therefore, it may compensate, and the man may live for a long time and there is no evidence that you can appreciate of the narrowed condition of his arteries. 30

Q.—Suppose you have a blocking of the channel so as to shut off the blood temporarily, what is the effect? A.—It may be anything, from death to unconsciousness, to certain disability in varying degrees, or it may be merely a subjective feeling of discomfort of a more or less intense character. That is, a man may think it is insignificant, or he may complain, or he may show objective signs. 40

Q.—If the blocking causes a hemorrhage it is very quickly detected? A.—It is very difficult to diagnose, in a great many instances.

Q.—What does that terminate in? A.—The reason I have stated that about the case in which a hemorrhage occurs is that often the patient loses consciousness and don't know the effect.

Q.—You wouldn't suggest, in this case, there ever was a hemorrhage? A.—I don't think there was a hemorrhage here.

Q.—You don't think he ever had a tumor? A.—Not in the ordinary medical acceptance of the term.

Q.—They call them "Gumma?" A.—Gumma.

Q.—There may have been periodical blocking of the system which would bring about aphasia occasionally? A.—Do you mean it would bring about blocking of a certain isolated portion of the vessel, closing it down, due to contraction of the muscle? As a man gets older his heart muscles may not be able to keep up the high pressure necessary to carry the blood through the thickened vessels, and the temporary lowering of the blood pressure will induce symptoms. That I believe to be very common.

Q.—That is something that commonly follows arteriosclerosis, or brain syphilis? A.—Arteriosclerosis in all its possible causes, however specific infection is possibly the smallest element in the production of arteriosclerosis.

Q.—It is one of the elements? A.—It is one of the possible elements. I have reason to think it was not quite as active in this particular case as might be assumed.

Q.—What was not? A.—Specific infection was not as active a factor in the production of arteriosclerosis.

Q.—At any rate, it is a factor in the production of arteriosclerosis? A.—
20 In a few cases.

Q.—What do you say did cause it in this case? A.—There is rather an interesting feature there, I don't know how far it is evidence, but it was suggested that the brother had had a stroke. Now, we know that arteriosclerosis runs in families, and there are certain families who die, no doubt, of arteriosclerosis in one of its different forms, and generation after generation, or one brother after another, may show symptoms of arteriosclerosis early. And that has been suggested in this case by Mr. Harrington Walker having had a stroke. That, I say, is an assumption.

Q.—That is just a possibility that arteriosclerosis may be hereditary?
30 A.—Yes.

HIS LORDSHIP: A stroke is an emblem of constriction or filling? A.—It does not need to be by narrowing; "stroke" is really a term which may differ, we say "thrombosis," which is a thickening of the blood itself.

Q.—I thought "thrombosis" applied to the thickening of the vein as well?
A.—It may be either hemorrhage, thrombosis or embolus. The reason it is called a hemorrhage stroke is that it is a popular term for those who fall unconscious with it.

MR. McCARTHY: Embolus is a blood-clot? A.—No, there may be a little fleshy flake grow on a valve of the heart, and it flicks off, and may go anywhere.

Q.—This specific infection may either be in the area affected, the arteries,
40 or in the brain substance itself? A.—I don't think it ever affects the brain substance, to be absolutely accurate, the brain substance itself. We teach that it travels along the course of the vessels.

HIS LORDSHIP: How about continuing this tomorrow?

(Court adjourned at 5.30 p.m., Wednesday May 21st, until Thursday May 22nd, 1924, at 10 a.m.)

RECORD

In the
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Defendant's
Evidence.

No. 58
Dr. R. G.
Armour
Cross-
Examina-
tion.
21st May,
1924.

—continued

THURSDAY, MAY 22nd, 1924. 10 a.m.

RECORD

In the
Supreme
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No. 58
Dr. R. G.
Armour
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tion.
22nd May,
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—continued

Cross-Examination of DR. ARMOUR, continued by MR. McCARTHY:

Q.—Now, doctor, have you got in mind the history, that is the medical history, of Mr. E. C. Walker? A.—I think I have it pretty fully.

Q.—You remember that he was under Dr. Hoare's care from 1891 to 1907? A.—Yes, I remember.

Q.—And during that time there had been consultations with Drs. Gallie, Jennings, Johnston, and Hamilton? A.—I don't remember Dr. Johnston, I remember the others.

Q.—Do you know of Dr. Hamilton? A.—Yes, I know of him. 10

Q.—He has a world wide reputation? A.—He wrote a very valuable book on Medical Jurisprudence; and was a Neurologist.

Q.—You have not had an opportunity of conferring with any of these gentlemen who had seen the late Mr. Walker? A.—No.

Q.—You also heard that Dr. Cavan was called in consultation in 1905? A.—At Muskoka.

Q.—Did you take the opportunity of discussing the matter with Dr. Cavan? A.—I have not, sir.

Q.—We have heard that in 1908-09 Dr. DeLaferte was in consultation; and I understand he died last week? A.—Yes.

Q.—You didn't see him in consultation on the case? A.—No. 20

Q.—You heard Dr. Dewar's evidence, and Dr. Hoare's? A.—Yes.

Q.—And you heard that from 1906 to 1913 he was occasionally consulting Dr. Vedder, whom we heard give evidence yesterday? A.—Yes, on his way through New York.

Q.—And Dr. Delafield, and Dr. Brewer were called in consultation there? A.—Yes.

Q.—Do you know of Dr. Delafield? A.—He wrote a book, which is a standard work.

Q.—And I see, from the cheques that have been put in, that Dr. Inglis and Dr. Aaron were apparently in consultation in 1912 and 1913? A.—Yes. 30

Q.—And finally Dr. Shurly took charge from November 1913 to February 1915, and you say you have read his evidence? A.—I have read his evidence, yes.

Q.—Is there any inconsistency in the medical history, or medical evidence from 1891 to 1915? A.—I think not, sir. Mr. Walker had certain illnesses, or certain recurrent attacks of what we might call rather protracted illness, with, however, normal intervals. I believe he was entirely normal in between those attacks.

Q.—Not if Dr. Shurly's evidence is correct? A.—Dr. Shurly was asked to see him at a time when he had had two attacks of influenza, and I don't know how long he might have seen fit to continue the attendance for the after results, the physical weakness. And then I suppose there were occasions in which Mr. Walker's prolapse of the bowel, or the digestive disturbance, might have caused him sufficient discomfort to have required more than one visit. 40

Q.—Possibly you missed the evidence given by Gilbert who said at one time he had to relieve the situation, as far as the bowel was concerned, by means of a tube? A.—Unfortunately he would not say it himself; but isn't that an enema he was giving him?

Q.—I understand not. Would he give an enema to remove the feces with a tube? A.—He would give an enema with a tube.

Q.—That is as he describes it, I understand, he used a tube to relieve the bowel situation? A.—He didn't say it in court, I don't know what he could do by using the rectum tube, it doesn't put the prolapse back.

10 Q.—I don't understand the prolapse was at that time, I understand it was practically complete paralysis of the sphincter? A.—I don't think one should assume that from the prolapse of the rectum.

Q.—I am not speaking of the prolapse of the rectum, but I am speaking of the time when Gilbert attended him? A.—I do not recognize any evidence which indicates paralysis of the rectum.

Q.—If it had to be removed two or three times a day, as I understood Gilbert to say, by means of a tube? A.—You mean if the sphincter were paralyzed?

20 Q.—Yes? A.—Paralysis of the sphincter would allow the feces of the bowels to pass uncontrolled, if there were paralysis of the sphincter the feces would come more readily and wouldn't require the use of a tube.

Q.—It would come more readily, but for the purpose of control, isn't it removed by means of a tube? A.—An enema is given. That is not the only use of an enema.

Q.—Where you have paralysis isn't the feces removed artificially, so as to prevent very disagreeable results? A.—It is a precaution to give an enema early in the morning to clear the bowel; but not two or three times a day.

30 Q.—That must necessarily follow. Did you look over the attendances which Dr. Shurly set forth in his evidence? A.—Yes, they seemed to be a pretty fair number.

Q.—Beginning in November? A.—Wouldn't they work out at about two a week, on a rough average, about 150 a year. It seemed to me it was very, very regular.

Q.—Do you agree, or disagree with his diagnosis? A.—I do not recognize the diagnosis.

Q.—You cannot recognize the diagnosis? A.—There are certain names for diseases, which he has not used.

Q.—As I read his evidence; he diagnosed the case as brain syphilis? A.—He has not used any word to indicate that to me.

40 Q.—Perhaps we will get at it in another way. You heard Dr. Hoare's evidence? A.—Yes.

Q.—There was no doubt as to how he diagnosed the case? A.—He diagnosed it as this infection.

Q.—And treated it accordingly? A.—Yes.

Q.—What do you suggest are the symptoms of brain syphilis? A.—You mean from the evidence that has been brought out?

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Q.—No. Give me the symptoms? A.—That would be a volume in itself.

Q.—Perhaps I can suggest. It doesn't seem to fill a volume here? A.—
I can condense it, in a way.

Q.—Give me what I might call the psychical symptoms? A.—Psychical
symptoms of mental diseases which are essentially due to this infection?

Q.—Yes? A.—And not due to anything else?

Q.—Yes? When you say "nothing else," do you propose to eliminate
arteriosclerosis? A.—No, I think that is where they are putting a little undue
influence on the infection.

Q.—Explain what you mean by that? A.—What I mean to say is that a 10
certain area of the brain is dependent on a certain definite blood supply for its
function, and that blood supply obviously is largely through certain blood ves-
sels.

Q.—Exactly? A.—Now there are a large number of different things
which may obstruct the flow of blood through that vessel.

Q.—Quite so? A.—We can have inflammation of the infection, we can
have a spasm of the vessels, which is very much like the spasm of the vessel in
my leg when I have a cramp, and muscular coating of the vessel wall. And
pressure of a foreign body, one I have in mind is where a bullet lay up against
a certain vessel of the brain without actually having damaged the vessel, but it 20
occluded it, from pressure.

Q.—That is something of the same effect as a tumor or gumma? A.—
Very much. And the natural defects in any one of the three coats of the vessel
wall due to age, and, for the purpose of delicacy, I think one could argue the
whole thing on that, unless there was a particular reason for bringing that out;
that is, that the vessels being diseased may be due to an infinite number of
causes.

Q.—Let us begin at that end: transitory aphasia would be due to some de-
generation, either temporary or otherwise, of a certain portion of the brain?
A.—I wouldn't go so far as to say "degeneration." 30

Q.—What would cause it? A.—Interruption of its function due to the
lowered blood supply.

Q.—Every time that takes place isn't it an injury to the brain? A.—I do
not think, practically speaking, that is the case, I do not think the cutting off of
the blood supply at any one of these intervals is necessarily an injury, there
is a certain amount of blood supply left which will sustain what we may call
miraculous life.

Q.—You are theorizing? A.—No, I am not theorizing, I have made ex-
aminations under the microscope of brains got from people who suffered from 40
this.

Q.—You are assuming there was no cutting off of the blood supply tem-
porarily? A.—I think it is a safe assumption, taking the evidence of his men-
tality which I regard as being of a high order in between the attacks, and sub-
sequent to the apparent cessation of all the aphasic symptoms somewhere be-
tween Dr. Dewar's attendance and Dr. Shurly's.

Q.—Have you given any thought, or paid any attention, to the fact he was
not getting any treatment after Dr. Hoare left off attending him? A.—Yes, I

think that is capable of two interpretations; one is, I would seriously question the existence of this infection at any time. Mr. Walker apparently had a certain amount of reason to think he might have been infected. There was not a test at that time which was available at even well equipped hospitals; at the time of the infection, of course, there were none at all, and even ten years later, in 1910-1911, this test was not readily available, and I think it is a tribute to Dr. Hoare's thoroughness that he should see fit to put him on treatment even though he were not sure of the existence of the infection, but just thought of it as a possibility.

10 Q.—Are your assumptions, ideas, or opinion based on the assumption that Mr. Walker might be mistaken in thinking he had this specific infection? A.—Yes, I think that is very likely.

Q.—You think it is very likely he didn't know he had it? A.—Might not.

Q.—Although you have heard the evidence that he had been treated by doctors Gallie, Johnston, and Jennings for it? A.—It is hard to give a conception of the difficulty of diagnosis in those years, as compared with the comparative ease with which the diagnosis can be made now, with a test which is increasingly reliable. The more skilful the man is who makes the test, and the more accustomed one is to interpret the test, the more reliable it is. During those 20 years one couldn't take chances.

Q.—I want to get the foundation of your opinion, I think it is very important? A.—My idea is this: it is not at all an infrequent experience for a physician to have a man come in and say, "I think possibly I have had this infection and I want you to make absolutely sure." Nowadays you can apply the test, repeat it, and carry out the physical examination in addition, and be reasonably certain. In those days one had to go on their clinical experience, and very often, in question of doubt, such a case was put on intensive treatment, because there was no way of saying positively you have not got it, therefore, you better have the treatment. Now, that is one side of it. The other side, 30 which is quite consistent with the absence of the necessity for further treatment would be that Dr. Hoare treated him very regularly, and what we would call perhaps "intensively," you might sum it up as "efficiently," in those early years. And, even if the infection did exist it seems to me that Mr. Walker had had enough treatment to have had it stamped out.

Q.—Yes, but was not the damage done? A.—Not entirely, not by any means.

Q.—Take the sclerosis? A.—I have in mind at the present time a man that I had under my care at the General Hospital.

Q.—Need we go into other cases? A.—I base my opinion on my personal 40 experience.

Q.—Do not let us get away from the question I first asked you. You think there is a possibility of these five doctors,—Gallie, Johnston, Jennings, Hoare and Hamilton—being mistaken?

MR. HELLMUTH: There is no evidence with respect to all these doctors.

MR. MCCARTHY: Yes, that he had been treated by them.

THE WITNESS: There is no evidence of Dr. Johnston, Dr. Gallie, and Dr. Jennings treating him for this condition, it was in consultation with them.

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Q.—For this thing that he had been treated for in Detroit, by Johnston and Jennings? A.—For certain conditions which may, or may not, have been due to this.

Q.—They treated him on the assumption? A.—I don't know what the treatment was. I am not in a position to say what their conception of the case was.

Q.—They treated him for specific infection.

MR. HELLMUTH: I submit there is no evidence of that. I do not think the details of their treatment was given.

MR. MCCARTHY: I admit the details of their treatment was not given. I 10 say the conference with Hamilton, and Gallie, and the former treatment by Johnston and Jennings, is evidence of what the trouble was.

MR. HELLMUTH: Not evidence of what the treatment was for.

MR. MCCARTHY: Oh, yes, it is the same thing.

MR. RODD: Dr. Johnston's treatment was for nervous trouble.

HIS LORDSHIP: I have it that Dr. Gallie's treatment was for specific infection; Dr. Johnston of Detroit also; and Dr. Hamilton and Dr. McLean. But Dr. Shurly says, it was the logical sequence of what he knew. Dr. Hoare says, "After July 1907, I didn't attend him, I hadn't any opportunity of observ- 20 ing. I gave him the specific treatment of mercury and iodine." That is Gallie, Johnston and Hamilton; I haven't noticed Dr. Jennings.

MR. MCCARTHY: What I want to get at is, you are basing your opinion on the assumption that these gentlemen were all wrong? A.—Oh, no, they were very careful.

Q.—But wrong in their diagnosis? A.—I wouldn't take it on myself to say that.

Q.—If they were right in their diagnosis that he was suffering from specific infection? Doesn't everything that happened subsequently justify their diagnosis at that time? A.—What happened subsequently was that the aphasia completely cleared up. 30

Q.—When? A.—Dr. Shurly never mentioned it, there is not one word of evidence from there on that he had it.

Q.—You don't consider the blanks of the mind as being incompatible with the aphasia being entirely cleared up? A.—I don't think for an instant that Mr. Walker had aphasia such as mentioned in this court-room on the subject, and I have read Dr. Shurly's evidence at least three times from start to finish, and he never for an instant mentions the possibility of it.

Q.—I will refer you to certain portions: "Slow in thinking."? A.—How does he know what rate of thought Mr. Walker had? How can one judge of the rate of thought of another man? 40

Q.—Couldn't you, after attending him for one year? A.—He might have thought very rapidly but spoken slowly.

Q.—That is your explanation? A.—It was his habit to speak slowly in any case.

Q.—Do you say it is impossible to ascertain whether a man is a slow thinker, or not? A.—I wouldn't say his answer to a question was necessarily

indicative of slow thought; he might think twice for once he spoke, and that would take twice as long.

Q.—He says: "I talked as much as I could with him lots of times, he was very much like a vegetable, he would not know much about it, he would talk about the weather or something."? A.—Had Dr. Shurly and Mr. Walker any interests in common?

Q.—I don't know? A.—I don't see evidence of it.

Q.—There is no evidence they hadn't? A.—No, there is no evidence one way or the other.

10 Q.—Do you have to have tastes in common with your patients to ascertain their condition? If so, I will have to change my medical adviser? A.—Don't you find him congenial?

Q.—We have no tastes in common? A.—Perhaps if you had your relations would be different. There are some of my patients with whom I may sit down and talk for the pleasure of talking with them, and others I allow to go as soon as we are through with the medical subject in question. There is a great difference. It is not a business where you always like the man you are having dealings with.

20 Q.—"He would not really know what he was talking about, part of the time"? A.—There has been nothing given in evidence to support it, and Dr. Shurly's evidence is characterized by the the interpretation of signs and symptoms and evidences.

Q.—"Many times in the conversation he was not considered in it because he was just as far away, dazed, and vague, and not interested particularly. Ready to accept a suggestion any minute, and unable to really control his own mental affairs at all"? A.—Rather a reasonable attitude for a patient to take, to accept the suggestion of those looking after him.

Q.—With this high mentality of his? A.—Yes.

30 Q.—"A.—Well, if we asked whether his bowels moved, his wife or the nurse would have to answer it."? A.—It may not have been his fault he didn't answer.

Q.—"A.—The matter of intelligence, the acceptance of a statement, very slow, his mental processes were very slow."? A.—That seems to have been a habit during his life.

Q.—"A.—As far as thinking is concerned. It was all arranged for him by his wife." "A.—Whether he would have something to eat, whether he would have his bowels moved or not; whether he would take some medicine. 'I think this would be good for you,' or 'this would not be good for you.' He would say nothing. He accepted it just like a vegetable accepts a little water"?

40 A.—A man who is ill does very well to leave such details of judgment to those looking after him, rather than try to run his own case.

HIS LORDSHIP: No matter how eminent a physician—when you say, "those looking after him," you mean physician? A.—I was thinking of the patient, who should accept his physician's suggestion, or his wife's suggestion.

Q.—It is immaterial whether it is the physician's, or the wife's, the patient does well to accept their suggestion, if they are reasonably intelligent at all?

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A.—I think his wife would know more about what was good for him, in the matter of diet, than he would, and was more accustomed to caring for his diet, and it would not be unusual for her to say, "I think you better have a certain thing this evening."

Q.—She seems to have been a devoted wife. She seems to have been a little fussy at times? A.—Doesn't that relieve him from some of the stigma of mental degeneration cast on him?

Q.—I was just speaking of what I gathered from the evidence. Apparently he was grateful to her, and I have heard of no resentment, that he was hen-pecked, or anything of that kind? A.—On two occasions he rebuked her for taking up so much of Dr. Dewar's time, another time for having disturbed him so late at night. Mr. Walker seems to have been, on those occasions, pretty alert to his surroundings. 10

MR. MCCARTHY: Disturb whom so late at night? A.—Disturb the man at the gate, and Dr. Dewar who was called.

Q.—Do you mean to tell me that a physician of ordinary intelligence would not be able to form an opinion as to the mental condition of his patient during the continuous attendance, such as Dr. Shurly's? A.—Dr. Shurly saw fit to have consultations, and I think his admission was that his own opinion in itself was not sufficient. 20

Q.—Answer the question? A.—That is an answer.

Q.—You didn't hear the question, or you haven't tried to answer. Do you say that Dr. Shurly, from his attention and attendance, was not able to form an opinion as to this man's mental condition? A.—I do not think I saw evidence that he formed any opinion.

Q.—Do you say he was not in a position to form an opinion as to this man's mental condition? A.—What is Dr. Shurly's specialty?

Q.—Answer the question: was he in a position? A.—I do not want to make any reflections on Dr. Shurly, but I do want to know what his specialty is. 30

Q.—I don't think you will worry him? A.—I don't suppose it would, nevertheless I have reason to believe his specialty took him into other realms of medicine than mental diseases.

Q.—You are introducing something else. If you can answer the question, tell us the answer? A.—I don't know whether Dr. Shurly could or not.

Q.—Could you have formed an opinion of this man's mental condition had you been in attendance? A.—That is my specialty, and

Q.—Could you, or not? A.—Other physicians consider I can, and they bring me into consultation.

Q.—I am asking you, not other physicians; could you form an opinion as to this man's mental condition if you had seen him under the same circumstances as Dr. Shurly's attendance? A.—I have reasonable confidence that I could; I have devoted a good many years' study to it. 40

Q.—Well Dr. Shurly is your senior by many years, I fancy, is he not? A.—Yes, he is.

Q.—And probably his experience is as varied and as wide as yours? A.—Not in mental diseases.

Q.—How do you know? A.—Because I have reason to think he specializes in certain other branches of medicine.

Q.—What about Dr. Hamilton? A.—He has had by far greater experience than I.

Q.—Did you make any enquiries about Dr. Johnston, or Dr. Gallie? A.—No, I don't know of those two doctors, sir.

Q.—There is one thing I want to ask you, about a remark you made a few minutes ago, you spoke of the possibility of the blood stream being lessened by a spasm of the vessels; does that cut off the blood supply? A.—It may entirely or partially.

Q.—You are serious about that, that there may be an entire cutting off of the blood supply by a spasm? A.—I think I can say it can be absolutely.

Q.—I want to ask you another thing. Do you believe that once syphilis is in the system it is ever completely eliminated? A.—I believe absolutely it is.

Q.—Was it ever eliminated in this case? A.—I believe that it was.

Q.—When? A.—Sometime before that blood examination that Dr. Vedder had made, I think probably sometime in 1913.

Q.—Why do you say that? A.—Because, from 1913 on there is no evidence of aphasia.

20 Q.—Unless you can say Dr. Shurly's evidence . . . ? A.—I think, if Dr. Shurly thought there was aphasia, he would have used the word.

Q.—That is your interpretation of his evidence, and what you go on? A.—That is my opinion.

Q.—Because he didn't use the word aphasia, you think aphasia did not exist in that time? A.—I can hardly conceive of a physician looking after a patient who had aphasia, and later on being asked for his conception of the man's mentality, and not using the word, if the condition had existed.

Q.—The Wassermann's test, of course, was not sufficient to enable you to form an opinion? A.—It is contributory evidence.

30 Q.—There was no test of the spinal fluid? A.—Apparently not.

Q.—To go back to my original question: give me the psychical symptoms of cerebral syphilis? A.—Would you name the disease?

Q.—I said cerebral syphilis? A.—That is a general term covering a large number.

Q.—A large number of what? A.—A large number of different diseases.

Q.—Isn't that a specific disease? A.—It is what can be called a generic term for a large number.

40 Q.—I find such difficulty because you and the text-books seem to differ; the text-books seem so clear; perhaps if I might refer to them; they seem so clear on the subject. Speaking of this particular subject, it says psychical symptoms are manifested by mental fatigue. Is that one? A.—Not characteristic of that disease alone.

Q.—Incapacity for work; is that one of the characteristics of this disease? A.—It may, or may not be.

Q.—May it be? A.—It may be.

Q.—Incapacity for work? A.—That is a pretty general term.

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Q.—Undoubtedly. May it be one of the symptoms of this disease? A.—
What kind of work? Mental or physical?

Q.—Mental work? A.—It might be.

Q.—Enfeeblement of intelligence, or general obtuseness? A.—The same
general term; it is possible.

Q.—The patient exhibits a semi-somnolent condition? A.—It is a possi-
bility.

Q.—With lack of power to recall afterwards what has happened? A.—I
think you can take any symptom you like and ascribe it to that disease.

Q.—Is that your answer? A.—Yes.

Q.—Any symptom you like? A.—Any symptom you like.

Q.—I ask you about these particular symptoms? A.—I wouldn't like to
say they are pathognomonic of the disease.

Q.—One of the earliest symptoms is sensory aphasia? A.—Yes, in this
disease as in many others.

Q.—One of the earliest symptoms in this disease is transitory aphasia, as
pointed out by Sharko? A.—Not characteristic of this alone, however.

Q.—I didn't say it was? A.—I don't want the impression to be that it
was.

Q.—I am not asking you to give that impression, but am asking if that is
correct, or not? A.—It is a possibility.

Q.—I put this to you; One of the earliest symptoms is transitory aphasia,
as Sharko has pointed out, do you agree, or disagree? A.—With the qualifica-
tions I have expressed.

Q.—What qualifications have you expressed? A.—Not characteristic of
the disease, and not invariably in the disease.

Q.—I am speaking of one of the earliest symptoms; can you bring your
mind to that expression just for a moment? A.—I would say it exists in a
very small percentage of cases.

Q.—You don't agree that one of the earliest symptoms, as Sharko has
pointed out, is transitory aphasia? A.—Not all cases.

Q.—Of what? A.—Cerebral infection.

Q.—I am afraid I cannot follow your answer—not all cases? A.—Let us
say 99 per cent. of the cases of cerebral infection would run the course from
beginning to end, either to a complete cure, or death, and never show aphasia.
99 per cent. perhaps of all cases.

Q.—99 per cent. of all cases, there is no transitory aphasia at all? A.—
I think that would be a safe estimate.

Q.—Tell me, how does it affect the brain? A.—You may pick any func-
tion of the brain you like.

Q.—I have not asked you to give us a discussion of the functions? A.—
You give a generic term that covers an infinite number of the diseases due to
one infection.

Q.—What disease may be due to this one infection, as far as the brain is
concerned? A.—A mental disease which is due to this infection, and to per-
haps no other cause, is genial paresis, that is a legitimate conclusion in cerebral
infection.

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Q.—Don't you know that paresis is quite distinct from the disease I speak of now? A.—I don't know what disease you speak of now.

Q.—You don't? A.—No, I don't.

Q.—You don't? A.—No, I don't, sir.

Q.—What do you say this man was suffering from? A.—Arteriosclerosis.

Q.—Caused by? A.—I said yesterday, it might be running in the family, or it might be due to this.

10 Q.—Is specific infection one of the causes of arteriosclerosis? A.—I don't think it is as prominent a cause as natural changes; if you take a large number of arteriosclerotic men in the world, a very small minority of them have had such an infection.

Q.—What age are you speaking of? A.—I mentioned cases the other day.

Q.—Will you answer the question? What age were you speaking of? A.—Of the cases showing hypertension it might come at 42 or 43 years of age and be absolutely non-specific.

Q.—Isn't it the origin of the infection? A.—No, I think not. Diabetes is the most common cause, and nephritis is one of the commonest.

20 Q.—This text-book gives infection as one of the causes of arteriosclerosis? A.—One of the causes.

Q.—We have this man who evidently thought he had it, and with his high mentality he is hardly likely to have been mistaken? A.—Oh, yes, his caution would be a better code.

Q.—He had been treated for it by physicians and specialists, and we find him with arteriosclerosis, and yet you rather doubt whether he had the infection or not? A.—I doubt it for the reason that he apparently developed arteriosclerosis in the face of the most intense treatment.

Q.—How do you know? A.—Because Dr. Hoare was giving him treatment.

30 Q.—How do you know when Dr. Hoare began treating him for this? A.—Because he said he started the treatment in 1893.

Q.—Had he not the arteriosclerosis when Dr. Hoare first examined him? A.—I didn't gather that from the evidence.

Q.—That is what he found him suffering from, and one of the symptoms that enabled him to diagnose the disease, I understood him to say? A.—I did not appreciate that Dr. Hoare gave us indications of the disease at that time.

40 Q.—Another one mentioned in the work I have before me, one of the first symptoms may be ushered in by numbness or tingling of the part? A.—Of the face, hands, or feet, sometimes one side, and sometimes another. May I give you my own idea of numbness? If a man came to me complaining only of numbness as a disease, I would think it was pernicious anemia; because, of my own personal experience, numbness would be the cause of that, and that is one of the first diseases I would investigate.

Q.—Numbness may make you think he has a disease of a certain kind, and you experiment to find out what it is? A.—Not experiment.

Q.—What do you mean? A.—Investigate.

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Q.—Are not we just splitting hairs? A.—No, your term “experiment” has rather an invidious meaning when applied to a medical examination.

Q.—Something like your definition of aphasia? A.—It is a legitimate definition.

Q.—I wouldn't have thought so; I am told your definition fits the word “aphemia.”? A.—That is one of the subdivisions.

Q.—Your definition for it would have fitted the word “aphemia.”? A.—My definition is not in the books, I gave it without any assistance.

HIS LORDSHIP: Suddenly called upon? A.—No, my lord, as Mr. McCarthy said, it was perhaps premature for me to have to define it, and at the same time deny that aphasia constituted a disability in Mr. Walker's case. 10

Q.—You had, as it were, to make a choice, doctor, when called on suddenly? A.—Yes, my lord.

HIS LORDSHIP: It shows you should not ask for a volunteered opinion, especially from a person who is going to be a witness, however, I asked him more as a classic scholar than a medical man.

MR. MCCARTHY: Aphasia is the loss of the appropriate use of words, is it not, in some cases? A.—That is incomplete aphasia.

Q.—Complete aphasia would be inability to speak at all? A.—Yes, and to understand. 20

Q.—That is complete aphasia in all its branches? A.—In all its branches.

Q.—Now that is caused, is it not, by the cutting off of the blood supply of the brain? A.—That is one of the causes.

Q.—That is one of the causes? A.—That is one of the causes.

Q.—And arteriosclerosis may contribute to that? A.—You may attribute aphasia to arteriosclerosis, yes.

Q.—In other words, if the arteries are in that condition the supply of blood to the brain is temporarily clogged up, you call it? A.—Occlusion.

Q.—And it will cause aphasia? A.—It will cause it if the appropriate vessel is affected. 30

Q.—If we have as a starting point the specific infection, followed by the arteriosclerosis, and the arteriosclerosis followed by the filling of the particular vessel which feeds the brain, you might get either transitory or complete aphasia? A.—Transitory or permanent, complete or incomplete.

Q.—Transitory or permanent, is not that so? A.—Yes.

Q.—And the evidence of the transitory aphasia would be the defect in speech which might arise as the result of that blocking or clogging and cutting off of the blood supply to the brain? A.—And one other cause which I think ought to be noticed, the lowering of the blood pressure due to the failure of the heart muscle, temporarily or long continued. 40

Q.—Quite so; that is another story. If you get these attacks occurring with more frequency and lasting for a longer time, you get something in the nature of injury to the brain each time it happens? A.—I don't think I would assume that.

Q.—You don't think you would assume that? A.—No, I think it is possible to cut down the blood supply to a certain area of the brain to the degree in

which that portion of the brain will go out of function, but its life is maintained, and it is capable of coming back to its complete function.

Q.—That is perhaps not what I am asking you? A.—I think that is an answer to the question.

Q.—I do not think it is an answer to the question. All you have said is there may be a temporary injury which may be recovered from? A.—Not temporary injury; temporary loss of function.

10 Q.—Each time the brain loses its power to function isn't there a certain amount of degeneration or injury? A.—Theoretically speaking, perhaps so—practically the permanent damage to it need not be appreciable.

HIS LORDSHIP: I know of a man who was drunk at five o'clock every day, and he lived until 95 years of age. Is that what you mean, that a man can go on? A.—Theoretically, that man's brain was not as good as if he had not drunk so freely, but he apparently satisfied himself.

Q.—Suppose he drank Epicure whiskey to that extent, and he became speechless, or, as I have heard, too full for utterance, is that aphasia? A.—No, I don't think that it would be right to call it that, my lord.

20 Q.—Would not intoxication paralyze certain nerves? A.—I would make this distinction, that I tried to establish earlier, there may be difficulty in articulation, a man's speech may become thick, but that is due to poisoning of the nervous system, and lowering the level of his intellect.

Q.—What part of the brain does it affect? A.—One of the lower parts of the brain that is intoxicated.

Q.—The cerebral part? A.—What we call the brain stem, the connection between the brain and the spinal cord, that is where the alcohol acts perhaps most specifically in thickening a man's speech.

30 MR. McCARTHY: What is it that caused death in this case they spoke of, specific infection of the nervous system or of the brain? A.—As a rule, the disease of some other system altogether. One I have in mind at the present time is pneumonemia, and another common one is infection of the genito-urinary tract.

Q.—What causes pneumonemia? A.—General debility.

Q.—Caused by what? A.—Rapid degeneration of the man's vital processes.

Q.—May that be caused by specific infection of the nervous system, or brain system? A.—It may be caused by it, but it is not caused by it in a large number of cases.

40 Q.—There is an instance of that given in this book, where they tell of the picking up of a man in what you call a somnolent or semi-conscious condition, who was taken to the hospital, treated, and finally died of pneumonemia running its natural course? A.—A very common cause, but not necessarily due to infection. Coma may be due to many other things.

Q.—I am speaking of cases due to infection, and especially with specific infection? A.—We can be killed by a thousand things.

Q.—If Drs. Dewar, Hoare and Shurly are correct, then the disease ran its normal course in the case of Mr. Walker? A.—No disease runs its normal course when interrupted by treatment.

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Q.—The treatment was interrupted when Dr. Hoare left him? A.—Yes.

Q.—And after that we find the symptoms gradually increasing? A.—According to some witnesses, and according to other witnesses they were not increasing.

Q.—If I read Dr. Shurly's evidence correctly, he very soon became what he describes as a "vegetable."? A.—I would consider a great deal of that is due to the previous influenza, that is, very shortly after Dr. Hoare was first called in, Mr. Walker had an attack which he describes as "grip"; which I take it means he used it synonymously with the term "influenza," a very prostrating disease.

Q.—Our difference, as far as you and I are concerned, begins and ends here; your interpretation of Dr. Hoare's evidence is quite different from mine? A.—I am not absolutely certain of your interpretation.

Q.—My interpretation of Dr. Hoare's evidence is that after reading Dr. Shurly's evidence, and having in mind the patient's condition when in his hands, that Dr. Shurly's evidence of what he found was the logical sequence of what he had observed when treating the man for 17 or 18 years. What do you say to that? A.—I would be inclined to think that Dr. Hoare's feeling was unduly pessimistic if, going back to the years when he was looking after him, he got a response to his treatment which exceeded his expectations.

Q.—Well, did he? A.—According to the evidence, outside of Dr. Shurly's.

Q.—In what respect? I think the suggestion just now, according to your understanding of Dr. Hoare's evidence, is that the worst years were 1905 and 1906? A.—That is Dr. Hoare's experience.

Q.—Then, what treatment was not having the desired effect? A.—He didn't treat him in 1905 or 1906, but apparently Mr. Walker steadily improved from 1905-06.

Q.—Where do you get that? A.—He has no more attacks, they are not mentioned from Dr. Shurly's time on.

Q.—Dr. Shurly didn't come until 1913? A.—There are no more attacks of the aphasia.

Q.—Where do you get that? A.—No one mentioned them.

Q.—We haven't been able to find a doctor who attended him, except Dr. Dewar? A.—Throughout Dr. Shurly's attendance there is not one example of it.

Q.—There again we differ; I take issue with you; so does Dr. Hoare. You don't think what Dr. Shurly described could be considered as anything in the nature of aphasia? A.—He doesn't indicate it either in word or description.

Q.—You heard the evidence of those who had to do with him during that period, after Dr. Hoare left off, where he would go to sleep in the middle of a conversation, and apparently wouldn't understand what people said to him. Wouldn't that be the result of aphasia? A.—No.

Q.—Or injury to the brain? A.—Not necessarily injury.

Q.—What would cause that? A.—Impaired function, not necessarily injury.

MR. OSLER: I don't remember hearing anybody say that he would go to sleep during a conversation.

MR. McCARTHY: Mr. Robins did.

HIS LORDSHIP: There is no scientific evidence about it.

MR. OSLER: Only the evidence of Mr. Robins.

MR. McCARTHY: I can use Mr. Robins' evidence in cross-examination.

MR. OSLER: But please do not put it as if anybody else said it.

MR. McCARTHY: I did not say that anybody else said it, I said there was evidence to the effect that he would go to sleep in the middle of a conversation, that he would not understand what was said to him, and when some more or less difficult matters were endeavoured to be explained to him by Mr. Robins that he would not understand at the end what was said at the beginning? A.—I don't think he said that absolutely; he said he wouldn't understand, but would have to ask over and over again.

Q.—No; wait a moment! If you are being misled by the evidence, it was the occasion when Mr. Robins was describing what was being done in Washington? A.—About the Pure-Food Act?

Q.—Yes. And he couldn't remember when he got to the end of the conversation what he had said at the beginning? A.—He had to ask over and over again. Mr. Robins, when in the box, said, on two different occasions, Mr. Walker would have difficulty in understanding, and would have to ask over and over again.

Q.—That is in regard to the pure-food matter. He would try to explain a matter which might take some concentration, and he would forget at the end of the story what had taken place at the beginning. Was that nothing more than injury to the functioning part of the brain, or injury to the brain itself? A.—It is possible the problem may have been put to him in a way that was rather tedious.

Q.—Tell me if that is your answer, because I will take it? A.—Take it as a possible explanation.

Q.—If that is your honest answer, as a medical man, on oath, to my question, I will leave it there? A.—Yes, because I don't think . . .

Q.—I will let the Court judge, if you think that is a fair honest answer to the question? A.—I think it is, for the reason I interpret Mr. Robins' conception different to what he does.

Q.—You consider that is an honest answer? A.—I think it is absolutely honest. I think one should take a very wide view of patients' symptoms, and interpret them in different ways until one is certain of the proper footing.

Q.—Having in mind here was a man who had been a friend of Mr. Robins for many years, with a great affection between them, and a business relationship which had existed for a great many years, and Mr. Robins becomes alarmed at the symptoms which I have pointed out, he consults Dr. Hoare about them, and finds them continuing and increasing in degree; and your answer is it may possibly be that it was an uninteresting, or difficult condition, or position, that existed between these two men? A.—For a certain reason.

Q.—Give me that reason? A.—Mr. Robins was asked whether Mr. Walker ever wrote to him, and he said they would write very many letters but none of them were important enough to keep. Now, if Mr. Robins had receiv-

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ed letters from Mr. Walker that were indicative of deterioration of Mr. Walker's mind, when Mr. Robins was conscious of that at the time, surely he would have put those letters away as being important letters, or evidence, as to his mental deterioration, in case Mr. Walker made any mistakes they would be of interest. Those letters were not important enough as indicating mental deterioration.

Q.—Now, look here, Dr. Armour, is that an honest answer to my question?

A.—I submit it as such.

Q.—You know, as a matter of fact, Mr. Ed. Walker never wrote a letter to Mr. Robins after this condition of affairs existed at all? A.—Which condition of affairs? 10

Q.—After 1905? A.—Mr. Robins never said that, he said Mr. Walker never wrote many letters. That is all he said.

Q.—Did he ever say he wrote a letter to anybody? Have you seen a letter of Ed. Walker's since 1905? A.—I have seen it, I don't know the date of it.

Q.—Where is it? A.—I believe it may be in the file, I wouldn't have the slightest idea which, except there is a little short note in his own handwriting.

Q.—Do you know when it was written? A.—I have no idea; I know he was writing in a hurry.

Q.—There has been no letter produced in this case that Mr. Ed. Walker ever wrote? A.—I didn't have any letter of his, no. 20

Q.—Would it be in Mr. McDougall's evidence? A.—That he always gave him instructions as to what would be written.

Q.—And Mr. McDougall did the dictating? A.—Yes, after receiving instructions.

Q.—Having that in mind, do you still consider your answer an honest answer? Had Robins any reason to keep them? A.—If he thought Mr. Walker's mind was deteriorating to that extent.

Q.—Why keep them? A.—Supposing Mr. Walker made a very injudicious deal, due to impaired mentality, and the contract could have been declared void because Mr. Walker's mentality was not equal to it, and Mr. Robins had some of these letters which would indicate that, and which might have been put in as evidence? 30

Q.—Evidence of what? A.—Of his impaired mentality.

Q.—In what case? I do not follow you, it is a most intricate thing? A.—Mr. Robins claims at that time he was concerned

Q.—What time are you speaking of now? A.—From 1905, when he first sent for Dr. Hoare, he is very much concerned about Mr. Walker's mental condition; Mr. Walker is in a position to make colossal deals of one kind and another and might have ruined himself due to his mental deterioration. If Mr. Robins had letters which might, or might not, indicate that, they would be exceedingly important letters. 40

Q.—That is your answer? A.—That is my answer.

Q.—You think Robins would have kept such letters? A.—If important enough.

Q.—For the purpose of deciding what? A.—For the purpose of relieving Mr. Walker of serious loss. He was very much interested in Mr. Walker's career.

Q.—You have no evidence that he got a letter during that period? A.—Yes, Mr. Robins' statement that he never wrote many letters implies he wrote some.

Q.—We have no evidence that Mr. Walker ever wrote a letter to Mr. Robins during that period? A.—Yes, Mr. Robins' statement that he didn't write many.

Q.—During that period, I am speaking of, do not try to get away from it. A.—I think the way the question is framed would indicate that the letters occurred after that, I think the wording of the question would indicate it was
10 after 1905.

Q.—What is the wording of the question you have in mind? A.—It would be very difficult to recall the context of the question.

Q.—You are basing your opinion on the testimony, and I should like to know what the wording of the question was? A.—I don't pretend to remember what the wording of the question was.

Q.—What was there in the wording of the question to indicate that the letters may have been written after 1905? A.—Just the subject matter of his examination, dealing with affairs subsequent to Mr. Walker going to Muskoka.

Q.—You think that is true? A.—I think it is true.

Q.—What Mr. Robins said was that he never knew Ed. Walker to dictate a letter? A.—I am not talking of dictating, but what he wrote.

Q.—You are basing your opinion on this wording, and it is not shown that he ever wrote to Mr. Robins at all? A.—Mr. Robins said he never wrote many letters.

Q.—Did he ever say he wrote to him at all? A.—Yes, because Mr. Robins said he didn't keep any, he didn't consider them important.

Q.—When did he say so; in what period? A.—He didn't specify what period.

Q.—You are putting in the period to suit your convenience?

30 MR. HELLMUTH: That is not fair, to say "You are putting the period to suit your convenience."

HIS LORDSHIP: You can re-examine.

MR. MCCARTHY: Why put in that period? A.—Because you already dealt with the period in which Mr. Walker was at Muskoka.

Q.—I had already dealt? A.—Counsel dealt with the period, it follows a discussion of his visit to Muskoka.

HIS LORDSHIP: Dr. Dewar who was the local physician, and who saw him, says this: "I wouldn't think Mr. Walker would, in 1913, be capable of instigating that will, (Mr. Lash's will of 1914) or carrying it through. Do you
40 agree with that? A.—No, I don't think I do, because it was in 1913 he went abroad, and was able to discuss many questions, he was able to play golf at Dieppe, according to Mrs. Walker's letter, on the way from London to Dinard.

Q.—It is to instigate that will—pointing out it is a long will—or the carrying it through; that is what he says, and I want your opinion? A.—Well, instigate

Q.—That means to give instructions for, and thinking it out and all that?

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A.—That was made rather easier by his will of 1901 which was more or less of a pattern.

Q.—Would it require to be made easier? Was his mental condition such that it would require to have it made easier? A.—I think he showed, subsequent to his trip abroad, after Dr. Dewar had seen him the last time that year—I think he manifested signs of mental activity.

Q.—Sufficient to make a will of 20 pages? A.—Sufficient to make corrections in the previous one.

MR. HELLMUTH: No re-examination.

DR. NELSON H. BEEMER, Sworn. Examined by MR. HELLMUTH: 10

Q.—Dr. Beemer, what is your position medically at present? A.—Medical Superintendent of the Ontario Hospital at Mimico.

Q.—What experience have you had in regard to mental cases, or investigation into the mentality of people? A.—Well, I have been superintendent of that hospital since 1894.

HIS LORDSHIP: I suggest, Mr. Hellmuth, you leave it to him. You know these cases, doctor, you have to tell your experience, while it sometimes sounds immodest, and may be disagreeable, it is part of this game; tell all about yourself and what you have done? A.—I was appointed to the Ontario service in 1878, and was assistant medical officer at the Ontario Hospital at London, from 1878 to 1894, when the government appointed me Superintendent of the hospital at Mimico, at which I have continued. 20

MR. HELLMUTH: So, in all those years, since 1894, you have been the superintendent? A.—1898, I should have said.

Q.—That is, chief medical officer? A.—Yes.

Q.—Then, Dr. Beemer, you have been in court here from the opening of this case, during all the period in which evidence has been given, until the present time? A.—Yes, sir.

Q.—And have heard all the witnesses who have given evidence viva voce, and also heard the evidence taken on commission? A.—Yes. 30

Q.—Have you, from the whole of that evidence, formed an opinion as to the mental competence, or incompetence, of the late Mr. E. C. Walker, at the time in February 1914, when this will was executed? A.—Yes.

Q.—And what is that opinion in regard to the late Mr. Walker's mental competence, or incompetence? A.—I believe he was competent.

Q.—That is, you mean competent to make and understand the will? A.—Yes.

Q.—Will you give me some of the reasons, including, if you can do so, the means or method by which you have arrived at that conclusion? A.—The forming of an opinion as to competency is, to my mind, one of the most difficult undertakings I ever have to perform, and I would like to make it plainer by telling you how I try to do it. I will be very brief, but if a man goes into a physician's office for counsel as to his health, the physician will examine his eyes, ears, nose, throat, lungs, heart, alimentary tract, stomach, liver, kidneys and blad- 40

der. When he reaches an organ which is ill he will interrogate and find if it is the part of the body which is ill. When I have to examine a man's mind it is not a single thing but is composed of faculties, and I try to understand what those faculties are, and the story that each of them tells me, when I interrogate and find it comparatively easy when I have the man or woman in my presence, but it is less easy, it is more difficult, when I have to reach a conclusion formed upon so large an area of testimony as that to which I have listened. I have to take everything into account, both professional and lay evidence, and I have to try to apply all of that to each of these problems about the mental faculties which compose the mind.

For instance, all of our external impressions from the outside world come to us through one of our special senses, vision, or hearing, or taste, or touch, or smell. We get no outside impressions except those sensory impressions; we get any ideas we have through one of those functions, and if any one of those senses rings untrue that is where to start from, because those untrue, perverted or false impressions leave a man with a wrong basis. If a man's vision is not right, I mean to say if he conceives a certain thing that does not exist, it is an hallucination, and that hallucination he has in his mind is the basis of subsequent conditions. That leads him wrong in regard to the other faculties. We call that perception, that is, he receives that perception through one of the senses. That is the first faculty, and perception may come through more than one sense at once. Perceptions are of slight account unless we give the next faculty attention. We may have scores of impressions that we lose track of, and it is the constant attention that is a strain upon everybody, by the registering of our impressions. Business men have to exercise that faculty of attention all the while to everything that comes to their consciousness through one of these sense impressions. And if a man or woman can give the proper attention they will be so registered that they may be recalled, and we call that the faculty of memory. Most people think the memory is the important faculty. It is a very important practical thing but it does not distinguish the mind of man as much as the more important faculty which comes next, that is the reasoning power. Those things which are registered, and can be recalled by memory, are dealt with by the reasoning power. Then there is the mental faculty which finally deals with everything that has come to the consciousness by each of the preceding faculties, making deductions, ordering the life, and directing the whole career, which is called the disposing power. We physicians call that judgment.

I have to use that all the time, and throughout the whole of the testimony to which I have listened, in order to reach a judgment.

Q.—Now, tell me what you find from this testimony, taking it the way you have put it yourself, that leads you to the conclusion that Mr. E. C. Walker, in February of 1914, had that judgment, or disposing power.

HIS LORDSHIP: Or not.

MR. HELLMUTH: Or not. He has said already that he had it.

MR. MCCARTHY: No, he didn't.

MR. HELLMUTH: The first question I put was as to his mental competency.

THE WITNESS: I think he was competent.

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HIS LORDSHIP: Let us understand that.

MR. HELLMUTH: To show I am not at all over-stepping in what I have said, I shall ask you: What is it in the evidence here that has led you to that conclusion, dealing with it in the way you have put it to me now? A.—Taking it altogether, we judge by the man's relationship to his family—his relationship to his friends—his business relationships—and his interest in things outside of what we may call his business relationships, that is, social or public subjects, and we judge from his conduct and conversation, and deportment in every day life.

Q.—Will you apply it to the concrete case we have before us of Mr. E. C. Walker? A.—In his home relationship he seems to have had the affection and devotion of his wife, who constituted his family, and this devotion and attachment she had in an unusual degree, she looked after him all the while, she looked after him in his home life. The relationship between his brothers and himself was always, or rather commonly, that which should exist between a man and his brothers; and the relationship with the friends, the same might be said, he was interested in them, cared for them, and they cared very much for him apparently. And his business relationships were such that he was the president of the company, and was consulted in business matters, and he had a very particular interest in some parts of the business. And there was nothing said in the evidence, as far as I remember, about the inadvisability of him remaining in that important position as president of the company. That shows that his business relationships were those of a normal man. And his deportment, his conversation, his consideration for people, casual people he would meet seem to have been those of an ordinary man, considering all the physical disability connected with the bowel, bladder, and other things, which were the cause of very great discomfort to him. That is the way it seems to me, in brief. 10 20

Q.—What does that point to? A.—Why, it points to competency, it points to the exercising of his disposing power, of his judgment. There were, at the same time, I may say, in the testimony I listened to, no references to delusions, or hallucinations, which would indicate mental illness. And, while there were nervous symptoms, there was no testimony that I can remember which claimed that he suffered from delusions which would interfere with the exercise of his judgment, or hallucinations which would interfere with the exercise of his judgment. 30

Q.—What do you say, as far as your experience goes, as to a man who, so far as his friends or business associates are concerned, had from 1912 to the time of the making of the will in question, and up to the time of his death, made no impression upon them as to any mental deficiency? How would you treat a matter of that kind, if you had such a history? A.—I am afraid I do not quite catch the drift of that. 40

Q.—If the history of Mr. E. C. Walker, from the summer of 1912, up to the time of his death, does not disclose any evidence to any business associate, or friend, that there was anything strange or abnormal in his conduct or speech, how far would that influence you, as a medical expert, in regard to the man not being mentally incompetent? How far would it influence you in coming to

a conclusion, or would it have any influence, that fact? A.—The experience between 1912 and 1914?

Q.—Well, to the time of his death in 1915; assuming that no witness, no associate, no friend—I am not speaking of the physicians—had seen him and met him, had ever noticed anything abnormal, or out of the way; would that have any influence on the business relations, or otherwise? A.—That would confirm it.

Q.—Have you read the evidence of Dr. Shurly? A.—Yes, sir.

10 Q.—What do you say as to that evidence of Dr. Shurly's, as a medical man disclosing any aphasia? What do you say as to that? A.—Without disrespect, it seemed to me that his observations were somewhat vague. I cannot remember whether he said he had aphasia.

Q.—He does not? A.—I do not think he has said so, I do not remember it. I do remember that he said two or three times he had made no diagnosis. I noted especially that he had made no diagnosis, I think he mentions two or three times in his testimony that he had made no diagnosis.

20 Q.—Tell me if the conclusion which you have given me is based on the entire evidence, including Dr. Hoare, and Dr. Dewar whose evidence was taken orally, and Dr. Shurly, as well as Dr. Vedder; are they included? A.—They are all included.

Q.—And the conclusion you have given me as to your opinion in regard to Mr. Walker's capacity to make and understand the will in question is based on that evidence, as well as the great body of the evidence? A.—On the whole thing.

HIS LORDSHIP: I do not understand why Dr. Shurly, who only has to come half a mile by water, did not come here, instead of having the commission evidence. He would hear the evidence given by the other doctors if he were here.

30 MR. MCCARTHY: It is also significant, probably your lordship noticed, that my friend did not examine him, although they took the commission to take the evidence in Detroit, and we had to call Dr. Shurly.

HIS LORDSHIP: Perhaps they knew he was going to call Mr. Walker a vegetable.

MR. FLEMING: I should like to make a statement with reference to Dr. Shurly, my lord, and it is this, that Dr. Shurly took the position that he would not talk to any person, or give any information to anyone.

MR. HELLMUTH: I do not think my learned friend can make a statement of that kind; I think it is very improper.

40 MR. MCCARTHY: His lordship asked the question; surely it is not improper to give an answer.

HIS LORDSHIP: I commented on what seemed strange, it is such a short distance to come. Now Mr. Fleming may say something that I am afraid might influence my mind. I do not want that done.

MR. FLEMING: I just wanted to explain that we made an effort to get him here.

MR. HELLMUTH: I object to that statement.

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HIS LORDSHIP: I do not need it.

MR. FLEMING: We made every effort

MR. HELLMUTH: My friend is going on.

MR. FLEMING: It is a matter of record.

MR. HELLMUTH: Will your lordship note my objection that Mr. Fleming has no right to make any such statement.

MR. FLEMING: We were compelled to take out the commission, and that is a matter of record.

HIS LORDSHIP: I have enough to show that Dr. Shurly didn't want to be bothered making any statement to the lawyers beforehand. 10

MR. FLEMING: We had to get the order from the court in Michigan to compel him to attend and submit to the examination.

MR. HELLMUTH: Your lordship will note there is no evidence of that.

MR. FLEMING: Yes, there is, the record shows it.

HIS LORDSHIP: I will take that statement as being correct.

MR. MCCARTHY: Get the order.

HIS LORDSHIP: I will take Mr. Fleming's statement. I do not want to hear the order.

CROSS-EXAMINED by MR. MCCARTHY: 20

Q.—In the first place, doctor, eliminating the evidence given by the plaintiff in regard to Mr. Walker, what evidence did you hear given by the defendants from which you are entitled to judge Mr. Walker was competent to understand that will at all? A.—I haven't any evidence of mental illness, and, without mental illness, I would expect him to be.

Q.—Well, take the old gentleman Mr. Melchers, the artist, who was in the box yesterday, did you see any signs of mental illness, as far as he was concerned? A.—I made no examination, I made no observation.

Q.—Would you think he would be able to understand this will? A.—From his evidence, yes. 30

Q.—Were you able to understand it? A.—Yes. I am not sure that I could understand all of the details of a will in reference to so much property, but I think I understand that as a very strong will, as a proper will.

Q.—What do you mean by "proper will?" A.—I mean made in a proper way by the instructions of the testator, on his counsel.

Q.—If I hand this will to you, without giving you the benefit of advice of counsel, would you understand all its intricacies? A.—Perhaps not, but I would understand my will, as he understood his will; he was qualified to understand what I am not qualified to understand in that regard.

Q.—In what way do you mean now? A.—Why, a man who has acquired 40 property necessarily considers how he will dispose of it, all his life time, not all his life time, but the latter part, and the conditions of the will. That part of his mental life is always more or less present, I believe, he is thinking of how he will dispose of his property, and a man might retain his disposing power after he has declined in some respects as to his business acumen.

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Q.—What evidence have you got of any business acumen on the part of Mr. E. C. Walker? What evidence did you hear in the witness box? A.—There was the testimony of the bond transaction, which is in the latter part of the testimony, I believe.

Q.—Did you realize the significance of that? A.—I perhaps didn't realize all the difficulties, but there was the impression made upon me.

Q.—That was one of the things that influenced you? A.—It was constant with other things.

Q.—Was that one of the things that influenced you? A.—Yes, everything.

10 Q.—The Delano transaction? A.—I may not have understood the whole of the intricacies of it, but I understand the outcome.

Q.—The outcome may have been because Henry Ford bought some property nearby and, for that reason, the property Mr. Walker bought doubled in value? A.—I did not quite understand that.

Q.—What else led you to think that E. C. Walker had any business acumen at all? A.—He was the president of the company.

Q.—Well, he was the eldest brother? A.—And there was no reference, as far as I saw, or heard in the testimony, of his position being questioned by the brothers, or by their solicitor.

20 Q.—You did hear the evidence that he refused to take a salary after 1910? A.—Yes.

Q.—And yet remained as the president of the company? A.—Yes.

Q.—He was the eldest brother, as you know? A.—Yes.

Q.—And the brothers rather worked together? A.—Yes.

Q.—You also heard the evidence that, up to the time he left, Mr. Robins was really the company? A.—I understood that evidence to be given.

30 Q.—During the time we have evidence of Mr. Walker's connection with the concern, was there anything you heard in the evidence at all that you could call "business acumen?" You will bear in mind, please, doctor, the evidence of the different officers that came from that company and endeavoured to give evidence of his . . . we will say "business acumen."

MR. HELLMUTH: I object to the word "endeavoured" to give evidence.

MR. MCCARTHY: I said "evidence of business acumen."

MR. HELLMUTH: You said "endeavoured to give."

THE WITNESS: The relationship and regard which he maintained in this business, was business acumen, was it not?

MR. MCCARTHY: You mean their affection for him? A.—Their affection and regard for him was good business.

40 Q.—Yes, if you think it was the result of business acumen, I would agree with you, but if it is the result of pleasantness, and allowing things to take their course, I don't think I would? A.—I understood he reviewed with the officers their work, and wanted to know if there was anything new. He was interested in new things, he entered departments and asked if there was anything new. And that would be business acumen.

Q.—The fact that as he is walking in in the morning, and passing Brown, or Isaacs, and saying "Good morning, is there anything new?" you wouldn't

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really call that business acumen? A.—If they were subjects new to that department, it would be a proper subject.

Q.—We did not hear of anybody suggesting anything new to him? A.—No.

Q.—And the suggestion which they made—and I presume my friends put forth their best efforts to get the best evidence as to his business acumen—and the only evidence we have is that in regard to some experiments as to whiskey? A.—Which is said were good.

Q.—But apparently were never put on the market. Wouldn't that strike you as rather extraordinary, in face of the fact they had a world-wide product on the market which at that time was a gold mine, and perhaps still is, that he should be delving into a whiskey which was unmarketable apparently? A.—Except this, if a man has a business in which he prides himself he will be glad to make an advancement, even if it be in reference to a new product, hoping to gain a greater reputation. That is all. I am not sure that was his hope; that appeared to me to be. 10

Q.—The other evidence, as I remember, was about the new form for insurance that one of the officers spoke to him about, because he had taken an interest in the insurance end of the business? A.—Yes, sir.

Q.—Was there anything you heard there that exhibited business acumen of an extraordinary degree? A.—No, not extraordinary degree. 20

Q.—The other gentleman, I think, mentioned the fact that he took an interest in keeping the water buckets filled in the fire department, and seeing that the extinguishers were properly charged; he used to ask about that because he was apparently the Chairman of the Fire Commission? A.—That only demonstrated the acuteness of his observation.

Q.—I don't think anybody said he looked to see if they were filled or not? A.—Pardon me, I do not like to illustrate the point by referring to myself, but as manager of the hospital I am constantly making observations as to points that may seem trivial, but to show the general trend of the interest of the staff in their work; and that I understand was apparently what Mr. Walker did. 30

Q.—That, doctor, you would not put down as business acumen, more than general interest in the undertaking, that you, as the head of the institution, should be watching trivial things? A.—That is my business to watch them.

Q.—You would have someone in the organization who would do that? A.—To attend to that, but I have to supervise that.

Q.—The act of supervision would be more or less—you would hardly call that business acumen? A.—Perhaps not.

Q.—Take the other thing he was interested in, in seeing that the letters should be folded properly, and the stamps put on straight, would that be any indication to you of business acumen? A.—The same class. 40

Q.—As the fire buckets? A.—I should think so.

Q.—Now did you observe clause 5 of the will, for instance, which makes three alternative propositions, or options, to his wife. Did you consider this with the idea of trying to understand it? A.—What I just said about the will would apply to that; I should think that if I had originally made that will, or

something of that kind, and had my counsel there to consult with, I would be able to understand it.

Q.—Would you without your counsel? A.—I think so.

Q.—This particular will? A.—Yes.

Q.—Did you observe the wording of those three options? A.—I read it only once.

Q.—They strike me as complicated? A.—They strike me as being the product of a very astute legal mind.

Q.—I agree? A.—And every man has to expect that in making his will.

10 Q.—I would say the whole will would be properly characterized in the way you say. Now, doctor, I was going to ask you another question. There is no doubt in the world that if you had had the opportunity, in his life time, of examining this man, you would have been in a much better position to form an opinion than what you are here? A.—Very much.

Q.—If you had had the opportunity of hearing Mrs. Walker give evidence, or of consulting with her, as she was apparently his constant companion for many years, and had been in a position to ask her questions, which questions have been left unasked at this trial, you would have been in a better position to form an opinion? A.—If she could afford me any better information than that
20 given by the testimony. I always prefer to see the patient.

Q.—If you had had the opportunity; because I am inclined to agree with you. Dr. Shurly's evidence is perhaps not as well expressed as it might be, he appeared to be an indifferent witness? A.—Vague.

Q.—Naturally he was, because he was being examined by the other side; if you had had the opportunity of a conference with him since you came here you would have been in a better position to form an opinion? A.—That is supposing there had been a proper situation. I couldn't see him since I came here.

Q.—If you had? A.—Yes, if any prior consultation.

30 Q.—If you had had an opportunity of hearing the evidence of Mrs. Walker, if she could have thrown any new light on the situation here, it would have been of assistance to us? A.—Yes.

Q.—Or the nurse who attended him during what turned out to be his last illness, before he left for Washington? A.—A nurse's testimony doesn't always prove very conclusive, but it might have been.

Q.—If you had had the opportunity of having questions asked that nurse, or spoken to him yourself, you could have got information which would have been valuable? A.—I would have tried to.

Q.—You know Dr. Hoare? A.—Oh, yes.

40 Q.—He is a competent physician? A.—Yes, sir, straightforward.

Q.—Have you any doubt as to the result of his accuracy, in his diagnosis of this case? A.—It seemed to me perfectly honest and straightforward.

Q.—I speak more from its correctness? A.—I wouldn't like to question his judgment in the matter.

Q.—He would have a better opportunity of observing the patient than you? A.—Yes.

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Q.—Although his evidence given at this time, many years afterwards, may have left out a great many details you would like to know about, there is no doubt as to his competency to make an examination of that patient at the time?
A.—No.

Q.—Do you know anything about Dr. Shurly at all? A.—I have never seen him, all I know is the evidence which I have read.

Q.—Is his evidence as to the condition of the patient consistent with Dr. Hoare's diagnosis as the result of his treatment, which terminated in 1907? A.—I think Dr. Hoare said that the testimony of Dr. Shurly was acceptable to him; something like that. 10

Q.—And you know Dr. Dewar? A.—Yes, sir.

Q.—He is a competent physician? A.—Yes, sir. I knew both these men in early life, sir.

Q.—Have you any doubt in your mind as to the correctness of their diagnosis? A.—The same observation would apply to Dr. Dewar and Dr. Hoare.

Q.—In regard to Dr. Shurly, he used the expression "vegetable."? A.—Yes.

Q.—It is not scientific, I know? A.—Hardly.

Q.—It does convey a great deal to you, doesn't it? A.—I think it conveys carelessness on his part, that is, he should not have used that term. 20

HIS LORDSHIP: No; as a brother medical man you are rather ashamed of a man using such a term? A.—I wouldn't like to say that; only it is carelessness.

HIS LORDSHIP: He seemed to me to be fooling all through his examination.

MR. MCCARTHY: It is an unusual expression? A.—I am not familiar with the term "vegetable," I have heard the term "lobster."

Q.—I am sure you must have cases of people who are lying in bed in a sort of semi-conscious condition, thinking about nothing, talking about nothing, just breathing, and moving, and that is all? A.—I never thought of applying the term "vegetable" to them. 30

Q.—I cannot say I ever heard a doctor apply it, I have applied it myself, and have heard others apply it? A.—I haven't had the fortune to hear it before.

Q.—Taking the medical evidence, that is, the evidence given on behalf of the plaintiff as a whole, is there anything inconsistent in the conclusions which they came to? A.—Inconsistent in reference to the man's mental state?

Q.—Yes? A.—At the time of their examination, perhaps not; that is, of the plaintiff.

Q.—Have you in your mind that the man suffered from specific infection? A.—I have to accept their testimony. 40

Q.—Would they be in a position to judge, at that time, plus the information which he gave them himself, that he thought he had? A.—He only asked if he had, and he asked for a consultation that he might have it determined.

Q.—Would they be in a position, at that time, to determine whether he had or not? A.—They would give their honest opinion.

Q.—And you have no reason to doubt the accuracy—have you any reason to doubt the accuracy of the opinions which they have arrived at? A.—The only reason is the later application of the blood test which showed the blood to be pure, or free from the infection, which might have been the consequence of treatment. But you understand the application of that, if they had been wrong the blood would have been right when it was examined for the blood test.

Q.—The negative test isn't always accurate? A.—No, it is not infallible.

Q.—They should have made a test of the spinal fluid? A.—Even that might not be final.

10 Q.—Every symptom that has been described can be attributed to the specific infection? A.—And arteriosclerosis.

Q.—And the arteriosclerosis might have been the result of the infection? A.—There is one point which seemed to me to be neglected as a possible explanation of the aphasia, that is, reflex irritation. I do not remember that it was mentioned. It is well known that reflex irritation may cause transitory aphasia; and tapeworm in the bowel; and this prolapsus may have been in the nature of reflex irritation.

Q.—Is not it a fact that specific infection will cause paralysis of the sphincter? A.—I am not quite sure whether it should be called "paralysis of
20 the sphincter."

Q.—What will I call it? A.—It permits the lower part of the bowel to protrude. That is prolapsus.

Q.—I am not speaking of prolapsus, but complete paralysis where a man has lost all control? A.—Oh, yes, if he has lost all control it may be the outcome of the specific illness.

Q.—If Dr. Hoare—he was not asked the question, if I had known I would have asked him, I did not appreciate the significance of it—but if Dr. Hoare says he hadn't aphasia at the time he had prolapsus of the bowel? A.—Dr. Hoare said he was better at times, and worse at times, and Dr. Hoare was
30 principally called to attend the prolapsus symptoms.

Q.—I think you are mixing Dr. Hoare with Dr. Dewar? A.—Yes, sir, Dr. Dewar, that is right.

Q.—It was Dr. Dewar, I think, who was called in on those occasions? A.—Yes, altogether for the prolapsus. Dr. Hoare found it also.

Q.—Quite so? A.—That point, I think, should be remembered; that would be reflex irritation, like dysentery, or diarrhoea, or tapeworm, or something in the intestinal tract that would cause temporary aphasia.

Q.—What would be the treatment for it? A.—Injections in the lower bowel, or it might be the faeces passing that would cause aggravation. The
40 injection treatment would be the right treatment.

Q.—What about an operation? A.—That is a serious matter, that is really a surgical rather than mental question, but it is a proper thing to consider.

Q.—Doctor, what I am trying to get at is this; if your theory or suggestion be correct that the aphasia was the result of the prolapse of the bowel, then shouldn't Dr. Brewer have removed the bowel so as to eliminate that possibility? A.—I think he should. I said that was not emphasized, rather than not referred to.

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Q.—In conclusion, is not every symptom that has been pointed out, and really up to the man's death, consistent with specific infection? A.—Yes, sir.

Q.—My attention has been called to the fact that Dr. Hoare didn't say anything about prolapse in his time at all? A.—I understood he did. I may have mixed the two together.

Q.—I am not sufficiently clear to depend on my own memory? A.—There was a lot of evidence, and I may be wrong.

Q.—I may be wrong too? A.—It was one following the other.

MR. OSLER: That is my case, my lord.

HIS LORDSHIP: Is there any reply?

MR. MCCARTHY: I do not think there is any reply, my lord.

10

(Mr. McCarthy commences his argument, until the adjournment for lunch)

(Court adjourned at 12.45 p.m., until 2 p.m., Thursday, May 22nd, 1924).

AFTERNOON SESSION

(Mr. McCarthy continues his argument).

Arguments
by Counsel

MR. MCCARTHY: If I may digress for a moment, my lord, I have now got the papers in order, as agreed upon by Mr. Foster and Mr. Walker, in refer- 20
ence to the service of notice of trial by mail, as directed by the order.

HIS LORDSHIP: I can take it that counsel agree that everybody has been served who should have been served?

MR. MCCARTHY: Yes, my lord. I understand Mr. Walker has satisfied himself as to that.

(Mr. Osler asks that Mr. Fleming file the Order Mr. McCarthy said was issued by the Court in Michigan).

(Argument by Mr. Fleming at 3.10 p.m.)

(Argument by Mr. Osler at 3.30 p.m.)

(Argument by Mr. Rodd at 5.15 p.m.)

(Court adjourned at 5.50 p.m., Thursday, May 22nd, 1924, until Friday, May 23rd, 1924, at 10 a.m.)

30

FRIDAY, MAY 23rd, 1924. 10 a.m.

(Argument continued by Mr. Rodd).

(Argument by Mr. Hellmuth at 10.50 a.m.)

(Argument by Mr. Saunders at 11.25 a.m.)

MR. FLEMING: I am under this difficulty, Mr. McCarthy was called to Toronto last night by the Attorney General, and I shall have to claim the indulgence of your lordship in this way, before Mr. McCarthy left last evening he 40

was good enough to anticipate what my learned friends might say in reply and he has prepared the argument in reply which has been typed. As my throat is hoarse I shall ask Mr. Foster to read Mr. McCarthy's argument, and I should like to make some comments afterwards.

(Mr. Foster reads Mr. McCarthy's argument in reply).

(Argument by Mr. Fleming, in reply, at 12.10 p.m.)

10 (Mr. Fleming states that Mr. Millar was advising them with regard to the law in the state of Michigan, and Mr. Osler says, "My learned friend should not go into this, it is the first time it has been mentioned in this trial. As the record stands, the laws of the state of Michigan are exactly the same as the laws of Ontario, as no difference has been proved."

HIS LORDSHIP: It is not strictly in reply.

(Objection is taken by Mr. Osler and by Mr. Hellmuth to cases being quoted in reply).

(Court adjourned at 12.45 until 2 p.m.)

AFTERNOON SESSION

20 MR. FLEMING: There is just one note I want to go on the record in reference to the question that arose yesterday when Mr. Osler asked me to produce to him evidence that it was in consequence of an order of the court in Detroit that Dr. Shurly attended for his examination; I think I have satisfied Mr. Osler as to that.

MR. OSLER: My learned friend produced the subpoena.

MR. FLEMING: And order of the court.

MR. OSLER: I suppose you did, you showed me a file with papers attached.

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HIS LORDSHIP: This action has consumed a very long time, some eight days has been taken in trying it, but it does not present difficult features, and, while the importance of the case, and the amount involved, might lead it to be supposed that I would take the case into consideration, it is not necessary, I find, to do so. I think it better to express my opinion now about the case when the evidence is fresh in my mind rather than go exhaustively into a large mass of exhibits and evidence taken on commission. Therefore, I propose to deal with it now.

The action is to set aside and declare invalid the probate of the will of the late Edward Chandler Walker of Walkerville, in the county of Essex, and to declare a previous will made by him to be his true will, which provided for the appointment of the plaintiff, William Robins, as Executor, he being the only surviving executor. 10

Mr. Robins, who lives in England, used to live in Walkerville, and he was employed in the Walkerville Distillery, known as Hiram Walker & Sons, Limited. He was there from 1888, and occupied a high official position, and executive position, with the Distillery Company, and, from all we can see, rendered a great service financially and otherwise to the proprietors and shareholders of the company, who were almost entirely composed of members of the Walker family, descendants of the late Hiram Walker. 20

Mr. Robins, having been made a beneficiary and legatee under the will of the late E. C. Walker, dated the 21st of December, 1901, essays in this action to set aside the later will, which would have the effect of bringing into force the earlier will.

The plaintiff disclaims, and his counsel disclaims for him, any suggestion that the late E. C. Walker had not the right to change his will, or to make those beneficiaries whomever he liked; but, at the same time, it is quite clear that the effect of his success in this action would be to establish the will in which he was made the beneficiary of 1,000 shares in the Walker industry. His task is a difficult one, as he and his counsel admit, because of the long time which has elapsed since the making of the will, and the death of E. C. Walker in March, 1915. Yet he undertakes this task with the energy and industry which his counsel say he possesses, and which I think indeed is the fact; and he does it no doubt hoping to benefit under the first will in which he was a legatee; and he does it despite the fact that in doing so it must cause him great pain to bring, as following that effort, his life-long friend into a position, and his memory into a position, which is derogatory to him. Yet, he does it, and he is entitled to have his rights, such as they are, determined by the court. 30

Mr. Walker, the testator, it is admitted by everybody, was a man of exceptionally high character. Mr. Robins, the plaintiff, who says he was his friend, and was more closely connected with him than his own brothers, describes E. C. Walker as a princely man, kind, and gentle. Others say that E. C. Walker was a man refined in taste, careful in dress, versed in art as far as painting goes, and fond of his employees. Dr. Dewar, who was called by the plaintiff, says that he was a polished gentleman; others seem to agree that he was slow in 40

manner, deliberate, of quiet demeanour. He was liked, he never spoke a sharp word to the servants, he was generous, but not a spendthrift, he had strong convictions, he wanted to prove proposals made to him in order to see whether the judgment of the person making them was correct in his opinion. He was strict as to the cost of his purchases; animated and smiling when conversing with his friends; and, after having made his slow decision, he would not alter it. These seem to have been the characteristics of the testator.

10 Having submitted his will to probate, his executors are entitled to hold that this is the correct will, and the only will of E. C. Walker. The will, having been admitted to probate, and being attacked by the plaintiff, the plaintiff must bear the onus of proving his case. It is claimed by counsel for the plaintiff that having adduced in evidence that which would throw doubt upon E. C. Walker's mental capacity, therefore then and there the onus is shifted. This contention I do not altogether agree with, and I think that until the plaintiff can show the court something which beyond peradventure creates a doubt as to the capacity, or as to the presence of undue influence which would influence the making of the will, that the onus rests upon him. I think that onus rested upon the plaintiff until the completion of the trial of this action.

20 There have been a number of extraneous matters presented, and evidence adduced during the course of the evidence, which I was unable to stop at the time, although I thought they were beyond the question at issue. The issue presented by the pleadings is that Mr. E. C. Walker was incapable, owing to mental incapacity, of making his will at the time he did. It is also alleged that he was influenced in the making of his will by the undue solicitation of others. This being left at large, it was impossible to confine the case within strict limits, and the consequence is that the evidence has been extended more than I wished for, but there was no help for it. I have, therefore, allowed the fullest liberty to both parties to pursue their case according to the pleadings as they stood. It seems that particulars were applied for and were refused by an Order of the

30 Court, which I must take to be a correct order. In a case like this there should be some limitation made before the trial as to the evidence that can be adduced.

Now, Mr. Walker having this character, which I find he had, altered his bounty, and the objects of it, in a will made on the 27th of February, 1914, and while I do not think it necessary to make a decision with respect to some of the issues attempted to be made, and which are outside the question of mental incapacity and undue influence, yet it seems proper that I should express myself on the facts.

40 The first thing, therefore, that occurs to me is as to the circumstances under which he made his will on the 27th of February, 1914. Those circumstances were different from those that existed at the time and which surrounded and induced him to make the provisions of the former will.

In passing, it might be said that some of these circumstances were that Mr. Robins, to whom E. C. Walker no doubt felt attached, and apparently grateful to for having increased the financial stability of the Walker business by his efforts, had, in 1914, left the business; he was still in Walkerville and did not leave, I think, until some months afterwards, but he had become disassociated with a position which he no doubt occupied in Mr. Walker's mind when he

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made his former will. In addition to that, Mr. Robins, by a series of letters in 1912, sought to have some remuneration bestowed on him in addition to his fixed remuneration of salary and commission, and in these letters Mr. Robins used language which might have the effect, and probably did have the effect, of changing Mr. Walker's good opinion of him which had formerly existed. Mr. Robins makes no apology for these letters, he says they expressed his mind, in fact, he emphatically says in the witness box that anything he said in these letters was true, just as if he was making the statement under oath. That is a courageous thing to do, and it shows Mr. Robins to be a man of determination and character. But the writing of these letters of enormous length, and mostly written to Z. A. Lash, an eminent counsel in Ontario, puts him in a different position than what he has to assume in this trial. I do not wish to characterize the letters as I think they might be characterized, but I merely allude to a letter in the correspondence from Mr. Lash to Mr. Robins, he being a friend of Mr. Lash, as Mr. Lash was of the Walkers, and I will leave it at that. It seems to me to be quite clear that these letters contained statements and suggestions which were not those of a friend of the Walkers, but were those of somebody who was hostile to their interests. Mr. Robins says that this correspondence was composed of communications which composed largely the fight of his life—as he expresses it—and he no doubt hoped to get extra remuneration by the expressions used in those letters. It seems to me, however, that he took a great risk, and if he could have foreseen this litigation he would not have sent letters of the character which he did. It is unbelievable that Mr. Lash would be the sole repository of the statements made in those letters, and it is highly likely that Mr. Lash would discuss these letters with the three Walker brothers, and these letters must necessarily have affected their minds adversely to Mr. Robins; it is likely that they affected the mind of the late E. C. Walker the testator, whose will is attacked in this action, and would be sufficient ground for him to change the provisions of his former will. In addition to that, however, there is the evidence that he did change, or attempt to change, his will by instructing a change to be made in the provisions of the will, because in December, 1913, he instructed Mr. Coburn, who had been largely associated with the Walkers as their legal advisor in Walkerville, to prepare a codicil in which he did, by the terms of it, make the same change as he made in his subsequent will of February the 27th, 1914, because in that codicil he cuts out the legacy of the stock, the par value of which was \$100,000. It is true that the late E. C. Walker did not execute that codicil, therefore, it is not before the court as a completed document. But there is evidence that those were his instructions, and the codicil, therefore, showed his mind at the time of its date, which was sometime in December, although the precise date is not given.

At that time Mr. Walker told Mr. Coburn that he did not propose to sign a codicil then because he was going to make a new will altogether, and, as only a few weeks elapsed since the drawing of that codicil and the actual making of the new will, I assume that was the result of his cogitation after giving instructions for the drawing of the codicil. So the reasons must have been the same in December as they were at the end of February, for making the change in his will.

In addition to that, there was the fact that in 1901 the financial position of the Walker Distillery was not by any means the same as it was 13 years afterwards; it was doubtful whether there would be a permanent dividend, and it was doubtful as to what would be the size of the dividend; and the making of the bequest of 1,000 shares in 1901 must have been vastly different, if we can judge by the figures given here as to the progress of the company, than it was in 1914.

In addition to that, there was the dispute between the Walker brothers and Mr. Robins as to the extra remuneration, and which was settled in 1912 when
10 Mr. Robins left their service.

The result of that settlement shows that Mr. Robins got more from the Walkers than they thought at the time the stock was worth, or as they were entitled to believe by indications in other directions, and it is likely that they thought, although there is no direct evidence of it, they would secure a settlement which they all desired, because they were not quarrelsome, but righteous men, and it is likely that they thought they had given him at least \$50,000.00 more than they were willing to give.

So, having done that in 1912, there was nothing more natural, Mr. Robins having left their service, and having suggested these things in these letters,
20 which must have given offence to them all, although they may not have expressed it, being quiet men, as far as E. C. Walker goes, and apparently J. Harrington Walker,—I do not know about Frank Walker—than they should feel they had amply recompensed Mr. Robins for the stock that had been given to him in consideration of these extra services. The amount at one time was \$25,000.00, and \$75,000.00 at another, that is, the par value of the stock.

For these reasons why should there not be a change in that will? But, of course, the case does not depend upon that entirely, nor does it depend upon the fact that the Walker brothers seemed to have come to the conclusion—one of those slow deliberate conclusions—that Mr. Robins, having separated from
30 them, having made a pretty definite attempt to secure the support of two of the brothers against the third, and having come to the conclusion that they preferred the friendship and affection of the other brother, rather than any regard for Mr. Robins' feelings, or for the value of his service, that that was another reason for not bringing on trouble with their brother Frank. These things must have had an effect upon the mind of the testator, who had a mind such as I described a few minutes ago.

Then there was the letter written by J. Harrington Walker—and when I speak of the letters of one, I am inclined to speak of them as representing the feelings of all on account of the close relationship and confidential manner of
40 living that these brothers had with each other. That letter is dated August 20th, 1912, in which it is, it seems to me, clearly disclosed that he had not still the feeling for Mr. Robins which he formerly had for him when J. Harrington Walker was a younger man. And I think it is highly likely that E. C. Walker would approve of the letter which J. Harrington Walker wrote at that time.

Then, Mr. Robins made an effort to buy back the stock which he had sold, at \$175.00, stock which he had received \$300.00 for. That is not a likely thing to induce a feeling of high favour for the person making the effort. If Mr.

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Robins was only willing to give \$175.00, coupled with his continued interest, they may have looked on that with disfavour also. Altogether, the circumstances combined to make Mr. Robins a very different man in the opinion of this testator, and his brothers, than what he had formerly enjoyed.

Mr. Robins, in presenting his case here, made some very robust statements as to his value to the firm, and, from a business standpoint, that is not a bad trait, but it does seem to me that his very high opinion of his services as expressed in the way in which he did, making him the king of the institution, to the disparagement of the brothers, permitting, according to Mr. Robins, the brothers to go abroad when they felt inclined and leaving to him the management of the business, which I am glad to say he did with great efficiency; nevertheless, no matter how indifferent a man may be to his business, no matter how little time he gives to it, scarcely any man in business likes to be disparaged, and when disparagement comes it is highly likely that it will produce a feeling of dislike and resentment. All these things combine to make it likely that the testator would change his will. 10

Now, in these will cases, if there is a sudden change, it produces a feeling of shock in the mind of the court, when such a change could not have been made except by undue influence or mental incapacity, and in such cases the court scrutinizes the matter very closely to see whether the will so changed was the real will of the testator. But, in this case, with the facts that have been brought out before me, I do not deem it necessary to enquire very closely into that feature of the case, because I think that the course Mr. Robins took in striving for more remuneration was inconsistent with the position he now seeks to enjoy as the valued friend of the testator. 20

Now we come down to the real issue in this case, as to whether the testator had a mind capable of disposing of his property, as showing his will, and not that of others. A stranger coming into this court-room at the time when the health of the late E. C. Walker was being discussed, would wonder at so much evidence being admitted as to the physical troubles of Mr. E. C. Walker. I felt I could not refuse to accept that evidence, although it did not seem to me apt, because it was stated that it would lead up to his mental condition and affect it. But the most of the evidence adduced here, the medical and scientific evidence, dealt with the physical troubles of a man who was by no means strong. We have been wearied by accounts of influenza, and prolapse of the large bowel, which is not a painful condition although very inconvenient and nerve irritating, and which might bring on that aphasia and intermittent aphasia. None of those things can, in any way, be said definitely to produce the condition of mind which renders it infirm so as to take away the capacity to will. 30

The further comment was made that E. C. Walker, the testator, had been so unfortunate in his youth as to acquire what is called a specific infection, which has more to do perhaps with the state of mind latterly. I wish this could have been avoided, and I am sure the plaintiff and his counsel were by no means willing to advance this, because it might reflect on these people, and upon the character of a man who by everybody is said to have been gentle, kindly and generous. He was generous to this present plaintiff. This evidence has been given, and it has to be dealt with. I am by no means convinced that this infec- 40

tion was not removed at the time of the execution of the will. Dr. Hoare says that while it is a serious thing, yet it may be arrested.

10 Mr. Walker, in his nervous state, which might be called hypochondriacal, when in New York submitted to a test with respect to this infection, he having got into his mind that he was troubled with this infection. It was found that the result of the test was negative. It may be said that one test is not enough, but that seemed to satisfy the doctor who was then called in, and who was afterwards called in many times to see Mr. Walker. Dr. Armour, who impresses me as a man of learning, who gave his evidence in a very frank manner, emphatic at times, perhaps more than one would say was expedient in a scientific witness, —but we cannot always dictate to a scientific witness as to exactly how he will give his evidence—he gave his evidence in a way which showed he has made a profound study of mental and neurotic diseases, and he has given it as his opinion that this trouble did not exist so that it affected the mind of Mr. Walker when he made his will. Dr. Armour could not say positively because he never saw Mr. Walker, but, judging from the evidence given, and after a scrutiny of the evidence given by the plaintiff's medical men, he gives that as his opinion, and I am impressed by it, although it is not essential that I should believe or disbelieve it.

20 I wish to point out that the evidence in this case has impressed me favourably, on both sides. I do not believe that there ever was a case tried where a more respectable body of witnesses appeared in court. I do not intend to go over the evidence in detail, though I have it clear in my mind, both as to the appearance and demeanour of the witnesses, and what they said; I shall not deal with the vital points of their evidence because it has all been taken down and it can be treated in a higher place, if this case goes further, just as well as if I expressed my opinion.

30 There was no contradiction in the facts of the case, there was no discrepancy which would need me to give my opinion as to the comparative truth of different witnesses, and another court can come to a conclusion upon their evidence the same as if I had stated my conclusion. I simply say that as a result of the evidence given as to the facts, first, on the part of the plaintiff by bringing here the house-servants, body-servants of the late E. C. Walker, by the evidence given by Mr. Robins as to what he found in 1904-05, in which he states there was a falling off in the physical and mental health of E. C. Walker, and the reasons he gave for that. The evidence of the different employees of the Walker establishment is that of witnesses who saw the most of Mr. E. C. Walker in his lifetime. As to that evidence there is nothing I can criticize, they impressed me as in no way trying to make a case for one side or the other, but gave their recollections of the facts, which occurred ten or twelve years ago, as best they remembered them. I think, on the whole, there was a great deal of creditable evidence given, and I cannot remember any witness who spoke as to the facts who might be what is called a light witness. I have no adverse comment to make upon their evidence.

40 The result of this evidence pieced together, dovetailed together, combined and considered as a whole, does not make me think that there was anything

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which would affect the mind, or which would show the incapacity, of the late E. C. Walker to make his will when he did.

It is almost inconceivable that a practical man like General Andre Brewster, who has come up in the American Army and now arrived at the position of commanding the Corps of an area, which is a very large area, who was, therefore, to be trusted by his superiors, who frequently met E. C. Walker, and states that he was a man of rational mind, is not to be believed, as it is quite obvious that he is telling the truth. General Brewster is a brother-in-law, and says that the suggestion made now, that the man in whose house he has stayed on many occasions was a man of mental incapacity, is very puzzling to him—or he used words to that effect. General Brewster saw E. C. Walker, rode with him, walked with him, stayed in his house, and had that intimacy which would bring to his mind any defects such as mentioned. And there are other witnesses of the same kind. It is true that the witnesses differ in small regard as to the existence of that aphasic condition which made Mr. Walker at times stop in the middle of a sentence, or use the wrong word, or be so deliberate as to almost think he was incapable of speech. I do not place any importance upon that. It is true that this aphasic or aphemic condition existed at times, I think ten times in two years, as is said by his own physician Dr. Hoare, who does not say that the effect of that aphasic or aphemic condition would incapacitate him from making his will when he knew him and during his treatment in 1907.

Now, it is clear to me that he threw off some of the infection, or affection, either, which he had in the earlier time of the 1900's; he was really a better man, except perhaps for the arterio-sclerosis effects, after that, and after Dr. Hoare's period of attendance, than he was before. It is true he was not an active man, he was a valetudinarian, he liked to indulge his artistic tastes, and at the same time he had other diversions, he rode horse-back, he was an expert billiard player, which he kept up, he discussed the question and reversed the decision not to fit out the steam yacht in one year, which he did himself with the proviso of the steward, who seems a bit of a mariner as well, and used the yacht to travel in the calmer waters of the Detroit river and Lake St. Clair.

All these things, and many others which I will not take time to develop, show me that he did many things after and which he probably would not have felt like doing in the time of Dr. Hoare's attendance.

Then, if that is so, the attack on this will fails. I realize the difficulty of getting evidence by the plaintiff, but he has done so most assiduously, he has even found house-servants who were in the employ of the late E. C. Walker, and brought them here to testify on his own behalf. That must have been a matter of considerable difficulty and persuasion. While I realize the plaintiff's difficulty, that is not for the court to consider. The plaintiff must have known the difficulty he would have, when he commenced this litigation, and, no doubt, being a prudent man, he had an advisor. But the plaintiff has not been able to make a case, in fact, his evidence falls short in a marked degree of any case that I am aware of where it has been attempted to show mental incapacity.

Then, with regard to the facts brought out about undue influence, which are said to have made this man's will for him instead of allowing him to do it himself; I suppose I had better comment upon that, although it is not essential.

Mr. McCarthy, leading counsel for the plaintiff, in opening his address frankly and candidly said, as an eminent and experienced counsel would do, that he had no direct evidence of undue influence, and he could only argue that from the exterior facts. Well, he was right in saying so, and there is nothing left but to urge that the counsel employed to draw the will must have influenced this will. for what reason it is not suggested or shown, except that Mr. Z. A. Lash, who enjoyed a high position among the legal practitioners of Ontario for many years, who was Deputy Minister of Justice, a Bencher of the Law Society, and an Examiner of the Law Society, had some reason for doing this, and that

10 reason was used in favour of the residuary legatees Frank Walker and J. Harrington Walker. Well, I am not here to guess or make wild inferences, and I do not take that inference. I think, on the contrary, that the position of Mr. Lash is unattackable. Mr. E. C. Walker told Mr. Coburn that he was going to make another will; he sends for Mr. Lash, in what way we do not know, but it is immaterial. Mr. Lash arrives and spends part of two days in Walkerville. He has a well-to-do client and he knows that there will be no question about his remuneration, he is a faithful solicitor, and, having got the ideas of Mr. E. C. Walker, he proceeds to have the will drawn up. Now, it is obvious to me, in view of this, Mr. Lash took the old will of 1901 and went over it with Mr.

20 Walker twice, not once, that day when Mr. Walker attended at his office. Mr. Walker must have given the suggestions which appear in the old will written on the margin of it, and attached to it by pins, which was the result of that interview.

Now, the fact that Mr. Walker advised Mr. Lash that he was going to make a new will, and that Mr. Lash had this interview apparently by arrangement, and that afterwards Mr. Lash sent to Mr. Walker a copy of some of the main clauses, but leaving the purely legally expressed clauses to Mr. Lash, shows that Mr. Lash had not the slightest doubt that he was dealing with a man who was mentally capable of making his will.

30 Then the will arrives, and Mr. Walker is expecting it, and gets his brother J. Harrington Walker to have witnesses brought. We do not know if the names of the two witnesses, Mr. McDougall and Mr. Daniels, were mentioned, but it is highly likely that he did because they are men he knew, and were men who would be there if the will had to be proved. Mr. McDougall and Mr. Daniels go up to Mr. Walker's home, and he is there apparently to have his will signed in their presence, with the usual formality to make the document complete.

40 Now, the suggestion has been made that because Mr. J. Harrington Walker got these two witnesses to attend, therefore he was interested in the making of the will, and making the changes that were made. That is a wild suggestion, and I cannot accept such a suggestion for a moment. This was done in the ordinary course of business, and there is no suggestion that these brothers influenced this man at all; there is no evidence that his wife influenced him, although that was the suggestion at the early part of the trial. It was stated in evidence that Mrs. Walker might try to upset the will unless she was given further provision.

The fact that Mr. J. Harrington Walker drew the cheque in payment of Mr. Lash's account for the drawing of the will is not significant, because he was

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given power of attorney drawn by Mr. Coburn entitling him to draw this and any other cheques as attorney for his brother. Mr. Lash's bill was \$500.00 for drawing this millionaire's will, and it is absurd to suggest that J. Harrington Walker would want to keep it from his brother. \$500.00 is not an improper charge, in fact, nowadays a millionaire thinks nothing of paying a vastly larger sum for a carefully drawn will, because that means the result of years and years of study of the very thing which is incorporated in the instrument.

Then with regard to the medical evidence. While it is true that the two doctors, Dr. Hoare and Dr. Dewar, who lived in this vicinity, saw the late E. C. Walker and thought that the aphasia would indicate testamentary incapacity, yet it must be noted that the court cannot accept that evidence unless it is convincing. These two doctors were not called in for the purpose of treating, and did not think they had to treat, this mental trouble. While they saw those manifestations, and we must believe them, they do not say that aphasia, such as they mention, alone, was caused by the infection which he had, nor do they say that some other causes might not have been for it. 10

Dr. Dewar says, and he is a very capable physician, that he was not called in for that purpose at all, he says he took the history not from his own observations but from the predecessor who had attended Mr. Walker four or five years before. Dr. Dewar's treatment was confined to the relief of the intestinal trouble, although it was not necessarily a treatment to cure it. And that is apparently all he had in his mind. Dr. Dewar says that he does not think, at that time, Mr. Walker would be capable of understanding a will such as this. He does not say that condition existed in 1914, and, of course, he does not know whether or not Mr. Walker was capable of understanding the will of 1914, because the last time he saw him was in August of the year before. 20

Dr. Hoare had not treated Mr. Walker for some seven years, so it would be very unsafe, in fact, improper, for the court to base its opinion upon that evidence of those doctors as to the mental condition not anywhere near the approximate time of the making of the will. 30

Then there is the evidence of Dr. Shurly of Detroit, who is said to be an eminent man in his profession, but his evidence does not show that eminence, he is frivolous, in his answers he makes an extravagant statement which is different from that made by scientific men in discussions of this kind. He has described the late E. C. Walker as a "vegetable"; that he could merely move, and absorb food as a vegetable does moisture. And he said that Mr. Walker was like a child in the hands of his wife. Those are rash statements and are not worthy of a doctor of his eminence. I do not think he himself thought he was at that examination for any serious purpose. He does not give scientific evidence, as pointed out by Dr. Armour, such as should be expected of him. I do not think his mind was really upon the examination, as indicated by the answers which he gave. So I am not inclined to give much credit to what he says about the mental capacity of Mr. E. C. Walker. 40

We have the evidence of one doctor who attended Mr. Walker personally, that is Dr. Vedder, who, it is true, was not chosen because of any special reputation he had, but he was a practical physician, a house physician in the Netherlands Hotel of New York, and he certainly did not see any evidence of mental

incapacity. Dr. Vedder saw Mr. Walker very shortly before the making of the other will.

Then as to the evidence given by Dr. Armour, and Dr. Beemer, who gave their opinion, as they are entitled to do, by listening to and considering the other evidence given from the witness box, and I do not think their evidence is to be diminished in value by the fact that they did not see Mr. Walker. Neither of them thought, from what they could hear of the symptoms and the actions of the testator, that he was incapable of making this will.

10 Then, referring for a moment to the alleged evidence of Mrs. Walker that her husband was incapable of making a will,—for whatever worth it has—and that she had threatened the residuary legatees that unless they would give her more money she would break the will. Mrs. Walker denies this, and she denies that she had such a quarrel with Mr. Frank Walker that she turned him out of the house. She says that was an entirely different thing. Mr. Frank Walker seems to have been an impetuous man, and he may have said something to anger her, in the same way as he had been angered by the conduct of Mr. Robins and would say things to Mr. Robins which he could not brook, and Mr. Frank Walker would apologize afterwards. Well, that is evidence of a decent man, if, when he says something that gives offence, he will apologize after-
20 wards. That is apparently what Mr. Frank Walker did.

Mr. Robins made trouble among the brothers, and it was decided that he should leave. Mrs. Walker claims that she did not say, or did not mean to convey the impression in the interview in the Hyde Park Hotel in London, in her conversation with Mr. Robins, as Mr. Robins has contended. It was at that interview that Mr. Robins got hold of the idea that he was made a legatee in the earlier will, and that apparently was the motive which induced him to seek this prize of \$400,000.00 or \$500,000.00 which is involved in this action. These things would be present in his mind, but, in view of the contradictions, I do not pay much attention to them.

30 But I think it is highly important for me to recognize that in the document of settlement between the two brothers and their sister-in-law, by which they gave her more money, they do not attempt to ask her to give them a quit claim. That is a binding instrument on them to give her an income of \$75,000.00, instead of a much less sum given by the will. There is no provision made to prevent her seeking from them more money, and there is nothing stating that she will not give them further trouble, therefore, the instrument differs from the ordinary settlement of a claim; is was more a settlement made by chivalrous gentlemen to put her in a position that she could have as much as she had before. They had a very large income themselves and they were willing to share it to
40 that extent with her to make her happy, and leave her free from any feeling that she was going to be cribbed in connection with her income. So I do not see that that affects the case, even supposing that she was an ambitious woman and felt dissatisfied, and was wondering how it was that Edward had given her so little of his wealth. Those things occur after wills are read, but in the end, as a rule, common sense prevails, and even if she had thought in the early days, even if she had got an agreement in the meantime, that he was not capable of making his will, that is totally inconsistent with all the rest of the evidence as

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to her relations with him. For instance, take the letter which she wrote asking Mr. Robins to give less work to her husband; how could a woman write that letter imploring that he should be relieved of certain duties, and feel that he was a man of infirm mind, or incapable of making his will? It is impossible. The letter is here, and I believe it.

Mrs. Walker was careful of her husband's interests; they married late in life and she seems to have devoted herself, as far as I can see, to his welfare. He did not give her enough in proportion, but that is often done, and I am not sure he did not leave that, to some extent, to his solicitor, as to the details. Anyway, she was not satisfied with it and may at first have been nervous enough to say that she would threaten,—I do not think, if she did threaten, that it would have made much difference; anyway, she got a great deal more by her agreement than she would if she had gone to law. I do not think that it affects the case, although I comment upon it in passing. 10

Then there are the codicils which he dictated, showing his mind, some months before, and his will being in accordance with those codicils, as far as this plaintiff is concerned, it really disposes of the case. There is the incidental matter of his having changed some money bequests to those of bonds which were said to depreciate at the time. Well, that is his business; but to make the suggestion that it was a scheme of the brothers to get cash while the relatives got these bonds is not worthy of belief, and I do not believe it. 20

The onus not having been displaced, that this former employee after nine years of inaction should be allowed to be put in a position to benefit by the former will, on the evidence which has been adduced here, would not be doing justice. The plaintiff knew he had been appointed executor under the first will, and, as a business man, it must have struck him as peculiar that he had not heard of the requirement to do his duty when he heard of the death of the late E. C. Walker which took place in 1915. The letter of Mr. Robinson was written not long afterwards, and Mr. Robins must have heard about the death. As executor, he would write a letter saying "I was told I was made executor of Ed. Walker's will made in 1901; now what am I to do?" He does nothing until after a lapse of eight or nine years, when he comes from England, having heard that he met with this reverse; and now attempts to break the will of a gentleman of this character, on the evidence which he has given. That is not sufficient. 30

I direct that judgment be entered on and after the eighth of June, 1924, dismissing this action with costs to both sets of defendants. Costs of the Hotel Dieu to be paid out of the Estate, and limited to \$100.00. Costs of interlocutory orders in my discretion to be costs in the cause.

Certified to be correct,

40

(Sgd.) A. E. CABELDU.
Official Reporter,
with Nelson R. Butcher & Co.

IN THE SUPREME COURT OF ONTARIO

THE HONOURABLE MR. JUSTICE MOWAT

Friday, the 24th day of May, A.D. 1924.

BETWEEN:

WILLIAM ROBINS

PLAINTIFF,

AND

NATIONAL TRUST COMPANY, LIMITED,

DEFENDANTS.

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*In the
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- 10 1. THIS ACTION COMING ON FOR TRIAL on the 14th, 15th, 16th, 19th, 20th, 21st, 22nd, and 23rd days of May, 1924, before this Court at the sittings holden at Sandwich for trial of actions without a jury in presence of counsel for the plaintiff and the defendants National Trust Company, Limited, Executors of the Estate of Edward Chandler Walker, the Trustees of Hotel Dieu, Mary Griffin Walker, Elizabeth Brewster, named in the writ of summons as Lillie Brewster, and Mary W. Cassels, named in the writ of summons as Mary W. Cassels, and no one appearing for the defendants Stephen A. Griggs, Executor of the Estate of Mrs. Stephen Griggs; The Churchwardens of St. Mary's Church, Walkerville; The Board of Governors of the University of Toronto;
- 20 the Board of Governors of St. Andrew's College, Toronto; The Churchwardens of All Saints' Church, Windsor; Stephen A. Griggs; The National Trust Company Limited, Administrators of the Estate of Franklin Hiram Walker; Harrington E. Walker, Hiram H. Walker, F. Caldwell Walker and National Trust Company, Limited, Executors of the Estate of James Harrington Walker; Edward Chandler Farrington; Elizabeth Buhl; May Walker; Margaret Walker; Arthur H. Buhl and Detroit Trust Company, the last two named as Executors of the Estate of Willis E. Buhl; Arthur H. Buhl; Lawrence D. Buhl; Elizabeth Buhl Sheldon; F. Caldwell Walker; Mary Margaret Small; Jennie Williams; Lucy Farrington; Board of Directors of the
- 30 Detroit Art Museum; Edward Lothrop Warner; Edward Walker Elliott; Elizabeth Talman Walker; Harrington E. Walker; Hiram H. Walker; Mrs. James Campbell; Susie Jenney; Alice Hoffe; and Countess Ella Matuschka, although they were duly served with notice of trial as appears by proof of service filed, upon hearing read the pleadings and hearing the evidence adduced and what was alleged by counsel aforesaid;

2. THIS COURT DOETH ORDER AND ADJUDGE that this action be and the same is hereby dismissed with costs, including all costs which were reserved in any order to be disposed of by the trial judge, to be paid by the plaintiff to the defendants forthwith after taxation thereof.

- 40 3. AND THIS COURT DOETH FURTHER ORDER AND ADJUDGE, that the costs of the defendant the Trustees of Hotel Dieu, Windsor, be fixed at the sum of One hundred dollars (\$100.00) and be payable out of the estate of the late Edward Chandler Walker.

(Sgd.) Henry Clay,
Local Registrar E.Signed June 11th, 1924,
entered S. C. J. B. # 3 folio 349

June 11th, 1924

H. C.

S.R.E.

RECORD

In the
Supreme
Court of
Ontario

No. 62
Notice of
Appeal by
Plaintiff to
Divisional
Court.
4th June,
1924.

IN THE SUPREME COURT OF ONTARIO

BETWEEN:

WILLIAM ROBINS

PLAINTIFF,

AND

NATIONAL TRUST COMPANY, LIMITED, ET AL,

DEFENDANTS.

TAKE NOTICE that the Plaintiff appeals to a Divisional Court, from the judgment pronounced by the Honourable Mr. Justice Mowat, on the 23rd 10 day of May, 1924, on the following among other grounds:

1. That the said judgment is contrary to law, and to the evidence and the weight of evidence.

2. That the evidence adduced upon the part of the Plaintiff cast the onus upon the Defendants to prove that at the time of making of the alleged will of the late Edward Chandler Walker, bearing date the 27th day of February, 1914, he was of sound mind, and that the Defendants have not discharged the said onus.

3. That the Learned Trial Judge erred in the improper admission of evidence. 20

4. And in the alternative that the Plaintiff is entitled to a new trial of this action, upon the grounds: Firstly: That the Learned Trial Judge wrongfully admitted the evidence of Mrs. Mary Griffin Walker, and Secondly: That the Learned Trial Judge wrongfully permitted the Defendants to give evidence of more than three persons who expressed opinions as to the mental capacity of the late Edward Chandler Walker to make a will or transact business contrary to the provisions of the Evidence Act, Revised Statutes of Ontario, Chapter 76, Section 10.

Dated the Fourth day of June, 1924.

FLEMING, DRAKE & FOSTER, 30
Solicitors for the Plaintiff.

RECORD

*In the
Supreme
Court of
Ontario*No. 63
Notice of
Affidavits
to be
read.
5th Nov-
ember, 1924.

IN THE SUPREME COURT OF ONTARIO

BETWEEN:

WILLIAM ROBINS,

PLAINTIFF,

AND

NATIONAL TRUST COMPANY, LIMITED,

Executors of the Estate of Edward Chandler Walker and others,

DEFENDANTS.

10 TAKE NOTICE that upon the hearing of the Appeal herein there will be read the affidavits of Carl L. Fuller, Rena O. Caster, Lavinia Hatton and O. E. Fleming, filed.

DATED at Toronto this 5th day of November, 1924.

FLEMING, DRAKE & FOSTER,
Solicitors for the Appellant.To HELLMUTH, CATTANACH & Co.,
BLAKE, LASH & COMPANY, and
SAUNDERS, KINGSMILL & Co.,
Solicitors for the Respondents.

RECORD REASONS FOR JUDGMENT OF SECOND DIVISIONAL COURT

Delivered April 3rd, 1925.

(Appeal heard 5, 6, 7, 17 and 18 November, 1924).

In the
Supreme
Court of
Ontario

No. 68
Judgment of
Second
Divisional
Court
3rd April,
1925.

ORDE, J.A.:—At the conclusion of the argument of counsel for the appellant we stated that we would not then call upon counsel for the respondents, but would do so later if we should think it necessary.

That intimation made it fairly plain that in our judgment the appellant had failed to convince us that there was any ground for the reversal of the judgment of the learned Trial Judge, and we might well say no more, and merely dismiss the appeal.

But the magnitude of the amount involved, and the length and detail of the arguments advanced in the attack upon the will, perhaps require some statement of our reasons for affirming the judgment below.

The grounds upon which the appellant's arguments are based are:—

1. That the evidence establishes that the testator was not mentally capable of making a will at the time when the alleged will was executed.

2. That the evidence discloses certain suspicious circumstances surrounding the preparation and execution of the instrument which shift the onus of establishing it as a testamentary instrument upon the defendants, and that they have failed to satisfy that onus.

3. Or in the alternative that there should be a new trial.

(a) Because the Trial Judge allowed more than three expert witnesses to be called by the defendants in breach of Sec. 10 of the Ontario Evidence Act, R.S.O. 1914, Ch. 76.

(b) Because the evidence of Mary Griffin Walker, the widow of the testator, taken upon commission, was improperly admitted.

(c) Because of the discovery since the trial of new evidence.

The difficulties in the plaintiff's way are obvious. The action is launched more than eight years after the death of the testator and the probate of the will in question, and after the death of many important witnesses, including the solicitor who drew the will, and the two brothers of the testator, who, it is charged, were instrumental in procuring its execution.

Edward Chandler Walker was born about 1851, and died the 11th March, 1915, leaving a will dated the 27th February, 1914. Probate of this will in Common Form was granted shortly after his death by the Surrogate Court of the County of Essex to the National Trust Company, the executors therein named. The will contained a large number of legacies in cash and in bonds, amounting in all to several hundred thousand dollars. Many of these legacies will be found to have been improperly paid if the will is now declared invalid.

The testator was a son of the late Hiram Walker, the founder of the distillery at Walkerville, and with his two brothers, Franklin Hiram Walker, (sometimes referred to in the evidence as "Frank Walker"), and James Harrington Walker, (sometimes referred to as "Harry Walker"), controlled and practically owned the distillery. The testator was married but had no children.

The plaintiff was in no way related to the Walker family. His sole interest in attacking the will at this late date rests upon the fact that there was in the latest known prior will to that in question, made on the 21st December, 1901, a legacy to him of 1,000 shares of the capital stock of Hiram Walker & Sons, Limited.

The plaintiff was an accountant and entered the employment of the Walker distillery firm in 1888, and continued in their employ, and in that of the joint stock company into which in 1890 the partnership business was converted, until the year 1912, when he left the service of the company. Shortly afterwards he left Canada to reside in England, and, although he was later aware of E. C. Walker's death he did not learn of the legacy to himself contained in the earlier will until the year 1922. On the 23rd June, 1923, he launched this action.

No useful purpose will be served by attempting to review all the evidence adduced at a trial which lasted eight days. It has already been elaborately summed up in the judgment of the learned Trial Judge.

That the plaintiff was a valued servant of the company is not questioned. His salary in 1891 was \$7,500 per annum; in 1895 it was \$9,000; in 1896 \$10,000; in 1897 it became \$15,000 and so remained until 1912. But in 1898 the plaintiff received, either as a bonus or by way of additional remuneration, \$25,000 of the capital stock of the company, and in 1905 a further \$75,000 of its capital stock. In addition to this, in the year 1907, and thereafter until he left the company's service, he received as further remuneration by way of commission on profits, sums varying from \$15,000 to \$23,000 per annum, so that during the last six years of his employment his remuneration averaged \$34,311 per annum. This steady increase in his remuneration and the bonus of \$100,000 of stock would of themselves indicate that he occupied a position of trust and responsibility in the management of the company. Nor can there be any doubt as to his having been on terms of close friendship with the three Walker brothers and particularly with Edward. Edward's confidence and friendship are evident from the fact that by the will of 1901 he appointed the plaintiff one of his executors and made him the handsome gift of the 1,000 shares. The value of that gift may be gathered from the price of \$300 per share which the plaintiff procured for certain shares when he left the Company in 1912.

In 1905 there was some friction between the plaintiff and the directors of the Company, the plaintiff asserting that his services were not fully appreciated or rewarded. This difficulty was adjusted by the issue or transfer to the plaintiff of the 750 shares (\$75,000 par value) already mentioned and the increase two years later of his remuneration to about \$34,000 per annum.

In 1912 differences again arose between the plaintiff and the Company, and after the unsuccessful efforts of the late Mr. Z. A. Lash, K.C., who was not only the legal adviser of the Company but also to the Walker brothers, to adjust matters, the plaintiff's engagement with the Company came to an end and he left the Company's service.

A few months later Edward C. Walker commenced to consider the making of a new will. In November, 1913, he executed a codicil which revoked the appointment of his two brothers and the plaintiff and one Aikman as his executors and substituted the National Trust Company. In December, 1913, a further

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codicil was prepared which revoked certain clauses of the will of 1901, among them being that containing the gift of 1,000 shares to the plaintiff, but there was no evidence that this codicil was ever executed. A copy of the draft was put in. Shortly afterwards the will in question was prepared by the late Mr. Lash after personal interviews and correspondence with the testator, and was executed by the testator in his house in Walkerville on the 27th February, 1914.

The death of Mr. Lash and of the testator's two brothers renders it impossible to get all the facts connected with the preparation and execution of the will in question, but there was evidence upon these points adduced at the trial amply sufficient in our opinion to support the findings of the learned trial judge. Mr. J. H. Coburn, K.C., of Walkerville, had been the local solicitor of the three brothers and of the Company for many years. He had witnessed the 1901 will, and had drawn a short codicil to it for the testator in 1903 or 1904. Under instructions from the testator he drew the codicil of November, 1913, which was executed and also the intended codicil of December, 1913. He says that shortly before the November codicil was drawn the testator sent for him and told him he was thinking of making a new will and wanted him to attend to it, but that he had not yet made up his mind what he wanted to do. He asked Mr. Coburn to prepare the codicil changing his executors (the November codicil), and said that would do in the meantime. Later he gave instructions for the December codicil, saying that he did not have his instructions ready for the new will. Mr. Coburn says the testator had the 1901 will before him when giving these instructions, and said that circumstances had changed and that he wanted to make certain changes on that account.

Shortly after this, some time in January, 1914, Mr. Lash went to Walkerville from Toronto and received instructions from the testator for the preparation of the new will. Exactly what took place between Mr. Lash and the testator cannot be wholly known, but the widow of the testator who, though a defendant, was called as a witness by the plaintiff, says that Mr. Lash came to the house and had breakfast and that he and the testator went to the latter's office immediately afterwards. Mr. Walker returned to the house for lunch and went back to the office immediately afterwards, and returned to the house again late in the afternoon with Mr. Lash, who stayed to dinner and spent the evening with Mr. and Mrs. Walker before returning to Toronto by the night train. Mr. Lash may have made written notes of his instructions but, apart from certain memoranda in his handwriting on the 1901 will itself and two letters written by Mr. Lash to the testator on the 28th January, 1914, and the 16th February, 1914, no written memoranda are forthcoming. The 1901 will was before Mr. Lash and is put in with numerous pencil notes in his handwriting upon it. These notes consist of certain additions, alterations and erasures, and opposite several paragraphs appear the initials "O.K.", or the word "out", or the word "dictated." Whether or not these notes were made during the course of the interview with the testator, or afterwards by way of instructions to the person who typed the new will, or partly at one time and partly at the other, must be mere conjecture. Many paragraphs of the old will are repeated verbatim in the new will though differently numbered, and the fact that the day and month in the testimonium clause are surrounded with pencil lines, and

the year changed to "fourteen", would indicate that the old will was used by the typist when engrossing the new one.

The gift to the plaintiff appears in paragraph 20 of the old will, and opposite this paragraph is the memorandum "out" in Mr. Lash's handwriting. This is one of the paragraphs which according to the instructions given to Mr. Co-burn by the testator was to be revoked by the intended codicil of December, 1913

- On the 28th January, 1914, Mr. Lash wrote Mr. Walker enclosing the first part of the new will for his consideration. According to the letter this contained the special clauses relating to the homestead and his wife's annuity.
- 10 The letter mentions other matters and speaks of going to Walkerville, if the testator desires it, to discuss anything or to make any alterations. Then on the 16th February, 1914, Mr. Lash writes again, saying that he has completed the will, which he encloses. He explains how it should be executed, and again says that if there is anything the testator wishes to discuss he will go up for the purpose, but he suggests that the will should be signed and that any additional provisions can be made by codicil. The letter also draws attention to the fact that he had changed two of the legacies to educational institutions, giving the reasons therefor. The amount involved in these two legacies was \$35,000, a trifling sum out of a total estate of more than four millions. And the letter indicates
- 20 and the natural assumption is that the objects of the testator's bounty in this regard had been chosen by the testator with the view of assisting certain institutions in which Mr. Lash was interested.

- The will was not executed until the 27th February, 1914. It was signed by the testator at his house in the presence of John A. McDougall and Robert L. Daniels, both of whom had been in the employ of the Walker family for more than 20 years, and who occupied positions of trust and responsibility in one or more of the several companies in which the Walkers were interested. Mr. Harrington Walker asked McDougall to get Daniels, and to go with him up to the testator's house to witness the will. They drove up in the afternoon,
- 30 and when they arrived they found the testator fully dressed and waiting for them at a table in a room downstairs. There was very little conversation, if any. Some mention was made of the execution of the will, and it was thereupon signed by the testator and then witnessed by McDougall and Daniels. Mr. Harrington Walker and the two witnesses then left.

- Now, here is a will prepared after instructions given during the course of a whole day's personal contact with the testator both in his office and at breakfast and dinner and afterwards in his home, by a gentleman who in his lifetime ranked among the leaders of the bar, who had for some years been Deputy Minister of Justice at Ottawa, and who was considered one of the ablest and sound-
- 40 est solicitors in Canada, and executed so far as the attesting witnesses were concerned, by one who appeared to know what he was doing. That the will was not read over or discussed in the presence of the two witnesses is of no consequence. It would have been most unusual for a wealthy man either to read aloud, or to have read to him, or even to discuss, a long will containing many provisions of an intimate and private nature, in the presence of two of his own employees. Eight years after the testator's death this will is attacked on the ground that the testator was not mentally competent to make a will at the date

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of its execution. This attack involves the implication either that Mr. Lash spent a whole day with, and received instructions from a man who was not aware of what he was doing, or that he was in some direct or indirect way a party to a fraud upon the testator in drawing and procuring the execution of a will which did not in fact embody the testator's wishes, assuming him to have been capable of expressing them. In the circumstances the plaintiff's task would appear to be well nigh hopeless, but he undertakes it with an energy and determination worthy of a better cause.

What is the evidence on which the plaintiff relies? Three physicians are called by the plaintiff, Dr. C. W. Hoare, Dr. P. A. Dewar, and Dr. Burt R. Shurly. The testator had not been in good health for many years, he was never a robust man, and there is no doubt that during the later years of his life he was suffering from arteriosclerosis, from some bowel trouble, and times from aphasia. 10

Dr. Hoare had attended him between the years 1891 and 1907. He says there was at times a good deal of confusion in his mental condition, and that there was "slightly progressive degeneration of the mental faculties and nervous system," and yet during the period covered by Dr. Hoare's visits the testator was attending to his ordinary business, except during the "periods of disability," as Dr. Hoare terms them. 20

Dr. Dewar attended the testator between 1910 and 1913. He says he was called in frequently and that he probably saw Mr. Walker at his worst times. On these occasions he talked with some difficulty, there was some confusion of ideas, and he had some difficulty in walking. He says, speaking of Mr. Walker's condition in 1913, that "any time I saw Mr. Walker I would have no hesitation in saying I would not think he would be capable of making that will (i.e. the 1914 will) himself. He could not instigate the thing or carry it through. He might understand a simple will when it was put in very plain language to him, and he was given plenty of time to think." But Dr. Dewar admits that on one occasion he was surprised to find the testator talking intelligently about some matters. And as he saw the testator only at his worst he is forced to admit that his conclusions as to the testator's mental powers are based upon inferences from his tendency to get confused in his conversation when he, Dr. Dewar, was called in to see him. The value of the conclusions so drawn may be tested by his statement that from what he saw he would not expect the testator to have been able to give weight and consideration to any important business deal late in 1912. 30

In the teeth of these conclusions of Dr. Dewar's we have the evidence afforded by the correspondence between the plaintiff on the one hand and the testator and Mr. Lash on the other, during the summer of 1912, to which fuller reference is made later. How can Dr. Dewar's opinion be reconciled with the overwhelming evidence afforded by the existence of these voluminous letters written by the plaintiff himself and containing not the slightest suggestion of mental incapacity or impairment in Edward Walker, but rather that he was still one of the dominating factors in the management of the Company? 40

Dr. Shurly, of Detroit, first began his attendance in November, 1913. His evidence, if it stood alone, would undoubtedly create the impression that

during this period the testator was wholly lacking in mentality. He describes the testator as a "vegetable" and as like a child, but he admits on cross-examination that the testator may have had his good days, and there is so much of this physician's opinion that is plainly contradicted by the facts that its value is completely destroyed. It is utterly inconceivable that Mr. Lash and Mr. Coburn could have had such prolonged interviews and received instructions from a man in the hopeless mental condition which Dr. Shurly describes.

10 In the face of Mrs. Walker's evidence as to her husband's mental and physical condition during the period in question, of the evidence of the two witnesses to the will as to the testator's condition the day he signed it, and of the physicians called by the defendants, of the fact that he went to and from his office on the day of Mr. Lash's visit and spent hours of that day with Mr. Lash, of Mr. Coburn's evidence as to his condition when giving instructions for the November and December codicils, and of many other pieces of evidence as to the testator's ability to transact business during the period when the will was in preparation and was executed, can the Court possibly hold that the plaintiff has made out the case he set himself to establish? The signature to the will itself gives no indication of having been appended by a "vegetable" and is as well written as that in the 1901 will.

20 It is rather remarkable that the plaintiff should now seek to prove that for many years before the execution of the will the testator's mental powers had been steadily deteriorating, when up to the late summer of 1912 he corresponded with him as if he were possessed of all his mental faculties and could still give effect to his wishes with respect to the Company and what was due the plaintiff as a servant of it. Several letters written by the plaintiff to Mr. Lash and to the testator during the summer of 1912 were put in, among them two very long ones to the testator dated the 14th and 20th August, 1912. In these two letters the plaintiff discusses his relationship to the business and the justice of his claim to greater remuneration in great detail. It is quite clear from the opening words of the later letter that he and the testator has discussed the matter, and it is abundantly clear that the plaintiff regarded the testator as still one of the dominating influences in the management of the business, with power to turn the decision one way or the other upon the matters then under discussion. Nor is there anything in the plaintiff's letters to Mr. Lash during the same period to indicate that the testator was not in full possession of his faculties or in any way incapable of disposing of matters of business. Throughout these letters the three brothers are all mentioned individually. It is true that the antagonism to the plaintiff seemed to come from one of testator's brothers, and Harry and Frank are mentioned oftener than Edward, but nowhere is there a suggestion that Edward has no voice in the matter. On the contrary, there are frequent references to him as if his decision would in effect settle the difficulty in the plaintiff's favour, though doing so might involve a rupture with the antagonistic brother.

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Counsel for the plaintiff laid much stress upon the fact that the testator's widow had objected to the provisions which the testator had made for her and had threatened to attack the will. The difficulty then raised was adjusted with the assistance of Mr. Lash, by an agreement with the two surviving brothers.

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Though Mrs. Walker was examined on commission on behalf of the plaintiff, there was no evidence to indicate that her objections to the will arose from any doubt as to her husband's mental capacity, and I can see no warrant for assuming that she had any such idea whatever. It is not unusual for wives and other relatives who think that a testator has not seen fit to give them all they think they ought to get to threaten to "break the will."

It is argued that the testator's friendship for the plaintiff as evidenced in many ways and particularly by the intended gift of 1,000 shares in the 1901 will could not so materially have altered in 1914 as to go the length of leaving the plaintiff nothing. At the outset there is this outstanding fact, that the plaintiff was not related to or in any way connected with the testator, and not only knew nothing of the contents of the 1901 will but never contemplated the possibility of any such gift. When he learned of Edward Walker's death he accepts the situation without a murmur and without any enquiry as to what the testator might have intended for him when their friendship and business relations were closer. 10

Now, it may well be that the testator's intention by the legacy in the 1901 will was to reward the plaintiff for his services to the Company. When later the plaintiff received the bonus of 750 shares from the Company itself and had his salary augmented, and then had completely severed his business relationship with the Company and the Walker brothers, it would have been surprising if the testator had not altered his previous intention and revoked the gift. It is evident from certain statements in the plaintiff's letters to Mr. Lash during the summer of 1912 that even the testator, who had undoubtedly been more friendly and intimate with the plaintiff than either of the other brothers, was becoming a little irritated by the plaintiff's insistent demands for additional remuneration. The plaintiff's demand that they should buy back his shares at \$300 per share may well have come as a shock to the testator, and have brought home to him not only the extent of his previously intended gift of 1,000 shares, but the danger of placing so large a number of shares in the hands of a man who might use them to the detriment of other members of the Company. Is it not clear from this correspondence that the plaintiff's influence with the Walker brothers was waning and that the current of his life was rapidly drifting away from theirs, even from that of the testator who, theretofore, had been one of his greatest friends? Rather than maintain his relationship upon the footing then existing the plaintiff chose to sever his connection with his employers and his erstwhile friends. In his letter to the testator of the 16th August, 1912, the plaintiff speaks of being driven to some course which may cause the testator discomfort, a plain intimation that unless his demands were acceded to he would not hesitate to sacrifice even the testator's friendship. What possible reason could now exist for making so large a gift to one who had been rewarded so handsomely by the Company, and who as a result of all this friction had left its employ. One cannot help thinking that failure to revoke the earlier legacy would itself have indicated imbecility on the part of the testator. 30 40

The plaintiff clearly fails upon the first of his grounds for the reversal of the judgment.

As to the second ground, not much need be said that is not already covered by what I have dwelt upon already. The plaintiff has failed to show such suspicious circumstances as would justify the Court in holding that the will should not be sustained. The judgment of the Appellate Division in *Larocque v. Landry* (1922) 52 O.L.R. 479, that after probate has been granted, even in Common Form, mere suspicious circumstances surrounding the execution of the will are not sufficient, when the will is attacked in the Supreme Court, to shift the onus of establishing the validity of the will to the executors is binding upon us. Apart from the evidence of the physicians called by the plaintiff, it is difficult to see just what there was about the drawing and execution of the will to arouse any suspicion whatever.

In the alternative the plaintiff asks for a new trial upon the three grounds set forth above.

The first ground is that the learned Trial Judge improperly allowed more than three expert witnesses to be called for the defence. Sec. 10 of the Evidence Act limits the number of "persons entitled, according to the law or practice, to give opinion evidence," who may be examined as witnesses on either side to three. There has not been much judicial exposition of the exact scope of this provision. In *Rice v. Sockett* (1912) 27 O.L.R. 410, a Divisional Court directed a new trial because six witnesses had been called to express an opinion about the construction of a silo. The judgment in that case indicates that the Act was intended to apply to persons who possess special or peculiar knowledge or experience as to the subject matter upon which they are called upon to testify. That knowledge or experience may be acquired either by scientific study or practical experience. And in that case it was clear that each of the six witnesses was called to give evidence because of his special qualification to give opinion evidence upon the point in issue.

But does a man who, for example, having seen a motor car pass is asked how fast it was going, come within the category of those who are "entitled, according to the law or practice, to give opinion evidence?" I think not. He does not qualify for the purpose of any such opinion by first shewing what experience or training he has to enable him to testify as to the speed of the car. To bring the matter home to the present case, do the two witnesses to the execution of the will come within the category because they were asked as to the testator's mental condition when he signed the will? I cannot think so. They merely tell what they saw or failed to see. Their statements as to what they saw or failed to see are not predicated upon any peculiar knowledge or experience differing from that of mankind in general. There is, of course, a type of evidence which comes clearly within the Act; where one possessing scientific knowledge is called to express an opinion upon facts adduced in evidence and who knows nothing about the case except what he hears or is told in Court. There is another type where one specially qualified to give an opinion, but who has come into direct relationship with certain of the persons or things involved in the case, may be called to give evidence not only as to those persons or things but to draw conclusions based upon his scientific knowledge or special qualifications, and to give the Court the benefit of the conclusions so formed. Cases of this type may present difficulty as to just where to draw the line be-

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tween what is admissible and what the Act excludes. Then there is the type which is in question here, which while sometimes termed "opinion evidence" is not that of persons "entitled according to the law or practice to give opinion evidence" as such, within the meaning of Sec. 10. Suppose, for example, a man who has associated for years with another is asked whether in all that time he ever saw anything to indicate that the other was insane or incapable of making his will. Would his evidence not be admissible *quantum valeat*? See Alderson, B. in *Wright v. Tatham* (1838) 5 Cl. & F. 670 at pp. 720 et seq. I think the plaintiff has failed to establish that there was any infringement by the learned Trial Judge of the provisions of sec. 10.

There was a subsidiary objection under this head as to the admissibility of some of the evidence of Dr. Armour, but whether inadmissible or otherwise, there was no substantial ground shown for the granting of a new trial because of it.

As to the admission of Mrs. Walker's evidence taken on commission. Though called by the plaintiff, the evidence so given was tendered by counsel for the defendant executors. Its admission was strenuously opposed by counsel for the plaintiff, upon the ground that as Mrs. Walker had refused to answer certain questions upon the advice of counsel, and being herself a defendant had not come forward to give evidence, it was not proper for those defendants who tendered the evidence to get the benefit of those answers which she saw fit to give without also having those answers which she saw fit to withhold. There may be some force in this objection and it would be greater still if Mrs. Walker's counsel were tendering the evidence on her behalf. The matter may have been largely in the discretion of the Trial Judge. The evidence was adduced by the plaintiff and it is difficult to see upon what ground he can object to its admission on behalf of a defendant other than Mrs. Walker, merely because the witness whom the plaintiff chose to call failed to come up to his expectations. No substantial reason has been advanced for granting a new trial upon this ground.

The third is that fresh evidence has been discovered since the trial which it is suggested may assist the plaintiff. Whatever this evidence may be it is admittedly merely corroborative at most of evidence already given on behalf of the plaintiff. The practice is clear that a new trial cannot be granted upon that ground.

For these reasons the appeal must be dismissed with costs.

Latchford, C. J.:—I agree.

Middleton, J. A.:—I agree.

Masten, J. A.:—I agree.

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IN THE SUPREME COURT OF ONTARIO

The Honourable the Chief Justice of the
Second Divisional Court.

The Honourable Mr. Justice Middleton. Friday the 3rd day of April, 1925.

The Honourable Mr. Justice Masten.

The Honourable Mr. Justice Orde.

BETWEEN:

WILLIAM ROBINS,

PLAINTIFF,

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AND

NATIONAL TRUST COMPANY, LIMITED, et al,

DEFENDANTS.

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1. Upon motion made unto this court on the 5th, 6th, 7th, 17th and 18th days of November, 1924, on behalf of the plaintiff by way of appeal from the judgment of the Honourable Mr. Justice Mowat, pronounced the 23rd day of May, 1924, herein, in presence of counsel for the defendants National Trust Company Limited, Executors of the Estate of Edward Chandler Walker, Mary G. Walker, Elizabeth Brewster, named in the writ of Summons as Lillie Brewster, and Mary W. Cassels, named in the writ of Summons as Mary W. Cassell, and the Trustees of the Hotel Dieu, Windsor, being all the defendants who appeared at the trial of this action, and upon hearing read the pleadings, the evidence adduced at the trial and the judgment aforesaid, and upon hearing what was alleged by counsel aforesaid, and judgment upon the motion having been reserved until this day;

2. This Court doth order that the said appeal be and the same is hereby dismissed.

RECORD

*In the
Supreme
Court of
Ontario*

No. 69

Judgment of

Second

Divisional

Court

3rd April,

1925.

—concluded

3. And this court doth further order that the plaintiff do pay to the defendants National Trust Company Limited, Executors of the Estate of Edward Chandler Walker, Mary G. Walker, Elizabeth Brewster, named in the writ of Summons as Lillie Brewster, and, Mary W. Cassels, named in the writ of Summons as Mary W. Cassell, and the Trustees of the Hotel Dieu, Windsor, their costs of this appeal forthwith after taxation thereof.

"E. Harley"

Senior Registrar.

IN THE SUPREME COURT OF ONTARIO

RECORD

*In the
Supreme
Court of
Ontario*

No. 70

Order
Allowing
Appeal.
29th April,
1925.

The Honourable Mr. Justice Middleton Wednesday, the 29th day of April,
1925

BETWEEN:

WILLIAM ROBINS,

PLAINTIFF,

AND

NATIONAL TRUST COMPANY LIMITED, Executors of the Estate of Edward Chandler Walker; Stephen A. Griggs, Executor of the Estate of Mrs. Stephen Griggs; The Churchwardens of St. Mary's Church, Walkerville; The Board of Governors of the University of Toronto; The Board of Governors of St. Andrew's College, Toronto; The Trustees of Hotel Dieu, Windsor; The Churchwardens of All Saints' Church, Windsor; Stephen A. Griggs; National Trust Company Limited, Administrators of the Estate of Franklin Hiram Walker; Harrington E. Walker, Hiram H. Walker, F. Caldwell Walker and National Trust Company Limited, Executors of the Estate of James Harrington Walker; Edward Chandler Farrington; Elizabeth Buhl; May Walker; Margaret Walker; Arthur H. Buhl and Detroit Trust Company, the last two named as Executors of the Estate of Willis E. Buhl; Arthur H. Buhl; Lawrence D. Buhl; Elizabeth Buhl Sheldon; F. Caldwell Walker; Mary Margaret Small; Jennie Williams; Lucy Farrington; Board of Directors of the Detroit Art Museum; Edward Lothrop Warner; Edward Walker Elliott; Elizabeth Talman Walker; Harrington E. Walker; Hiram H. Walker; Mrs. James Campbell; Susie Jenney; Alice Hoffe; Mary Griffin Walker; Lillie Brewster; Mary W. Cassell; Countess Ella Matuschka.

DEFENDANTS.

1. Upon the application of the above-named plaintiff made this day for leave to appeal to His Majesty in His Privy Council from a judgment pronounced herein by the Appellate Division of the Supreme Court of Ontario on the 3rd day of April, 1925, and for an order allowing the security given by the plaintiff in regard to the said proposed appeal, and upon hearing read the bond of the plaintiff and the United States Fidelity and Guarantee Company, dated the 17th day of April, 1925, filed, and upon hearing what was alleged by counsel for the plaintiff and for defendants National Trust Company Limited, Mary G. Walker, Lillie Brewster, Marv W. Cassell and the trustees of the Hotel Dieu, Windsor—

2. IT IS ORDERED that the above named plaintiff be at liberty and he is hereby given leave to appeal from the said judgment of the Appellate Division of the Supreme Court of Ontario to His Majesty in His Privy Council.

3. AND IT IS FURTHER ORDERED that the bond entered into on the 17th day of April, 1925, in which the said plaintiff William Robins and the United

RECORD

*In the
Supreme
Court of
Ontario*No. 70
Order
Allowing
Appeal.
29th April,
1925.
—concluded

States Fidelity and Guarantee Company are obligors and National Trust Company Limited, Mary Griffin Walker, Lillie Brewster, Mary W. Cassell, the Board of Governors of The University of Toronto, the Board of Governors of St. Andrew's College, and the Trustees of Hotel Dieu are obligees for the penal sum of \$2,000.00 duly filed as security that the plaintiff will effectually prosecute such appeal from the said judgment of the Appellate Division of the Supreme Court of Ontario and will pay such costs and damages as shall be awarded in case the judgment appealed from shall be affirmed, be and the same is hereby approved and allowed as good and sufficient security in respect of said appeal but not in respect of the costs directed to be paid by the judgment 10 appealed from.

4. And it is Further Ordered that the Costs of this Application be costs in the said appeal.

(Sgd.) *E. Harley.*

Senior Registrar, S.C.O.

EXHIBITS

RECORD
In the
Supreme
Court of
Ontario

EXHIBIT NO. 1

IN THE SUPREME COURT
OF ONTARIO

No.
BETWEEN

A.D. 19

Exhibits
No. 1
Notice to
Produce
(Filed by
Plaintiff)

WILLIAM ROBINS,

Plaintiff

AND
NATIONAL TRUST COMPANY, LIMITED,
Executors, et al,

Defendants.

10

TAKE NOTICE that you are hereby required to produce and show to the Court on your examination for discovery in this Action all Books, Papers, Letters, Copies of Letters, and other writings and Documents in your custody, possession or power, containing any Entry, Memorandum or Minute relating to the matters in question in this Action and particularly those hereinafter specified.

Dated this sixteenth day of February, A.D. 1924.

To Mr. O'Connor, Manager of the Estates Department of the above-named defendant, National Trust Company,

20 Limited, and

To the above named defendant, National Trust Company, Limited, and to Messrs. Blake, Lash, Anglin & Cassels, their Solicitors.

FLEMING, DRAKE & FOSTER,
Solicitors for the above-named plaintiff.

Description of Document	Dates
Original Probate of the Will of the late E. C. Walker,	February 27, 1914
Original will of late E. C. Walker,	December 21, 1901.
Original codicils thereto,	Any dates.
30 Original agreement of settlement made with Mary Griffin Walker,	Any date.
Original letters referred to in defendants' affidavit on production,	Any dates.
All documents produced in defendants' affidavit on production.	

EXHIBIT NO. 2 *

Last Will and Testament of Edward Chandler Walker, dated twenty-first day of December, A.D., One thousand nine hundred and one.

40 THIS IS THE LAST WILL and TESTAMENT of me EDWARD CHANDLER WALKER, of the Town of Walkerville, County of Essex, Ontario.

No. 2
Will of
1901, with
Z. A. Lash's
notes
thereon.
(Filed by
Plaintiff)

*NOTE: Pencil notes in Mr. Lash's handwriting are shown in red. The italics in the body of the document show what is in the testator's handwriting.

RECORD

In the
Supreme
Court of
Ontario

Exhibits

No. 2
Will of
1901, with
Z. A. Lash's
notes
thereon.
(Filed by
Plaintiff)
-continued

E. Chandler Walker

OK

E. Chandler Walker

OK

1. I HEREBY REVOKE all Wills and writings testamentary by me at any time heretofore made, and I declare this to be my last Will and Testament.

2. I APPOINT my brothers, ~~Franklin Hiram Walker and James Harrington Walker~~, and my friends, ~~William Aikman, Junior, of the City of Detroit, and William Robins of Walkerville~~, my executors. I hereinafter refer to them as my trustees, and I devise and bequeath to them all my property, real and personal, of whatsoever kind and wheresoever situate, which I may die possessed of or entitled to TO HAVE AND TO HOLD upon the trusts and for the purposes hereinafter declared. ~~So long as said Trust Company remains as trustee hereunder it shall not be necessary to fill any vacancy which may occur in the office of the other two trustees.~~

3. Subject to the specific bequests herein given, I empower my trustees 10
to collect, get in and convert into money all my estate, and to execute all such conveyances, assurances, and assignments thereof as may be necessary, but I give to them uncontrolled discretion as to the manner in which, the times when and the terms upon which my said estate is to be collected, got in and converted as aforesaid; and I specially empower them to delay the conversion of any part or parts of my estate as long as they think fit, and to allow all or any existing investments thereof to remain for so long as they think proper, notwithstanding that the securities and things in which such investments may be are not those upon which trustees are by law entitled to invest trust moneys. *Provided (See Insert)

4. Until my estate has been divided in accordance with the provisions of 20
this Will I authorize my trustees to invest and re-invest the moneys of my estate which may from time to time come into their hands in such securities and investments as they in their uncontrolled discretion may think fit, notwithstanding that the same may not be securities or investments upon which trustees are by law entitled to invest trust moneys; and I hereby relieve my trustees from liability for any losses which may be sustained owing to any investments made by them in good faith or owing to delay in realizing any portion of my estate, or owing to my trustees having in good faith allowed any investments existing at the time of my death to stand.

5. If at the time of my death I am liable as endorser, guarantor, surety 30
or otherwise for any liability of any Company or person or persons, I authorize and empower my trustees to renew from time to time in their discretion the bills, notes, guarantees or other securities or contracts evidencing such liability, and for that purpose to enter into new bills, notes or other securities or contracts for and on behalf of my estate. My intention in conferring upon my trustees the powers and discretions by this clause conferred is to give them such powers and authorities as will enable them to assist in the gradual liquidation of the liabilities which I may be under, in order that the Companies or persons for whom I may be liable as aforesaid may not be unduly embarrassed.

6. If at the time of my death I am liable, either alone or jointly with 40
another or others or otherwise, in respect of any bills, notes, contracts, agreements or other obligations in connection with any business carried on by me or by any Company of which I am a shareholder, either alone or with another or others, or in connection with any ~~speculations or other~~ transactions, I authorize my trustees to renew from time to time in their discretion such bills, notes, contracts, agreements or other obligations, and for that purpose to enter into new bills, notes, contracts, agreements or other obligations for and on behalf of my

(The following memorandum, in Mr. Z. A. Lash's handwriting upon three sheets of paper was attached by a pin to the will when produced in Court.)

*Provided always that should my trustees in carrying out the provisions of this will require to sell any ~~of~~ _____ shares of stock in the capital of Hiram Walker & Sons Limited they shall notify my residuary legatees under clause _____ of this will to that effect and said residuary legatees ~~or~~ may thereupon require my trustees to transfer such shares of stock to them on their paying

~~to my trustees the am or securing~~
~~price~~
~~to them the amount for which~~
~~the Trustees may~~
 to my trustees the amount
 required to be raised by such
 sale—and before making
 any sale of such stock my
 trustees shall give said res-
 iduary legatees the preference
 of purchasing same at the
 same

same price which any other
 purchaser may be willing
 to pay

RECORD

*In the
 Supreme
 Court of
 Ontario*

Exhibits

No. 2
 Will of
 1901, with
 Z. A. Lash's
 notes
 thereon.
 (Filed by
 Plaintiff)
 -continued

estate. I further authorize and empower them in their discretion to continue on behalf of my estate to carry on any such business, ~~speculations~~, or ~~other~~ transactions in such manner and for such time and upon such terms as they think proper, with a view to the prudent and advantageous realization of my interest therein or to the winding up of the same without loss or excessive loss to my estate.

RECORD
In the
Supreme
Court of
Ontario

Exhibits

No. 2
Will of
1901, with
Z. A. Lash's
notes
thereon.
(Filed by
Plaintiff)
-continued

E. Chandler Walker
OK

7. Should any Company in the capital stock of which I may hold shares at the time of my death increase its capital and should my trustees hold shares therein as part of my estate, I authorize them to take up and subscribe for the portion of such increased capital to which as holders of shares in the Company they may be entitled and to pay up the same out of the moneys of my estate. I also authorize my trustees if in their opinion it would be in the interests of my estate so to do, to subscribe for or purchase additional shares in any Company in the capital stock of which I may at the time of my death hold shares and in the capital stock of which my trustees may as part of my estate hold shares.

20
Out

8. All the powers, authorities and discretions given to my trustees above named shall extend to and be vested in any trustee or trustees appointed as hereinafter provided. Should any trustee hereby appointed or hereafter appointed die or desire to be discharged or refuse or become incapable to act, it shall be lawful for the surviving or continuing trustees to nominate a new trustee to act in his place. Should the surviving or continuing trustees not agree upon the person so to be nominated, it shall be lawful for the surviving or continuing trustees or either of them to apply to a Judge of the High Court of Justice for Ontario to have such new trustee appointed, which appointment any such Judge is hereby authorized to make. Upon every appointment of new trustee the trust property shall be transferred so that the same may be vested in the trustees for the time being, and every new trustee may, as well before as after such transfer, act or assist in the execution of the trusts, discretions, and powers relating to the trust estate as fully and effectually as if he had been hereby constituted a trustee. I DIRECT that at all times the number of trustees shall be kept up to three, and every new appointment shall be made with all convenient dispatch after the occasion therefor arises. Should it be thought advisable by the three remaining trustees, upon the death, resignation or incapacity of the fourth, to delay indefinitely the appointment of the fourth they shall be at liberty to do so; but, should it happen at any time that there is but one continuing or surviving trustee, I direct that he shall without delay apply to a Judge of the High Court of Justice for Ontario to have two other trustees appointed, which appointment any such Judge is hereby authorized to make.

E. Chandler Walker
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40
Out

9. I DECLARE that the decision of a majority of my trustees with respect to any matter connected with the trust estate or the exercise of any power or discretion vested in my trustees shall be final, and shall be complied with and carried out by the trustees.

Dictated

10. I DIRECT my trustees to pay over to my wife during her life the sum of Ten thousand dollars (\$10,000.00) per year in such payments from time to time as may be convenient and I make the same a first charge upon my estate. My trustees may make such payments out of capital or income in their discretion. Although I make the payment of said annuity to my wife a first charge

RECORD

In the
Supreme
Court of
Ontario

Exhibits

No. 2
Will of
1901, with
Z. A. Lash's
notes
thereon.
(Filed by
Plaintiff)
—continued

E. Chandler Walker

on my estate yet I do not thereby interfere with or limit the various discretions and powers conferred on my trustees by this will. I merely make the payment of said annuity a charge on my estate in priority to the legacies and other dispositions thereof contained in this will. My trustees may at any time set apart securities which in their opinion are amply sufficient to produce the said annuity for my wife and thereafter the said annuity shall be a first charge upon such securities and shall cease to be a charge on the rest of my estate.

I DIRECT my trustees to hand over to my wife all my household furniture and household effects which may be in and about the dwelling house and premises which may be my home at the time of my death.

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I DIRECT my trustees to hold One hundred thousand dollars par value of the capital stock of Hiram Walker & Sons, Limited, upon the following trusts, namely,—

During the life of my said wife to pay over to her the dividends or income upon the said stock. After her death the said stock shall be disposed of as part of the residue of my estate hereinafter bequeathed to my two brothers; provided always that the voting power upon the said stock at all meetings of the shareholders of the said Company or otherwise shall be exercised by the trustees thereof as my said two brothers may direct and proxies for that purpose shall from time to time be given by said trustees to such person as my brothers may direct; Provided further that my brothers may and they are hereby given the option at any time to require a transfer to be made to them of the said stock upon paying to the trustees thereof the amount of the par value thereof and upon the same being paid said amount shall stand in lieu of the stock and shall be invested by the trustees, and the income thereof and the principal shall be paid over and disposed of as the dividends or income on the said stock, and the stock itself would have been paid over and disposed of had the same remained in the said trust. Provided also that should either of my brothers die, the survivor shall have the direction as to the voting power on said stock and as to the proxies therefor and shall have the said option to require the transfer thereof.

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I DECLARE that the provisions herein made for my wife shall be in lieu of dower or right to dower or other interest in my estate.

Should my trustees desire to be discharged from the trusts connected with the securities set apart to produce said annuity for my wife and from the trusts connected with the said \$100,000.00 of stock in the capital of Hiram Walker & Sons, Limited, I empower them at any time to transfer the said trusts and the trust estate representing the same to an incorporated Trust Company or to two or more trustees, to be selected by them and upon such transfer being made my trustees shall be discharged from future responsibility with respect to the trusts and trust estate so transferred.

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Any moneys forming part of the said trusts which may require investment or re-investment may be invested by the trustees thereof in such securities and investments as they may think best notwithstanding the same may not be securities or investments upon which trustees are by law entitled to invest trust moneys.

11. As a token of affection for my sister, Mrs. T. B. Buhl, of Detroit,

E. Chandler Walker Dictated

Outt

E. Chandler Walker

who is so situated that she requires no pecuniary legacy from me, I DIRECT my trustees to hold Fifty thousand dollars (\$50,000.00) par value of the capital stock of Hiram Walker & Sons, Limited, upon the following trusts, namely,—

10 During the life of my said sister to pay over to her the dividends or income upon the said stock. After her death the said stock shall be disposed of as part of the residue of my estate hereinafter bequeathed to my two brothers. Provided always that the directions above contained with respect to the voting power upon the stock to be held for the benefit of my wife as above mentioned and to the proxies therefor and to the option to require a transfer to be made of said stock; and to the payment over and disposition of income and principal; and with respect to the death of either of my brothers; and with respect to the transfer of the trust relating to said stock and the investment of the moneys of the trust, shall apply to the Fifty thousand dollars of stock in this clause mentioned, to the same extent, and in the same manner as if the said directions had been repeated in this clause with respect to said Fifty thousand dollars of stock.

12. I DIRECT my trustees to hold Fifteen thousand dollars (\$15,000.00) par value of the capital stock of Hiram Walker & Sons, Limited, upon the following trusts,—

20 During the life of my aunt, Jennie Williams, of Detroit, to pay over to her the dividends or income upon the said stock. After her death the said stock shall be disposed of as part of the residue of my estate hereinafter bequeathed to my two brothers. Provided always that the directions above contained with respect to the voting power upon the stock to be held for the benefit of my wife as above mentioned, and to the proxies therefor, and to the option to require a transfer to be made of said stock, and to the payment over and disposition of income and principal; and with respect to the death of either of my brothers; and with respect to the transfer of the trust relating to said stock, and the investment of the moneys of the trust, shall apply to the Fifteen thousand dollars of stock in this clause mentioned to the same extent and in the same manner as if the said directions had been repeated in this clause with respect to said Fifteen thousand dollars of stock.

40 13. I DIRECT my trustees to hold Twenty thousand dollars par value of the capital stock of Hiram Walker & Sons, Limited, upon the following trusts, —During the life of Mrs. Andre W. Brewster, sister of my wife, to pay over to her the dividends or income upon the said stock. After her death the said stock shall be disposed of as part of the residue of my estate hereinafter bequeathed to my two brothers. Provided always that the directions above contained with respect to the voting power upon the stock to be held for the benefit of my wife as above mentioned and to the proxies therefor, and to the option to require a transfer to be made of said stock and to the payment over and disposition of income and principal and with respect to the death of either of my brothers, and with respect to the transfer of the trust relating to said stock and the investment of the moneys of the trust, shall apply to the Twenty thousand dollars of stock in this clause mentioned to the same extent and in the same manner as if the said directions had been repeated in this clause with respect to said Twenty thousand dollars of stock.

E. Chandler Walker

RECORD
In the
Supreme
Court of
Ontario

Exhibits

No. 2
Will of
1901, with
Z. A. Lash's
notes
thereon.
(Filed by
Plaintiff)
—continued

RECORD

In the
Supreme
Court of
Ontario

Exhibits

No. 2
Will of
1901, with
Z. A. Lash's
notes
thereon.
(Filed by
Plaintiff)
—continued

E. Chandler Walker

Out

E. Chandler Walker

Out

Out

Out

Out

14. I DIRECT my trustees to hold Twenty thousand dollars par value of the capital stock of Hiram Walker & Sons, Limited, upon the following trusts, namely,—

During the life of Mrs. Stephen Griggs (mother of Stephen Adelbert Griggs below mentioned) to pay over to her the dividends or income upon the said stock. After her death the said stock shall belong to her daughter, Frances, and shall be transferred to her said daughter or to whom she may appoint. Provided always that during the life of the said Mrs. Stephen Griggs and for one year after her death, should she die within one year after my death, the said stock shall continue to be held in trust and my said brothers may and they are hereby given the option to require a transfer to be made to them of the said stock upon paying to the trustees thereof the amount of the par value thereof and upon the same being paid it shall stand in lieu of the stock and during the lifetime of Mrs. Stephen Griggs the same shall be invested by the trustees thereof and the income thereof and the principal shall be paid over and disposed of as the dividends or income on the said stock, and the said stock itself, would have been paid over and disposed of had the same remained in the said trust. Provided however that the voting power upon the said stock shall during the life of the said Mrs. Stephen Griggs or until the time for my brothers to exercise the said option has elapsed, at all meetings of the shareholders of the said Company or otherwise, shall be exercised by the trustees as my said brothers may direct and proxies for that purpose shall from time to time be given by the said trustees to such persons as my brothers may direct. Provided also that should either of my brothers die the survivor shall have the direction as to the voting power on said stock and as to the proxies therefor and shall have the said option to require the transfer thereof. 10 20

Provided also that the directions above given with respect to the stock to be held for the benefit of my sister, Mrs. Buhl, relating to the transfer of the trust and the investment of the trust moneys, shall apply to the Twenty thousand dollars of stock in this clause mentioned, to the same extent and in the same way as if the said directions had been repeated herein with respect to the said Twenty thousand dollars of stock. 30

15. I DIRECT my trustees to pay over to my great-aunt, Mrs. R. W. Jenney, of Flint, Michigan, the sum of Twenty-five dollars per month during her life.

16. I DIRECT my trustees to provide for the payment during the lifetime of Belle Jenney, daughter of my said great-aunt, of the sum of Twenty-five dollars per month, to be expended for the benefit of the said Belle Jenney during her life.

I GIVE my trustees uncontrolled discretion with respect to the payment and application of this annuity. They may for that purpose purchase an annuity or they may set apart securities of my estate sufficient to produce the same and transfer the same to trustees on such trusts with respect to said payment as they think proper and the said annuity may be paid to such persons and in such manner as my trustees or the trustees in charge thereof from time to time may consider most advisable and in the interests of the said Belle Jenney and the persons entrusted with the application of said annuity may be relieved from 40

E. Chandler Walker

Bonds

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the necessity or liability of accounting for the application thereof. Any securities set apart to represent said annuity shall after the death of the said Belle Jenney form part of the residue of my estate hereinafter bequeathed to my brothers.

17. I DIRECT my trustees to hold or to transfer to a Trust Company or other trustees to hold the sum of Five thousand dollars for the benefit of Mrs. Susie Jenney, formerly wife of Clare W. Jenney, and her two daughters upon such trusts as to investments, disposition of income and principal, and the shares therein, for life or otherwise, of the three beneficiaries or any of them, as my trustees may think best in the interests of the said beneficiaries.

18. I DIRECT my trustees to hand over to a Trust Company or other trustees to be selected by them and upon trusts to be declared by them the sum of Five thousand dollars for the benefit of Edward Chandler Farrington, son of Mrs. Harvey Farrington, of Croton-on-the-Hudson. The income upon the said sum not required from time to time for the maintenance and education of the said Edward Chandler Farrington (who is now about one year old) is to accumulate and be added to the principal. Upon the death of the said Edward Chandler Farrington before attaining the age of twenty-one, the principal and accumulations are to be paid over to his mother, if she be then alive; if not, then such principal and accumulations are to be paid over or held for the benefit of such brothers and sisters of his as may be then alive; but if there be no such brothers and sisters, the said principal and accumulations shall form and be disposed of as part of the residue of my estate hereinafter bequeathed to my brothers. When the said Edward Chandler Farrington attains the age of twenty-one years, said principal and accumulations shall be paid over to him.

Dictated

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E. Chandler Walker

19. I DIRECT my trustees to hold or to transfer to a Trust Company or other trustees to hold the sum of Ten thousand dollars for the benefit of my
✓ Jessie ✓

Dictated

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E.C.W.

J.H.C.
E.R.

uncle Ephraim S. Williams, of Detroit, and his wife and daughter, upon such trusts as to investments, disposition of income and principal, and the shares therein for life or otherwise of the three beneficiaries or any of them as my trustees may think best in the interests of the said beneficiaries.

20. I DIRECT my trustees to transfer to William Aikman, Junior, of Detroit, One hundred thousand dollars (\$100,000) par value of the capital stock of Hiram Walker & Sons, Limited, and to transfer to Stephen Adelbert Griggs, of Detroit, One hundred thousand dollars (\$100,000) par value of the capital stock of the said Company; and to transfer to William Robins, of Walkerville, one of the Board of Directors of Hiram Walker & Sons, Limited, One hundred thousand dollars (\$100,000) par value of the capital stock of said Company; also to transfer to C. M. Walker, of Walkerville, Twenty-five thousand dollars (\$25,000) par value of the capital stock of the said Company. Provided always that the said stock is to be transferred to the said Aikman, Griggs, Robins and Walker, respectively, upon condition that they are respectively to agree with my said two brothers that in case any of them, the said Aikman, Griggs, Robins and Walker, should die within five years after my death and should not have previously sold or disposed of said stock, the executors or administrators of those so dying shall, if requested, by my said brothers, or such one as may be alive within six months of the death, transfer the said stock, or

Out

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E. Chandler Walker

Out

RECORD
In the
Supreme
Court of
Ontario

Exhibits

No. 2
Will of
1901, with
Z. A. Last
notes
thereon.
(Filed by
Plaintiff)
—continue

RECORD

so

In the Supreme Court of Ontario

Exhibits

No. 2 Bill of Exchange with A. Lash's interest thereon. Filed by Plaintiff continued

Out

E. Chandler Walker

so much as may not have been disposed of to my said brothers or the said survivor of them, upon being paid the par value thereof together with interest at the rate of six per cent. per annum since the last preceding dividend paid on said stock.

21. I DIRECT my trustees to transfer to the said William Aikman, Junior, Two hundred and fifty shares in the capital stock of The Walkerville Land and Building Company, Limited; and to transfer to the said Stephen Adelbert Griggs, twenty shares of the capital stock of The Walkerville Malleable Iron Company, Limited.

22. I DIRECT my trustees to hold for the benefit of the said Stephen Adelbert Griggs Seventy-five thousand dollars of the debt owing to me by The Walkerville Brewing Company, Limited, and for the benefit of E. W. Bauslaugh, the Secretary of the said Brewing Company, Twenty-five thousand dollars of the said debt; and to pay over to the said Griggs and Bauslaugh, respectively, the proceeds of the realizations of the said debt from time to time in the proportions that the said sum of Seventy-five thousand dollars and Twenty-five thousand dollars bear to the whole debt.

23. I DIRECT my trustees to pay the following legacies,—

Bonds To Mrs. Harvey Farrington, above mentioned, the sum of Five thousand dollars; 20

Bonds To Mrs. James V. Campbell, of Lyons, New York, the sum of Five thousand dollars;

Out To my cousin Mrs. Mariva Hodges, of Pontiac, Michigan, the sum of Five thousand dollars;

Out To Henry Harmon, of Detroit, Michigan, the sum of Five thousand dollars;

Cash To the son (named after me) of my old friend William A. Warner, of Detroit, the sum of Two thousand dollars;

Cash To the son (named after me) of Robert Elliott (formerly Excise Officer at Walkerville) the sum of Five hundred dollars; one thousand

J.H.C. ~~To my cousin Miss Belle A. Jenney, of Flint, Michigan, the sum of one thousand dollars.~~ 30

E.R. Bonds To my niece, Mary W. Brewster, the sum of Five thousand dollars;

To Mademoiselle Marie Hoffe;

Cash To Mademoiselle Alice Hoffe, daughters of Madame Hoffe, of Paris, France, at whose boarding-house I stayed when in Paris on various occasions, and from whom I received many kindnesses, to each the sum of Two thousand five hundred dollars;

Cash To the proper officers or trustees of the "Hotel Dieu," in Windsor, Ontario, for the benefit of the said Hotel Dieu, the sum of Ten thousand dollars;

Cash To the proper officers or trustees of All Saints Church, Windsor, Ontario, where I was baptised, for the benefit of said church, the sum of Ten thousand dollars; 40

Cash To the Board of Trustees of the Detroit Art Museum, for the benefit of said Museum, the sum of Fifty thousand dollars; \$25,000

To the Board of Trustees or proper officers of Upper Canada College, for the benefit of such College, the sum of Ten thousand dollars;

To the Board of Trustees of the University of Toronto, for the purposes of erecting a Convocation Hall or enlarging or otherwise improving the present Convocation Hall, the sum of Twenty-five thousand dollars; (\$25,000.)

E. Chandler Walker

The jagged line here shown represents a pencil line on the Will

24. It being my desire to provide for the citizens of Walkerville a place for healthful recreation and amusement and being of opinion that a park or recreation grounds would best serve this purpose I DIRECT my trustees to pay over to the trustees of said recreation grounds, to be constituted as hereinafter provided for, the sum of Thirty thousand dollars and I empower and request the Municipal Council of the Corporation of the Town of Walkerville to pass a by-law, with the approval in writing of my trustees, providing for the constitution and continuation of a Board of Trustees, not exceeding five in number, to accept the legacy which my trustees are above directed to pay over to them, and to dispose thereof and deal therewith in accordance with the directions herein contained and with such rules and regulations as may be duly made in that behalf as hereinafter provided for. The moneys so paid to the said Board of Trustees shall, to the extent required, be used by them in procuring grounds in or near Walkerville suitable for recreation, sports, pastimes and entertainments, such grounds to be conveyed to the Corporation of the Town of Walkerville and to be called by such name as the Municipal Council with the approval of my trustees may decide upon; any moneys not required for the purpose of procuring said grounds to be invested by the Board, the income thereof, together with part of the principal if necessary to be used from time to time in enlarging, maintaining, fencing and otherwise improving and adorning the grounds and making them suitable for the purposes aforesaid. I empower the said Municipal Council, with the approval of the Board of Trustees, to make from time to time such rules and regulations respecting the investment and management of the trust funds and the quorum, powers and duties of the Board as they may think proper; and I direct my trustees to apply, at the expense of my estate, for such legislation as they may think expedient in order that the said Board may be properly constituted and continued and that all necessary and proper rules and regulations may be legally made and enforced and that the said grounds may be held in perpetuity for the purposes aforesaid. I desire that the use of the same shall in general be free but the said rules and regulations may provide for charging an admission fee from time to time in order to raise a revenue for the purposes of the trust. My desire is that persons be from time to time selected for said Board sufficiently public-spirited to give their services free. A salaried manager or secretary of the Board may be appointed if thought fit.

25. It being my desire to create an endowment fund for the benefit of St. Mary's Church (Episcopal) Walkerville, I DESIRE that a Board of three trustees be constituted to manage the Fund herein bequeathed for that purpose; one member of such Board to be appointed by the congregation of said Church; one by the Rector or Incumbent of said Church for the time being; and one by the General-Manager for the time being of The Canadian Bank of Commerce. The vote of the congregation making said appointment shall be taken in such manner as the Rector and Church Wardens of said Church may determine. Any vacancy in the office of trustee appointed by said congregation shall be filled by a similar vote. Any vacancy in the office of trustee appointed by the Rector or Incumbent shall be filled by appointment of the Rector or Incumbent for the time being; and any vacancy in the office of trustee appointed

Out
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E. Chandler Walker

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Out

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E. Chandler Walker

Out

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RECORD

In the
Supreme
Court of
Ontario

Exhibits

No. 2
Will of
1901, with
Z. A. Lash'
notes
thereon.
(Filed by
Plaintiff)

-continued

RECORD

by the General-Manager of the said Bank shall be filled by appointment of the General-Manager for the time being.

In the Supreme Court of Ontario

I AUTHORIZE the Board so constituted to make rules and regulations with respect to the management, investment and disposition of the funds entrusted to them as hereinafter mentioned; also with respect to meetings of the Board; the quorum, which shall not be less than two; the employment and remuneration of the Secretary or other persons employed in connection with the trust; the appointment of a Chairman of the Board—his duties and authorities and term of office.

Exhibits No. 2 Will of 1901, with Z. A. Lash's notes hereon. (Filed by Plaintiff) -continued

Out
Out
F. Chandler Walker

I DIRECT that any vacancy which may occur in the said Board be filled 10 without delay, in order that the Board may at all times be kept up to three.

I DECLARE that the decision of the majority of the said Board with respect to any matter connected with the trust estate or the exercise of any power or discretion vested in the Board, shall be final and shall be complied with and carried out by the Board. The members of the Board or any of them may receive from time to time out of the funds of the trust such remuneration for their services as may be fixed by unanimous vote of the Board, with the approval of the Rector and Church Wardens.

I DIRECT my trustees to pay over to the said Board the sum of One hundred thousand dollars (\$100,000.00) as an Endowment Fund for the benefit of 20 the said Church. Not more than Fifty thousand dollars thereof to be used in buildings and land, including a parsonage. Any moneys not so used are to form an Endowment Fund; the net income whereof shall be applied for the benefit of the said Church. The said Fund shall be invested and re-invested from time to time in such securities and investments as the said Board may think proper notwithstanding that the same may not be securities or investments upon which trustees are by law entitled to invest trust moneys. Should it be necessary to apply for legislation in order that the trusts of this paragraph may be properly and legally carried out and accomplished, I AUTHORIZE my trustees to apply at the expense of my estate for such legislation as they may 30 think expedient in that behalf.

26. The stocks in the capital of Hiram Walker & Sons, Limited, and of The Walkerville Land and Building Company, Limited, and of The Walkerville Malleable Iron Company, Limited, or some of them, may be held in the name of the partnership of Walker Sons, of which I am a member, but I DIRECT my trustees to require from the surviving members of said partnership a transfer to them of the stocks which I have above specifically bequeathed, in order that such bequests may be properly carried out.

27. I GIVE to my trustees full discretion as to the times when the legacies and bequests given by this will or any of them shall be paid and carried out. My 40 trustees are to act prudently in this matter, having in view any liability which I or my estate may be under; but I EMPOWER my trustees to pay over to the persons entitled to the said legacies and stocks, or the income or dividends thereof, interest at five per cent. per annum upon said legacies and the dividends and securities bequeathed income of ~~said stock~~ from such period after my death as my trustees may think proper notwithstanding that one year after my death may not have elapsed.

and the prudent realization of assets for the payment of said legacies

E. Chandler Walker Out?

28. I RELEASE my cousins Oliver Williams and Charles Williams, and William Aikman, Junior, above mentioned, from any indebtedness which they, or either of them, may be under to me at the time of my death and I DIRECT my trustees to give them respectively the necessary releases therefor.

29. I DIRECT that all duties payable ^{or taxes} under ^{any} the Ontario Succession Duty Act upon or in respect of any of the legacies, specific or otherwise, or annuities ~~or endowments~~ ^{or death} hereby bequeathed shall be paid out of the residue of my estate,

and in order that the said legacies, annuities ~~and endowments~~ ^{or death} may be received by those entitled thereto free from any succession duty or tax.

30. The legacies given to the said Aikman and Robins are not attached to the office of executor.

31. Should I leave a memorandum signed by myself indicating the disposition to be made of any of my pictures or personal effects, I DIRECT and DESIRE my trustees to carry out the wishes I may therein express and the bequest to my wife of my household furniture and household effects above made is subject to the provision of this clause.

32. I DIRECT my trustees to hand over to my two brothers Franklin Hiram Walker and James Harrington Walker, share and share alike, all the rest and residue of my estate, real and personal, for their own use and benefit absolutely and I DIRECT my said brothers thereout to pay all my just debts, liabilities funeral and testamentary expenses.

33. Should either of my said brothers die before me leaving issue him surviving I DIRECT that whatever the one so dying would have received under this Will had he not pre-deceased me, shall belong to such issue, and if more than one, then share and share alike.

IN WITNESS WHEREOF I have hereto set my hand at the Town of Walkerville, Ontario, this twenty first day of December, A.D., One thousand nine hundred and one, fourteen

30 The foregoing Will consisting of this and the preceding twenty pages, each of which has been signed by the testator, in the margin, was SIGNED, PUBLISHED and DECLARED by the testator, Edward Chandler Walker, as and for his Last Will and Testament, in the presence of us, who at his request, in his presence and in the presence of each other have hereto set our hands as witnesses.

E. Chandler Walker.

40 J. H. Coburn, of Walkerville, Barrister-at-Law.
Edward Radford, of Walkerville, Secretary.

Revoked by new will executed in 1914

Z. A. I.

RECORD
In the
Supreme
Court of
Ontario

Exhibits

No. 2
Will of
1901, with
Z. A. Lash's
notes
thereon.
(Filed by
Plaintiff)
—concluded

E. Chandler Walker

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Out

Out

Out

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EXHIBIT NO. 3

RECORD

In the
Supreme
Court of
Ontario

Exhibits

No. 3
Codicil of
1913.
(Filed by
Plaintiff)

I, EDWARD CHANDLER WALKER, of the Town of Walkerville, in the Province of Ontario, Esquire, hereby declare this to be the second codicil to my Last Will and Testament bearing date the 21st day of September, 1901.

I hereby revoke the appointment therein made of my brothers, Franklin Hiram Walker and J. Harrington Walker, and of William Aikman, Jr., and William Robins, as Executors and Trustees of my estate, and hereby nominate, constitute and appoint NATIONAL TRUST COMPANY, LIMITED, of Toronto, Executors and Trustees in their stead. Said National Trust Company, Limited shall have all the rights, powers and authorities as if it were named in my said Last Will and Testament, wherever the said Franklin Hiram Walker, J. Harrington Walker, William Aikman, Jr., and William Robins, are named or referred to as Executors or Trustees. 10

IN WITNESS WHEREOF I have hereunto set my hand this day of November, 1913.

SIGNED, PUBLISHED and DECLARED by the Testator, EDWARD CHANDLER WALKER, as and for the second codicil to his Last Will and Testament, dated the 21st day of December, 1901, in the presence of us both present together at the same time, who at his request in his presence and in the presence of each other have hereunto subscribed our names as witnesses.

(Sgd.) EDWARD C. WALKER 20

(Sgd.) C. C. AMBERY
(Sgd.) ROBT. J DANIELS

EXHIBIT NO. 4

No. 4
Draft
Codicil
(Filed by
Plaintiff)

I, EDWARD CHANDLER WALKER, of the Town of Walkerville, in the Province of Ontario, Esquire, hereby declare this to be the third codicil to my Last Will and Testament, bearing date the 21st day of September, 1901. 30

Circumstances having materially changed since the date of my said Will, I hereby revoke clauses No. 20, 21, 22 and 24.

I give and bequeath to Stephen A. Griggs all the bonds of The Walkerville Brewing Company Limited that may be held by me at the time of my death, together with all unpaid interest coupons; the said bonds being of an issue made by the said Company of \$150,000, and bearing date the 30th day of December, 1911.

IN WITNESS WHEREOF I have hereunto set my hand this day of December, 1913.

SIGNED, PUBLISHED AND DECLARED by the Testator, EDWARD CHANDLER WALKER, as and for the third codicil to his Last Will and Testament, dated the 21st day of September, 1901, in the presence of us both present together at the same time, who at his request in his
 10 presence and in the presence of each other have hereunto subscribed our names as witnesses.

RECORD
 In the
 Supreme
 Court of
 Ontario
 Exhibits

EXHIBIT NO. 5

(Original Probate Produced)

No. 5
 Will of
 1914.
 (Filed by
 Plaintiff)

Last Will and Testament of Edward Chandler Walker, dated twenty-seventh day of February, A.D. 1914.

This is the Last Will and Testament of me, EDWARD CHANDLER WALKER, of the Town of Walkerville, County of Essex, Ontario.

1. I hereby revoke all Wills and writings testamentary by me at any time
 20 heretofore made, and I declare this to be my last Will and Testament.

2. I appoint National Trust Company, Limited, of Toronto, my Executors. I hereinafter refer to them as "my Trustees," and I devise and bequeath to them all my property, real and personal, of whatsoever kind, and wheresoever situate, which I may die possessed of or entitled to, to have and to hold upon the trusts and for the purposes hereinafter declared.

3. I have such confidence in the fairmindedness and good judgment of my two brothers, F. H. Walker and J. H. Walker, that notwithstanding the interest in the residue of my estate which they will take under this Will I request my Trustees from time to time to consult them or one of them with respect to
 30 any important questions which may arise in connection with the carrying out of any of the provisions of this Will, and I relieve my Trustees from all liability for any action taken by them in accordance with the opinions or advice of my said brothers or of the one consulted.

4. I devise to my wife Mary Griffin Walker during her natural life the right to occupy and use personally my homestead and premises known as "Wil-
 listead," in the Town of Walkerville, Ontario, including the lands surrounding and connected therewith and the garage and other buildings thereon, the said lands consisting of about fifteen and one half acres. I hereinafter refer to the foregoing as "homestead and premises" and subject to the exceptions and speci-
 40 fic bequests hereinafter made I bequeath to my said wife during her natural life

RECORD

In the
Supreme
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Exhibits

No. 5
Will of
1914.

-continued

the right to possess and use personally all my furniture and effects which may be in and about said homestead and premises, including among other things pictures, ornaments, &c., automobile and garage effects; also including such effects as may be temporarily absent from the said homestead and premises but which are usually kept there. So long as my wife desires to occupy and use personally the said homestead and premises, furniture and effects, I direct my Trustees to make, out of my estate, such expenditures thereon as may be required to enable my wife to maintain the same in good order and condition, including automobile repairs, the keeping up of the grounds, gardens, greenhouses, &c., and the heating and lighting of the dwelling house, garage and other places requiring heat and light. I also direct my Trustees to pay the taxes, including water rates, connected with the said homestead and premises, furniture and effects, and to pay the insurance premiums for any fire or other insurance which they may think expedient to effect. 10

Should any dispute arise as to what is or is not included in the above devise and bequest and in the directions contained in this clause, the decision thereon of my Trustees shall be final and binding on all concerned.

5. Should my wife at any time decide not to occupy and use personally the said homestead and premises, then she may notify my Trustees in writing to that effect, and thereupon shall have the following options, viz., either:— 20

(1) To surrender and convey to my Trustees all her life estate and interest in said homestead and premises, furniture and effects, and to require them to pay to her as the consideration for such surrender and conveyance such lump sum or yearly or other payments during her life or for a shorter period, as may be agreed on between her and my Trustees and any difference between them to be settled by some person to be agreed on by them or in case of disagreement to be appointed by the President of the Canadian Bank of Commerce.

(If my wife exercise this option No. 1, she will naturally have to be prepared to procure and furnish for herself another dwelling and in setting the consideration to be paid to her for such surrender and conveyance I desire that the reasonable value to her of her occupation and use, during the remainder of her life, of said homestead and premises, furniture and effects, should be considered, as well as the value to my estate.) or— 30

2. To surrender and convey to my trustees all her life estate and interest in said homestead and premises, and to require them to procure by purchase, lease or otherwise, for her personal occupation and use, in Canada or some other place approved by my Trustees, another dwelling and premises smaller in size and less expensive to keep up; she to select from the said furniture and effects of said homestead and premises such parts as she may desire to use in and about said other dwelling and premises, and to surrender and convey to my Trustees all her life estate and interest in the parts not so selected. 40

My intention is that in making selections of furniture and effects my wife shall have in mind the size and convenience of said other dwelling house and premises and shall select only such as she may consider suitable and convenient and reasonably necessary, but her discretion in this respect is left uncontrolled.

If option No. 2 be exercised my Trustees shall, out of my estate, make such expenditure as may be required to procure such other dwelling and premises, which shall become part of my estate and which my wife shall have the right to occupy and use personally during her life in lieu of my said homestead and premises, and to which the furniture and effects so selected shall be removed by her. My Trustees shall, with respect to such other dwelling and premises and the furniture and effects so removed thereto, make similar expenditures for similar purposes to the expenditures above directed to be made with respect to my homestead and premises and furniture and effects thereof.

- 10 6. My general intention in making the provisions contained in clause number 5 hereof is that my wife may, if she decides not to occupy my said homestead and premises, have a comfortable furnished home, suitable to her personal tastes and convenience, and that the expenditures for and in connection therewith above referred to may be made by my estate; and for the substantial carrying out of such intention, according to my Trustees' opinion as to its fair meaning I confer upon my Trustees all necessary powers and discretions to do from time to time that which may appear to them necessary, even though it may not appear to be expressly provided for in said clause, and their decisions from time to time shall be final and binding upon all concerned. Without limiting the generality of the foregoing, I specially authorize them to use their own discretion as to the amount to be expended in procuring the other dwelling and premises for my wife if she exercise option No. 2, and as a guide to them in this respect I express the opinion that the sum of \$30,000 (Thirty Thousand dollars) or thereabouts should be sufficient, but as I cannot now know when such other dwelling may be required or where it may be placed I leave the amount of such expenditure to my Trustees' discretion.
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7. I desire my wife to give to my Trustees her written acknowledgement for the furniture and effects to be held and used by her under the terms of this Will, the list to be made at the expense of my estate; and I relieve my Trustees from any duty of looking after or seeing to the safety of any such furniture and effects, and when my wife's interest therein or right to hold and use the same ceases I relieve my Trustees from all responsibility with respect to any parts or things which may not be in or about the dwelling then occupied by her or which they cannot readily obtain.
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8. Should my Trustees, after consultation with my said brothers or one of them and with my wife, be of opinion that it would be advisable in the interests of my estate to reduce the area of the lands connected with my said homestead and to dispose of the rest, and that such reduction would not substantially interfere with the comfortable use and enjoyment by my wife of said homestead and premises as her home and residence, then, notwithstanding said devise to my wife, I authorize them to set apart out of such lands an area sufficient in their opinion for such home and residence, and to lay out the lands remaining into such lots with such streets, lanes and other public places as would in their judgment be best, and to sell, lease or otherwise dispose of the same on such terms and for such purposes and with such building, using, or other restrictions as they may think necessary. I desire my Trustees to bear in mind at all times the effect upon the selling or renting value of my said homestead and re-
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RECORD

In the
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No. 5
Will of
1914.

-continued

RECORD

In the
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No. 5
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1914.

—continued

maining premises which such reduction in area and the use by others of the lots or lands sold or disposed of might have.

9.—I direct my Trustees to set apart such securities and investments forming part of my estate as may be in their opinion amply sufficient to produce the annuity hereinafter given to my wife and to provide for the expenditures referred to in clauses 4 and 5 of this Will, and I direct my Trustees to pay over to my wife during her life the sum of \$25,000.00 (Twenty-five thousand dollars) per year, in such payments from time to time as may be convenient, and I make the payment thereof a first charge upon the income and principal of the securities and investments so to be set aside by my Trustees. My Trustees may make payments of said annuity out of principal or income in their discretion. 10

I make the above provision for setting apart securities and investments in order that so much of the residue of my estate as may not be required to be held by my Trustees may be paid or transferred to my brothers in accordance with the devise and bequest to them hereinafter contained, but in order that there may be no possible doubt about the security for the payment of the annuity given to my wife and for the expenditures to be made under clauses 4 and 5, I direct my Trustees when paying or transferring residue to my brothers to take from them a joint and several covenant or covenants that should the income from the securities and investments set apart not be sufficient in any year or years during my wife's life to meet said annuity and said expenditures during such year or years the covenantors will on demand pay the difference. 20

10. In addition to the said annuity I bequeath to my wife the sum of \$200,000.00 (Two hundred thousand dollars), and I direct my Trustees to pay to her the said sum in whole or part out of the moneys of my estate at convenient times, or with her approval to transfer to her investments or securities in whole or part to that amount. I recommend my wife to employ National Trust Company, Limited, my Trustees, as her agent to look after the investment of said moneys for her and the collection of the income upon her securities. 30

11. I declare that the provisions herein made for my wife shall be in lieu of dower or right to dower or other interest in my estate.

12. I make the following bequests as tokens of affection, viz:

To my sister, Mrs. T. D. Buhl of Detroit, who is so situated that she requires no pecuniary legacy from me, the picture being the painting "Sunset," by Dearth.

To my sister-in-law Mrs. Franklin H. Walker, the picture being the painting "The Oaks" by Harpigny.

To my sister-in-law Mrs. J. Harrington Walker, the picture being "Esmeralda," by Wunnenberg. 40

I also bequeath the following pictures, viz:

To my sister-in-law Mrs. A. W. Brewster, the painting, an "Italian Scene" by Richard Wilson.

To my nephew, Willis E. Buhl, the painting, a landscape by Hans Hermann.

To my nephew, Arthur H. Buhl, a painting of Dogs, by Blinks.

To my nephew, Lawrence D. Buhl, the painting, a Landscape with Cattle, by Marie Dieterle.

To my great niece Elizabeth Buhl Warren, the painting of a Woman by Francois Flemeng.

To my nephew F. Caldwell Walker, a Landscape by Vreedenburgh.

To my niece Mary Margaret Walker, a Water-color by Harpigny.

To my niece, Elizabeth Talman Walker, small Oil-painting of Child (head and shoulders), by Jacquet.

10 To my niece, Countess Ella Matuschka, "The French Garden, Venice," by Ziem.

All these pictures are excepted out of the bequest above made to my wife of the use of furniture and effects.

13. In this clause the "Pere Marquette Bonds" referred to are part of a bond issue made by the Railway Company now known as the Pere Marquette Railway Company which bonds are at present held by the Partnership of Walker Sons, of which I am a member, for the partners, and which under agreement of the partners are not to be sold but are to be divided among the partners or their estates. I authorize and direct my Trustees to take such steps and make arrangements with such partnership and the surviving mem-
20 bers thereof as may be necessary in order that they may receive for the purposes of this clause the bonds herein bequeathed.

I make the following bequests of Pere Marquette bonds to the persons, and of the respective amounts, par value, following, viz:—

- (a) To my aunt Jennie Williams, of Detroit, \$20,000.00 (Twenty Thousand dollars)
- (b) To Mrs. Andre W. Brewster, of Washington, D.C., sister of my wife, \$20,000.00 (Twenty thousand dollars.)
- (c) To my niece Mary W. Brewster \$10,000.00 (Ten thousand dollars.)
- 30 (d) To Mrs. Harvey Farrington, of Croton-on-the-Hudson, N.Y., \$5,000.00 (Five thousand dollars).
- (e) To my nephew Harrington Walker, \$20,000.00 (Twenty thousand dollars.)
- (f) To my nephew Hiram Walker, \$20,000.00 (Twenty thousand dollars.)
- (g) To my nephew Caldwell Walker \$20,000.00 (Twenty thousand dollars.)
- (h) To my niece Mary Margaret Walker \$20,000.00 (Twenty thousand dollars.)
- (i) To my niece Elizabeth Talman Walker, \$20,000.00 (Twenty thousand dollars.)
- 40 (j) To my niece Countess Ella Matuschka \$25,000.00 (Twenty-five thousand dollars).

Should any of the foregoing legatees mentioned in this clause be under twenty-one years of age at the time of my death, my Trustee shall pay to such legatee the income or interest upon the bonds, and shall hand over the bonds when such legatee attains twenty-one.

I direct my Trustees to hold Pere Marquette bonds of the par value in the following paragraphs of this clause stated, upon and for the respective trusts and purposes set out in said paragraphs respectively, viz:

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- (k) Amount \$20,000.00 (Twenty thousand dollars). Trusts; During the joint lives of Mrs. Stephen Griggs, of Detroit, and her daughter Frances, to pay over to the former the interest or income arising from said bonds, and upon the death of either of them to transfer said bonds to the survivor or her nominee.
- (l) Amount \$5,000.00 (Five thousand dollars). Trusts: To apply the interest or income thereof for the benefit of Edward Chandler Farrington, son of Mrs. Harvey Farrington, of Croton on the Hudson River, such income to be paid to the said son or to such persons for his benefit as my Trustees may decide. Any amount not required to be used for the benefit of said son is to accumulate and be added to the principal. Upon the death of the said Edward Chandler Farrington before attaining the age of twenty-one, the principal and accumulations are to be transferred and paid over to his mother if she be then alive; if not, then such principal and accumulations are to be paid over or held for the benefit of such brothers and sisters of his as may be then alive, but if there be no such brothers or sisters the said principal and accumulations shall form part of my residuary estate. When the said Edward Chandler Farrington attains the age of twenty-one years the said principal and accumulations shall be transferred or paid over to him.
- (m) Amount \$5,000.00 (Five thousand dollars). Trusts: During the life of Mrs. James Campbell, of Lyons, N.Y., to pay over to her the interest or income arising from said bonds, and upon her death to transfer said bonds to her daughters then alive in equal shares if more than one.
- (n) Amount \$10,000.00 (Ten thousand dollars). Trusts: The income thereof to be paid over to my aunt Mrs. Ephraim S. Williams, of Detroit, for her life; the principal to be divided equally between her children after her death, the interest of such children to vest in them at the time of my death.
- (o) Amount \$5,000.00 (Five thousand dollars). Trusts: For the benefit of Mrs. Susie Jenney, formerly wife of Clare W. Jenney, and her two daughters, upon such trusts as to payment and application of the principal, and the interest or income thereof to and among the said beneficiaries or any one or more of them as my said Trustees may from time to time think best in their interests; the decision of my Trustees from time to time to be final.

Should my Trustees think it in the interest of the beneficiaries, or any of them, mentioned in paragraphs (k) to (o), inclusive, of this clause, to sell the Pere Marquette bonds held in trust under said paragraphs or any of them and to invest the proceeds in other securities, I empower them to do so in their discretion, the proceeds to be held upon the same trusts and for the same purposes upon which the bonds sold were held; the investment of such proceeds to be governed by the clause hereinafter contained relating to the investment of moneys of my estate.

14. I make the following bequests in money viz:

- (a) To the Board of Directors or other governing body of the Detroit Art

- Museum, for the purposes of such Museum, the sum of \$25,000.00 (Twenty-five thousand dollars).
- (b) To the Trustees or proper authorities of St. Mary's Church (Episcopal) Walkerville, for the purposes of such Church, the sum of \$20,000.00 (Twenty thousand dollars). This is the Church for which the partnership of Walker Sons (of which I am a member) have already made provision in land, buildings and endowment.
- (c) To the Governors of the University of Toronto, for such purposes in connection with students' residences, present or future, as they may think best, the sum of \$25,000.00 (Twenty-five thousand dollars.)
- 10 (d) To the Board of Governors of St. Andrew's College, Toronto, for the purposes of the College, the sum of \$10,000.00 (Ten thousand dollars.)
- (e) To the Trustees or proper authorities of "Hotel Dieu" in Windsor, Ontario, for the purposes of said Hotel Dieu, the sum of \$10,000.00 (Ten thousand dollars.)
- (f) To the Trustees or proper authorities of All Saints Church, Windsor, Ontario, (where I was baptized) for the purposes of said Church, the sum of \$10,000.00 (Ten thousand dollars.)
- 20 (g) To Mademoiselle Alice Hoffe, daughter of Madame Hoffe of Paris, France, at whose house I stayed when in Paris on various occasions, and from whom I received many kindnesses, the sum of \$2,500.00 (Two thousand five hundred dollars.)
- (h) To the son (named after me) of my old friend William A. Warner, of Detroit, the sum of \$2,000.00 (Two thousand dollars).
- (i) To the son (named after me) of Robert Elliott (formerly Excise Officer of Walkerville), the sum of \$1,000.00 (One thousand dollars). Provided that if, after making such reasonable efforts to ascertain the residence of said son as my Trustees may in their uncontrolled discretion think sufficient, they are unable to ascertain the same within one year from the date of my death, or should said son have died after my death, and before such residence has been ascertained, then this legacy to him shall lapse and form part of my residuary estate, and a statement in writing made after the expiry of said year by resolution of the Board of Directors of my Trustees declaring such lapse shall be final and conclusive.
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15. I bequeath to Stephen A. Griggs, of Detroit, all the bonds of the Walkerville Brewing Company, Limited, which may be owned by me at the time of my death or held for me by Walker Sons, together with all unpaid interest coupons thereof; said bonds being of an issue made by said company of \$150,000.00 (One hundred and fifty thousand dollars), and bearing date about 30th December, 1911.

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16. I give to my Trustees full discretion as to the times when the legacies and bequests given by this Will or any of them shall be paid and carried out. My Trustees are to act prudently in this matter, having in view any liability which I or my estate may be under, and the prudent realization of assets for the payment of such legacies; but I empower my Trustees to pay over to the persons entitled to the said legacies, or the income or dividends thereof, inter-

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—continued

est at five per cent. per annum upon said legacies and the dividends and income of securities bequeathed, from such period after my death as my Trustees may think proper, notwithstanding that one year after my death may not have elapsed.

17. I direct that all duties or taxes payable under any Succession or Death Duty Act upon or in respect of any of the legacies, specific or otherwise, or annuities hereby bequeathed, shall be paid out of the residue of my estate, in order that the said legacies and annuities may be received by those entitled thereto free from any Succession or Death Duty or Tax.

18. Subject to the specific bequests herein given, I empower my Trustees 10
to collect, get in and convert into money all my estate, and to execute all such conveyances, assurances and assignments thereof as may be necessary, but I give to them uncontrolled discretion as to the manner in which, the times when and the terms upon which my said estate is to be collected, got in and converted as aforesaid; and I especially empower them to delay the conversion of any part of (?) parts of my estate as long as they think fit, and to allow all or any existing investments thereof to remain for so long as they think proper, notwithstanding that the securities and things in which such investments may be are not those upon which Trustees are by law entitled to invest trust moneys. Provided always that should my Trustees in carrying out of the provisions of this 20
Will require to sell any shares of stock in the capital of Hiram Walker & Sons, Limited, they shall notify my residuary legatees under clause 24 of this Will to that effect, and said residuary legatees may thereupon require my Trustees to transfer such shares of stock to them on their paying to my Trustees the amount required to be raised by such sale, and before making any sale of such stock my Trustees shall give said residuary legatees the preference of purchasing same at the same price which any other purchaser may be willing to pay.

19. Until my estate has been divided in accordance with the provisions of this Will, I authorize my Trustees to invest and reinvest the moneys of my 30
estate which may from time to time come into their hands in such securities and investments as they in their uncontrolled discretion may think fit, notwithstanding that the same may not be securities or investments upon which Trustees are by law entitled to invest Trust moneys; and I hereby relieve my Trustees from liability for any losses which may be sustained owing to any investments made by them in good faith or owing to delay in realizing any portion of my estate, or owing to my Trustees having in good faith allowed any investments existing at the time of my death to stand.

20. If at the time of my death I am liable as endorser, guarantor, surety or otherwise for any liability of any Company or person or persons, I authorize and empower my Trustees to renew from time to time in their discretion the 40
bills, notes, guarantees or other securities or contracts evidencing such liability, and for that purpose to enter into new bills, notes or other securities or contracts for and on behalf of my estate. My intention in conferring upon my Trustees the powers and discretions by this clause conferred is to give them such powers and authorities as will enable them to assist in the gradual liquidation of the liabilities which I may be under, in order that the companies or persons for whom I may be liable as aforesaid may not be unduly embarrassed.

21. If at the time of my death I am liable, either alone or jointly with another or others or otherwise, in respect of any bills, notes, contracts, agreements or other obligations in connection with any business carried on by me or by any company of which I am a shareholder either alone or with another or others, or in connection with any transactions, I authorize my Trustees to renew from time to time in their discretion such bills, notes, contracts, agreements or other obligations and for that purpose to enter into new bills, notes, contracts, agreements or other obligations for and on behalf of my estate. I further authorize and empower them in their discretion to continue on behalf of my estate
10 to carry on any such business or transactions in such manner and for such time and upon such terms as they think proper, with a view to the prudent and advantageous realization of my interest therein or to the winding up of the same without loss or excessive loss to my estate.

22. Should any Company in the capital Stock of which I may hold shares at the time of my death increase its capital, and should my Trustees hold shares therein as part of my estate, I authorize them to take up and subscribe for the portion of such increased capital to which as holders of shares in the Company they may be entitled, and to pay up the same out of the moneys of my estate. I also authorize my Trustees, if in their opinion it would be in the interest of my estate so to do, to subscribe for or purchase additional shares in
20 any Company in the Capital Stock of which I may, at the time of my death, hold shares and in the capital stock of which my Trustees may as part of my estate hold shares.

23. I direct my Trustees to pay out of the residue of my estate all my just debts, liabilities, funeral and testamentary expenses.

24. All the rest and residue of my estate, real and personal, I devise and bequeath to my brothers Franklin Hiram Walker and James Harrington Walker, for their own use and benefit, and should either of my said brothers die before me leaving issue him surviving then whatever the one so dying would have
30 received had he not predeceased me shall belong to such issue, and if more than one then share and share alike.

IN WITNESS WHEREOF I have hereto set my hand at the Town of Walkerville, Ontario, this 27th day of February, A. D. One thousand nine hundred and fourteen.

The foregoing WILL, consisting of this and the preceding nineteen pages, was SIGNED, PUBLISHED and DECLARED by the Testator, EDWARD CHANDLER WALKER, as and for his last Will and
40 Testament, in the presence of us, who, at his request, in his presence, and in the presence of each other have hereto set our names as witnesses,

"J. A. McDougall."

"Robt. J. Daniels."

"Edward C. Walker."

EXHIBIT NO. 6

Charles W. Hoare, M.D.
79 Wyandotte Street
Walkerville
Ontario.

RECORD

*In the
Supreme
Court of
Ontario*

Exhibits

No. 6
Dr. Hoare's
Charges
(Filed by
Plaintiff)

	No. of Charges	
1891 to 1896 inclusive	173	
1897	47	
1898	63	10
1899	111	
1900	114	
1901	158	
1902	145	
1903	117	
1904	142	
1905	138	
1906	63	
1907 (to 29th July)	46	
	—1317	20

EXHIBIT NO. 7

No. 7
Commission
Evidence
(Delano and
O'Leary filed
by Defend-
ants, Shurly
filed by
Plaintiff.)

Examinations on Commission of F. M. Delano, William O'Leary and F'r.
Burt R. Shurly.
(Read into Record (Delano) p. 436, (O'Leary) p. 455, (Shurly) p. 61.)

RECORD

*In the
Supreme
Court of
Ontario*

Exhibits

No. 8

Letter
Z. A. Lash to
E. C. Walker
(Filed by
Plaintiff)

EXHIBIT NO. 8,

Letter Z. A. Lash to E. C. Walker, Jan. 28, 1914.
(Read into Record, p. 102, l. 15).

EXHIBIT NO. 9

No. 9
Letter
Z. A. Lash to
E. C. Walker
(Filed by
Plaintiff)

Letter Z. A. Lash to E. C. Walker, Feb. 16, 1914.
(Read into Record, p. 103, l. 29).

EXHIBIT NO. 10

No. 10
Letter
Z. A. Lash to
G. H. D. Lee
(Filed by
Plaintiff)

Letter Z. A. Lash to G. H. D. Lee, June 18, 1915.
(Read into Record, p. 107, l. 21).

10

EXHIBIT NO. 11

No. 11
Letter
Z. A. Lash to
G. H. D. Lee
(Filed by
Plaintiff)

Letter Z. A. Lash to G. H. D. Lee, July 12, 1915.
(Read into Record, p. 108, l. 1).

RECORD

EXHIBIT NO. 12

In the
Supreme
Court of
Ontario

AGREEMENT made the 19th day of July A.D. 1915;
BETWEEN:

Exhibits

No. 12
Agreement
between
F. H. and
J. H. Walker
and Mrs.
Mary G.
Walker.
(Filed by
Plaintiff)

FRANKLIN HIRAM WALKER and JAMES
HARRINGTON WALKER,

OF THE FIRST PART;

MARY GRIFFIN WALKER, widow of the
late Edward Chandler Walker (and
hereinafter called "Mrs. Walker"),

OF THE SECOND PART; 10

and

NATIONAL TRUST COMPANY, LIMITED,
(hereinafter called "trustees"),

OF THE THIRD PART.

WHEREAS by his last Will and Testament dated the Twenty-seventh day of February, A.D. 1914, the said Edward Chandler Walker (hereinafter referred to as "testator") appointed the trustees his sole executors and trustees, and probate of said Will is about to be applied for by them;

AND WHEREAS by his Will the testator made certain provisions for the benefit of Mrs. Walker, and after making various bequests to others he bequeathed the residue of his estate to his brothers, the parties hereto of the first part (who are hereinafter called or referred to as "brothers"); 20

AND WHEREAS, the brothers having discussed with Mrs. Walker the provisions made for her by said Will and the probable expenditure required in connection with her living in the homestead and premises in Walkerville called "Willstead" devised to her for life, and in properly keeping up and maintaining the same, and believing that the testator's desire was that Mrs. Walker should be under no anxiety with respect to such expenditure or to her personal expenditure, and that such desire would be better carried out were the provisions hereof made as supplementary to the provisions of said Will, believing also that the other provisions hereof would be in accordance with the wishes of the, testator, the brothers and Mrs. Walker have decided to make this agreement; 30

THEREFORE THIS AGREEMENT WITNESSETH

1. In addition to the annuity of \$25,000.00 (Twenty-five thousand dollars) a year bequeathed to Mrs. Walker by the testator's Will, the brothers assign to her, out of the income of the testator's residuary estate to which they are or may become entitled under the said Will, the sum of \$25,000.00 (Twenty-five thousand dollars) per year during her life; and they hereby authorize and direct the trustees to deduct from time to time from the income to which they are or may be entitled as aforesaid the said sum of \$25,000.00 (Twenty-five thousand dollars) per annum, and to pay over the same from time to time to Mrs. Walker during her life; any amount representing any broken period between the time of the payment last preceding her death and the time of her death to be paid to her executors and administrators. 40

2. Instead of the trustees expending themselves, as directed by the said Will, what may be required to enable Mrs. Walker to maintain in good order

and condition the homestead and premises, furniture and effects, devised and bequeathed to her under the fourth clause of the said Will, including automobile repairs, the keeping up of the grounds, gardens, greenhouses, etc., and the heating and lighting of the dwelling house, garage and other places requiring heat and light; also for the taxes, including water rates, connected with the said homestead and premises, furniture and effects, and the insurance premiums for fire or other insurance, it is agreed that a sum at the rate of \$25,000.00 (Twenty-five thousand dollars) per year shall be paid by the trustees to Mrs. Walker for so long a time as under the terms of the said Will the trustees are directed to make such expenditures, and out of said money Mrs. Walker shall herself make all said expenditures.

The brothers as residuary legatees under the said Will hereby authorize and direct the trustees to pay to Mrs. Walker the said sum at the rate of \$25,000.00 (Twenty-five thousand dollars) a year for the purposes aforesaid, and to charge the same against the residue of the testator's estate to which the brothers are or may become entitled.

The trustees are hereby relieved from the responsibility of making said expenditures or of enquiring as to the making thereof by Mrs. Walker, and Mrs. Walker shall not be called upon to account for any surplus which may arise between the actual expenditure for the purposes aforesaid and the moneys paid to her as representing the same.

Mrs. Walker agrees with the trustees and with the brothers to make out of the said moneys such expenditures upon the said homestead and premises, furniture and effects as will maintain the same in good order and condition, including automobile repairs, the keeping up of the grounds, gardens, greenhouses, etc., and the heating and lighting of the dwelling house, garage and other places requiring heat and light, and that she will pay the taxes, including water rates, connected with the said homestead and premises, furniture and effects, and will pay the insurance premiums for any fire or other insurance which the trustees may think it expedient to effect. Provided that exceptional expenditure caused by explosion, earthquake, tornado, riot and other like causes shall not be included in the expenditure to be made by Mrs. Walker, and that repairs of damages by fire, etc., such as are covered by insurance shall be made out of the insurance moneys.

Should Mrs. Walker make default in carrying out this agreement, the trustees shall, upon being notified of such default by or on behalf of the brothers, make enquiries as to the same, and upon being satisfied that default has happened the trustees shall cause the necessary expenditures to be made to remedy the default, and shall deduct the amount thereof from any moneys payable or to become payable to Mrs. Walker hereunder or under the said Will.

3. The brothers hereby authorize and direct the trustees, at the request of Mrs. Walker, to expend the amount required in building and furnishing a small summer dwelling house and premises on the lot of land in St. Andrews, New Brunswick, purchased by the testator, the conveyance of which was taken to himself and Mrs. Walker as joint tenants and not as tenants in common, provided that when making the request Mrs. Walker declares that she intends to occupy such house and premises for her own use and does not intend to sell

RECORD

*In the
Supreme
Court of
Ontario*

Exhibits

No. 12
Agreement
between
F. H. and
J. H. Walker
and Mrs.
Mary G.
Walker.
—concluded

or lease the same; provided also that the sum to be expended by the trustees upon such dwelling house and premises shall not exceed \$25,000.00 (Twenty-five thousand dollars). The trustees may furnish Mrs. Walker from time to time with such amounts up to the said total for the said purpose as she may require, and they shall not have any duty to see to the application thereof, or with respect to the plans or otherwise of said dwelling house and premises. The brothers authorize and direct the trustees to charge against the residue of the testator's estate the moneys expended under this clause.

4. The brothers authorize and direct the trustees to pay to Mrs. Walker out of the residue of the testator's estate the sum of \$2,500.00 (Two thousand five hundred dollars) in order that she may be able to make gifts thereout to the servants who were in the employ of the testator. 10

5. The brothers hereby authorize and direct the trustees to transfer and convey to Mrs. Walker absolutely, with the exceptions below mentioned, all the furniture and effects bequeathed to her during life by clause 4 of the testator's Will, which may be in and about the said homestead and premises, including among other things pictures, ornaments, etc., automobile and garage effects; also including such effects as may be temporarily absent from the said homestead and premises but which are usually kept there; the intention being that Mrs. Walker may become the absolute owner thereof and not the owner of a life estate therein only; and the brothers authorize and request the trustees to enter as part of the residuary estate to which they are or may become entitled the interest in said furniture and effects, etc., which is to be transferred and conveyed to Mrs. Walker hereunder. The exceptions above mentioned are the pictures bequeathed by clause 12 of the testator's Will. 20

6. It being believed by the brothers that the testator intended to give a legacy to the Children's Free Hospital at Detroit and that such legacy was omitted from his Will by inadvertence, the brothers hereby authorize and direct the trustees to pay to the said hospital out of the residue of the testator's estate the sum of \$10,000.00 (Ten thousand dollars), such payment to be made to such officers or persons on behalf of the said hospital as the brothers may direct. 30

7. So long as Mrs. Walker occupies "Willistead" the brothers agree that none of the lands thereof shall be divided or sold without her consent, and they hereby authorize and instruct the trustees accordingly.

IN WITNESS WHEREOF this agreement has been duly executed by the parties.

WITNESS:

(Sgd.) Anton Unger
(Sgd.) Sidney G. Small
(Sgd.) Sidney T. Miller

(Sgd.) F. H. Walker
(Sgd.) J. Harrington Walker
(Sgd.) Mary E. G. Walker
(Sgd.) Z. A. Lash
Vice-President National Trust
Company, Limited. 40
(Sgd.) W. E. Rundle
General Manager.
Seal, National Trust Company
Limited, Toronto.

EXHIBIT NO. 13

3 Letters of Mrs. Walker to Plaintiff. July 29, 1905; undated; Aug. 2nd.
(Read into Record in examination of Plaintiff, pp. 120 to 122).

RECORD

*In the
Supreme
Court of
Ontario*

Exhibits

Nos. 13 & 14
Letters of
Mrs. Walker
to Plaintiff
(Filed by
Plaintiff)

EXHIBIT NO. 14

2 Letters of Mrs. Walker to Plaintiff July 12th and Aug. 20th, 1906.
(Read into Record in Examination of Plaintiff at pp. 123 to 125).

EXHIBIT NO. 15

10 Letter Estates Manager of National Trust Company to Church-Wardens
of St. Mary's Church, Walkerville.
(Read into Record in examination of Miller Lash, p. 133, l. 42).

No. 15
Letter
National
Trust Com-
pany to St.
Mary's
Church
(Filed by
Plaintiff)

EXHIBIT NO. 16

CANADIAN PROFITS: EXPORT PROFITS: WALKER "SALARIES"
ROBINS'S REMUNERATION

No. 16
Profits, etc.,
of Hiram
Walker &
Sons, Lim-
ited.
(Filed by
Plaintiff)

Year ending August 31st	Canadian Profits	Export Profits Yearly	Totals	Walker Salaries	Robins's Remuner- ation
1891	286,000	The Export Trade was done		30,000	7,500
1892	227,000	at a small loss for some years,		60,000	7,500
20 1893	316,000	but "turned the corner"		60,000	7,500
1894	241,000			60,000	7,500
1895	266,000	69,000	69,000	(a) 56,250	9,000
1896	279,000	182,000	251,000	45,000	10,000
1897	174,000	142,000	393,000	45,000	15,000
1898	199,000	55,000	448,000	45,000	15,000)
					(b) 25,000)
1899	268,000	76,000	524,000	45,000	15,000
1900	271,000	85,000	609,000	45,000	15,000
1901	246,000	92,000	701,000	45,000	15,000
30 1902	269,000	115,000	816,000	45,000	15,000
1903	303,000	110,000	926,000	45,000	15,000
1904	407,000	209,000	1,135,000	45,000	15,000

RECORD	1905	393,000	296,000	1,431,000	45,000	15,000)	
<i>In the Supreme Court of Ontario</i>	1906	373,000	453,000	1,884,000	45,000	15,000	(c)75,000)
	1907	429,000	696,000	2,580,000	45,000	15,000)	
Exhibits							(d)22,975)
No. 16	1908	305,000	652,000	3,232,000	45,000	15,000)	
Profits, etc., of Hiram Walker & Sons, Lim- ited.	1909	355,000	613,000	3,845,000	45,000	15,000)	(d) 19,739)
--concluded	1910	329,000	448,000	4,293,000	45,000	15,000)	(d) 19,093)
	1911	466,000	489,000	4,782,000	(e)30,000	15,000)	10 (d) 15,194)
	1912	x495,000	x495,000	5,277,000	30,000	15,000)	(d) 19,083)
							(d) 19,782)
		<u>\$6,897,000</u>		<u>\$5,277,000</u>	<u>\$1,001,250</u>	<u>\$504,866</u>	

(a) Mr. Hiram Walker retired, aged 79.

(b) Shares, in recognition of work on the Export Trade, and low salary for some years. 20

(c) Shares, in further recognition of work on Export Trade, and to increase salary.

(d) Commission of 2% on Profits, as participation in the fruits of the Export Trade.

(x) Accounts were not made up when I left the business, and I cannot learn how the total should be divided, so have split it evenly.

(e) E. C. Walker refused to draw salary any longer.

Combined Profits 22 years \$12,174,000.

Average per year \$553,363.

Calculating the Walker and Robins remuneration on Profits, before deduc- 30
tion of such remuneration, we have:—

Combined Profits	Walkers 7 1/3%	Robins 3 2/3%
Canadian Profits only	Walkers 11.9%	
Export Profits only	Robins 9.57% or, charging against the Canadian business the \$7,500 a year he was getting before there were any Ex- port Profits, the balance of his remun- eration was only 6.44%.	

EXHIBIT NO. 17

40

No. 17
Letter
Walker Sons
to Plaintiff
(Filed by
Plaintiff)

Letter Walker Sons to Plaintiff, August 14th, 1912.
(Read into Record, Examination of Plaintiff, p. 137, l. 21).

EXHIBIT NO. 18

Letter J. H. Walker to Plaintiff, July 26th, 1905.
(Read into Record, examination of Plaintiff, p. 139, l. 8).

*In the
Supreme
Court of
Ontario*

Exhibits

Nos. 18 & 19
Letters
J. H. Walker
to Plaintiff
(Filed by
Plaintiff)

EXHIBIT NO. 19

Letter J. H. Walker to Plaintiff, July 28th, 1905.
(Read into Record, examination of Plaintiff, p. 139, l. 31).

EXHIBIT NO. 20

Hiram Walker & Sons, Limited,
Distillers and Bottlers in Bond,
Walkerville, Ontario, Canada.

No. 20
Letter
Plaintiff to
Z. A. Lash
4th June,
1912.
(Filed by
Defendants)

10

Confidential.

Walkerville, June 4th, 1912.

My dear Lash,

I reported our interview to Mr. Harry, who left on Friday last for his sea-side place. He had been hoping to meet Mr. Ed. in New York or Boston, but the latter came west too soon: so Mr. Harry proposes to run back here shortly. I told him that the two of them ought to make up their minds definitely what their attitude will be, and if it should not be in accord with Mr. F.'s, and any difficulty should arise, you would be willing to be called in as the adviser of all concerned.

- 20 Ever since President Taft and Attorney-General Wickersham decided the question, "What is Whisky?" and the interpretation of the Distinctive name clause of the Act in our favor, I have felt and said that if Roosevelt should return to the White House, (which I always believed to be his ambition from the moment he left it), we should be in great danger of his reinstating the Roosevelt-Wiley-Bonaparte decision. In Kentucky, the principal producer of "Straight Whisky," and the centre of the conspiracy to have it decreed the only real whisky, Roosevelt recently alluded to the matter, and, as reported, in similar language to that of an interview published in *The Saturday Evening Post*, May 4th, extracts from which I enclose. I asked Mr. Lucking what
- 30 he thought of this, and a copy of his reply I also enclose. I really cannot bring myself to believe that Roosevelt will win; but it is a possibility, and many people think it a certainty. If he should undo the work of Taft and Wickersham I think we may depend upon it that he would use all his power to keep it undone: and we know from what he did before that he is capable of almost any usurpation of authority. Consequently, there is the possibility that we may

RECORD

In the
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Exhibits

No. 20
Letter
Plaintiff to
Z. A. Lash
4th June,
1912.

—continued

have our fight all over again; and it seems safe to assume that in such event it would be a harder one than before. If that should happen, who is to undertake it? Mr. Lucking has seen enough of us to realize that there is no one but myself. He asked Mr. Harry the other day what strong man would be left here if I should go, and Mr. Harry replied that there would be none—adding, that I had handled every serious question which had arisen here ever since I came. There is no lack of modesty in my saying that I alone supplied the arguments which were effective at Washington. Mr. Lucking generously says that I won the fight. “What is Whisky?” is not a legal question: and the other lawyers aligned on the same side as ourselves were making the fatal mistake of asserting that Neutral Spirit from grain was whisky because it could always be distinguished from Neutral Spirits from other sources. I knew that if that were put to the test it must fail: and I insisted that the name WHISKY did not depend upon dissimilarity from other spirits, but solely upon origin, just as one is not an Englishman because he can always be distinguished from a man of any other nationality, but because of his origin, even if he would never be taken for an Englishman in ignorance of his origin. I warned the lawyers that they would make a fatal mistake if they advanced the argument of dissimilarity: and that I was right was proved by the fact that the opposition relied largely upon the argument that Neutral Spirits from various sources are indistinguishable: and they convinced Solicitor-General Bowers, who, upon that ground, held that Neutral Spirit from grain was not of itself Whisky any more than it was Brandy or Rum—that being the one point in which he did not upset Wiley’s doctrines. 10

The lawyers admitted that we were the people who must supply the facts: and I can truthfully say that, although I have no practical knowledge of the art of distilling, as some of our people here have, there wasn’t another man about the place who grasped the subject—indeed, Mr. F. disagreed with me on some very material points, and once, during my absence, quite upset Mr. Choate by so doing. 20 30

That there are many other fellows who could have done just as well as I have done in this and many other weighty matters I do not for a moment question; but they would have needed a good deal of experience, which cannot be got all at once, and they didn’t happen to be around here.

If my friends arrive at any conclusion upon the presumption that all their big problems have been disposed of, they are apt to find themselves very greatly mistaken. This, I think, is a matter which the “mutual friend” ought to have in mind quite as much as the “equities” of the case.

I hope you are still keeping well. I am going to New York tomorrow on a matter of business, and hope to be back here on Saturday morning. 40

By the way, after I left you last Wednesday, a possible explanation occurred to me for Mr. F.’s course, which had puzzled me greatly in view of what he said when he asked whether I would be content to allow the old arrangement to stand for the present year. I wondered whether it could be that when he got so bad-tempered on the other side about our telegrams, he held me responsible: and you will remember his expressing himself somewhat in that way in the letter to you which you opened in bed while I was with you and read

aloud. On my return I threw out this suggestion to Mr. Harry, who admitted that Mr. F. did put the blame on me, though he could not say that this accounted for the other thing.

I think that was most unkind, to say the least. Mr. Harry had been greatly perturbed by Mr. F.'s proposal to curtail his trip abroad, and he wired that it would worry him greatly and was quite unnecessary. Thereupon, Mr. F. cabled me privately for my opinion; and my answer was that I knew and approved of Mr. H.'s message; that I knew of nothing to bring F. back: that he could depend upon me to stand between Mr. H. and any difficulty. Under these
10 circumstances, whatever his opinion of my judgment, and without regard to the fact that we had the benefit of yours, he might at least have credited me with my best efforts to do what would approve itself to Mr. H. and to himself. And I feel quite sure that if I had taken upon myself to advise the peremptory discontinuance of your discussions he would have been greatly dissatisfied. So, there you are.

Yours very sincerely,

(Sgd.) W. R.

NOTE: Originally, Exhibit 20 (filed by defendants) was composed of a considerable part of a correspondence, and Exhibit 30 (filed by plaintiff) contained
20 the remaining part. The two Exhibits apparently became mixed. The following schedule, printed at the request of the respondents, is a list of the documents said to form Exhibit 20.

Correspondence between Z. A. Lash and Plaintiff

	Plaintiff to Lash—June 4, 1912	pages 153 and 643
	Plaintiff to Lash—July 13, 1912	pages 155 and 658
	Plaintiff to Lash—July 25, 1912	pages 155 and 661
	Plaintiff to Lash—August 6, 1912	pages 156 and 662
	Plaintiff to Lash—August 8, 1912	pages 157 and 662
	Plaintiff to Lash—August 15, 1912	pages 162 and 666
30	Plaintiff to Lash—August 19, 1912	pages 164 and 668
	Lash to Plaintiff—August 20, 1912	pages 170 and 670
	Plaintiff to Lash—August 21, 1912	pages 172 and 673
	Lash to Plaintiff—August 22, 1912	pages 183 and 674
	Plaintiff to Lash—August 23, 1912	pages 184 and 675
	Plaintiff to Lash—August 24, 1912	pages 192 and 679
	Plaintiff to Lash—August 24, 1912	pages 200 and 685
	Plaintiff to Lash—August 29, 1912	pages 204 and 687
	Plaintiff to Lash—August 29, 1912	pages 205 and 686
40	Lash to Plaintiff—October 4, 1912	pages 211 and 688
	Plaintiff to Lash—October 5, 1912	pages 211 and 688
	Plaintiff to Lash—October 9, 1912	pages 215 and 689
	Lash to Plaintiff—October 10, 1912	pages 218 and 692
	Plaintiff to Lash—October 10, 1912	pages 218 and 692

RECORD

In the
Supreme
Court of
Ontario

Exhibits

No. 20
Letter
Plaintiff to
Z. A. Lash,
4th June,
1912.

—concluded

RECORD

In the
Supreme
Court of
Ontario

Exhibits

Plaintiff to Lash—October 13, 1912 pages 220 and 692
Lash to Plaintiff—October 15, 1912 pages 222 and 694
Plaintiff to Lash—October 16, 1912 pages 222 and 694
Plaintiff to Lash—October 23, 1912 pages 223 and 696
Lash to Plaintiff—October 31, 1912 pages 224 and 698
Plaintiff to Lash—November 1, 1912 pages 225 and 698
Lash to Plaintiff—November 4, 1912 pages 226 and 699

Correspondence between Plaintiff and E. C. Walker

Plaintiff to E. C. Walker—August 16, 1912 page 173
Plaintiff to E. C. Walker—August 20, 1912 page 178

10

Correspondence between Mr. Lash and F. H. Walker

Lash to Walker—August 27, 1912 pages 203 and 702
Walker to Lash—September 27, 1912 pages 209 and 708
Lash to Walker—October 8, 1912 pages 212 and 710
Lash to Walker—October 10, 1912 pages 219 and 712
Walker to Lash—October 14, 1912 pages 220 and 713
Walker to Lash—November 5, 1912 pages 226 and 714

Correspondence between Mr. Lash and J. H. Walker

Lash to Walker—October 8, 1912 pages 215 and 718
Walker to Lash—October 12, 1912 pages 219 and 719

20

Correspondence between Plaintiff and J. H. Walker

Walker to Plaintiff—June 6, 1912 pages 154 and 722
Plaintiff to Walker—August 25, 1912 pages 201 and 722
Plaintiff to Walker—Sept. 2, 1912 pages 205 and 724
Walker to Plaintiff—Sept. 8, 1912 pages 206 and 724
Plaintiff to Walker—Sept. 15, 1912 pages 208 and 725

EXHIBIT NO. 21

E. C. Walker Estate—Assets Owned in Entirety

No. 21
Statement
of Assets
E. C.
Walker
Estate
(Filed by
Defendants)

	Estate Inventory	Revised Valuation	
Cash			
In Canadian Bk. of Commerce—			
Savings	\$417,150.67	\$417,150.67	
Current A/c.	13,761.70	13,761.70	
	<hr/>	<hr/>	\$430,912.37
Book Debts and Promissory Notes			
J. Harrington Walker	400,213.41	400,213.41	
F. H. Walker	317,977.38	317,977.38	
Walkerville Brewing Co. Ltd.	15,293.42	15,293.42	
S. A. Griggs	30,275.75	30,275.75	
	<hr/>	<hr/>	763,759.96

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763,759.96

	Stocks & Bonds	Par Value			
	2 shares Hiram Walker & Sons Co., Ltd.	\$100	200.00	200.00	
	20 shares Walkerville Land & Bldg. Co.	50	250.00	800.00	
	1 share Essex County Golf & Country Club	100	100.00	100.00	
10	1 share Windsor Curling Club	100	100.00	100.00	
			<u>650.00</u>	<u>1,200.00</u>	
	Real Estate				
	Willistead property in- cluding grounds and buildings in Walker- ville		100,000.00	120,000.00	
20	St. Andrews' Property Huron Street Pro- perty, Walkerville		<u>100,000.00</u>	<u>120,000.00</u>	
	Household Furniture, Pictures & Automobiles As per valuation of C. J. Townsend & Co.		108,053.00	108,053.00	
			<u>108,053.00</u>	<u>108,053.00</u>	
	Total		<u>\$1,403,375.33</u>	<u>\$1,423,925.33</u>	
	SUMMARY				
	Estate valuation		\$1,403,375.33		
30	Revised valuation		<u>1,423,925.33</u>		
	Increase			\$20,550.00	

In the
Supreme
Court of
Ontario

Exhibits

No. 21
Statement
of Assets
E. C. Walker
Estate
—continued

Interests in Assets of Partnership of E. C. Walker and Brothers

	Stocks and Shares	Par Value	Executor's Valuation	Revised Value
	15,465 1/3 Fully paid shares of Hiram Walker and Sons Ltd.—par value \$100	\$1,546,533.33	\$1,546,533.33	\$1,546,533.33
40	323 Fully paid shares of Walkerville Water Co. Ltd., par value \$100	32,300.00	32,300.00	125 40,375.00

RECORD <u>In the Supreme Court of Ontario</u> <u>Exhibits</u> No. 21 Statement of Assets E. C. Walker Estate <i>—continued</i>	3,313 1/3 shares 50% pd. of Walkerville Land & Building Co., Ltd., par value \$100	165,666.66	41,416.66	80	132,533.33	
	380 Fully paid preferred shares Studebaker Corporation — par value \$100	38,000.00	37,988.00	93 1/2	35,530.00	
	380 do—common shares	38,000.00	1.00	47	17,860.00	
	95 Shares Detroit & Ontanagan Mineral Land Co. (book value \$36.10) valued at \$2.75 per share.		261.25		261.25	10
	16 Fully paid shares of Page Wire Fence Co. par value \$100	1,600.00	1,600.00	112 1/2	1,800.00	
	50 Fully paid shares of Canadian Bank of Commerce, par value	5,000.00	9,850.00	197	9,850.00	20
	8 Fully paid shares American Telegraph & Telephone Co., par value \$100	800.00	976.00	122	976.00	
	50 Fully paid shares of West Gate Improve- ment Co., par value \$100	5,000.00	3,750.00	100	5,000.00	
	57 Fully paid shares— par value \$100, of Mexico Tramways Co.	5,700.00	Not valued		No value	30
	25 Fully paid common shares par value \$100 of Meixco North- western Railway Co.	2,500.00	do		do	
	100 Fully paid common shares, par value \$100, of Mexico Northern Power Co. Ltd.	10,000.00	do		do	40
	41 1/3 Fully paid shares— par value \$100, of Trussed Concrete Steel Co., of Canada, Ltd.	4,133.33	Not valued	80	3,306.66	

					RECORD
					<i>In the Supreme Court of Ontario</i>
					Exhibits
					No. 21 Statement of Assets E. C. Walker Estate <i>-continued</i>
	150	Shares — par value \$100, of Hoskins Mfg. Co., Detroit, Mich.	15,000.00	do 25	3,750.00
	133 1/3	Fully paid shares par value \$100 of Wilt Twist Drill Co. of Canada	13,333.33	do 60	8,000.00
10	273	Kerr Engine Works, \$25 each	6,825.00	No value	
	333 1/3	Walkerville & Detroit Ferry Co., \$50 each	16,666.67	do	
	165	Barcelona T. L. & P. Co., Ltd., \$100	16,500.00	10	1,650.00
	50	Fuller Co., \$100	5,000.00	No value	
	6 1/3	Western Peat Co., \$100	633.33	do	
20	2451	Winong Copper Co., par \$1., cost 25c.	2,451.00	do	
	100	Dominion Motors Ltd., \$100	10,000.00	do	
	240	Detroit Cold Storage Co., \$100	24,000.00	do	
		Bonds and Debentures			
30	\$300,000	1st Mortgage 4½% Debentures of Walkerville Land & Building Co., Ltd., due Jan. 2, 1923, valued at 90	300,000.00	270,000.00 90	270,000.00
	829,333.33	Collateral Trust 20 year 4% Gold Bonds of Pere Marquette Railway Co. due Jan. 1, 1923, valued at 25	829,333.33	207,333.33 25	207,333.33
40	20,000	1st Mortgage 30 year 5% Gold Bonds of Rio de Janeiro Tramway Light & Power Co., due Jan. 1, 1935, valued at 80	20,000.00	16,000.00 80	16,000.00
	17,207.35	5% Debentures of Town of Virden, Man., repayable in annual instalments			

RECORD

In the
Supreme
Court of
Ontario

Exhibits

No. 21
Statement
of Assets
E. C. Walker
Estate
-continued

	of \$1,654, until Dec. 31, 1929, valued at 90	17,207.35	15,486.61	90.58	15,751.32	
					and accrued interest	
145,000	5% 1st Mortgage Bonds of Walkerville Brewery Co., due Dec. 1st, 1943, valued at 70	145,000.00	101,500.00	60	87,000.00	
11,000	1st Mortgage 30 year 5% Gold bonds of Mexican Northern Power Co., Ltd., due Jan. 1st, 1939	11,000.00	Not valued	7	770.00	10
10,000	1st Mortgage 5% bonds of Mexican North Western Railway Co., due March 1, 1959	10,000.00	do	17	1,700.00	
10,000	1st Mortgage, 5% 30 year Gold bonds Mexican Light and Power Co., Ltd., due Feb. 1, 1933	10,000.00	do	45	4,500.00	20
£1,933 1/3	1st Mortgage 5% 50 year Gold bonds of Port of Para, due Jan. 1, 1957	9,248.22	do	15	1,387.23	
£6,000	Barceloná T. L. & P., 5% bonds, 50 year Gold (see liabilities)	29,200.00		25	7,300.00	30
Investment Interests	Walkerville Light & Power Co., Ltd., amount due to deceased under agreement of sale of undertaking	11,652.95	11,652.95		11,652.95	40
	Investment of Wilt Syndicate	4,750.00	Not valued		4,750.00	
	Total		\$2,296,649.13		\$2,435,570.40	
	LESS — Liability re Barcelona T. L. & P. Co. underwriting				20,378.71	
	Net Total		\$2,296,649.13		\$2,415,191.69	

ASSETS		Partnership of Walker Sons			RECORD <i>In the Supreme Court of Ontario</i> Exhibits No. 21 Statement of Assets E. C. Walker Estate <i>—continued</i>
		Executor's Value	Revised Value		
Real Estate—					
Item 1	Sandwich East Lands	\$162,963.50	\$387,500	Including items 7, 8, 9, 11, 12	
	2 Fort St. Property, Detroit	500,000.00	500,000		
10	3 Ferry property	10,000.00	30,000		
	4 Greenfield property	85,130.66	85,130.66		
	5 Walker Road property	12,440.00	12,440.00		
	6 Planing Mill Plant	50,000.00	50,000		
	7 Tobacco Farm Plant	33,512.63	.....	See item I	
	8 Farm Buildings	40,000.00	.....	do	
	9 Dairy Building, 3rd. Con.	11,578.76	.....	do	
	10 Park Account	.....	.....	Expense ac- count	
20	11 Orchard	2,120.82	.....	See item 1	
	12 Water main to 3rd Concession Farm	.....	.....	do	
Mortgages					
	Walkerville Roofing Co.	14,725.00	14,725.00		
	L. H. Cheeseman, et al,	5,798.24	5,798.24		
	A. H. Askin	3,288.71	3,288.71		
Loans					
	Walkerville & Detroit Ferry Co.	.....	25,000.00		
30	Kerr Engine Co.	4,000.00	4,000.00		
	R. H. Frees	.....	.....
	Joseph Fitzsimmons	417.88	417.88		
	Harrington E. Walker	1,000.00	1,000.00		
	Walker Norval	.....	.....	Worthless	
	Town of Sandwich East	.....	3,150.58		
	John Bailey	1,000.00	1,000.00		
	H. B. White	1,000.00	1,000.00		
	Leon Oulette	38.00	38.00		
	Mrs. C. Montreuil	25.00	25.00		
40	Mrs. C. K. Jenking	50.00	50.00		
	John Trepannier	35.00	35.00		
Inventories—					
	Essex Farm Crop	59,815.60	59,815.60		
	Tobacco Crop	28,227.20	28,227.20		
	Third Concession Farm	33,909.45	33,909.45		
	Lumber & Planing Mill	120,150.95	120,150.95		
	Office Furniture & Fixtures	815.50	815.50		

RECORD	Fire Alarm System	1,575.00	1,575.00	
<i>In the</i>	Fire Department	30,000.00	30,000.00	
<i>Supreme</i>	Farm Fire Department	422.00	422.00	
<i>Court of</i>	Paving Machinery	4,112.20	3,250.00	
<i>Ontario</i>	Stocks & Shares			
Exhibits	St. Clair Flats Shooting Co., Ltd.	3,000.00	2,500.00	
No. 21	Land Contracts			
Statement	J. F. Scranton & Co.	150.00	150.00	
of Assets	D. Levesque	450.00	450.00	10
E. C. Walker	Thomas B. Bearman	240.00	240.00	
Estate	Wm. Bearman	170.00	170.00	
—continued	Fred G. Bearman	510.00	510.00	
	R. M. Morton,			
	Lots 383-401 Church St.	425.00	425.00	
	36-37-38 Bruce St.	75.00	75.00	
	249 Bruce Street & 339 Church St.	125.00	125.00	
	Special Accounts Receivable			
	Hiram Walker & Sons, Ltd.	53,921.22	53,921.22	20
	Walkerville Land & Bldg. Co., Ltd.	4,729.62	4,729.62	
	Rock City Tobacco Co., Ltd.	3,621.50	3,621.50	
	Imperial Tobacco Co., Ltd.	1,784.43	1,784.43	
	National Tobacco Co., Ltd.	3,421.05	3,421.05	
	Township of Sandwich East—			
	Walker Road Paving	21,627.45	21,627.45	
	3rd Concession	16,544.43	16,544.43	
	Tecumseh Road	1,632.77	1,632.77	
	Sundry Accounts Receivable	12,706.58	10,872.63	30
	Cash			
	In Vault	2,369.51	2,369.51	
	In Can. Bank of Commerce	1,490.62	1,490.62	
	Peoples State Bank	465.06	465.06	
		Book	Executors'	Revised
		Value	Value	Value
	Investments—			
	Oil Exploration Co. of Canada Ltd.			
	Shares	\$56,250.00		40
	Debentures	24,741.25		
	Current	64,524.31		
	Canadian Trinidad Assn. Ltd.	3,296.37		
	Shares	750.00		
	Advances on Shares	3,982.50		

Trinidad Oil Explora- tion Syndicate Ltd.	4,670.13	
Trinidad Special	3,227.94	
J. R. Minhuinick	865.62	
	<hr/>	
	\$162,308.32	
Dividend Trinidad Oil Exploration Syndi- cate Limited	5,692.66	
10	<hr/>	
	\$156,614.66	
Converted, in 21,600 shares of Trinidad Leases, Limited		\$43,200.00
	<hr/>	<hr/>
Totals	\$1,347,611.34	\$1,573,090.06
LIABILITIES		
Miss Jennie M. Williams	\$41,093.93	41,093.93
20 Bills Payable	30,000.00	30,000.00
do Special	40,000.00	40,000.00
Deposit Account	25,179.85	25,179.85
Walkerville Water Co., Ltd.	8,000.00	8,000.00
Insurance Companies	24,637.03	24,637.03
Tobacco Crop, 1914	11,778.69	104.36
J. A. McDougall	1,899.57	1,899.57
T. S. Biggar	13,878.66	13,878.66
C. N. Kramer	4,251.58	4,251.58
W. T. Kramer	1,167.43	1,167.43
30 S. A. Griggs—Distillery Stock Account	2,613.34	2,613.34
Chick Contracting Co., Ltd.	4,090.30	4,090.30
Globe Furniture Co., Ltd. In Trust	2,121.27	2,121.27
Sundry Accounts payable	3,983.66	3,983.66
	<hr/>	<hr/>
	214,695.31	203,020.98
	<hr/>	<hr/>
	\$1,132,916.03	\$1,370,069.08
	377,638.68	456,689.69
SUMMARY		
Assets directly held	\$1,403,375.33	\$1,423,925.33
Interest in Assets of E. C. Walker & Brother	2,296,649.13	2,415,191.69
40 Interest in Assets of Walker Brothers	377,638.68	456,689.69
	<hr/>	<hr/>
Total	\$4,077,663.14	\$4,295,806.71

RECORD

In the
Supreme
Court of
Ontario

Exhibits

No. 21
Statement
of Assets
E. C. Walker
Estate
-continued

RECORD Increase—\$218,143.57

*In the
Supreme
Court of
Ontario*
Exhibits

I certify this and the foregoing seven pages to contain a true copy of the valuation, as settled for succession duty, of the assets of the estate of Edward Chandler Walker late of Walkerville, deceased.

(Sgd.) R. E. M. Meighen,
Solicitor Under Succession Duty Act.

Toronto, April 28th, 1924.

EXHIBIT NO. 22

10

No. 22
Letter of
Plaintiff to
J. H. Walker
11th Decem-
ber, 1904.
(Filed by
Defendants)

Walkerville, December 11th, 1904.

My dear Mr. Harry,

For some time past I have had it in mind to have a little talk with you about my remuneration, but for one reason and another I have postponed it. In view of your improved health I feel that I may now do it with a free conscience.

While I am aware that it takes a good man to earn \$15,000 a year, that is not a salary upon which one can become a fairly rich man, unless he lives much more economically than I think a good man ought to live, and has different views from mine as to what is due to the business which gives him his living. Nor is it by any means a large salary as things go now. This is an age of big salaries and big opportunities to the best men, and I am vain enough to believe that I belong to that class. Even since I came to Walkerville there has been a considerable change in this respect in Canada. I know of a number of men who have distanced me, and I cannot honestly say that I think it has been because they have filled larger places or done better work than myself. I feel that I am reasonably entitled to accumulate a comfortable competency faster than I am now doing; and I can hardly have many more years in which to do it. 20

When I came here I left behind all opportunities but those which your employ might afford. I got out of touch with the people who have wanted able and reliable men for the big things which have been developed of late years. I determined that I would have no interests but yours, and I have had none. Though several times invited to go into things of a promising character, I have never put a dollar where it would take a minute's time or cause an anxiety which could militate against my giving to your business the best that was in me, whether in office hours or out of them. 30

So far as your Canadian business is concerned, you know that neither I nor anyone else could do much to add to it. We have had to take our allotted share and be content with it. As to my part therein, I feel that you have been well satisfied, and I should consider my salary fully earned if there had been nothing more than that. 40

But in the Export business I think I may claim to have done a good deal;

and not only in making it, but in saving the biggest part of it, the United States trade, from destruction by the imitators. No one but myself, I fancy, knows how incessant was the effort for years to build up the business, and then to keep it.

The profits made in the Export business to August 31st, last, show a total of \$1,052,000. My salary to that date, including the shares kindly given to me, totals \$208,589, or an average of \$12,768 per year.

10 I think it would be no exaggeration to say that for many years the Export business absorbed practically all the time that was my own; and I do not doubt that if at the beginning I had proposed to give that time in exchange for a substantial share in the results, it would have been considered a very reasonable suggestion. No such bargaining ever entered my mind; and I put the matter in this light only to illustrate my point of view, which is that I have not received any of the profits on this newly created business.

I am going to be perfectly frank with you and say, that, in my judgment, I ought not to be making less than \$25,000 a year. I know of a good many men in salaried positions which do not seem to me to be of greater importance, who are making more than that, and, so far as I can see, without either more ability, more energy, or more fidelity than I have given to my work.

20 Of course it has always been open to me to bring the subject up; but it has ever been distasteful to me to do that; and I doubt whether I should do it now if I had no one to think of but myself.

If I believed you would misunderstand the spirit in which I write I would not finish this letter. It is not one of complaint, I assure you, but with the idea that in this isolated position there has probably been nothing to bring to your attention the larger opportunities to which I have referred. I hope that after nearly seventeen years close acquaintance you pretty well know what manner of man I am. You know, I think, that money does not unduly magnify itself in my eyes; and if now, under a sense of duty to those dependent upon me, I bring the subject up, I do not fear that you will misinterpret my feelings. And if you and your brothers do not see with my eyes, there will be no hard feeling on my part, though I shall naturally be pleased if after full consideration you think my views not inconsistent with your own interests.

Believe me, my dear Mr. Harry,
Yours sincerely,

(Sgd.) Wm. Robins.

EXHIBIT NO. 23

Walkerville, December 23rd, 1904

40 My dear Mr. Harry,

As I said to you the other day, after learning how kindly you and Mr. Ed. had received my suggestions regarding my remuneration, I have no desire to argue any particular detail for the sake of argument; but I know that you

RECORD

*In the
Supreme
Court of
Ontario*

Exhibits

No. 23
Letter of
Plaintiff to
J. H. Walker
23rd Decem-
ber, 1904.
-continued

always welcome my views, and that you always wish to look at matters in the right light. I stated then that I could not quite agree with Mr. Ed. that \$15,000 a year is as much as the Distillery itself should pay, and I venture to give my reasons.

It is often not merely a question of what a man does for the time being, but also what he can do if required. From my standpoint you require a man here who is equal to any emergency; in other words, whom you can feel satisfied to leave in charge whether any of you are here or not. And if I am not such a man, I think you ought to get him in your own interest. A mere "assistant" might at any time be much less than you require.

Neither is it in the higher positions just a question of whether one gives all the hours of business to one interest; frequently the best paid men give comparatively little time to the one thing. I remember getting a report on a man in New England for you some years ago, and he was receiving a very large salary for two or three days a week. The case of Mr. Nichols, of Toronto, mentioned by our friend Matthews, is an illustration.

I sincerely believe that my services to the Distillery alone for many years past have been worth the sum I mentioned in my former letter; and if I thought that they would be worth less in the future, even though I may give fewer hours to the business, I should feel that accumulated experience, proved capacity and the results in dollars and cents were at a discount.

If the business had not been incorporated I should have hoped for a partnership, and had that been given to me it would no doubt, as usual, have been a fractional interest, so that if the profits grew my share would grow. In that case what I got would not be regarded in the light of a salary. I really think that just the same view should be taken of it now, for there is no difference in the principle.

After our talking the other day I sent Matthews a copy of my letter to you and asked his opinion of it; also whether he could tell me about some of the prominent salaried men in Toronto. I think a great deal of his judgment, and I knew that you all do too. This morning I received the enclosed reply, which he gave me permission to show to you if I wished, though he did not write it expecting that; I telegraphed after receipt asking whether I might. I am glad to be able to do so, because, as I stated the other day, I did not feel at liberty to give you certain information which I had obtained confidentially. I now find, however, that a memo I thought I had enclosed to you I failed to put in the envelope; it is enclosed herewith.

Of the men he mentions, Coulson is Manager of the Bank of Toronto; Wilkie, of The Imperial; Brough, of the Bank of Montreal, (Toronto branch); Langlois, formerly office man for W. R. Johnston & Co., and for many years a partner, Jermyn the same in W. R. Brock & Co.

It is hardly necessary to speak of the many opportunities which come to the General Managers of Banks in addition to their salaries; and, apart from that, it does not seem to me that the General Manager of any of the minor banks, such as The Imperial and The Toronto, or indeed any but the very largest, has as much upon his shoulders as there is here. Their Boards are ever at hand to share the responsibility; they have full staffs of trained men; if mis-

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takes are made they are generally kept quiet; and they have short hours day by day and long vacations year by year.

I write very hurriedly at the last moment, and I may not have said what I have written in the way that would have been best; but I leave the matter with you fully satisfied that you will understand me.

Yours sincerely,

(Sgd.) Wm. Robins.

RECORD
In the
Supreme
Court of
Ontario

Exhibits

EXHIBIT NO. 24

No. 24

10 Agreement St. Andrew's College and National Trust Company, Limited (Omitted by Agreement).

EXHIBIT NO. 25

No. 25
Power of
Attorney
12th Decem-
ber, 1913
(Filed by
Plaintiff)

Power of Attorney E. C. Walker to J. H. Walker.
(Read into Record, examination of Hiram H. Walker, p. 237, l. 41).

EXHIBIT NO. 26

No. 26
Z. A. Lash's
account for
drawing
wills.
(Filed by
Plaintiff)

Z. A. Lash, K.C., LL. D.
Toronto.

Toronto, March 3rd, 1914

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E. C. Walker, Esq.,
Dr. to

Z. A. LASH, K.C.

Fees drawing Wills for E. C. Walker
and Mrs. Walker; attendance in
Walkerville, etc. \$500.00

Received payment
(Sgd.) Z. A. Lash
March, 1914

30 (Cheque attached, dated March 4th, 1914, payable to Mr. Z. A. Lash for \$500.)

EXHIBIT NO. 27

No. 27
Letter
Z. A. Lash
to Mrs.
Walker.
(Filed by
Plaintiff)

Letter Z. A. Lash to Mrs. Walker, March 22nd, 1915.
(Read into Record, examination of Hiram H. Walker, p. 244, l. 23).

RECORD

*In the
Supreme
Court of
Ontario*

EXHIBIT NO. 28

Letter Molly (Mrs. Walker) to J. H. Walker.
(Read into Record, examination of Hiram H. Walker, p. 246, l. 30).

Exhibits

No. 28
Letter Mrs.
Walker to J.
H. Walker
(Filed by
Plaintiff)
No. 29
Part letter
S. C. Robin-
son to Plain-
tiff.
(Filed by
Defendants)
No. 30
(Part)
2 Letters
Plaintiff to
E. C. Walker

EXHIBIT NO. 29

Part of letter S. C. Robinson to Plaintiff, April 29/17.
(Read into Record, examination of S. C. Robinson, p. 276, l. 28).

EXHIBIT NO. 30

2 Letters Plaintiff to E. C. Walker, Aug. 16th and 20th, 1912. 10
(Read into Record, examination of Plaintiff, p. 173, l. 34, and p. 178, l. 13).

CORRESPONDENCE BETWEEN Z. A. LASH AND WM. ROBINS

No. 30
(Part)
Correspond-
ence.
Z. A. Lash
and Plaintiff

Private

Toronto, June 11th, 1912.

William Robins, Esq.
Walkerville,
Ont.

My dear Robins:—

I received your letter just as I was leaving for Muskoka. I go to Mon- 20
treal tonight on business, but will go on from there to the Godbout River for
some salmon fishing, and do not expect to be back before the end of the month.
In your letter you wrote sense as usual.

Faithfully yours,

(Part of
No. 20
See Note

Private

July 13th, 1912.

My dear Lash,

at
p. 645)

I received your letter, saying you were going for some fishing, and expected 30
to be away until about the end of June. I hope you had a thoroughly enjoyable
and beneficial holiday.

I daresay you have wondered why you have not heard from me before
this; but the fact is I have even now but little to tell. Mr. H. had hoped, when
he went down to his summer place the first time, to meet the senior in New York

upon his arrival from Europe; and he said that if they did not meet he would come back for a talk with him. That is what happened, and H. reported to me that the senior had not been spoken to in Europe on my matter, and would take it up with the other when the latter got home. Also, that the senior considered what had been done unjust to me. I was not, however, told what definite stand they were prepared to take, if any, and I did not feel like pressing for anything more than they cared to volunteer.

H. remained here only three days, and it was after he went back that the senior spoke to me, which was very briefly, to the effect that he had had a talk with H., and would discuss the question with F. when the latter got home. He is quite feeble, and he does not say much these days: so I thought it wise to remark that I could under no circumstances stay here unless assured that the attitude I complain of would be abandoned. I mentioned some of the incidents, including the last. His only comment was that F. did not always mean all he said; but that would hardly be an explanation for the financial proposition put forward by H. at the suggestion of F.

F. got here a week ago today, and I have seen him every day this week; but there has been no allusion whatever to the big question from either of them to me.

I feel, very properly, I think, that this is hardly as it should be. They all ought to realize that the matter is of consequence to me, and that I have been in suspense quite long enough. But it has always been characteristic of them all to overlook the importance of certain things to certain people—such, for example, as applications for increased salaries, which have often been held up quite a long time. Complaints of this have frequently been made to me, and I have thought it might perhaps be explained by the fact that these people have never had to experience how big a thing a comparatively small amount of money often is to men on moderate pay.

H. said before he returned to the sea that if it became necessary he would come on; but what "Necessary" might mean I was left to surmise. If nothing is done within the next few days, I propose to write to H. about it and say that I think I ought to know quickly where I stand. He is stronger physically and mentally than the senior, and I cannot go on for ever putting their comfort first. It does not seem to me my place to open the subject to either of those now here.

I presume the senior was told of my having seen you, and of your willingness to come in as an adviser if desired.

I have naturally been under a good deal of anxiety the past several weeks; and I regret to say that the considerable investments I made in the automobile industry upon my faith in the judgment of certain practical friends look much worse today than when I saw you.

I am sorry circumstances prevented your taking some of the American Light and Traction shares, which are up nearly \$100 a share since then, and they seem to be as slow to come out at present quotation as at the lower. From what appears to be a reliable source, I learn that the "book value" is about what they are now quoted at (394 bid—397 asked) and that the earning power warrants a considerable addition to that. There are people who expect to see them at 500. I don't own a great many unfortunately, as I turned over 55 of my

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shares to my daughter's trust fund, besides some to my sister, my brother, my niece, and a few unprotected ladies who come to me to help them with their little capital; and I felt I could hardly buy any more while this uncertainty is hanging over me. However, it is good to know that my daughter and others have benefited, as well as a friend or two to whom I communicated the information I had gathered.

With compliments to your good sister, and kindest regards to yourself,
I am, yours very sincerely,

(Sgd.) W. R.

F. has been very pleasant to me this week; but I know only too well how little that can be relied upon. 10

Private.
William Robins, Esq.
Walkerville,
Ont.

Toronto, July 23rd, 1912.

My dear Robins:—

After my return from salmon fishing I went up to Muskoka. I returned yesterday for a week. I shall be up and down from time to time during the rest of the summer. While there I received your letter of the 13th of July, and was interested to learn what you write. I presume there is nothing which you expect me to do at present. I have not heard from anyone but yourself on the subject. 20

I am sorry to hear about that Automobile industry. Such things I suppose are inevitable some time or other during a man's life. As a little offset, I am able to report that the common stock of the Barcelona Company is now selling in London quite freely at about 55. Of course, it would not be wise to attempt to sell now, as it is sure to keep on going up as the work of the Company advances towards completion. Dr. Pearson was here ten days ago, and he told me that everything was going on very satisfactorily and that the stock was selling at the figure I have named. He said that a handsome surplus had been realized already in the operation of the existing Traction Companies which were purchased, over and above the fixed charges upon them. 30

I am glad for your sake, and for that of your daughter and the other friends who hold shares in the American Light and Traction Company, that the results are so satisfactory. After having let the opportunity which you kindly suggested pass, I did not think further upon the matter.

I am glad to be able to tell you that I was much benefited by my fishing trip, both mentally and physically, and I feel now that my nerves have recovered their tone. 40

Sincerely yours.

Private

July 25th, 1912

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My dear Lash,

Ans'd 28th July
Asked R. if I should
open the matter with F.
if I had a chance.
Z. A. L.

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I thank you for yours of the 23rd, very much indeed. No, there is obviously nothing you can do at present; but it is a great comfort to me to be able to tell you what the situation is; and, if it does not radically change, I believe the time will soon come when our friends here will need the best advice they can get—for every day adds to my sense of injury, and if a crisis arrives I shall not be as amiable as I have sometimes been.

10 On the 16th I wrote to H. that although F. had been home some ten days, and in constant attendance at the office, not a word had been said to me on the vital question. He replied on the 21st, expressing much surprise, and stating that he had written F. on the subject, two or three times. He said he did not consider me at all impatient, and suggested that I should speak to E. if things were still unsettled; he stated also that he knew the matter had been discussed between E. and F.

Nine days more have gone by, and still no word to me. I do not intend to speak just yet, but will see how much longer this indifference to my interests and to my just claims to consideration will last.

20 My reverses outside are what we must all be prepared for, and I am not taking them too much to heart, though they are serious enough at my age and just at this time. I appreciate greatly your kindly remarks. I am glad that in one or two other directions my investments are more promising; but they will not go very far toward balancing the account. I could not afford to buy many shares of American Light and Traction for myself, but I am pleased that I took 55 of them for my daughter's Settlement Funds, as well as a few for my wife.

I am particularly glad to know of the improvement in your health which I hope will be carried still further by your rest in Muskoka.

30 I omitted to say that H. gives anything but a good account of himself, and his letter shows very plainly that he is unfit for much physical or mental strain. I very much fear that he will not be able to escape the latter. I have warned him often enough when he had the strength to safeguard the future; but, while he admitted the danger, he failed to face it at the proper time.

With best regards, I am,

Yours very sincerely,

(Sgd.) W. R.

Private

July 30th, 1912.

My dear Lash,

40 Accept my best thanks for yours of the 28th. There is no change whatever in the situation; and my mind has been made up not to take the initiative, though I have reached that conclusion solely upon considerations of what is due

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to me, and curiosity to see how long the matter will be allowed to hang fire—not from any instinct that it would be safer. I have a strong impression that, when the time comes, I shall be able to take care of myself; and the “hurt” has lost some of its first shock. Not that I have in the least changed my views about it; but we get used to almost anything in time.

He would be a bold man, who, knowing you as I do, would think he could give you much advice; but, since you ask the question, I cannot see any harm in your saying to F. that I had seen you with, as you were informed, the concurrence of H., and you had been wondering how things were settled. Use your own judgment entirely. I don't believe it can possibly operate adversely; and I am quite sure that good advice is badly needed by all three. 10

I hope you have had better weather in Muskoka than we have had here. It has been most unsettled for some time.

With kindest regards,
I am, Yours sincerely,

(Sgd.) W. R.

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Private
My dear Lash,

August 6th, 1912.

After complete silence in the meantime, H., who arrived on the scene yesterday unexpected by me, has just informed me that F. is to have his way. I am not surprised, for the utter weakness of the other two for a considerable time past has been pitiable. They apparently do not feel it necessary to call in a mutual friend. I predict that a little later on they will regret not having done so. 20

I appreciate to the full your willingness to be that friend, and the sympathy which I believe I have from you. It is a very bitter awakening; but there are limits to what a man ought to pay to sentiment, and this acquiescence by E. and H. in what they have admitted to be gross injustice makes a vast difference to me.

With kindest regards,
I am, Yours very sincerely,

30

(Sgd.) W. R.

(Part of
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See Note
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Private
My dear Lash,

August 8th, 1912.

Although my friends apparently did not care enough about justice to me to avail themselves of your good offices, I learn that H. is going down to see

you. I am not told just what for, but as the information was given to me by H. after I had asked to be told whether they desired to take over my stock, and, if so, at what price, I infer that you will be consulted on that; but whether or not it is purposed to ask your opinion on any other point, I have no idea, though it seems to be rather unlikely that the conversation will not be pretty general.

I have turned over in my mind long and carefully the question of saying anything more to you in anticipation of your meeting with H. I thought yesterday that I should have a day or two more to ponder over it, but I have just learned that H. goes down tomorrow to see you Saturday; so I have decided
10 to lay some thoughts before you. I must ask you to be indulgent toward this letter. I got practically no sleep last night, and my head troubled me so much this morning that the doctor made me stay in bed. I got up in the middle of the afternoon, but still with a bad head, and I am not in the best condition for writing.

Before proceeding with what is in my mind, I will just say that I greatly regret the reticence which has been characteristic of Mr. H.'s talk with me the past two days, and of the only allusion E. has made to the subject to me, namely, before F. returned from abroad. Previous to that, H. stated quite
20 frankly that he entirely shared my view of the situation, and that he wished me to stay; later he told me that E. was very much annoyed at the course F. had taken without consulting him, and agreed that it would be most unjust to me.

But on Tuesday H. seemed to try to justify their letting F. have his way, by saying that the five years' agreement was my own suggestion, and that I had declared I would not remain unless safeguarded against indignities and a repetition of the shock I got a little while ago—meaning by the latter the opening incident of this episode. I replied that what he said was correct; but that I had never had any previous understanding for more than from year to year, and I
30 thought the time had come when that was hardly fair; that there was nothing in the agreement to imply that it was to end our connection; that whatever might have been my own inclination, I thought he knew quite well that I would stay by them as long as they wanted me if it were possible; also, that he and E. had it in their power if so inclined to protect me against the things on F.'s part which have so often made me unhappiness for several years. If H. really feels that their decision is justified, he has greatly changed; I believe that it is only a weak attempt to make the best of what he and E. know to be cruelly wrong but have not the courage to prevent.

Now to the other things. Not in the least from any obtrusion on my part, but wholly of their (the W's) own doing, I have been regarded by our customers and the public far and wide as the force and influence in this business
40 from the early days of my residence here. In spite of much urging from me, they refused for a very long time to speak for themselves at public meetings, or to address our numerous gatherings. In business matters they made it very plain on almost every occasion that they relied upon my judgment. It was common talk throughout the country, as I have often been told by numerous persons, and repeatedly by the late W. C. Matthews, that Robins was the "whole thing" here. It has been very embarrassing to me to have these things said to my face, as it was only recently, when I told a caller that his proposition

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would have to be submitted to the W.'s. His answer, in a tone implying that I was trying to shelve the thing, was—"Everybody says that you settle everything here" or words to that effect.

It has also been rather hard on me in some ways. Politically, it has resulted in my being bitterly attacked, in spite of my studious avoidance of personalities in political discussion, because the Walker money was supposed to be back of me. In one campaign, while I was abroad, the leading Grit "Spell-binder" of this vicinity alluded to a report that our employees were being coerced. He compared it to the conditions which "ensanguined the snows of Russia," and then proceeded to acquit the Walkers of any knowledge of or complicity in the reported action, and suggested that their "General Manager," (which title is often given to me, though I have never borne it), was the responsible party. If I had been less conspicuous in this business there would have been much less of this sort of thing and certain papers would be less keen now to publish anything disagreeable to me. Only once have I known the Walkers to be attacked in the same way, which was in last year's campaign, and, I believe, because F. had declared against Reciprocity before I got home from Europe.

10

It has also cost me no little money. People seemed to think that I must be a man of large income long before my salary was more than modest. I am now regarded as a millionaire in many quarters. One can't always be telling people that his income is much smaller than is supposed. For the credit of the W.'s I for years wouldn't have made my salary public. But from my first day here I have felt that I owed a duty to my position, and I have liberally recognized it.

20

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Another thing that actuated me to do what I could for the credit of Walker-ville and the W.'s was the remark often repeated to me by good friends of the concern and myself that "the W.'s made their money in Canada and spent it in Detroit." As you know, until E. built his new house here he lived in very modest style compared with his brothers in Detroit. Then a good many people in Canada knew that the W.'s had spent a lot of money on hospitals in Detroit. (I think H. put it lately at \$750,000 in 15 years), and adverse comments on this came to my ears not infrequently. One thing is very sure—that the W.'s themselves have not been more jealous of their reputation than I.

30

I was the prominent man, also, in the spurious whisky suppression, and many was the time a nasty hit at me was made in the papers friendly to the fellows we hurt. William Mida, an unscrupulous Jew Editor of Chicago, "went for" me viciously, because this Company's letter refusing to renew its advertising because he was puffing some of the worst offenders was signed by me. He kept it up for months, and I have no doubt he would rejoice at the chance to say nasty things about me again.

40

There are hundreds, perhaps thousands, of people in Canada and the United States who would receive with incredulity the suggestion that the W.'s would willingly part with me.

Now, if I go from here with anything but the appearance of having retired altogether from business, the inferences bound to be unfavourable to me. Valuing my 1,000 shares at anything like the figures of your letters on that subject, (which I have given to H.), I could not give my retirement that com-

plexion. My opportunities for saving were very small until that five year agreement began; and since then I have had extraordinary demands upon my purse, and my recent losses pretty well wipe out what I had accumulated. I should be more than happy to drop down very considerably from the scale of my living here, and to be free from the worries I have so undeservedly endured here; but the very least I could do with to meet the claims of blood which I have had for years, (and which are increasing), to keep up my insurance, (premiums over \$5,000 a year), and to live with sufficient comfort to justify my giving up business, would be \$400,000, inclusive of the value of my shares in
 10 this Company.

If I cannot really retire, and avoid unfavourable inferences, I must, in justice to myself and my family, see that those inferences are effectually disposed of. That could only be done by revealing to the public what I have done here and how my retirement comes about. I should regret exceedingly to do it. I would infinitely rather get out on the pretext that I want to enjoy some leisure and devote some time to public questions, of which I am known to be fond.

I feel that I have the strongest possible moral claim to something more in the way of participation in the magnificent business I have created here than is
 20 represented by my shares. Those, while given to me, I always regarded as back pay. The larger income I have had the past six years has every dollar been handsomely earned by the work of those years. If I had done nothing more than the Washington work, the whole thing would not be extravagant remuneration.

If the W.'s like to take this view it would relieve me of a painful necessity which I am sure will otherwise arise. I leave it to your judgment to advance the idea or not. If you do not think well of it, please send this letter back to me.

As to the value of the shares: F. made the price to Bristol \$300 a share,
 30 refused to continue a negotiation looking to \$200 a share or better, raised a devil of a row with H. because he didn't at once refuse to consider anything below the former price; and, so far as I can discover, brings about my present situation because of my part in answering your letters to the best of my judgment and with H.'s full approval—for nothing in the least disagreeable between F. and me had, to my knowledge, transpired between that and his intimation to me unequivocally his desire that I should remain here indefinitely. I hardly see how he can decently, (after telling me since his return from Europe that he didn't want to sell even at 3 for 1), offer me less than that. But if you put my shares at \$200, the balance of the \$400,000 would represent only five
 40 months' foreign profits on the basis of last year, which was one of two lean years following the Pure Food trouble. This year should show some improvements, as the U.S. sales are larger. The figures are:—1906, \$453,191; 1907, \$696,318; 1908, \$652,281; 1909, \$613,957; 1910, \$448,218; 1911, \$488,639.

I think that \$200,000 in lieu of decent notice, (for I am practically dismissed like a chauffeur), would be a modest amount for the man who created, and has twice preserved, so fine a business, in addition to so attending to the business he found here that the chief proprietors have been able to come and go

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at their pleasure, one, two, or all at the same time; and I feel very sure that if I am compelled to publish the facts in defence of my reputation, that will be the opinion of the general public.

If the appearance of voluntary retirement is desired, it will be necessary to provide for it at once, for it will be difficult for me to present an amicable front if I am to be allowed to go in the way the present signs indicate to me. And this is a place where things have a habit of leaking out. I have said nothing myself to anyone outside my own family, (whose discretion I can depend on), with the exception of one intimate and trustworthy friend.

I hope I am not imposing upon you. In reality I am acting, as I think, 10
in the best interest of E. and H. Bitterly as they have disappointed me in the hour of trial, I want to save them any trouble I can. They know as well as I do that practically every case of friction between F. and me has been because I have conscientiously pressed my views of what I believed to be for their own good. A man of less strong convictions could get along better with F., but he would, I think, have been much less valuable to all of them. And my arguing strongly for what I considered wise gave no ground for the insolence I have so often submitted to from him for the sake of the other two. In almost every instance the latter have told me that I was right, though they unfortunately failed to speak up during the discussions as they might, most likely to the avoid- 20
ance of the nasty finale.

With kindest regards,
I am, Yours sincerely,

(Sgd.) W. R.

You are at liberty to let H. know of this letter if you think it well, but upon the strict condition that he does not repeat it to the others without my leave. I should like to say a word or two to him first. But if you feel you can do as well by previously sounding H. as to how he would regard some recognition of what I am leaving behind, perhaps you will do so.

August 15th, 1912. 30

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My dear Lash,

I have just had a talk with Mr. Harry which has affected me deeply, and, at his request, I repeat to you in effect what it was. I must, however, first allude to a possible misunderstanding on my part. When I first spoke about this difficulty to you in Toronto, I took you to say that you made it a rule never to act for one partner against the other, nor as between members of a group, when you had been the adviser of the partnership or such group, but that you had several times taken the part of a friendly mediator or balance in times of trouble; and I noticed that you strictly refrained from expressing any opinion 40
on the merits of our difficulty at that time. When I got back I repeated as faithfully as I could to Mr. Harry your own language on the foregoing, with your offer to come up to mediate here.

I yesterday supposed your attitude to be the same and I still so regard it; but I find that Mr. Harry's impression of what I said after seeing you in Toronto was that you could not advise me because you had been the adviser of the Walkers; and he tells me that he and Mr. Frank now feel that it would not be right for them to decide a matter without your approval, which, of course, puts you rather in the light of their lawyer at this moment. I cannot quite think that you so regard yourself, since you said to me yesterday that you thought you would not mix up in the matter to the extent of drafting the letters I asked for. I said to you one or two things yesterday which I should hardly
10 have been disposed to say even to you had I regarded you as the "professional" adviser of the Walkers; and I am strengthened in my belief that my understanding is correct from your having said to me when we parted that I was to feel that I could come to you whenever I wanted to talk further.

I write this, therefore, not to clear up anything in my own mind, but solely to avoid any possible omission from the Walkers' standpoint. I hesitated a little to write you when I saw that Mr. Harry's impression differed from my own; but he urged me to write, and I shall try to make the letter precisely what he would wish. I am sending a copy of it after him to Magnolia, for which place he leaves presently.

20 What I said to Mr. Harry was this—that I fully realize the condition of Mr. Ed. and himself, and do not in the least blame them for avoiding a rupture with Mr. Frank; but that I was deeply hurt that they did not put the thing to me upon those grounds, and recognize their moral obligation to protect me so far as possible from the avoidable consequences of a situation for which I cannot feel in any way to blame, and which today is an entire mystery to me—it being absolutely true that I know of no reason whatever for Mr. Frank's change of attitude towards me. I told Mr. Harry, as I told you, that my mind was firmly made up to one of two courses—to keep up the appearance of voluntary retirement in amity if I could really give up work; or to fight for my hand
30 in defence of my reputation if compelled to continue in business.

I, however, assured him that I should be greatly grieved to be forced to the latter course, and of my anxiety that neither he nor Mr. Ed. should have unnecessary trouble of mind just now. I spoke of the two months' vacation to which I am entitled for this year, and for which my remuneration would, of course, go on. I expressed my willingness to take that vacation during September and October, in the meantime neither saying nor doing anything that might prevent an amicable separation at the end of that time if the means to bring it about should be found; in other words, simply to carry over until the end of October the conditions existing today so far as I am concerned, for I
40 have done nothing to give rise to any suspicion of a rupture.

Mr. Harry saw Mr. Frank and returned to me with the report that they favor the suggestion subject to your approval.

I cannot close without trying again, as I tried, very imperfectly, I fear; yesterday to express my deep sorrow that I could not see my way to accept your advice. Such friends as you are not so plentiful that I could lightly weaken ever so little the regard I believe you have felt for me. Indeed, I never before felt the value of such friendship as much as now. I beg you to believe that

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what I say is sincere, and that I shall always regret having to hold out against your advice; and I beg you to accept my warmest thanks for your good will toward me.

Yours most sincerely,
(Sgd.) W. R.

August 19, 1912

Private and confidential.

My dear Lash,

Being, pending your reply to mine of the 15th, in doubt as to the exact capacity in which you stand toward the W.'s, I should hardly feel at liberty to write you now, but for the fact that E., with whom I had a talk Saturday afternoon, and again just now for a few minutes on the eve of his going away, still speaks of you as our mutual friend, and seems to wish that a "way out" could yet be found. He said he was sorry he had not more time now, and he invited me to write him to St. Andrews if I could suggest any solution. He has again assured me that nothing was further from his thoughts or wishes than what has happened, and that I had lost none of his confidence; and to my remark that I had been so deeply hurt that he and H. had not talked over with me in the friendly spirit which had always prevailed between us the consequences to me of the course which they felt they could not avoid, he replied that they, perhaps, ought to have done so, and he was sorry that they had not. As you know, their aloofness and apparent indifference to my painful position was what hurt me most and induced the frame of mind in which you found me last week.

Mr. H.'s talk with me on Thursday would indicate that he too, would be glad if something could be done. I am persuaded that the only hope lies in those two; and they are the men I care about and would like to spare any trouble. F. said to me that he is not leaving the country for two weeks or more, and there is time for them to communicate with each other if they so desire; indeed I think they will be meeting before E. sails.

If you no longer consider yourself the "mutual friend" and at liberty to act upon this without revealing to F. that I have written, I want you to regard it as not written at all, for I do not wish to render myself liable to misinterpretation in that quarter. I am sure I may ask this from you. I suppose that means that if you move at all it will have to be ostensibly a further effort on your part to bring about a settlement.

You expressed the opinion on Wednesday that a self-sacrificing attitude on my part would give Gertrude as well as myself the greatest satisfaction. I have told her everything, and her feelings are even stronger than my own have ever been—due, of course, to the fact that it is her Daddy who is hurt. She cares nothing about the result to herself of my vastly changed financial position, for she has for years said how much rather she would be living modestly if my mind were at rest. She regards the offer made to me as petty, and refuses to believe that it was your independent estimate of what would be fair. E. mentioned the figure to me (\$20,000), and upon my suggesting that if you suggested it I assumed that you felt your limitations, he replied that he did not so understand. I hope I am right, for I should be very much wounded to

think you would consider any such sum as that as anything like adequate to these conditions.

My daughter, however, is begging me to get away from this place and all its painful associations as soon as possible. She knows that I have not had one full night's sleep since this thing opened up, and that I am fast developing a bad case of insomnia; also that my doctor is very apprehensive about me; so she is urging me to make any possible sacrifice for a quiet life. Therefore, for her sake, I am disposed to go a long way. What was proposed last week is not feasible, so it would be useless to repeat it; but if I receive a fair offer for my 10 shares, and something more nearly reasonable as compensation in lieu of notice, I will try to accept it, provided I can be done with the thing promptly.

As to the shares, the figures I sent you on the basis of 9% as a going concern, plus the present cash value of the surplus stock, show a value of 215; but in dealing with me I think it would be no excess of generosity to come somewhat nearer to F.'s own valuation. At all events, the price of the shares is the key to the situation, as they are the great bulk of what I have left, and I have borrowed on them from the Bank of Commerce \$30,000; in addition to which I owe a considerable sum. The less I get for the shares the more I must have from some other source.

20 Our profits for the six years last completed were—Canadian, \$2,209,868; Foreign, \$3,339,336; Total \$5,549,204; Average \$924,867; equal to 18½% on Capital. I see no reason why the entire profits should not be distributed hereafter. The Reserve Accounts exceed \$3,000,000, which is more than we planned when we began to put away large sums. Nevertheless, I do not want to hold the shares under existing circumstances, and I think you will not wonder at that.

As to the compensation in lieu of notice, H. volunteered the opinion, after he had talked with E. about F.'s plans, that one or two years' notice would be no more than fair, and I did not understand that to imply any sentiment, either. 30 While he did not say so, I inferred that he was voicing E.'s opinion as well as his own; and when I just now so stated to E. he made no demur.

My salary and Commission for the five years averaged \$34,217. The average of "one or two years" is 18 months—equal to \$51,325. The offer of \$20,000 represents seven months. It hurt me to think of it after all H. said to me as to the injustice of F.'s plans; and in the light of what they have both since said, I cannot conceive how they could bring themselves to make me such a proposition. If I were going out of my own accord and in very comfortable circumstances, a parting gift from each of them of a high-class motor car would not seem amiss, and that is all this amounts to. As recognition of a 40 hardship inflicted upon me in a pecuniary way, to say nothing of my wounded feelings, and, as they assure me, against their own wish, surely E. and H. cannot reconcile it with their sense of justice.

I did not mean my last to suggest delay in the W.'s decision about my shares, and I see no reason why it should. If they do not want them, I ought to be free to deal with someone else, for I can make no plans for the future until I know what my resources are.

I hope, my dear Lash, I may still feel that you have some sympathy for

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me. My reliable friends are now very few. My life here has not given me much opportunity for "close fellowship" except with the W's; and until this matter took shape E. and H. were the men I felt I could depend upon in time of trouble. If their sentiments toward me now do not prompt them to go beyond strictly legal obligations, or what they think mere decency calls for—in other words, if they are bound to stick to F. in every aspect of the case, I shall be forced to believe that the softening of my own mind since I have had these talks with them is hardly warranted by the facts.

If you have telegraph facilities, I wish you would wire me whether this letter is of any use, because I have very little expectation that E. and H. would do anything, even individually, without getting your views on the matter. 10

With best regard,

I am, Yours sincerely,

(Sgd.) W. R.

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Copy.

Four Way Lodge,
Morinus P. O., Muskoka,
August 20, 1912.

My dear Robins,

Your letter of the 15th, sent to Toronto, was forwarded to me here. 20

My recollection of our interview in Toronto is shortly this. You told me of the new differences which had arisen between you and Mr. Frank, and you alluded to past differences. You expressed the fear that the situation would become acute and that the Walkers were never more in need of good advice than they were at that time. You gave me in outline your side of the difficulties and naturally asked my views. You correctly say that I strictly refrained from expressing any opinion on the merits of the difficulty. I could not properly have done otherwise. I was under a yearly general retainer and I could not advise or act against the Walkers. My retainer was, of course, known to you, and it was not necessary to tell you that it prevented me from expressing any opinion or giving you any advice upon so important a case of conflicting interests as you had described to me, but because of our long personal friendship I felt that I should try and adjust matters amicably between you and the Walkers, and I authorized you to tell them so. I clearly recollect saying that I would have to have a talk with Mr. Frank before doing anything. I told you that in several cases in my long years of practice I had averted trouble between friends and clients by offering to mediate, and that if it were necessary to the solution of the difficulties in this case I would if asked even go on the Company's Board, or take some other official part in its important affairs. 30

You misunderstood the effect of what I said when you got the impression that I said I made it a rule never to act for one partner against another nor as between members of a group when I had been the adviser of the partnership or group. I could not have truthfully said that, for I have on many occasions 40

acted for some against others, but I have always first tried to mediate. I do not recall using the term "group," whatever that may mean.

In Walkerville on the 14th my efforts as a mediator completely failed, not because the Walkers would not accede to my suggestions (they did accede to them), but because you had so entirely made up your mind as to your course that you would not even discuss with me any other way. You would not even accede to my request to postpone our discussion till the next day, saying that it would be useless to do so, that you were sorry you could not accept my advice, that it was a matter which you had to decide for yourself and that you had decided it finally and irrevocably, and that you must take one or other of the two courses which your letter says you told Mr. Harry your mind was firmly made up to. Even then I hoped that you would later change your mind and have a talk with me, and when saying good-bye I told you I wanted you to feel that you could come to me whenever you wanted to talk further. I went to you as a friend, and though my efforts had failed I wanted you to feel that I was still your friend.

Your letter deals with two matters—First, my position professionally, and Second, your suggestion that you take September and October as a vacation and that the existing conditions be carried over till the end of October. As to the first, my professional position is and always has been a clear and simple one. My retainer still continues, and the duty which I undertook when I accepted it still exists. I could not properly refuse now to recognize that duty. I wonder you did not see that from the beginning. During your business life in Walkerville I have advised you many, many times upon business matters, but these matters have not been your own, and the fact that your present position was about to terminate or had actually terminated could not affect my professional position under my retainer. You say that you said one or two things to me during our interview on the 14th which you would hardly have been disposed to say had you regarded me as the professional adviser of the Walkers. I had no difficulty in distinguishing between what you expected me to regard as personal and what you expected me to report to the Walkers, and I confined my subsequent interview with them to reporting conclusions only. The basis of my interview with you, clearly expressed at the time, was that your existing position with the Walkers could not possibly continue, and what I wanted to bring about was an amicable separation. You insisted that the only way under which such a separation could be brought about would be for them to take over your stock at a figure which you named. I told you I had said to the Walkers that the question of the stock seemed to me to be the last question to take up, and not the first as you wanted to make it, and I told you the same, but you would not agree, and our interview ended with your repeating what you had said to me several times, that you wanted to be told by letter whether the Walkers wanted you any longer and whether they wanted your stock and what they were prepared to pay for it. We talked further about the stock, and it was in connection with its value and the letter you wanted about it that I intended my remark to apply when I said I thought I would not "mix up" in the matter, if I used that expression. I have so far expressed no further opinion as to the value of

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the stock than that which I expressed at the time you know of, when the question of selling the entire share capital of the Company came up.

Second. As to carrying over the existing condition until the end of October. My suggestion of an amicable separation (acquiesced in by the Walkers) was practically to give you a year's vacation with substantial money payments during the year! I did not mention any amount because you would not let me get that far. You would not entertain any plan which involved your remaining beyond the end of the year, 31st August, if your services under the existing agreement were no longer wanted. Had you made the suggestion to me about the two months' vacation it would have been entirely inconsistent with the firm stand you had taken, and we possibly might have got further in the discussion and nearer to a solution if we could have reconciled the difference in principle between the two suggestions. Under my suggestion all matters would be amicably arranged, leaving for decision only the question as to whether the Walkers desired to acquire your stock and upon what terms. Under your suggestion nothing would be arranged; both sides would be left in uncertainty. Unless you changed your mind before the two months expired, I cannot see that the delay would advance matters at all. If, however, within the next two months you would like to renew our talk, I shall then ask the Walkers to consent to my continuing the discussion, and I shall ask for the same latitude in endeavouring to arrive at an amicable understanding as they gave me when I saw you on the 14th. Though you would not comply with any suggestion I then made, yet I shall venture to make one other. You are still a member of the Board, but your engagement on the Company's staff will expire on August 31st, and will not, I understand, be renewed. I suggest that you go away for a couple of months, meantime remaining on the Board, and that before the end of October you tell me whether or not you want to continue our discussion. If you say you will do this, I shall ask the Walkers meantime to make no announcement of the termination of your engagement and to let things go on as far as possible as if you were on a vacation.

I appreciate to the full the concluding remarks in your letter, and I can assure you that the suggestion I now make is made out of friendship to you and because I am as firmly convinced as I was when I saw you on the 14th that you are taking a wrong course, and that you will gain nothing by it, either materially or in the opinion of those whom you had in mind when you told Mr. Harry that you would "fight for my hand in defence of my reputation if compelled to continue in business."

As you have sent to Mr. Harry a copy of your letter to me, I presume you expect me to send to the Walkers a copy of this reply, and as Mr. Harry is not in Walkerville and I do not know his address I am sending a copy to Mr. Frank, and am asking him to send it to his brother.

Believe me, my dear Robins, notwithstanding our difference of views,

Your sincere friend,

"Z. A. Lash."

August 21st, 1912.

My dear Lash,

I think it well to send you copies of two letters I have written to E., and which will explain themselves. I need only add that the first brought him in to see me on Saturday, when he expressed himself as very sorry about the situation, and said he wished some satisfactory solution could be found. We were interrupted by Mrs. Walker calling for him to accompany her to Detroit, and he suggested our continuing the conversation on Sunday. He said he would not be at liberty until about noon, and it was arranged that I would be at his disposal. I sat in my conservatory from shortly after eleven to a quarter past two and heard nothing from him; then my niece noticed the cards of Mrs. and Mr. Walker in the hall, and upon enquiry found that they had called and been told I was out as well as my girls, which was very vexatious, of course. I then telephoned Mr. Walker, but he was busy packing, and said he would see me for a few minutes on Monday before leaving for St. Andrews, which he did; and that accounts for my letter of yesterday to him.

Except general kind expressions, Mr. Ed. made no suggestion which might lead to a solution, and there was evident the same reticence which has been so new and so marked a feature of my relations with him and H. since the first inkling of what was in F.'s mind was given to me; but he did ask whether I would object to some modification of method if the result which I hold to be essential could be attained; my reply to which was that I would welcome anything which would admit of my going from here without unpleasantness.

I have received a letter from H. approving of the letter I wrote you last Thursday, and I enclose a copy of it.

I send you this correspondence to facilitate matters in case E. and H. should show a disposition to dispose of the difficulty before the former sails. He said to me on Monday, when suggesting my forwarding my views to him, that he would not be leaving the country for some two weeks and a half, which seemed to indicate the hope on his part that a settlement might be reached in the meantime. He also agreed with me that it would have been much better if he and H. had had a friendly talk with me as soon as they decided to fall in with F.'s wishes, and said he was now sorry that had not been done. In my letter to him I alluded to that subject only with the object of refreshing his memory. He did not in the least dissent from any statement I made as to the merits of the crisis, but told me frankly that nothing had been further from his thoughts or wishes than that we should part company. As this is equally true of H. from beginning to end, I am certainly justified in believing that there was no real occasion for what has transpired

With best regards,

I am, Yours sincerely,

(Sgd.) Wm. Robins.

Enclosures.

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Blake, Lash & Cassels

Four Way Lodge,
Morinus P. O.

Muskoka,

August 22nd, 1912.

My dear Robins,

Your private and confidential letter of the 19th came last night. You should receive today my answer to yours of the 15th in which I point out very clearly my professional position. I shall therefore, as you request, regard your letter of the 19th so far as the Walkers are concerned as not having been written at all, there cannot, however, be any harm in presenting to you some aspects of the situation which I am sure you have not seen but which stand in the way of the solution which you think is the only one possible. Removed from the personal aspect, out of which the complications have arisen and from what you term the moral aspect, the case is a simple one, so far as the legal position is concerned and when parties dispute, the legal position is never lost sight of. The facts as I understand them are these—An agreement was made for a period of five years. It was subsequently extended for another year which will expire on the 31st of this month. It makes certain provision for the disposal of the stock which you hold in H. W. & S., Ltd., but at the highest these provisions are in the nature of options to the Walkers. For reasons which the W.'s consider sufficient you have been told that it is not intended to extend the agreement beyond the 31st. Unless extended the agreement will terminate on the 31st and legally speaking the parties to it go their own ways. Here the personal and moral aspects intervene. You say that there is no good reason why the agreement should not be continued indefinitely and that though it may not be legally necessary to give any reason for not continuing it, yet morally good reasons should exist and you should be compensated if it be not continued. You say further that the value of your services in the past far exceeds the remuneration you have received for them and for personal reasons as well as on business results you feel that you have a strong moral claim for compensation. I have not blamed you for entertaining any of these views so far as the moral and personal aspects are concerned—the question of amount I say nothing about, but where I think you are wrong is in the way you are taking to enforce your moral claims. You say that because there is no proper reason for not retaining your services you will go out a discredited man and that unless you are paid an amount in money large enough to make you independent for life and to provide for your family afterwards, you will fight for your reputation, in what way you have not said, but the very fact that you have left it mysterious warrants the thought that you will not be careful so far as the Walkers are concerned in your choice of weapons. I think you are assuming too much in thinking that because the other parties to the agreement do not want to renew it you will be discredited to the extent you suppose. I have hesitated to say to you what "the man in the street" would in my opinion think of your attitude, because I am sure no such thought ever entered your mind, but does it not

savor of a threat to do something which will harm or will be intended to harm the Walkers unless money which you could not collect otherwise be paid to you? There is no doubt that this attitude is having a very important bearing upon the situation and I think it will make it impossible for me to succeed in straightening it out. You are making the question of the stock the stumbling block by putting it in the front and trying to force the sale of it as the important item essential to peace. There is a side to human nature (not unknown to yourself) which prevents people who might otherwise waive legal rights and admit moral claims, from doing so when they think an attempt at force is being made. I told you I thought the question of the stock should be taken up after all other questions are settled and in thinking this I am really doing you a service for I am convinced that I could do more for you in that way than in any other which would involve a decision as to the stock at the present time. My dear Robins, take the advice I gave in my letter received today and go away for a couple of months and talk to me after you have got back your nerves and are able to look at the situation from a standpoint where your feelings will not prevent you from seeing it more clearly than in your present frame of mind it is possible for you to do. I may say that the amount to be paid to you during the year had you entertained the suggestion I made during our interview on the 14th would have been a matter for discussion and any sum agreed on would have had more or less bearing when we afterwards discussed the value of the shares.

Sincerely Yours,

(Sgd.) Z. A. Lash.

Wm. Robins, Esq.
Walkerville, Ont.

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August 23rd, 1912.

My dear Lash,

Your letter of the 20th was received this morning. I am glad, very glad, to be assured of your continued friendship though I cannot but feel that it has, for some reason unknown to me, lost some of that sympathetic tone which made it so specially grateful to me in the past. This is one of the mysteries which surround my present situation and make it more painful to me than it need be. I cannot help wondering why it should be thought that I deserve it. Surely, my inability to accept your advice is hardly sufficient reason for it; and unless there is great discrepancy between what Mr. Ed. and Mr. Harry have said to me within the past few days and what you have heard, (which I will not suspect, much less suggest), I am wholly at a loss to comprehend the censorious complexion which, in spite of your kind expressions, your remarks last week, and your present letter, seem to me to have. How much I feel this it is impossible for me to say.

I accept, of course, in the utmost good faith, what you write as to your conception of your obligations to the Walkers, but I must confess I am greatly surprised; and while it may be presumption on my part to express an opinion on a professional question, I think I must state my point of view.

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Your retainer is from the Company, of which, though to a very modest extent, I am as much a part as the Walkers. As yet, so far as I can see, the Company is not in evidence.

I did not go to you in Toronto only on my own account. The situation at that time was that Mr. Ed. was abroad; Mr. Frank had given me no personal intimation of his desire for a separation; but it was revealed to me, I thought, by a suggestion from Mr. Harry which I could not suppose either of them expected me to accept, and which I could only interpret as intended to force me to take the initiative. It developed that Mr. Harry knew nothing of the verbal arrangement between Mr. Frank and me last fall; he stated that had he known of it he would under no circumstances have been the bearer of the suggestion; he said that if he were in my place his reception of it would have been the same as my own; to my specific question, his reply was that he personally desired me to remain, and that he would regard my leaving as a misfortune to the business; he said he would consider what Mr. Frank apparently desired a gross injustice to me; and he proposed that the matter should stand over until Mr. Ed.'s return.

This, in my judgment, left the case as though the conversation had not taken place, except in so far as it indicated Mr. Frank's design, and pointed to the probability of a conflict of opinion later on between Mr. Ed. and Mr. Harry on the one side and Mr. Frank on the other, which is precisely what I am given to understand did occur.

In view of that contingency, Mr. Harry agreed with me that the advice of a trusted friend would be opportune, and it was in that sense that I went down to you with his full approval. I had no thought of seeking your advice for myself alone, which must be evident from my speaking first to Mr. Harry, and was, I think, equally clear from what I said to you—that the Walkers were never more in need of good advice. The possibility that I could ever find the three brothers ranged against me so as to call for a legal adviser on either side had never entered my mind. What I apprehended was a trying struggle among themselves, and I foresaw the likelihood that Mr. Ed. and Mr. Harry would succumb; but that in such event they would do everything in their power to avoid my being unjustly dealt with financially, I was as confident as that the sun would rise on the morrow.

Therefore, I went to you not on my own behalf alone, nor in your legal capacity, but as the friend in whom we all had unbounded confidence. I should not expect you to be willing to act for Mr. Ed., Mr. Harry and myself against Mr. Frank, any more than I expected you to act for the three brothers against me.

It is a new experience, I think, for you and me to differ as to facts, and I am puzzled by our differing now. In using the word "group," I did not mean to imply that it was your word, but I brought away most clearly the impression that you never took sides professionally between men for whom you had been acting collectively; and I am perfectly sure that upon my return I told Mr. Harry that you could take no other part in this situation than that of a mutual friend. You spoke, I remember, of the possibility of meeting the difficulty by joining our Board and sharing in our contentious discussions, I replying that

that would hardly solve the problem, by reason of the fact that Mr. Frank had shown a tendency which made it impossible, for me at least, to know what would meet his approval in the conduct of the business from day to day.

I know, of course, that you would have saved me from a wrong impression if you had realized what view I was taking, though I really cannot see how I could have formed any other from what was before me. All your letters to me until now seem to me to forbid the presumption that, under any circumstances, you could be found acting against me—or, let us say, for the opposite side: and I repeat, that I never thought of any opposite side except the possible giving way of my trusted friends on the one point, which, by itself, would never have called for the services of any lawyer. I quote—May 19th. “I shall be always glad to see you and give what comfort I can”: (July 23rd) “I presume there is nothing which you expect me to do at present. I have not heard from anyone but yourself on the subject”: (July 28th) “Should F. turn up at any time, shall I mention the matter to him? If you think yes, is there any special way to begin? I instinctively fear the result of your opening it first under existing circumstances; but I really cannot say why.” On the 6th instant, I informed you that the brothers had reached a decision, saying—“They apparently do not feel it necessary to call in a mutual friend I appreciate the full your willingness to be that friend, and the sympathy which I believe I have from you.”

I think my letter of the 8th to you shows most plainly that I had no thought of your becoming anything but the “mutual friend.” I spoke of your being consulted about the price of my shares, because our agreement provides for that; but I opened my mind to you without reserve, and I said—“I leave it to your judgment to advance the idea or not.”

I had no uneasiness about your making an unfair use of anything I said to you last week—that I can assure you; but you will, I think, agree with me that some reserve would be natural even in a case of close friendship if one knew or imagined that the friend might become the advocate of the other side; and you will perhaps recall my saying, in answer to your inquiry what reply you should take to the Walkers, that you might tell them anything I had said. With a different understanding, it would be reasonable to expect that I would make some reservation. But, inasmuch as you had not communicated to me the nature of your conversation with the Walkers, but only the result, I took it for granted that you would pursue the same course on the other side—not from mere punctiliousness, but because your only mission was to bring about an arrangement between parties who were equally your friends.

But, notwithstanding that you did precisely what I expected, I cannot help thinking that a professional relationship toward the one party in a case like this could hardly fail to conflict with the fullest exercise of sympathetic interest in the other, even if the misunderstanding were void of feeling. You very strongly urged me to submit to what I regard as great injustice out of consideration for the health of Mr. Harry. I could not help wondering whether you had urged the Walkers to anything like equal sacrifice out of consideration for my deeply wounded feelings, my health, which might well be affected, and my unquestioned devotion to their interests for twenty-four years. If they or

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you see in the offer made to me any concession whatever, I can only express my great amazement. Right or wrong, it is impossible for me at present to doubt that you felt your limitations; and it would be difficult to persuade me that if the three brothers must act as a unit in settling with me it could be otherwise.

I cannot wholly confirm your impressions of our conversation here. I did not think that I refused to discuss with you "any other way" as I understand you to use the words, nor did I gather that you gave me any opening. It occurs to me that I may have missed your meeting. As I at once told Mr. Ed. last Saturday when he suggested that there might be "another way," I would welcome any means which would bring about the result I want. I do not recall your use of these precise words, but it is possible that I had in mind the two ways of going out—the amicable way if it is made possible for me to appear to retire of my own choice; the course I have indicated if compelled to take up other employment. I do remember your saying at one time something like this—"that means a capital sum," to which I replied "yes": but if you took that to imply that there was only one way in which my views could be met, it was not my intention that you should. I need not tell you that I was greatly upset, and I had been feeling far from well for a considerable time, with my head troubling me greatly, and constant indigestion. It is not unlikely that my mind was centred too much on certain things. 10

I did not think that I declined further discussion the following day. My recollection is that you asked me whether I would think over your proposition until the next day, and I know I refused that. I should have been most glad to talk with you again if I had seen in your attitude any hope of a settlement; and I really expected that you would come back to my room, if only to say another kind word before you went. I had no idea that you were still in the building when I left, as Mr. Harry told me the next day was the case. 20

Your reference to my suggested vacation impresses me as hardly what it would be if you were only the "mutual friend." I put the idea forward with the pure desire to demonstrate my unwillingness to give Mr. Ed. and Mr. Harry unnecessary worry, and I believe Mr. Harry was as glad to accept it in that spirit as I was to offer it. I did not expect that it would lead to "conditions" being made by them any more than by me. I am willing to join with the Walkers in recognizing the possibility that time for thought may conduce to an amicable arrangement as well as to the comfort in the meantime of Mr. Ed. and Mr. Harry. I shall be willing at any time to discuss matters further with you, as I should be if the vacation had not been mentioned. But I do not quite catch the meaning of the suggested "announcement" at the end of this month. It looks something like a threat and a "plan of battle" already decided upon. I will only say that any sort of announcement which occurs to my mind would make further hope that unpleasantness may be avoided out of the question. I am not at all ashamed to admit that when you saw me last I was in a fighting mood, because it seemed to me that I was being deliberately driven to a position where I must fight. I am not ashamed to admit that my heart softened at the first sign that Mr. Harry and Mr. Ed. were not as indifferent as they appeared to be. But I can hardly consent that what I proposed from genuine good will shall be put down to a less worthy motive. 30 40

I hesitated very much to write you on the subject when I learned from Mr. Harry that the brothers regarded you as their legal adviser in the case, and I acceded to Mr. Harry's urging that I would write only when I felt that it would please him. Since then Mr. Ed. has suggested that something might be gained by my writing him, as you will know I have done. I suppose no one will deny that my present year carries the vacation, and that I could hardly have taken it before now if I had known I was to go at the end of this month, with Mr. Frank abroad, Mr. Harry an invalid, and the situation during the past three months. If anyone is afraid I might take unfair advantage of the vacation

10 running into another fiscal year, they may dismiss the idea. If there is any other reason for making stipulations, I am unable to guess at it.

I will not trouble you now with other comments which I might make on what seems to me a rather hard criticism of the position I took in our personal discussion; but I feel bound to differ from you as to my stock. I thought, and still think, that it should be the first thing dealt with. It arises out of the written agreement, and the one thing which is settled seems to be that I am to go— for I do not suppose it to be necessary that my protest against my dismissal should take the form of a refusal to vacate my office, with the scene that must involve. Moreover, if the vacation suggestion is adopted, I should hope that

20 my room would be allowed to remain as at present, so that no comments would be invited calculated to interfere with my going out in a natural way if a solution of the difficulty is happily found.

Until I realize on my stock I cannot make any definite plans, for other occupation, if that I must do; what I get for it will have a material bearing upon how much more I must have if I am to give up business. I cannot conceive that the Walkers have any legal right to delay the matter. I have asked whether they want the shares and whether they will make me an offer for them; I have offered to put a price on them if they will not. I don't see what more I could do. I expected at least to be informed if they want the shares, but I have heard

30 nothing. Surely, I ought to be at liberty without unreasonable delay to make the most of my resources. I hope this question will not be made an additional bone of contention.

I would say again that if Mr. Ed. and Mr. Harry had talked with me before you came up as they have talked with me since, I believe the situation today would be much more satisfactory to all concerned; and I think it is only fair to me that you should take that feature into consideration.

Once more expressing my pleasure that I may still regard you as my friend, and with kindest regards,

I am, Yours sincerely,

40

(Sgd.) Wm. Robins.

Private and Confidential

August 24th, 1912

My dear Lash,

I have yours of the 22nd, and I cannot but note with gladness how much.

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softer it is in tone than your previous letter, written as the legal adviser of the Walkers, and your talk with me in the same capacity. It confirms in me the belief that if the professional character had never been brought in you would have been far more powerful to serve all the interests of the Walkers than you can ever be as their lawyer. I am fully aware that on the legal aspect of the case alone I could hardly have a more formidable opponent than yourself; but I am very thankful to know that defeat in the courts will in no degree weaken my weapon of defence if I am forced to defend my reputation; and that this necessity will follow the refusal of the Walkers to deal justly with me I am absolutely sure, and shall be equally sure to the end. To my mind it is not even debatable.

10

Your view of the legal position is naturally based upon your understanding of the facts. I maintain, and I think I shall be able to produce pretty good evidence, that the arrangement made with me by Mr. Frank was not only for a year, except as to the remuneration. I fancy I shall prove just as good a witness as he will if it comes to that; and all the circumstances of the time favor my version of what took place. I shall never believe that it was remotely in his mind then that they would want me to go at the end of the year. His lack of frankness on the subject during the past three months, and the methods he has adopted to carry out his designs, point in the opposite direction.

20

However, if money compensation was the first consideration with me, I should doubtless lay great weight upon the uncertainties of the law and the adage that "a bird in the hand is worth two in the bush." But that is by no means the position, and it never will be.

You say that "for reasons which the Walkers consider sufficient" they will not extend the agreement which they regard as terminating on the 31st instant, but I do not. I admit that it is not always legally necessary to give reasons, though I believe that the failure to produce good reasons for prematurely terminating an agreement has certain consequences; and I am quite sure that to refuse any reason to a devoted and eminently successful servant of twenty-four years would strike reasonable men as positively brutal.

30

It cannot be alleged that the reason is the agreement of the controlling shareholders and directors that my going will, in their judgment, be in the best interest of the business, for two of them have admitted the contrary to me, and one of them, at least, has admitted it to a third party. Therefore, these two directors are clearly making the interests of the business secondary to their present personal comfort; and the question arises in my mind whether this could be justified with their duty to the minority shareholders.

You speak of the probability that, if I feel bound to fight for my reputation, I shall not be careful, so far as the Walkers are concerned, in my choice of weapons. I have no hesitation in saying to you, privately and confidentially, that I cannot see the least reason why I should. I shall not have to take up any weapons if Mr. Ed. and Mr. Harry are, even to a small degree, alive to what is due from them to me upon every ground. I say with all my heart, "God forbid that they should fail." No man who knows me well credits me with caring much about money. If misfortune had come to these men, and I could have

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been useful to them, wild horses could not have separated us, even though it had meant to me only the most modest living.

10 But what are the facts? Over and over again, for years past, I have been assured in the most positive terms that they would never permit their brother to carry matters to extremes: that I could depend upon their support so long as I was right. When they told me, years ago, that they were going to make provision for their interests to be a unit in case either of them should die, to ensure the control of Mr. Frank (which they often freely discussed with me when he did things of which they gravely disapproved, but which they failed to deal with vigorously), and, as I understood, did make such provision, I was warranted in believing that while they both lived, or if one of them should die, I was safe so long as I deserved to be protected. On several occasions when the indignities put upon me by Mr. Frank seemed more than I could endure, and I declared that I must go, they asked me to have patience, relying upon their regard and backing; and, until now, they have always brought about before long a restoration of amicable relations between Mr. Frank and me. More than once, the affront had been so great that an apology was indispensable, and it was offered. I always accepted it in the most friendly spirit, determined to do all in my power to cause the trouble to be forgotten; and several times Mr. Frank and I had talks in which he emphatically assured me that I enjoyed his undiminished confidence, and praised my work as highly as I could possibly desire.

20 These unpleasant episodes were not infrequently marked by special tokens of the regard of Mr. Ed. and Mr. Harry; and once or twice Mr. Frank himself gave substantial expression, as it seemed, to the sincerity of his spoken words when harmony was restored.

30 Thus, in the years when I apparently had much of life before me, in the very fullness of my bodily and mental vigor, with no lack of tempting opportunities elsewhere, in surroundings more attractive than these would ever have been but for the personal attachment, I accepted the assurances mentioned in the fullest confidence; only to find them worthless in the end.

40 I have been during the past six years in the enjoyment of such easy financial circumstances as a man of my business record may, with all modesty, consider he has earned. After long years of sacrifice of my own fair leisure for the sake of these men, I have been able of late to go abroad for a rest once in three or four years (although my trip in 1908 was wholly spoiled by Mr. Frank's interference in the Trinidad matter, upon an unsupported yarn from Rust, whom he knew to be my bitter enemy, for whom he had expressed mistrust and contempt while I still believed in him, and who at that moment was clandestinely violating the most positive assurances given to me and Mr. Harry together shortly before in London. Mr. Frank's line of action was some cable messages to me, very offensive in tone, all in plain language, and without asking me whether Rust's story was correct, or what I had to say in explanation.)

I have been able to live upon a scale reasonably commensurate with the common estimate of my standing in this business and of my financial position; it has been within my means to pay a couple of visits to Harrogate for the relief of my gout or rheumatism; I have increased my Life Insurance, at an an-

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nual cost of some \$3,900, making my total premiums over \$5,000; I have been able to recognize the growing claims of branches of my family in which I am much interested; and I had looked forward to a continuance of all this, which I feel is no more than I have merited.

Much of this comfort I shall have to lose under the very best of circumstances: my insurance I shall probably have to cut down, either by dropping some of the policies or taking paid up policies. And the friends whose promises have failed me, whereby I have dropped the substance of other opportunities for the shadow of this, will continue to draw large revenues from the business which was made in my spare time, for which I was never paid.

I insist that, unless the code of honour is to count for nothing, these men cannot withhold from me substantial compensation for the consequences of their failure to keep the promises they made to me and which I regarded as of equal value with signed and sealed contracts. I should have considered it a reflection upon them to ask for written guarantees. If they do the very utmost I would think of asking, the loss to me in money's worth will be very great; and they cannot relieve me of the heart-ache I carry. How they can hesitate for a minute I cannot understand. I should have thought they would have hastened to anticipate my reasonable expectations, and have cheerfully exceeded them. Instead of that, I was left to think that neither my feelings nor my material interests gave them the least concern.

Now, happily, there has been a change in that respect, and I hope it may last and bear fruit, in which case the restoration of my faith in the men will go far to offset the inevitable sacrifice of the comforts of life, and the heart-ache inseparable from giving up in this way, after twenty-four years, a connection to which I have devoted the best that was in me, and in which I could not have taken more jealous pride if the business had been entirely my own.

In another way Mr. Ed. and Mr. Harry owe me a debt. My troubles with Mr. Frank have been mostly in connection with questions of business on which we have differed, but on which his brothers have agreed with me. In my anxiety to avoid friction, I have generally sounded one or both of the brothers in advance; but when Mr. Frank has come into the discussion, and he has been opposed, I have generally been left to argue with him alone, and the brothers have often failed to help me out with a word. Had they done their part, I am persuaded that most of the friction would have been avoided. This Mr. Harry very frankly conceded the day he went away. I might, of course, have dropped these questions when the discussion became threatening. Until six years ago it made no difference to me in money, for I had only a fixed salary. But, apparently, my zeal for Mr. Frank's own interests was my fault in his eyes. I wonder whether he would have spent as much time abroad, on the yacht, and on the links, if I had been ready to surrender my studied opinions unconvinced.

In thus throwing upon me the whole burden of discussion, Mr. Ed. and Mr. Harry failed in their duty to themselves and to the business. If, as I believe, my presistence has been beneficial to the business, though distressing and disastrous to myself, it is an added claim upon their consideration. The results of

my work would be a strong claim if it had been free from these disagreeable features.

If, then, my friends decline to recognize these claims to the extent necessary to avoid reflections upon my reputation, and my legal claims are insufficient, how can I afford to limit my choice of weapons to those which will be inoffensive to them? All the presumptions must be against me—the most natural one that a valuable man is never willingly dispensed with: those which will be drawn from the reputation for honor and liberality enjoyed far and wide by the Walkers, and very largely from the policy which I initiated here and have so
10 uniformly adhered to. When I came here, all that was known about the Walkers away from here was that they were distillers. I induced them to become patrons of curling, lawn bowling and other wholesome sports, to show an interest in the volunteer forces of the country by prizes for shooting, to go in for the entertainments which have been heard of far and wide—with the result that the popularity of their name excited the jealousy of the Toronto distillers, formerly the best-known people in the business, and led to my frequent snubbing and disparagement in that quarter.

The idea that the Walkers would be unjust or mean to anyone, least of all to a faithful employee, would be scoffed at almost anywhere where their name
20 is familiar, which is covering a wide area. Ask any man who has been about for us. Our outside men have constantly reported that our concern stands in the very first rank as to honor and liberality. What would it accomplish for me to barely say that I had left here for no fault, or that I had been badly treated? I should have to show it, just as we had to show that our statements about Wiley were borne out by facts. There would be only one course open to me. I must state what I had done, and what I had suffered, and that I was sent away because the brothers were too weak to stand out against what they admitted to be unjust and bad for the business; and I must put it in such shape as to challenge contradiction and be convincing if not refuted. It would be useless to
30 say—"I built up a new and valuable business for them." Valuable is a relative term. And if the reply should be—"We paid him all his services deserved," and if it should be added—"We offered him a very handsome sum on retiring, which Mr. Z. A. Lash considered ample," where should I be? Last year in London I heard an American comedian say that a man would have no more chance than "a tallow cat chased through hades by an asbestos dog." That would be me.

In the spurious whisky campaign which you so heartily approved; in our attacks upon William Mida and Dr. Wiley, we didn't regard generalities as adequate. Nor would they be in this case. I should have to give facts and figures.
40 You tell me that I should not gain any sympathy. That wouldn't matter if people concluded that there was nothing against my reputation. But as to sympathy I haven't noticed that it usually runs to the richer or the stronger, except from the rich and strong. Millionaires perhaps side with millionaires, but they are the few. When Mrs. E. C. Walker had trouble with her head gardener a couple of years ago, and he sued for \$2,000 for wrongful dismissal, she called me in to see what I could do. I had quiet enquiry made among the "common people" which convinced me, as well as Mr. Frank and Mr. Harry, that Mr. Ed.

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would lose if the case went to trial. Mr. Ed. had offered the man \$500, and stubbornly refused to pay any more. I persuaded the man to take \$1,000, and Mr. Frank and Mr. Harry privately made up the difference themselves to save Mr. Ed. annoyance.

At Sandwich, last winter, I sat through every minute of a trial for defamation of character in connection with a municipal election here. I was sure the jury ought to throw the case out: The Crown-Attorney present was of the same mind: the judge said after the verdict that he confidently expected an acquittal; but the jury gave \$1,000 damages, and Coburn learned that they gave it because of the impression that it would not fall upon the Councillor concerned, but would be paid by the Walkers, who were known to be favorable to him and unfavorable to the complainant. 10

So as between me and the rich distillers, just as between me and my chauffeur, what sympathy there is will mostly go to the poorer man—the under dog: so, if it is sympathy I want, and I am not indifferent to it, I am not afraid to take my chances.

I have never wanted to make any threats. I haven't all these years borne indignities which it is much against my nature to accept, to want now to threaten the men for whose sake I have borne them—first from the father, and now from his son: and at times when I was as independent of Walkerville for a living as I was of the moon; but the attitude of the Walkers forced me to point out what I might be compelled to do: and I think my legal right to do it cannot be disputed. If, therefore what is legal is to be the only measure of their obligation to me, I think I cannot be blamed if I follow their example. And if we cannot agree as to the moral claim (if, indeed, the offer made to me was on that account), it is my right as much as theirs to have my own opinion about it. 20

You are wrong, my dear Lash, as to my attitude about my stock. I have never tried to force the Walkers to buy it; I don't care whether they buy it or not; I have reason to believe that I know parties who would take it at a good price: I have only asked to be told whether the Walkers want it, and, if so, to see if we can agree on price without unnecessary delay. 30

I understand what you suggest as to the resenting of an attempt at force, for my own nature gives me all the example needed. And that is precisely why you found me so resentful of the tactics pursued here; an attempt to do what has but a solitary justification, if that—the absence of the written security which I could have had for the asking when these gentlemen felt a little more dependent upon me than they do now.

If it is any satisfaction to you, or if it will do ever so little to prove to you that I am naturally neither vindictive nor unreasonable, I will waive the point about the stock, at least for the present, though I am unable to see how I can make up my mind on the main question unless I know what I can get for it. The question with me is a sum total, a net result. The stock can be valued at par for all I care if there is enough else to give that result: and if anyone valued the stock at enough in itself, the rest could go hang—I wouldn't bother the Walkers for another dollar if it was as sure as death that I could recover from them. 40

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I heartily approve of taking the vacation, and as much in the Walkers' interests as my own, to say the very least. I am quite willing to take it on the understanding expressed in mine of yesterday. I know that I need rest, though I am not so sure of getting it. But the trouble isn't with my nerves. I could dare anything I ever dared, and, for the matter of that, I believe that if I could be rid of my heartache I could do as good work today as ever. But the wound is slow to heal. Gertrude begs me to forget it—to make up my mind that the men through whom I received it were never the friends I believed them to be. But the pain sticks. I wake up with it; and when I think it has subsided a little, it comes back with full force. Perhaps it will go after awhile; I'm sure I hope so. I will not predict what my views will be later, except that never, under any circumstances, would I accept any such sum as \$20,000, unless, of which there is no probability, my stock added should bring enough for my wants. I should feel degraded to accept it, whether in lieu of reasonable notice, or for breach of agreement, or in recognition of my moral claims. If it is that or nothing, I cheerfully say "let it be nothing."

I think I shall be in Toronto on Tuesday, and if so, I will ascertain whether you would care to see me.

I have been very frank with you in this letter, because I am most glad to respond to the hand which seems to be held out in yours. I don't see that it can do any harm, and it may do some good. It, at all events, gives you my point of view. I didn't in any way draft it, but have run it off just as the thoughts came to me.

Thank you very much for every kind word you say, and believe me,
Yours very sincerely,

(Sgd.) Wm. Robins.

(Conceding that my reputation will need protection, what other way is there, in your opinion?)

30 My dear Lash,

August 24th, 1912.

As it was all I could do yesterday to get off my letter to you, it was hurried, and perhaps imperfect. I should have taken more time but for your reference to a possible "announcement" which I am convinced the Walkers and you would deeply regret later.

I had intended to allude to just one other remark in your letter—namely, "The basis of my interview with you, clearly expressed at the time, was that your existing position with the Walkers could not possibly continue." That is pretty emphatic language, as I clearly noted at the time. It would precisely fit a case of the gravest misconduct on my part; for such service as mine, no less than charity, might well cover a good deal.

And I could not fail to see that your whole attitude was equally consistent with the same presumption; for I perceived not the slightest admission of hardship to me, and I observed with surprise and sorrow that the claims to consid-

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eration which I advanced were brushed aside by you almost curtly. And you write now as though the offer made to me was an act of grace, and the Walkers' acquiescence therein a generous thing.

Inasmuch as you were with the Walkers, I believe, for several hours before you came to me, my mind naturally enquires whether it took all that time to secure their assent to what you thought I ought to accept at once and gratefully.

And I am still, at this moment, without the least clue to what really precipitated the crisis, unless it is to be found in the information indirectly received that Mr. Frank blames me for the Bristol Negotiation correspondence—though you wrote me, after his return from Europe and meeting with you, that he then understood the matter, and was pleased that you had left the way open for a renewal of the negotiations. Yet, only a few days later, he opened a discussion of the subject; complained bitterly that the negotiation was not peremptorily stopped when the price was dropped from \$15,000,000, though he did not indicate me, and did indicate Mr. Harry, (to whom he had given "positive instructions" in New York before sailing) and he deliberately insulted me because I candidly but politely expressed my opinions. 10

What can any man make of a situation such as this? and what man with a spark of spirit would be content with it? 20

Yours sincerely,

(Sgd.) Wm. Robins.

Toronto, August 28th, 1912.

William Robins, Esq.,
Room 216, King Edward Hotel,
Toronto.

My dear Robins:—

I have received a telegram from Mr. Frank Walker approving of the suggestion which I made to you yesterday and which I conveyed to him in a letter last night. The simplest way to record our understanding is to send you a copy of the letter, which I do herewith. It will form the basis of our understanding, and I hope the result may be what I anticipate. To complete the record, kindly drop me a note acknowledging the receipt of this and conveying your approval. 30

Faithfully yours,

Enc.

I am very busy getting ready to leave at five o'clock, or I should drop in and see you. Goodbye.

August 29th, 1912 40

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Private

My dear Lash,

I want to tell you again how greatly it eased my heart to talk with you in Toronto on Tuesday upon the old footing, and to have your assurance that

nothing you had heard had weakened your respect for me. Perhaps I may never learn what it was that so unexpectedly brought Mr. F. H. Walker to the determination to force me out; and it will always seem to me very unfair to leave me in the dark about it. His action, however, would not surprise me so much; but that his brothers should pursue the same course toward me will always be inexplicable.

I appreciated greatly the little note you penned at the foot of your letter yesterday. It seemed to me to speak volumes of sympathy, and I have needed that very much of late. When I told my girls and my wife last night it cheered
10 them immensely, so that I have the more reason to be glad.

I will write you after a while as to the only process which appears to me feasible for arriving at a settlement with the stock valuation made the last feature. I have no definite plans as yet for going away, but I think it will be a course for my rheumatism somewhere, and I am making enquiry about Caledonia Springs.

With kindest regards and warmest thanks from my family as well as myself,

I am, Yours very sincerely,

(Sgd.) Wm. Robins.

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August 29th, 1912

My dear Lash,

Your letter of yesterday, enclosing copy of yours of the previous day to Mr. F. H. Walker, reached me at the King Edward Hotel,

I think your letter to Mr. Walker correctly expresses the understanding between you and me. As I have not been acting through a lawyer, it is quite possible that I may not always have put my ideas into the most appropriate words; but I feel sure that everything is clear between you and me. Even if I had a written contract with the Company for a term of years, it would be folly
30 to insist upon staying here against the Company's wishes; and my position is that the Walkers, with whom my arrangements have always been made, and who, as controlling shareholders, could and can effect any relations between me and the Company they wish, have made it impossible for me to continue with the Company, in breach of a clear verbal understanding.

I sincerely share your hope that it may not become necessary to raise that question outside of ourselves. I will initiate nothing during the next two months to jeopardize an arrangement; and I very much regret that the Walkers did not consult you in the first place as the mutual friend, for I cannot doubt that such a course would have entirely avoided the chief difficulty which
40 has arisen.

Yours very sincerely,

(Sgd.) Wm. Robins.

Toronto, Sept. 4th, 1912.

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Private
William Robins, Esq.,
Walkerville,
Ont.

My dear Robins:—

I duly received yours of the 29th August, and am glad that you felt better after your visit to Toronto and talks with me. I hope that you will find a good place to go to have a rest and for your rheumatism. I think we had both better defer discussing the business matter until we meet in October. Don't write me about any plan. I would prefer to keep an open mind and to discuss the matter when we meet. 10

Faithfully yours,

 Toronto, Oct. 4th, 1912.

Personal.

William Robins Esq.,
Walkerville,
Ont.

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I suppose that you will have reached home by this time; if not, that this will await your return.

As you and I are going to discuss matters as old friends, I suggest that when we meet you should be able to explain to me in detail your financial circumstances. I could not help inferring from previous interviews that things financial are worrying you, both at present and in anticipation. I may be able, if I know all about the position, to help you in solving the difficulties, and if I can do so you may be sure that would make me happy.

I hope that your stay at Caledonia Springs has dispelled your rheumatism and improved your health generally. 30

Sincerely yours,

I shall be in Toronto on Tuesday and Thursday only of next week.

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 Walkerville, October 5th, 1912.

My dear Lash,

Your kind letter of yesterday touched me deeply and strengthened my conviction that if you had come into this matter as the mutual friend before the irrevocable decision was reached, much present unhappiness, and future regret to all concerned would have been avoided.

I will go down to Toronto on Monday and be at your disposal on Tuesday. If you cannot spare time enough that day, I will stay over.

I got home Tuesday night. I cannot yet say much about my rheumatism, but I got a lot of fresh air, and friends think I am looking very well. But the mental strain has been severe and my insomnia continues. I had planned to write you today, asking whether we could not soon get together. Apart from my desire to end the suspense, the situation is threatening to become embarrassing, for there has certainly been some "leakage" somewhere. I am, therefore, very glad to have heard from you.

10 Most heartily reciprocating all your good-will, and with kindest regards, joined in by my wife and Gertrude,

I am, yours very sincerely,

(Sgd.) William Robins.

Private and Confidential

Walkerville, October 9th, 1912.

My dear Lash,

20 You said you were grieved that I could not yesterday see eye to eye with you, and I was truly grieved that you should feel so; for I had fully expected that you would regard my offer as very fair, and I was so anxious you should that I had "pared" very close in estimating what would enable me to give to my "stepping down" a fairly reasonable complexion of being voluntary.

30 I want you to thoroughly believe that I greatly appreciate your personal interest and kindness; but I cannot help feeling that if you more fully realized what I have gone through for years past, (the petulant and contemptuous reception of ideas carefully thought out, with nothing but zeal for the interest of the business, while my critic was taking his ease; the disregard of my long and close knowledge of matters of which he knew little or nothing; his diminishing respect for my judgment, in spite of the accumulated proof of my successful handling of difficult questions; the mortification of his interference in matters which were supposed to be left to me), you could not but more fully sympathize with my contention that I have now been treated with gross brutality and that my claims are morally such stronger than a written contract, because the influence against me has prevailed only by reason of broken promises which I believed to be as good as any document.

40 My offer included continued goodwill toward the Company, which I cannot possibly entertain unless I feel that something has been done with the object of mitigating to some extent the undeserved cruelty of my position—not by you, but by the principals. I cannot so regard what you proposed, if for no other reason than that it barely equals what J. H. expressed as his view of the least that should be done if the separation had come about without any of the present painful features, and in a way which would have given ground for none of the unpleasant inferences which I fear cannot now be wholly avoided, locally

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at least, whatever happens. I have this morning learned that significant remarks have already been made here by a man who is unfriendly to me solely upon suspicion that I covertly acted for the W.'s in a municipal fracas with which I never had the least connection, and which, I am sure, never would have arisen had I been representing them.

If I made any mistakes in so pressing my opinion as to annoy F.H., the two brothers must share the responsibility, seeing that they always supported me.

I look for no consideration from F.H. If sentiment comes in at all, it must be, I am convinced, from the others. Both of them have said very clearly what would warrant belief that they would like to do something to show their regard for me. Apparently, however, whatever you do will be with F.H. alone. 10

I am very reluctant to conclude that the brothers meant nothing by what they said. I can hardly believe they would wish the difference between your figures and mine to bring about a crisis deplorable for all. I feel very strongly that it would be no little comfort to them to know that I could be depended upon to help them out in certain contingencies by no means improbable,—to say nothing of my influence at Ottawa, and my ability to present the case more convincingly than most people because of the special study I have given to it. At all events, I did, some years ago, convince the Minister, when Gooderham, Blackstock, Beatty and others said it was hopeless and had better not be attempted. I recently carried my point with Mr. Saunders, of the Ontario License Department, when Gooderham said I would only make things worse, and with marked advantage to all the distillers. 20

I want to know whether you at all object to my asking J.H. if he would like to have a strictly confidential talk with me. I should be much relieved if you do not object. I do not want to leave any room for vain regrets later. When he left here he expected I would join my wife at Swampscott, and expressed the hope that he would see me then. He could hardly have thought that in such event there would be no reference to the matter at issue. 30

If you do not object, may I tell him all that passed between us yesterday, or shall I limit myself, and, if the latter, may I say what we each proposed, or only that the difference between us is \$50,000. That is nothing to them, but much to me, and I think I could give them value for it many times over at Ottawa alone.

Will you kindly wire me tomorrow to the Detroit Club, which will give you latitude of expression that might be unsafe if the message came here? Whatever is to be done, I want to lose no more time.

And, my dear Lash, let me ask you to realize that at my age and with the infirmities which threaten me, in spite of my sound heart and lungs and apparent general good health, a comparatively small addition to my income means all the difference between reasonable comfort and the reverse. My rheumatism has been making rapid advances, which may call for frequent visits to "cures" and for changes of climate; and I have not infrequent attacks of piles and bladder trouble which make my own bathroom and a drawing room when travelling at night no mere luxury. I don't want to magnify trifles, but only to show that if I have to "sail too close to the wind" my life is not likely to be any too 40

attractive; and I don't think I flatter myself in saying that I should make many personal sacrifices before denying my family.

I thank you again for every evidence of your friendship; which I hope always to retain. If you cannot approve of certain feelings I have expressed, it may be because you are a better man than I am, and I am very willing to believe it; but, for your own sake, I hope it is more due to the fact that you have never had an equally bitter experience.

Yours very sincerely,

(Sgd.) W. R.

10

Toronto, Oct. 10th, 1912.

Private

William Robins, Esq.,
Walkerville,
Ont.

My dear Robins:

I received this morning your letter of yesterday, and I at once wired you as follows:

20

"On Tuesday I wrote Mount Clemens and Magnolia substance of our interview giving the figures. Replies not yet received. I suggest you allow me to send them extracts from your letter just received leaving out all personal allusions and statements likely to invoke replies or denials. Meantime it would not be advisable for you to ask for the personal interview. Answer."

I have since received your telegram in reply.

30

I enclose copy of the extracts from your letter which I have sent to the Walkers. I leave town to-morrow morning and shall be away until Tuesday. When I get back I expect to have letters from them, and I shall write you the result and shall then answer your question about your having an interview with Mr. Harry. I do not think it would be wise at the present moment.

Faithfully yours,

Enc.

Pentilly,
Walkerville,
Ontario, Canada.

Oct. 10th, 1912.

My dear Lash:

I learn that F. H. was here yesterday, as well as today, and that he does not return to Mount Clemens. I assume that your letter has followed him, but I shall mention it to Ambery.

Yours hurriedly,

(Sgd.) W.R.

TELEGRAM

Toronto, October 10th, 1912.

RECORD

*In the
Supreme
Court of
Ontario*

William Robins,
Detroit Club,
Detroit.

Exhibits

No. 30
(Part)
Correspond-
ence.
Z. A. Lash
and Plaintiff
—continued

On Tuesday I wrote Mount Clemens and Magnolia substance of our inter-
view giving the figures. Replies not yet received. I suggest you allow me to
send them extracts from your letter just received leaving out all personal allu-
sions and statements likely to invoke replies or denials. Meantime it would not
advisable for you to ask for the personal interview. Answer.

10

Z. A. LASH.

(Paid)
1.37

Canadian Pacific Railway Company's Telegraph

53 Detn 134
Detroit Mich Oct 10; 12.
L. A. Lash,
Bank of Commerce,
Toronto, Ont.

all this page
(Part of
No. 20
See Note
at
p. 645)

Will do nothing against your wishes or judgment while any hope of agree-
ment between us, and should not have written but for fact that your suggested
presence here today if I concurred and parting request to be advised if I
changed my mind gave me impression that magnolia was leaving decision en-
tirely to mount-clemens and that you did not purpose communicating with lat-
ter at present. Am glad I was wrong. I accept your suggestion as to my letter,
but have strong feeling my writing might be misconstrued in one quarter and
shall be glad if you can give supplementary communication complexion of part
of Tuesdays talk, which, in fact I believe would be correct as to all you would
use except perhaps allusion to infirmities. However, will be content with what
you think best.

20

Robins.

338pm

30

Walkerville, October 13th, 1912.

Private

My dear Lash:

I received your letter of the 10th, with enclosure, and I hope you will on
Tuesday be able to report that my offer has been considered reasonable. To the
unavoidable strain of uncertainty as to my future there is now added the an-
noyance of very considerable talk about my affairs, new instances of which
come to my ears every day. It is certain that the main facts are known to a
good many people on both sides of the river, because the remarks made are very

specific; and the probability is that the knowledge is much wider than what I have heard. I am apprehensive of questions by telephone, particularly from newspapers; and I am avoiding my friends and acquaintances to escape embarrassment. If I had not so many things to do in preparing for whatever may happen, I would go away again; but if there is a satisfactory settlement my idea is to get right out of reach quickly—perhaps to England for the “cure” which has helped me so much before—and to give plenty of time for things to settle down before I reappear. It is sometimes very hard to evade the pointed questions many people do not hesitate to put.

10 My rheumatism seems to find new spots every day, and I am beginning to be anxious about it. I don't want to find myself a cripple just yet.

It was very thoughtful of you to write me so fully from Montreal about Mr. Holt, and a great relief to me to know that he thinks well of our land and the district. I forwarded the letter to Coburn at Vancouver, and wired him to Sicamous (where he is due this evening), to that effect.

If by any chance you can wire me favourably on Tuesday, I wish you would; and if there is any reason for caution, you might telegraph me here to go to Detroit and send the important message to the Detroit Club. A day is a short time; but when one has been carrying a big load for months a few hours' relief is very welcome; moreover, your being so little in Toronto just now has, of course, tended to “prolong the agony.”

With best regards,

I am, yours very sincerely,

(Sgd) Wm. Robins.

By “main facts” I mean that I am going. I haven't heard of any suggestion of an unpleasant nature.

Telegram

Toronto, October 15th, 1912.

30 William Robins,
Walkerville,
Ont.

Am glad to say that the matter will be arranged as you wished. Am writing.

Z. A. Lash.

(Paid)

The Great North Western Telegraph Company of Canada
Walkerville, Ont., Oct. 15/12.

40 To Z. A. Lash,
18 Grenville St.

Have just come in and found your message. Thank you very much will express my appreciation more fully by letter.

Wm. Robins.

RECORD
In the
Supreme
Court of
Ontario

Exhibits

No. 30
(Part)
Correspondence.

Z. A. Lash
and
Plaintiff.
—continued

(Part of
No. 20
See Note

at
p. 645)

Toronto, October 15th, 1912.

RECORD

In the
Supreme
Court of
Ontario

William Robins Esq.,
Walkerville,
Ont.

Exhibits

No. 30
(Part)
Correspond-
ence.
Z. A. Lash
and
Plaintiff.
-continued

My dear Robins:—

I have just received yours of 13th. I also received letters from Magnolia and Walkerville, and the result is that I have been able to telegraph you as follows,—

“Am glad to say that the matter will be arranged as you wished. Am writing.”

10

This means that you will receive \$300,000, that you will transfer your stock, and both parties will consider all disputes and claims at an end; and there is to be included, to use the words of your letter to me of the 9th inst., “continued goodwill toward the Company.” I have frequently assured you that no illwill toward yourself exists among any of the three brothers, and nothing has been said by any of them in any way reflecting upon you or your services to the Company, and I assume that the personal element which at one time since the unfortunate differences arose crept into the matter will be eliminated on all sides for the future.

all this page

(Part of

No. 20

See Note

at

p. 645)

I want to express my sincere pleasure that matters have been adjusted, and I think that, when you consider the whole matter with the irritation which you have hitherto felt removed, you will admit that the Walkers, all three, must have felt towards you in the most friendly way and must have recognized the value of your services to them when they authorized me to arrange for the payment to you of the sum mentioned. I know that these friendly feelings did exist all the time, and continue to exist.

20

Mr. Harry Walker in writing to me suggested that the payment of the money be postponed until he returns to Walkerville, about November 1st; but if you wish it before that time no doubt it can be arranged; I leave here on Thursday afternoon for St. Ann's duck marsh, and expect to be away all next week; therefore please write me to-morrow so that I may get your letter on Thursday morning.

30

Hoping that your intended trip, to renew the old cure which did you so much good on a previous occasion, will benefit you equally again,

Believe me, my dear Robins,
Yours sincerely,

William Robins
Walkerville, Ontario.

October 16th, 1912.

My dear Lash,

40

I hurriedly acknowledge the receipt of yours of yesterday, between a Catholic funeral service of the lengthened type and some pressing matters which must be arranged this afternoon in Detroit.

I want first to express as strongly as I possibly can the friendliness of your part in the settlement. If we have not been wholly agreed on some points, I am glad to remember that we have in the past sometimes been in a similar position, but, I think, without loss of esteem and regard on either side. I hope, and I believe from the tone of your letter, that we are still very good friends, and I trust we always shall be.

It is entirely agreeable to me to fall in with Mr. Harry's suggestion that the payment of the money be postponed to about the first of November, as I can easily get all I require for present needs now that the future is defined.

10 I shall honestly make good the understanding as to "continued goodwill toward the Company," and, while I will not pretend to you that I have changed my views upon certain episodes of the past, there need be, so far as I am concerned, no reviving of the personal element.

My wife and Gertrude wish to be most kindly remembered to you, and join me in hoping that you will thoroughly enjoy your outing in the marsh. I thank you very much for your good wishes as to my rheumatism, and am, as always,

Yours very sincerely,

(Sgd.) Wm. Robins.

20 Z. A. Lash, Esq., K.C.

Night Letter

The Great North Western Telegraph Company of Canada

138 De Dv

36 NL

Detroit Mich Oct 16-12

L. A. Lash,

Bank of Commerce Bldg., Toronto, Ont.

30 Since writing have decided to call in the morning and hold out the olive branch which I know will please you if you will give me post office for Marsh should like to write you further.

W. R.
919p

Toronto, Oct. 17th, 1912

William Robins Esq.,
Walkerville,
Ont.

My dear Robins:—

40 I have just received your letter of yesterday and your telegram. I am very glad that you have decided to make a personal call, and I know you will feel all the better for having done so. My post office address will be "C/o. St. Ann's Club, Mitchell's Bay P.O., Ont." I think there is a daily mail. I expect to be at the Club all next week, and to be home on Sunday night or Monday morning. You correctly interpret in your letter our own personal relations.

In haste,
Faithfully yours,

In the
Supreme
Court of
Ontario

Exhibits

No. 30
(Part)

Correspondence.

Z. A. Lash
and
Plaintiff.

—continued

(Part of

No. 20

See Note

at

p. 645)

RECORD

In the
Supreme
Court of
Ontario

Exhibits

No. 30
(Part)
Correspondence.
Z. A. Lash
and Plaintiff
—continued

Pentilly,
Walkerville,
Ontario, Canada,
October 18th, 1912.

My dear Lash,

I have your letter of yesterday, and I am glad to tell you that though I have not yet seen F. I feel very much better for the change which has taken place in my feelings. I cannot pretend to have altered my opinion as to what has occurred, but I have forgiven it all and am prepared to consider the past buried for good. I did not believe this possible; but it came into my heart suddenly Wednesday evening; and I was so sure of its permanency that I went over to Detroit to send you a message. I was so glad to do something of which I know you would approve; and I sent another message to Mr. Harry, thinking he would also be pleased and relieved. 10

Yesterday morning I went to the office but found that F. was at the Flats: so I gave McDougall a note to take up with him today.

I have no intention of discussing what is over and done with if F. responds to my overtures, because I am convinced that it could be of no advantage, at all events just now. I have told him this in my note, and that my purpose is to offer to bury all differences for good. As I never do anything by halves this means all that the words imply: and I am hopeful that it will clear the way for me to be of some service to Ambery at times, and perhaps to Mr. Ed., Mr. Harry and the Company. If F. himself should feel that I can be of any use to him I shall be just as ready in that direction too. 20

I am far from being what orthodox people would call a religious man, but I am nevertheless truly thankful to God for the load which has been taken off the hearts of my dear wife and the girls as well as from my own; for the merits of the case apart, I well knew that if a settlement could not be reached I should have to be prepared for heavy sacrifices, which they must share with me.

And I have learned much more fully within the past two days than I was previously aware how kind you were to my wife, for which I am unable adequately to express my feelings. I can only assure you that had the case been reversed there would have been nothing within my power that I would not gladly have done for you. I rejoice that you can still write me as you do. If I have fallen short of your expectations I ask you to forgive me. 30

I hope you will thoroughly enjoy your outing, and am,

My dear Lash,
Very gratefully and sincerely yours,
(Sgd.) Wm. Robins.

(Part of
No. 20

William Robins,
Walkerville, Ontario

Private

October 23rd, 1912 40

See Note
at
p. 645)

My dear Lash,

I was at the office this morning, and Mr. Frank and I had a pleasant meet-

ing. There was no reference to anything that is past, but we just met as though nothing had occurred. By-gones are truly by-gones so far as I am concerned, and I trust we shall all feel and be the better for it.

There is a point I want to take up with you so as to make sure that there will be no misunderstanding at the last moment. It never occurred to me until a couple of days ago, and it may be that it is quite unnecessary to speak of it now. I refer to the accrued dividends on my shares to August 31st. We have been in the habit of paying interim dividends as there were funds available; and the past two or three years, during which we have generally had money on deposit in the Savings Department of our bank, we have paid 2% each quarter. At the Annual Meeting the dividend for the year has been declared, and the excess over the interim dividends has been paid as soon as convenient. I have taken it for granted that there would be no question about my getting the full dividend for the fiscal year, notwithstanding that it may not be paid before the settlement is consummated. And as the settlement is, I suppose, as of August 31st, I have thought it possible that the estimated accrued dividend from that date to the transfer of the shares, or interest on the amount agreed upon, might be considered fair, seeing that I have practically had no income in the meantime. But, welcome as even small sums are to me now, I want you to understand that I am not going to ask for anything which you think I should not ask for; and that is why I take the matter up with you now, since you may be preparing some sort of a document in anticipation of Mr. Harry's return.

Another thing which I mention for you to deal with just as you think best is that, now we have "buried the hatchet" I feel differently about retaining my shares if the W.'s would rather I still had a material interest in the Company, subject, as you suggested, to my being at liberty to take a fixed price for them at any time. When you and I were talking, I felt that any connection with the concern would be a constant pain to me. I do not now feel that way. If they should want my help at Ottawa or otherwise, there would be no motive for my pressing my own views on the course to be pursued if my shares had a fixed value: therefore, I see that I could submit my ideas for their consideration and cheerfully accept their decision, whatever it might be. So, if you think they would rather have it the way you proposed, I am quite willing; and your own valuation of the shares, (175) would be quite satisfactory to me.

I spent a good part of yesterday trying to decide what I had better do about United States Motors, in consultation with some of my fellow-sufferers and a broker who had been to New York to study the reorganization scheme. The conclusion we came to was that the underwriters propose to get all the margin there is in it, and that to pay the assessment is just as likely to mean a further loss as a reduction of the first. I made up my mind to take no more chances; and as the prices are now lower than ever before my loss is a little more than I estimated. It is unpleasant, but it is all in a lifetime.

I hope you will have had good sport and a splendid outing, and with very best regards, am,

Yours very sincerely,

(Sgd.) Wm. Robins.

RECORD

In the
Supreme
Court of
Ontario

Exhibits

No. 30
(Part)

Correspondence.

Z. A. Lash
and
Plaintiff.

—continued

(Part of

No. 20

See Note

at

p. 645)

RECORD
In the
Supreme
Court of
Ontario

William Robins Esq.,
Walkerville,
Ont.

October 31st., 1912

Exhibits

No. 30
(Part)
Correspondence.
Z. A. Lash
and Plaintiff
—continued

My dear Robins:—

I received your letter on Tuesday last, after my return from the Marsh, but I have not had a chance to answer it till now.

The question of the dividend on the stock occurred to me, and, had you entertained the first suggestion which I made about your retaining the stock under a special agreement relating to it, of course the question would have settled itself. When, however, we abandoned that idea and took up a settlement for a lump sum in full, I assumed that whatever sum was agreed upon would be in full. I think I said to you that I did not want to fix a price for the stock, but that I wanted to fix a lump sum which would include everything, including the stock. If I did not say this to you I certainly said it to the Walkers.

I think it would be extremely unwise to raise the question about the dividends, now that harmony has been restored. I think also it would be unwise for me to suggest that you would now be willing to hold the stock on the terms of a special agreement. I explained in my report to the Walkers what I had suggested about this but that nothing had come of it, and I am afraid that were the matter to be reopened a false impression might be created. I feel so relieved that the very difficult matters I was dealing with have been settled that it would be extremely distasteful to me to have to in any way reopen them, and I do not think it would be in your interests to do so.

I cannot place my hand upon your letter at the moment, and I do not know whether this replies to all its material parts. My recollection is that in your letter you dealt with the two points only—1st, the question of dividends, and, 2nd, the question of your continuing to hold the stock under a special agreement.

Reciprocating your friendly feelings and wishes, and those of your wife and daughter,

Believe me, my dear Robins,
Yours sincerely,

P.S.

I had one excellent day's sport on the Marsh; the other days enjoyable but nothing out of the common.

William Robins,
Walkerville, Ontario

November 1st, 1912.

My dear Lash,

I have your letter of yesterday, for which I am much obliged. You certainly did put the matter to me just as expressed in your letter, though it never entered my mind that the dividend earned for the past year was involved any more than my commission for the same period, both of which were at the time

all this page
(Part of
No. 20
See Note
at
p. 645)

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of our discussion equally undetermined. I am naturally disappointed, for the few thousand dollars represented mean a good deal more to me than for many years before, and more than I supposed they ever would again until this break stared me in the face. However, as I said in my last, I am not going to raise the question against your wishes, and I would not for a good deal be the cause of anything distasteful to you now. I take it, of course, that what you say has no application to my commission, and I can readily understand that it would in your mind be a thing quite apart from the dividend, notwithstanding that in my mind the one seemed to be as fully earned as the other at the close of
 10 the year. It would go very hard with me to have to forego the commission, and I haven't the least idea that the question can arise.

I am quite content with your view that the matter of my keeping my stock had better stand as arranged. I wrote what I did with the idea that it might substantiate my assurances of continued goodwill toward the Company. But I should very much dislike to have my motives misconstrued.

I was very sorry to hear that Mr. Harry returned home not at all well, and I do not wish to trouble him about my matter until he is feeling better.

With kindest regards, I am, yours very sincerely,

(Sgd.) Wm. Robins.

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William Robins, Esq.,
 Walkerville,
 Ont.

Toronto, Nov. 4th, 1912.

My dear Robins:—

I am in receipt of yours of the 1st inst. Your commission is quite distinct from your stock; it forms part of your salary, and should be paid the same as salary. I have written Mr. Frank Walker to that effect today, as the question of commission was not pointedly mentioned to him in connection with the settle-
 30 ment, and my letter should prevent any wrong impression from arising with respect to it.

I am sorry to hear that Mr. Harry is not at all well.

Sincerely yours,

CORRESPONDENCE BETWEEN Z. A. LASH AND F. H. WALKER

The Great North Western Telegraph Company of Canada
 Received at Main Office, Scott and Wellington Streets, Toronto, Ont.

RM.D.

16

40 Walkerville, Ont. 16

Z. A. Lash,

RM.

Think letter was written you yesterday better delay reply until you receive my letter of today.

F. H. Walker.

RECORD

In the
 Supreme
 Court of
 Ontario

Exhibits

No. 30
 (Part)
 Correspondence.

Z. A. Lash
 and
 Plaintiff.

—concluded

(Part of

No. 20

See Note

at

p. 645)

No. 30

(Part)

Correspondence.

Z. A. Lash
 and F. H.
 Walker.

RECORD Hiram Walker & Sons
Limited
Walkerville, Ont.

August 16. 12.

In the
Supreme
Court of
Ontario

Exhibits

No. 30
(Part)
Correspond-
ence.
Z. A. Lash
and F. H.
Walker.
-continued

My dear Lash,

Yesterday before Harry left for Magnolia he went in to see Robins and say goodbye, etc., and when he expressed his regret of the present unfortunate conditions Robins said to him that he had intended saying to you the day before that as he had not had his two months' vacation this year that he thought we might perhaps give it to him now with salary of course, and then he thought after we had all had two months to think it over we could perhaps get together on the value of his stock in which case he could state that he was retiring and he would always take the same friendly interest in the business as he has had in the past and we could rely on his help at any time, etc., etc. This is an entire change of position from when he saw you, and I am convinced he was simply putting up a bluff when talking to you with the expectation that we would be frightened into giving him the price he demanded for his stock, and when he found we were going to stand pat he weakened. I did not think he would attempt such a thing with us, and I don't at all like it, and more particularly I don't like him treating you that way when you went to him in the role of an arbitrator. I told Harry I thought it was too late for him to make any proposition to us—that it should be done through you—Harry stated this to Robins and Robins said he would write you, hence my telegram of this morning. His suggestion that we give him a two months' vacation in Sept. and Oct. is, of course, absurd as he will not be in the Co's employ at that time—we could, of course, pay him two months' salary, \$2,600, which perhaps would be satisfactory, but under the circumstances anything in the way of a holiday is impossible. I should say that this letter to him we agreed on should be sent him had not been delivered at the time of Harry's interview, so his change of mind was not brought about by that letter. The letter was delivered immediately after Harry saw him and we have heard nothing from him since. He was at lunch with us yesterday and today and appeared unusually pleasant, so has undoubtedly had a decided change of mind since he found his bluff would not work. I don't know that it has occurred to you that under the original agreement at the time we gave him his stock, it was provided that in case he left us at any time either by dismissal or of his own wish, or by death, we were to have the option of buying his stock from him at par. This agreement is in force today and it is under this agreement that he holds his stock.

A year or so ago you will remember we discussed with you the question of changing this condition of our buying the stock as we felt it was hardly fair to shareholders of this class that perhaps they could not get the market value for their stock and it was our intention to change the terms of the agreement, but this has never been done and today, under the agreement we have the option to buy Robins' stock at par, and he could probably not make any sale of it outside so long as this agreement exists. I don't think we should want to take any

advantage of this condition, but it might be a strong argument in case of necessity.

Shall hope to hear from you after you get Robins' letter, but I wanted you should have this before your reply to him.

Regards.

Sincerely,

(Sgd.) F. H. Walker.

F. H. Walker
10 Walkerville, Ontario.

Aug. 24-12.

My dear Lash,

I have your letters with enclosures as stated, all of which I note with great interest. Your letter to Robins is, I think, a wonderfully clear and complete recital of the whole situation to date, and there can be no possible misunderstanding about it in the future. Robins' insinuations in his letter regarding your relations to us in any way affecting your interview with him, I think were nasty in the extreme, and entirely uncalled for—I wonder you could write him so considerately under the circumstances, but, of course, you were wise to do so. I am very sanguine that your handling of the matter will result in an amicable settlement—if not the case is indeed hopeless.

As to our option to buy his stock at par, to which I referred in my previous letter, this was the condition governing the first lot of stock we gave him, \$25,000 and the same condition was attached to the balance of his stock when issued to him. I believe both his certificates bear an endorsement referring to this condition. When Robins asked for a five-year contract in 1906 he and Harry agreed on the terms and Robins wrote the memo of agreement covering the understanding and this memo, I believe, provides that in case of our taking his stock, the value should be ascertained after consultation with you, or words to this effect. This memo was signed by Robins and Harry—I never saw it until a few days ago. Some time ago you will remember the question of establishing a value for all stock held by our employees was taken up with you, but we never reached a definite conclusion in the matter. I don't think this question can be material just now, but if later on it appears to be important I will go into the matter more fully. In the meantime there is nothing to do but wait developments—I have no doubt you will hear further from him pretty promptly. Copy of your letter to Robins I am sending on to Harry as requested.

Regards,

Sincerely,

(Sgd.) F. H. Walker.

Toronto, August 27, 1912

RECORD

*In the
Supreme
Court of
Ontario*

Exhibits

No. 30
(Part)
Correspond-
ence.Z. A. Lash
and F. H.
Walker.
—continued(Part of
No. 20
See Note
at
p. 645)

Personal

F. H. Walker, Esq.,
Walkerville,
Ont.

My dear Walker:—

In thinking over the Robins matter I thought it might advance the situation somewhat were I to suggest to Robins that instead of carrying over the present position till the end of October, thus extending his engagement until that time, as I thought his suggestion to your brother Harry involved, he should assume that his engagement will not be renewed, and that between now and the 31st of October he should take a rest or a vacation of his own, not expecting to return to the Company's employ, and that if during that time he desired to talk to me further about an amicable adjustment I would be glad to see him, and that I would then talk to you further. My object in doing this was that the situation as between him and the Company would be a fixed one, and that the question of your taking over his stock, which he made the prominent feature in connection with the whole situation, need not now be discussed. I thought that in six weeks or two months from now all parties would be better able to discuss what was fair to be done, freed from the effects of the personal element which now so largely bulks up. I accordingly wrote him from Muskoka and made this suggestion, telling him that if he said he would carry it out I would ask you to defer making any announcement to the staff that his engagement was at an end or making the formal changes which must necessarily be made for the future, treating the situation in the office so far as the staff is concerned as if he were on leave of absence, although he would actually not be on leave, as he would not be in the service of the Company beyond the 31st of August.

As I intended being in Toronto today, and thinking that he might want to see me, I telegraphed him that I would be here today. He came down, and I have just concluded an interview with him. He is willing to act on my suggestion, and I hope you will do the same. As I am acting as your professional adviser in this matter, I thought it right to say to him that I was making this suggestion as a mutual friend and without your knowledge; but I would like you to comply with it as I feel instinctively that it will be in the general interest to do so. I avoided discussing the legal position except to say that you took the position that his engagement would end on the 31st of August and that it would not be renewed. I told him, however, that in asking him to carry out my suggestion I did not ask him to waive any rights which he thought he had or might have.

I intend to go back to Muskoka tomorrow evening, and I would like to hear from you by wire, sent to me here, as early as you can tomorrow. If you cannot get off a wire tomorrow in time, send one to me at the Royal Muskoka Hotel.

I presume you would wish me to communicate with Robins. Perhaps, however, you would prefer communicating yourself. I told Robins I would

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write you to the above effect tonight. He told me he intended to return home tomorrow.

I have not heard from you since I wrote you enclosing a copy of my letter to Robins in answer to his which he wrote on the 15th after he had seen your brother Harry. Of course Robins on his part is to say nothing,
Faithfully yours,

The Great North Western Telegraph Company of Canada

From Walkerville, Ont.

August 28th, 1912.

10 To Z. A. Lash,

Can. Bank Commerce, Toronto, Ont.

Gladly agree to your proposal you better advise other party wrote you Saturday last to Muskoka.

F. H. Walker.

Toronto, August 28th, 1912

F. H. Walker, Esq.
Walkerville,
Ont.

20 My dear Walker:—

I have just received your telegram approving of my suggestion about Robins. I have sent him a copy of my letter to you, and he has acknowledged receipt and approved. I am now in hopes of being able to bring about an amicable arrangement after we have all had the benefit of five or six weeks free from the worry of it.

I received this morning from Muskoka your letter, which arrived after I left.

Faithfully yours,

Please send me Robins' letter of the 15th or a copy of it for my files.

30

Hiram Walker & Sons
Limited
Walkerville, Ont.

Aug. 28-12.

My dear Lash,

I have yours of yesterday and am delighted to learn that Robins has accepted your suggestion and I have wired you accordingly. I think this decidedly the best course possible under the circumstances and I am sure that at the end of two months we can arrive at some satisfactory settlement of the stock question which, of course, is, or will be, the important consideration with him. In the meantime no announcement of the facts will be made here and no change will be made in the office arrangements. I wrote you Saturday last to Muskoka expressing my full approval of the plan you suggested, but this letter evidently did not reach you before you left for Toronto. Regards.

Sincerely,
(Sgd.) F. H. Walker.

RECORD

In the
Supreme
Court of
Ontario

Exhibits

No. 30
(Part)

Correspondence.

Z. A. Lash
and F. H.
Walker.

—continued

RECORD
 In the
 Supreme
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Hiram Walker & Sons
 Limited
 Walkerville, Ont.

Aug. 29-12.

Exhibits

No. 30
 (Part)
 Correspondence.

Z. A. Lash
 and F. H.
 Walker.

-continued

My dear Lash,

I have yours of yesterday and am much pleased to learn that the negotiations are completed up to this point and I have no doubt you will be able to reach a satisfactory conclusion later on.

I enclose Robins' letter of 15th as requested.

Yours, etc.,

(Sgd.) F. H. Walker.

10

Hiram Walker & Sons,
 Limited,
 Walkerville, Ont.

Sept. 19-12.

My dear Lash,

Nothing new so far in the Robins matter except some letters he has written Ed. and Harry in which, however, no new points have developed.

In one of his letters to Harry I think he mentioned that he hoped he would hear from us or you at an early date as the suspense—if left the full two months—would be a hard trial for him, etc.—it consequently looks as if he were waiting to hear from you, but my recollection is that you told him you would be glad to talk with him any time he might suggest. Whether it would be wise for you now to write to him I would not dare say—would much rather leave it entirely to your judgment. I have once or twice referred to our agreements with Robins regarding his stock and, as I believe you have not seen these, I am enclosing copies herewith. The full agreement which was contemplated in the memo signed by Harry and Robins was never completed. You will note that a price was to be agreed on after consultation with you. 20

Weather here today is very suggestive of ducks. I hear there are lots of them in the Marsh, and I hope to get some next month. 30

Regards, Sincerely

(Sgd.) F. H. Walker.

Copy.

Agreement made the Eleventh day of November, A.D. 1897, between William Robins, of Walkerville, Ontario, of the first part; and Edward Chandler Walker, Franklin Hiram Walker and James Harrington Walker, hereinafter called Walker Sons, of the second part.

Whereas Walker Sons have agreed to transfer or cause to be transferred to the said Robins as his own property two hundred and fifty shares, (par value 40

\$100.00 each, or \$25,000 in all) of the capital stock of Hiram Walker & Sons, Limited, subject to the terms of this agreement:

Now this agreement witnesseth, and in consideration of such transfer it is agreed as follows:—

1. So long as the said Robins remains in the service of Hiram Walker & Sons, Limited, (hereinafter referred to as the Company) the said shares shall not be assigned or transferred by him without the assent in writing of Walker Sons.

2. If at any time while said Robins is in the service of the Company Walker Sons should decide to sell all the shares in the Company then owned or controlled by them, and if as a condition to purchasing such shares the purchasers should require the said Robins to sell his said shares on the same terms, he will at the request of Walker Sons make such sale as part of the sale of Walker Sons' said shares.

3. If said Robins should cease to be in the service of the Company either by his own or the Company's desire, or if he should die while in the service of the Company, Walker Sons shall have the option to purchase his said shares at a price equal to the par value of the amount paid up thereon, such price to be paid on the necessary transfers being made. In addition to such price, said Robins, or his executors or administrators, as the case may be, shall be entitled to receive the proper proportion of any dividend on said shares which may be declared for the then current year. Such option is to be exercised within two months after Robins ceases to be in the service of the Company, or after his death, as the case may be. Notice of exercising same may be validly given by post letter addressed to Robins at his then last post office address, or in the case of his death addressed to his executors or administrators at the same address. Upon such option being exercised, Robins, or his executors or administrators, as the case may be, shall make all necessary transfers and assignments of said shares on payment of the said price thereof.

4. The said Robins hereby appoints Walker Sons, or any one or two of them, as his attorneys or attorney for him and in his name, if and when the proper time in that behalf arrives to sign and execute all transfers of said shares which by this agreement he has agreed to make, and the Company is hereby requested and directed by the parties hereto to observe and do whatever may be necessary to secure the carrying out of the terms hereof.

5. Wherever in this agreement Walker Sons are mentioned or referred to, such mention or reference shall extend to and include the executors and administrators of such of them as may die.

In witness whereof this agreement has been duly executed.

Signed, Sealed and Delivered
in presence of

(Sgd.) William Robins (seal)

It has been agreed between Messrs. E. C. Walker, F. H. Walker, and J. H. Walker, Directors of Hiram Walker & Sons, Limited, and William Robins, as follows:—

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Walker.

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ence.
Z. A. Lash
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Walker.
—continued

1. That Robins shall remain with the Company for five years from September 1st, 1906, at the same salary as previously, and in addition thereto, a commission of two per cent. upon the net profits of the Company arrived at as heretofore, such commission to be payable yearly when the profits have been determined.

2. That an agreement shall be entered into between Walker Sons and Robins providing that if Walker Sons should sell all their shares in the Company, and it should be a condition of such sale that the shares in the Company held by Robins should be sold at the same price, Robins's shares shall be so sold; also, that the agreement shall further provide that Robins's shares shall not be offered for sale to any other parties until they have been first offered to Walker Sons, and that Walker Sons shall have the right to purchase said shares if Robins should die or leave the employ of the Company, upon terms to be settled after consultation now with Mr. Z. A. Lash.

3. Robins shall be entitled to two months' vacation each year; and if in the interest of the business he shall forego the vacation or a part of it, in any year; he shall be entitled to make it up later.

4. There shall be a regular contract between the Company and Robins to give effect hereto; but this memorandum is now signed to show what the understanding is, as it will probably be some little time before the Directors can formally complete the agreement.

June 6th, 1907.

(Sgd.) J. Harrington Walker for self and brothers
(Sgd.) William Robins.

F. H. Walker,
Walkerville, Ontario.

Walkerville, September 24th, 1912.

Z. A. Lash, Esq.,
Canadian Bank of Commerce,
Toronto, Ont.

My dear Lash,

This morning I have yours of 21st and your statement of the present condition is quite as I expected.

I shall be very glad of an opportunity to have a talk with you before your proposed interview. I am going to Mt. Clemens tomorrow for a bath treatment, hoping in this way to prevent another attack of gout during the winter. While this treatment will probably last a couple of weeks, I think there is no doubt that I could get away for a day to run down and see you at Toronto. If you will give me two or three days' notice of the day that will suit you I will make an effort to be there.

Best regards,
Sincerely yours,

FHW/J.

(Sgd.) F. H. Walker.

Address me at Park Hotel, Mt. Clemens.

Toronto, Sept. 25th, 1912. RECORD

F. H. Walker, Esq.,
Park Hotel,
Mount Clemens, Mich.

*In the
Supreme
Court of
Ontario*

My dear Walker:—

Yours of yesterday received. Don't worry about the time of seeing me during your treatment at Mount Clemens; I will make it suit you. I hope the treatment will ward off another attack during the winter.

With best regards,
Sincerely yours,

10

Exhibits
No. 30
(Part)
Correspondence.
Z. A. Lash
and F. H.
Walker.
—continued

Toronto, September 26th, 1912.

F. H. Walker, Esq.,
Park Hotel,
Mount Clemens, Mich.,
U.S.A.

My dear Walker:—

I think Robins will be home next week, and it is probable that he will want to talk to me as soon as he can. I am going back to Muskoka tomorrow, but will be here again on Tuesday, so that it is probable if he wants to see me that it will be on Thursday or Friday. As you may imagine, I have been pondering over the situation a good deal. It is very difficult for me to understand why Robins should have made so much of the stock matter unless it be that he is in a bad way financially and looks to that as the way out. I gave him an opportunity during one of our interviews to tell me about his financial situation, but he did not respond very fully. He told me generally that he had lost heavily in Motor ventures and that he was also under liabilities, but he did not say anything as to his assets and means of meeting them. I, of course, did not press him on that point, because I had nothing to offer or suggest.

30 In a letter which I received from your brother Harry a short time ago he says,—that you told him that if Robins had mentioned to you, when you spoke to him last Fall about staying another year, that he was in a bad way financially you would have told him to stay with you two or three years longer. This suggests to me that possibly if Robins explained to me fully his financial position I might be able to propose some way for his relief which would be fair to him as well as to you, and it might also remove the feeling that he has not been well treated. If you felt that you could have him back in the service, with a clear understanding as to his authority and position, so as to give him an opportunity of recovering from his financial troubles, it might result in good. I do not
40 advise this, because there are so many personal considerations connected with it that you would have to decide it yourself. I can only say that if any such arrangement could be brought about I personally would feel very much pleased, and I think that it would be good from the business side. I have not the slightest notion whether Robins would or would not entertain the suggestion if you

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Correspondence.

Z. A. Lash
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-continued

made it, but I would not make it unless you fully approved of my doing so. What I have in mind is that if Robins would explain to me his whole financial position I might be able to suggest a course which would settle his anxieties in that respect and re-establish between him and the firm the friendly relations which it would be very desirable to bring about. He would be much more likely to see the thing in the proper light if he saw that he was mistaken in thinking that nobody cared what was the result to him of the termination of his service.

Please write me so that I may receive your letter here on Tuesday next. Address it to 18 Grenville Street, Toronto; and tell me what you think about two things,—1st, whether you would consider having him back under any conditions, and, 2nd, whether you feel interested in helping him out of his financial troubles if I could suggest a course which would not be asking too much of you. 10

From expressions which Mr. Harry has made to me I am quite sure that he and Mr. Ed. would join you in anything you might decide upon in this connection, and would indeed go further on their own behalf than you could be expected to go.

Faithfully yours,

Sept. 27-12.

Park Hotel
Mt. Clemens,
Mich.

My dear Lash,

Replying to yours of yesterday—I can quite understand how the Robins matter puzzles you—if he would only confide in you fully, as he should do, it would simplify the matter a great deal, but in his present humor it makes it most difficult. What Harry writes you is quite correct, namely, if he had only told me frankly last fall when I suggested we should let the old agreement continue another year—that he was in any serious financial difficulty, I certainly should gladly have proposed that he should stay two or three years longer until he could have recovered his position financially but he never confided in me nor consulted me regarding his condition, so I had no opportunity of advising him or helping him in any way. You understand he has never consulted me in any way about his agreement or his own condition. I regret very much now to see him leave us when he is in trouble, but it is too late and the affair has gone too far to consider his coming back to us for even a limited period. He has, unfortunately, talked to at least two men in Walkerville about the matter, and has undoubtedly said nasty things about me, and is blaming me entirely for all the trouble, and if he should come back now it would appear as a great victory for him backed by my brothers against me. This, of course, I cannot consider for a moment. Unfortunately, both Ed. and Harry have allowed him to get the impression that they side with him, and think I am treating him badly—I don't at all blame Robins for having this impression from the correspondence I have seen between them and him. He has mis-stated several facts in his letters to them, reflecting seriously on me, and I have been obliged to ignore them 30 40

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in order not to annoy my brothers. They have, so far as I know, not attempted to correct him, and so his statements stand.

10 What I have written disposes of your first question in the negative. The second question I am glad to be able to answer in the affirmative—in spite of all that has happened I have a most friendly feeling for Robins and shall be very glad if I can assist in helping him out of his financial difficulties if they are serious and he is in need of assistance—more than this I think I cannot say, but I assure you I am most sincere in this statement. Am sorry I cannot go down and talk this over with you, but as you understand I do not want to interrupt my course of treatment here unless absolutely necessary. I am feeling wonderfully well after three baths, but I should have at least fourteen. I have great faith that this treatment will keep me free from gout for a long time and at least let me get some ducks later on.

With regards,
Very sincerely,

(Sgd.) F. H. Walker.

Would you mind having your stenographer make a copy of this letter and send it to me here. The pen I fear is becoming a burden to us all.

20

Frank H. Walker, Esq.,
Park Hotel,
Mount Clemens, Mich.

Toronto, Oct. 2nd, 1912.

My dear Walker:—

30 Yours of 27th September received. I think you have decided wisely on both questions. I have not yet heard from Robins but expect to hear from him any day now. When he writes me I shall say to him that at our next interview I want him to be prepared to tell me all about his financial position, and I will endeavour to mould any arrangement which I may be able to come to so as to deal with that, as well as to settle differences. I do not anticipate coming to any definite conclusion at the first interview, but I hope to lay the foundation for an arrangement at the final interview, after I have talked the matter over with you.

I note what you say about the results of your treatment at Mount Clemens. Although this Robins matter is of great importance, yet it is of more importance that you should look after your health; therefore do not worry about having to leave before you have completed your treatment. If I think it necessary to strike while the iron is hot, I shall go up and see you rather than have you come down. I am glad you have such hopes from the treatment.

40 As requested, I enclose copy of your letter to me.

Faithfully yours,

Enc.

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RECORD
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Park Hotel
 Mt. Clemens
 Mich.

October 4-12

My dear Lash,

I have yours of 2nd and am pleased to know that you are in accord with my decision on the two points as stated in my last letter.

My treatment here is proving very satisfactory, and I have now no doubt I shall be ready to leave here by the middle of next week, so if you would like to see me any time after that, I shall be quite prepared to come any day—don't hesitate to wire me any time you want me. I am feeling unusually well, and feel now, after ten baths, there is little chance of the treatment developing any acute condition. I ought to be entirely free from any gout for several months.

Regards,
 Sincerely,

(Sgd.) F. H. Walker.

Private.

Toronto, Oct. 8th, 1912.

Frank H. Walker, Esq.,
 Park Hotel,
 Mount Clemens, Mich.

My dear Walker:—

I wrote Robins last week suggesting that at our next interview he should be prepared to explain to me his financial position. I told him I would be in Toronto today. He came down last night, and I have just concluded nearly a three hours' interview with him. His nerves are in a much better condition, and he did not get excited at all.

He explained to me what his position was; and, although he has assets enough to meet all his liabilities and leave a small surplus, yet, speaking generally, he would have no income except the dividends on the Hiram Walker & Sons, Limited, stock, and that stock would have to be made use of to raise money to meet liabilities, so that the dividends on it would have to bear a first charge for money borrowed. If he sold the stock, it would amount to the same thing, as he would have to use some of the proceeds to meet liabilities.

Seeing that the question of income would be all-important to him for the next few years, I suggested to him that we might talk about an arrangement on the following lines,—To have an agreement made with him for the purchase of his stock at a price to be agreed on; to limit a period (say three years) for the completion of the purchase, giving him the right to call for the completion of the purchase (if he wished to do so) at any time during the period, but not giving you the right until the expiration of the period to complete it; meantime to allow him to receive the dividends on the stock; a term of the agreement to be that if the business was sold in the meantime, or re-organized under a new plan, you should have the right to put his stock in, and he should have the right

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to accept what it might represent on the sale or re-organization, or the cash purchase price, and that a payment on account should be made to him now of an amount sufficient to relieve his financial difficulties. I told him that I had not suggested any such plan to you, but that if he thought favourably of it we could discuss the figure or the price for the stock and the amount to be paid on account now. He would not discuss the basis at all; he wanted to cut clear once and for all.

I thought that the suggestion would have been attractive to him because of the income. I hesitated to make it, as I myself saw objections to it, but I took
 10 the responsibility, feeling that if the figure we might arrive at for the stock was satisfactory you would agree to the other. However, that suggestion is at an end.

We then talked about the value of the stock. I said I did not want to fix any value for the stock; that I wanted to get for him a lump sum which would buy the stock and settle all differences. I told him that the figure he first named, \$400,000, was out of the question, and he said that it was a matter to compromise on. I said that it was hardly fair for him to fix an exorbitant amount and then talk about a compromise with reference to it; that the question was not one of compromise at all, but was to endeavour to arrive at a figure which
 20 reasonable men would consider fair, and which I would take the responsibility of affirmatively recommending. I asked him what his ideas of a "compromise," as he called it, were. He said,—\$300,000. I am giving you necessarily only the isolated, main material items of our interview. He enlarged a great deal upon his reasons for asking that sum. I told him that if I was going to be able to bring about an agreement which would end the difficulties I must be able conscientiously to recommend an amount which I sincerely believed would under all the circumstances be a reasonable one, and that I could not recommend so large a sum as \$300,000 and that if I were asked the question,—did I consider that amount reasonable?—I would have to reply that I did not, and that I considered
 30 it very unreasonable.

From what your brother Harry has said to me as to what he and Mr. Ed. would be willing to do personally, I had determined some time ago to recommend a payment of \$250,000, which would, of course, take the stock and settle all differences. In fixing this figure in my mind I was somewhat influenced by what I knew your brothers would be willing to do, and I was prepared to recommend it to you and to think that it was reasonable under all the circumstances, and, in fact, generous. I told Robins that I would recommend the payment of this amount, but that I could not recommend the larger figure. I told him also that my sincere opinion was that under all the circumstances the sum was a
 40 generous one and should be accepted. We talked a long time about it, with the result that he would not recede from \$300,000. I expressed my disappointment and said that I thought when I had fixed \$250,000 in my mind and mentioned that figure to him it would have been at once agreed to, and that I could not conscientiously recommend any more. He made a similar reply with reference to the \$300,000, and expressed his disappointment that I thought it too much, and that he could not accept any less. He made the remark (which I think was made without fully considering what it meant) that he could not do what he had

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-continued

in view with respect to his future on less than \$300,000, and that if he were in a different position he might look at it in a different way. We parted in the most friendly way, I saying that if he changed his mind he should let me know. He answered by a similar remark,—that if I changed my mind I should let him know.

He made allusions to justifying himself, bringing out the facts, etc. I told him that any allusions of the kind would make it more difficult on my part to effect an arrangement.

I go to Montreal tonight, but will be here again on Thursday morning, and I would be glad to receive a letter from you then. I leave again on Friday morning and shall not be back until probably Tuesday. On Friday of next week I go to St. Ann's, and shall try to hold the gun straight for a week. 10

Faithfully yours,

P.S. To save time I am sending your brother Harry a copy of this letter.

The Great North Western Telegraph Company of Canada
6 wv nx 1157a 37 paid.

Walkerville, Ont. October 10-12

Z. A. Lash,

Blake, Lash, Anglin & Cassels,
Toronto. 20

Yours eighth received here this morning. I understood original proposition when here was two fifty not four. Apparently nothing further to be done at present. Can go down and see you any time now if you wish.

F. H. Walker.

Private.

Toronto, October 10th, 1912.

F. H. Walker, Esq.,
Walkerville,
Ont. 30

My dear Walker:

I wrote you on Tuesday giving you the substance of my interview with Robins. I was in Montreal yesterday. On my return this morning I found a long letter from him, from which I enclose extracts covering all essential parts. I am also sending a copy of the extracts and of this letter to your brother Harry. 40

I have written Robins telling him that I had reported the substance of our interview on Tuesday and that I am sending you extracts from his letter, and I have told him that I am leaving town again tomorrow morning and shall not be back until Tuesday next, when I expect to find your and your brother's answers to my letters.

In my letter to you of Tuesday last I wrote as your adviser, and I did not allow my feeling of friendship and sympathy for Robins to influence my judg-

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ment any more than I thought as your legal adviser I should be influenced by it. If you or your brothers feel that you can accede to the appeal which he has made to me in his letter received today, personally I shall be very much pleased.

In some parts of his letter Robins enlarged upon the personal aspect of the case. As these enlargements do not affect the substance of his letter, I am sending you extracts only, and, as he marked it "Private and Confidential," I first wired for permission to send the extracts, and I have received it.

Faithfully yours,

Enc.

- 10 P.S.—I have just received your wire. He intended the \$250,000 to cover price of stock only. To me he claimed \$150,000 more for compensation. This seemed so exorbitant that I did not complicate the situation then by mentioning it to you.

Hiram Walker & Sons
Limited
Walkerville, Ont.

October 14-12.

My dear Lash,

- 20 Yours of 10th duly received and acting on your suggestion I at once decided we should accede to Robins' demand of \$300,000, and I wrote Harry to this effect and asked him to wire me immediately on receipt so I could advise you today. He now wires me that he had already written you to close the matter as you suggested and you probably have his letter this morning. This settles the matter and I am very much relieved to have the difficulty adjusted. You may be sure your efforts are fully appreciated by us all—without you I am sure we should have become involved in an interminable trail which might have ended anywhere. You will, of course, advise Robins at once so the present strain may be relieved.

- 30 I assume the arrangement contemplated an immediate transfer of his shares—but you will, of course, advise us of this in due course. It is not very material in any case.

I hope you may have a good week with the ducks—I am going up Wednesday for the balance of the week.

Sincerely,

(Sgd.) F. H. Walker

Toronto, October 15th, 1912.

40 F. H. Walker, Esq.,
Walkerville, Ont.

My dear Walker:—

I have received your letter of the 14th. I also received one from your brother Harry to the same effect. I at once telegraphed Robins, and wrote him a letter, of which I enclose copy.

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Walker.

—continued

I feel as much relieved as you and your brother do that this unpleasant matter is at an end; and it is only at an end because you and your brothers have acted in a very handsome way in authorizing me to meet the claim made.

With kind regards,
Faithfully yours,

Toronto, Nov. 4th, 1912.

F. H. Walker Esq.,
Walkerville,
Ont.

10

My dear Walker:—

I regard Robins' commission as part of his salary or remuneration, and in this respect it differs very distinctly from the dividends on the stock. He has asked me about the two matters,—dividends and commission,—and I have replied that the settlement for a lump sum would include the stock and any dividends to which he might become entitled, but that, as the commission was part of his salary, it should be treated in the same way, and he should receive it, or the proper proportion of it, up to the 31st August. There would be no more reason for withholding this than for withholding part of his specified salary which accrued up to that day.

20

Faithfully yours,

Hiram Walker & Sons
Limited
Walkerville, Ont.

Nov. 5-12.

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My dear Lash,

Yours of 4th re the question of Com'n on years' business—there has never been any question in my mind on this point—it, of course, ranks the same as salary.

Harry is home today and, I understand, the whole thing has been closed up by exchange of cheque for the several a/c. Thank heaven and you this is now a closed incident. I am pleased to learn by yours of 1st that the Canadian Countryman is doing so well—with proper management, as it is sure to have, it will prove of great value to our country's future. Cheque for \$1,250 will be sent you today.

30

Sincerely,

(Sgd.) F. H. Walker.

Hiram Walker & Sons
Limited
Walkerville, Ont.

Nov. 12-12.

40

My dear Lash,

I have yours of yesterday with memo of charge re Robins and I am glad to enclose cheque for amount and still feel much indebted to you.

Am having some good sport in the marsh each week—hope you are to get some before the season closes.

Sincerely,

(Sgd.) F. H. Walker.

F. H. Walker, Esq.,
Walkerville,
Ont.

Toronto, Nov. 14th, 1912.

My dear Walker:—

10 Yours, with cheque in payment of my fees re Robins, received. Thank you very much.

I am glad to hear that you have had good sport in the Marsh each week. It is just possible that I may be able to go up once more, but it does not look hopeful just now. However, if the weather keeps open, I may be able to go before the "freeze.up" comes.

Faithfully yours,

CORRESPONDENCE BETWEEN Z. A. LASH AND J. H. WALKER

The Great Northwestern Telegraph Company of Canada

20 B-15-MO.T. 60 Paid

The Oceanside Magnolia Mass. Aug. 28th, 1912.

G. A. Lash, Esq. Toronto, Ont.

Have had letters from Robins and copies of your letter and his replies. There seems to be nothing to do to prevent trouble except buy his stock which E.C. and I will do if you approve Corn at price he gave you two hundred and fifty. If you approve kindly advise him also Frank and Wire me Magnolia Massachusetts.

J. Harrington-Walker.

940 a.m.

30

J. Harrington Walker, Esq.,
The Oceanside,
Magnolia, Mass.,
U.S.A.

Toronto, August 28th, 1912.

My dear Mr. Walker:—

I have just received and answered your telegram. I enclose copy of a letter which I wrote your brother Frank last night and which contains the understanding arrived at with Robins. I have received a wire from your brother
40 agreeing to my suggestion, and I have sent Robins a copy of my letter to your brother and he has acknowledged receipt and approved of the understanding.

I have an instinctive feeling that I shall be able to bring about an amicable

RECORD

In the
Supreme
Court of
Ontario

Exhibits

No. 30
(Part)
Correspondence.

Z. A. Lash
and F. H.
Walker.

—concluded

No. 30
(Part)
Correspondence.
Z. A. Lash
and J. H.
Walker.

RECORD

In the
Supreme
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Exhibits

No. 30
(Part)

Correspondence.

Z. A. Lash
and J. H.
Walker.

-continued

settlement inside of the two months. I want all parties to consider what is fair to be done, freed from the personal element which has so largely interefered up to the present.

With kind regards and hoping that your health continues to improve,
I am,

Yours faithfully,

Enc.

 Telegram

Toronto, August 28th, 1912. 10

J. Harrington Walker,
The Oceanside,
Magnolia, Mass.

Have just arranged with Robins with your brother Frank's approval that he should take a rest or vacation of his own till end of October, we to discuss the matter further then. Engagement terminates on 31st August but neither party will make any statement about it till our further discussion. All questions about stock deferred meantime. Am writing you.

Z. A. Lash

(Paid)

20

 Sept. 17th, 1912.

Rockledge
Magnolia, Massachusetts

My dear Mr. Lash:—

I must apologize for not answering your letter before and to tell you why I sent you the telegram I did.

When I received Robins' letter saying he was going to Toronto to get a lawyer to act for him, I felt from the tone of his letters you would not be able to do anything with him, and I made up my mind it would be better to pay him 30 what he asked for the stock than to have him publish what he threatened, not that I thought that it would hurt the business very much, but I hated to have him come out and say the nasty things about Frank that I was sure he would say, and none of it would do any one of us or the business any good, therefore it seemed wiser to me to pay the high price and keep him quiet. I only made the suggestion and would not, of course, have done anything without your approval.

I am indeed glad to know that you feel that you are going to be able to bring about an amicable settlement. If there is anyone in the world that can do it, you can, but from his letters I am afraid nothing will satisfy him except getting his price for his stock. I have never said a word to Robins about our 40 taking the stock and shall not, but you can bear it in mind that Ed. and I will take it if you advise it.

Ed. was here a couple of hours two weeks ago last Saturday and, although we had a little talk on the matter he said very little. Frank was here over last Sunday. He went home yesterday and said he was going to try and see you this week. He told me that if Robins had mentioned to him, when he spoke to him

last fall about staying another year, that he was in a bad way financially, he would have told him to stay with us two or three years longer. It is too bad that Robins was so unfortunate with his investments for if he had not been I am sure we would not have had this trouble.

I trust I have made myself clear, but I doubt it, for it is so hard for me to write, when I tell you that I have been over an hour writing this you can realize why I don't do very much writing.

With very best regards,

I am,

Yours sincerely,

(Sgd.) J. Harrington Walker.

10

RECORD

In the
Supreme
Court of
Ontario

Exhibits

No. 30
(Part)

Correspondence.

Z. A. Lash
and J. H.
Walker.

—continued

Sept. 20th, 1912.

Rockledge
Magnolia, Massachusetts.

My dear Mr. Lash:—

I had a letter from Robins a couple of days ago, and although he marked it Private I think it better to send you a copy, for I don't want to have any correspondence with him touching on the business question that you do not know about. I am sending you also a copy of a letter I received the part of the month. In this he refers to a telegram he had from me. It was simply in reply to a letter or message from him, and all I said was that I was still hoping a satisfactory settlement would be made.

When E. C. was here he asked me to tell Robins that he had received all his letters and should have answered them, but did not quite know what to say to him and was really not feeling up to writing. This I did when I answered his letter of the 2nd, and practically all I said besides was that I was greatly pleased with the arrangement you had made with him, and hoped sincerely that a satisfactory settlement would be reached before the end of the month.

Will you kindly let me know about what I should say in answering his last letter for I don't want to say anything I should not.

With best regards,

I am, yours sincerely,

(Sgd) J. H. Walker.

J. Harrington Walker, Esq.,
Rockledge,
Magnolia, Mass.,
U.S.A.

40

Toronto, Sept. 25th, 1912.

My dear Mr. Walker:—

I am in receipt of yours of the 20th with enclosures, which I was glad to receive. I will keep you informed of the progress of events.

RECORD

*In the
Supreme
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Exhibits

No. 30
(Part)Correspond-
ence.Z. A. Lash
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Walker.

—continued

I received a note this morning from your brother Frank, who has gone to Mount Clemens for a while. I have told him not to worry about the time of seeing me during his treatment at Mount Clemens, as I will make it convenient for him. I think I shall have to see you also, and I will make the time convenient for you too.

Sincerely yours,

Sept. 27th, 1912

10

Rockledge,
Magnolia, Massachusetts.

My dear Mr. Lash:—

I was glad to get your letter of 25th which came this morning, and also yours of 21st which came a few days ago.

You say nothing in your last letter about my answering Robins' letter, so imagine you don't think it is necessary.

As to my going on to Detroit, I will be glad to go any time that will suit you best, but it will be a little more convenient for me if it is not the first half of next week, as my wife is to take the daughter to school Monday, and I do not like to leave the little daughter here alone with the servants. However, do not let this interfere with any plans you have made.

20

With best regards,

I am, yours sincerely,

(Sgd.) J. Harrington Walker.

Toronto, Oct. 2nd, 1912.

J. Harrington Walker, Esq.,
Rockledge,
Magnolia, Mass.

My dear Mr. Walker:—

I am in receipt of yours of the 27th September. Robins' letter to you did not seem to call for any immediate reply, and I thought it would be better not to prolong correspondence with him. I expect to see him soon, and I shall try to make the time when I want to see you and your brother suit you both, so don't worry about that. I have not yet heard from Robins.

30

Faithfully yours,

J. Harrington Walker, Esq.,
Rockledge,
Magnolia, Mass.

Toronto, Oct. 8th, 1912.

40

Dear Mr. Walker:—

I enclose copy of a letter which I have just written to your brother Frank, re Robins. I need not add anything further, except to say that I shall be glad to hear from you on the subject.

Faithfully yours,

(Part of
No. 20

See Note

at

p. 645)

Canadian Pacific Railway's Telegraph

151 RA LW CC 29

Gloucester, Mass. Oct. 10-12

J. A. Lash,
Toronto, Ont.

Letter just received I do not think we should be expected to do more and understood that was amount he wanted. Will write so you will get letter Tuesday. 11.5 p.m.

J. Harrington.

10

Toronto, October 10th, 1912.

J. Harrington Walker, Esq.,
Rockledge,
Magnolia, Mass.

Dear Mr. Walker:—

On Tuesday last I sent you copy of a letter which I wrote your brother Frank, giving the substance of my interview with Robins. I now enclose copy of another letter which I have written to your brother, enclosing extracts from a letter received from Robins. I also enclose a copy of these extracts.

Sincerely yours,

20 Enc.

Rockledge,
Magnolia, Massachusetts,
October 12th, 1912.

My dear Mr. Lash:

Your letters of 8th and 10th with enclosures were duly received. On receipt of first I wired you as there was no chance of getting letter to you by Thursday. I did not know that Robins had ever asked for any more than the \$250,000, so felt he should not now demand more. It is hard for me to answer your letter of the 10th as what I must say may annoy Frank, and I have done far too much of that in the past. However, I will write plainly just how I feel, trusting I will be able to make it right with Frank later, and possibly you can help me. I still feel we should make a settlement with Robins, and from your saying that you would be very pleased if we can accede to the appeal he has made, I feel that you think it would be better for us to do it. I have no idea what Frank will write you, but from the way he has talked to me on several occasions I am afraid he will not agree to it. When I first told him that Ed. and I were willing to pay \$200,000 for the stock he said we were fools, and when he heard I had told you to pay the larger amount if necessary, he thought I was crazy, therefore I hardly think he will agree to the amount you now name, and I am not sure what Ed. would say, however, I am going to take it upon myself to tell you you can settle at this figure, (\$300,000) if Frank writes that he will not agree to it, and I will assume the responsibility of making a settlement with my brothers.

Frank says he does not care what Robins might do, that he can do no harm

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ence.

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Walker.

-continued

to the business or to us, but I don't quite agree with him in this. I have no idea he would gain anything by it himself, but it certainly would not be a good thing for the business and the stories he would publish about us would be far from agreeable. I will now leave it in your hands, as far as I am concerned, to settle. If Frank does not agree, you can decide how to handle it, but I would suggest that Robins does not know that we are not all in equally in the settlement.

I am making this offer on Frank's account as much, if not more, than for Ed. and myself, for if we do not make the settlement, Frank, I imagine will be in the most unpleasant position of the three of us.

I am most anxious, if possible, to bring about a better feeling in Robins' 10 mind towards Frank, therefore it seems to me he should feel we all three are doing the same.

It is needless to say that I have always felt that Robins was entitled to a reasonable amount, but I admit I think the amount he is asking is too much.

If you make the settlement with him, I presume you can arrange with him to postpone the payment until I get home, about November first.

Shall be most anxious to hear what you think of my decision.

With very best regards, I am,

Yours sincerely,

(Sgd.) J. Harrington Walker.

20

Night Letter

The Great North Western Telegraph Company of Canada

D.170 No NY. 45 N.L.

Gloucester, Mass. Oct. 14-12.

Z. A. Lash.

Toronto.

Mailed letter to you Sunday. Have letter from Frank today and he is willing to assume his share of two thirds. He probably has written you so you can close 30 matter as arranged in my letter it will be a great relief to my mind.

J. Harrington Walker.

1215am.15

J. Harrington Walker Esq.,
Rockledge,

Magnolia, Mass.

Dear Mr. Walker:—

I received your letter of the 12th, followed by your telegram of the 14th. I at once wrote Robins, and enclose copy of my letter to him; and, as to save 40 time I have been corresponding with you by sending you copies of my letters to your brother Frank, I now enclose a copy of my letter to him of today.

You will notice that in my letter to Robins I suggested that he should await your return and then carry out the final settlement.

With kind regards,

Faithfully yours,

Enc.

J. H. Walker Esq.,
Walkerville,
Ont.

Toronto, May 1st, 1914.

RECORD

In the
Supreme
Court of
Ontario

Dear Mr. Walker:—

After reading the enclosed letter several times, I drew the suggested reply enclosed, which is, I think, all you need say.

I am,

Yours truly,

Enc.

Exhibits

No. 30
(Part)

Corres-
pondence
Z. A. Lash
and J. H.
Walker.
—concluded

10

Draft of Reply to Mr. Robins' Letter.

I received your thirteen page letter dated Toronto, April 20th, 1914. You commence it with a reference to what you say you "heard indirectly," and it is evident to me that the statements which you make respecting our unfriendliness and respecting our attitude towards you since your engagement terminated are also based upon what you have "heard indirectly," and upon what others (for whose statements we are in no way responsible) have said, and upon what you describe as "an atmosphere of speculation." A letter based upon such foundations scarcely deserves an acknowledgment, much less a reply; but, for fear that you might construe my silence as corroborating what you say, I write this so that you may not get any such impression, and to say that there are no facts which warrant you in writing such a letter. My brothers and I have observed to the full any understanding between us respecting yourself or the reasons for your leaving the service. We were under the impression that the overtures we made for renewed friendly relations were not acceptable to you.

20

I make no comment upon your estimation of the value of your services, other than to remind you that a large sum was paid you, which you accepted in full.

May 6th, 1914.

My dear Lash:—

Walkerville, Ontario.

30

Your letter came last Saturday, and I wrote Robins on Sunday. I added one clause regarding the staff which Ambery thought he would like to have written. I enclose a copy of my letter which he copied for me on machine. I trust you will find no objection to the part I added.

I realize how terribly busy you are, and do not like to trouble you with any of our matters, but if you can find time to draw up the paper regarding the new company "Walker Brothers" so that I can have it a little time for consideration before Frank returns the end of the month, I will appreciate it very much.

40

Very sincerely yours,

(Sgd.) J. Harrington Walker.

If by any chance you should run across anyone that you feel might suit me as private secretary please let me know.

RECORD

CORRESPONDENCE BETWEEN J. H. WALKER AND WILLIAM ROBINS

"Magnolia, June 6th, 1912.

In the
Supreme
Court of
Ontario

My dear Robins:—

Exhibits

No. 30
(Part)

Correspon-
dence J. H.
Walker and
Plaintiff.

(Part of
No. 20
See Note
at p. 645)

Yours of May 31st with enclosures came on Monday, and on Tuesday I received your letter of June 2nd. It is not necessary for me to make any comments on the first two as I am sure you know how I feel about them. It is hard for me to say just what you should do about Whitehead, but after giving the matter much thought it seems the only thing you can do is to tell them you understand we do not want to sell, then if they insist on seeing you tell them all you can do will be to hear what they have to say and report to us when we return. 10

I trust you will have an opportunity of talking with E. C., so that he will have a chance to think over the matter before I return. I will probably be there the 20th, and will leave the 23rd, then I will go back in July if necessary."

Copy

Magnolia, August 17th, 1912.

My dear Mr. Robins,

Your letter of 15th with enclosure came to hand this morning. Your letter to Lash I have read over twice very carefully, and it seems to me that it gives him very fully and accurately our conversation. I sincerely hope he will approve of your suggestion, and that we may be able, at the end of October, to come to a decision that will be satisfactory to all concerned. 20

I appreciate deeply the last clause of your letter to me. I arrived safely after a very comfortable trip.

Very sincerely yours,
J. Harrington Walker.

I remembered when I got here that I had forgotten to tell you, when I went back to your office after talking to F.H., that he suggested your going to see Lash if you thought it better than writing; so if you should like to talk with him after getting a reply to your letter, you may be sure we will approve of your making the trip.

(Note: As my suggestion was, as I thought, in the interest of the present 30 peace of mind of E. and H., I don't see the need of my doing what would give it the other complexion. My own interests are altogether in the direction of the quickest possible termination of the matter; and if I must ultimately fight for my hand, the sooner I do it the better for me.

(Sgd.) W. R.)

"August 25th, 1912.

(Part of
No. 20
See Note
at
p. 645)

My dear Mr. Harry:—

As Lash's letter of the 20th has been duplicated to Mr. Frank for conveyance to you, I think you ought to see my reply, a copy of which is enclosed. Lash is a great lawyer, but even he can make mistakes; and I do not think his interpretation of his duty under his retainer will stand close investigation. However, if there must be lawyers between us, I would as soon he should be yours as 40

not, except that it naturally rather shocks me to find a man who was my friend before he knew you or your brothers, and who became your adviser through me, acting against me in what may be the fight of my life.

The allusion to a possible "announcement" in a few days is ominous, and I feel bound to point out to you that if any hostile step toward me is taken it must precipitate action on my part which cannot fail, whatever the consequences to myself, to give you and Mr. Ed. a great deal of worry, which is what I earnestly desired to avoid when I proposed the interval of two months. It would make the situation irretrievable, as I think you cannot fail to see. I emphasize this because Lash does not definitely accede to the proposal I made, and it is impossible for me to allow it to be made conditional upon any promises on my part except that I am prepared, if you all are, to do nothing during the two months which will militate against an amicable settlement later. And there is only this week left for the decision.

No one can blame me for the shortness of the time for consideration of a question of no little importance to all concerned. You know when I learned what conclusion you and your brothers had reached—the 6th instant, and that I then pressed for a prompt settlement of the matter about which there was no difference of opinion, namely, your option to take my shares if a price could be agreed upon. It never entered my head, of course, that my protest against the arrangement I claim was made with me by Mr. Frank being violated should take the form of my insisting upon staying here, for my arrangements for many years have not been with the company, but with you and your brothers, who, as the controlling interest in the company, could bring about any relations between the company and me which you desired. And my objection now will be, as I conceive (for I have had no legal advice on it), that you have failed to have the company retain my services, and should make good to me the damage I shall suffer through such failure.

Therefore, I can see no object in any "announcement," to say nothing of the certain consequences of it.

It was not until the 14th that any attempt was made to come to an understanding with me, and then Mr. Ed. was on the eve of going away for a considerable time. How long you would have been prepared to stay here I do not know, nor whether negotiations could be successfully continued in Mr. Ed.'s absence.

But I think you will realize Mr. Frank is the very last person with whom I could profitably have any discussion, for you can hardly be under any misconception as to what I must think of his action toward me.

I purpose going to Toronto to-morrow to arrange with a lawyer to act for me in the event of any hostile course being adopted here at the end of the month, which is the least I can do in prudence under the circumstances. I learn that Lash is expected to be there on Tuesday and Wednesday, and I will telephone him to ascertain whether he would like to see me. It may possibly seem advisable for his lawyer and mine to meet.

RECORD
In the
Supreme
Court of
Ontario

Exhibits

No. 30
(Part)

Corres-
pondence
J. H.
Walker and
Plaintiff.
—continued

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No. 20
See Note
at
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RECORD

In the
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Exhibits

No. 30
(Part)

Corres-
pondence
J. H.
Walker and
Plaintiff.
—continued

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No. 20

See Note

at

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My object is to show in the clearest possible manner my desire to prevent precipitate action which cannot fail to throw the fat into the fire, and I hope you and Mr. Ed. will see it in that light.

Sept. 2nd, 1912.

Dear Mr. H.—

Upon my return from Toronto last Wednesday night I found your telegram, and I replied on Thursday that matters had been arranged as I suggested to you. You have perhaps been sent a copy of Lash's letter to Mr. F., setting out the understanding; but if not, I may say briefly that on neither side is anything to be said or done which might militate against a satisfactory settlement during the next two months. That means, of course, that there shall be no inkling of what has taken place. I shall be most careful to keep my promise in that respect, and I hope nothing will leak out on the other side. 10

I am arranging to go down to Caledonia Springs, between Ottawa and Montreal, for my rheumatism, and I am trying to secure accommodation for Wednesday.

I thought that I might have had a line or two from Mr. Ed. by this time, but there has been nothing.

When I left the office on Saturday, closing a connection of nearly twenty-five years, I went out just as I might have gone had I been the most unfaithful and unprofitable employee the concern ever had. I cannot help thinking that the manner of my going will sometimes prick the consciences of your brothers and yourself in time to come. 20

I hope you are getting along nicely, and am,

With kindest regards,
Yours sincerely,

September 8th, 1912

My dear Robins:—

Please pardon me for not answering your letter of the 2nd sooner. I intended doing so at once, but every time I have started something has interfered. 30

I was glad indeed to get your message and also your letter, and hope and pray that before the end of October a satisfactory settlement will be reached.

You may be sure that I will do all in my power to keep the matter from getting out.

E.C. and his wife were here for luncheon a week ago yesterday on their way to New York. He asked me to say to you that he had received your letters and that (he) felt that he should have acknowledged them, but he hardly knew what to say, and that he was really not up to writing. He did not seem to be quite so strong as he was when I was in Walkerville. Personally, I think it is a mistake his taking this trip; however, I hope it will prove to be a good thing. 40

I was glad to hear you were going to Caledonia Springs and hope most sincerely that it will do you a lot of good. I have been feeling very well lately, but still have quite bad days, however, they don't come as often.

Copy
Private

Caledonia Springs, Ont.
Sept. 15th, 1912.

Dear Mr. H.—

I received your letter of the 8th a couple of days ago and was very glad to know that you have lately been feeling pretty well. I trust the improvement will keep up and lead to your complete recovery.

10 I shall continue to share your desire for a satisfactory settlement next month, though I must confess myself much less hopeful of it than when Mr. Ed. left home. What he then said indicated his intention to interest himself actively in the matter before sailing; and I cherished the expectation that it would mean the consideration of the question by him and you in the spirit which you had uniformly manifested toward me until the 6th of last month, and the view always heretofore taken by you both of the causes of friction between Mr. Frank and me. Had that expectation been realized, I believe the result would have been to remove all danger of unpleasantness, and gone a long way toward dispelling what is the most bitter feature of the situation to me.

20 If, however, as appearances indicate, our past specially close relations, and your approval of my conduct, are to have no bearing upon the present difficulty, I cannot be very sanguine of Lash's ability to offer any terms which it will be possible for me to accept. Still, I will hope for the best.

While I make the fullest allowance for Mr. Ed.'s state of health, I know, of course, that there must be another explanation. His discussions with me showed that he had no difficulty in grasping all the facts and considerations I put before him.

30 I am very hopeful that the treatment here will relieve my rheumatism, though it is not yet apparent. Otherwise I am not getting any benefit. I am not sleeping well, nor is there any abatement of the headaches which I have had pretty constantly for the past three months. I do not look for any improvement in that respect until I am rid of suspense.

With kindest regards,
I am, yours sincerely,
(Signed) W.R.

873 Jefferson Avenue,
May 3rd, 1914.

Dear Mr. Robins:—

40 I received your thirteen page letter dated Toronto, April 20th, 1914. You commence it with a reference to what you say you "heard indirectly," and it is evident to me that the statements which you make respecting our un-friendliness and respecting our attitude towards you since your engagement

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(Part)

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pondence

J. H.
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(Part)

Corres-
pondence

J. H.
Walker and
Plaintiff.

—continued

terminated are also based upon what you have "heard indirectly," and upon what others, (for whose statements we are in no way responsible) have said, and upon what you describe as "an atmosphere of speculation."

A letter based upon such foundations scarcely deserves an acknowledgment, much less a reply, but, for fear that you might construe my silence as agreeing with what you say, I write this so that you may not get any such impression, and to say that there are no facts which warrant you in writing such a letter.

My brothers and I have observed to the full any understanding between us respecting yourself, or the reasons for your leaving the service. We were under the impression that the overtures which we made for renewed friendly relations were not acceptable to you. 10

I must tell you, Mr. Robins, that the Walkers had absolutely nothing to do as to the staff slighting you,—it was in my opinion your own fault. You kept entirely away from the office, and declined the dinner we wished to give for you, and which we had discussed with one of the staff as to plans and arrangements. Therefore, it seems quite natural that they should not want to take the chance of being turned down also.

I make no comment upon your estimation of the value of your services, other than to remind you that a large sum was paid you, which you accepted in full. 20

Very truly yours,

(Sgd.) J. Harrington Walker.

LETTERS FROM F. H. WALKER TO J. A. MCDUGALL

Hiram Walker & Sons, Limited
Walkerville, Ontario, Canada
New York Office

Heidelberg Building

Broadway and 42nd Street

Friday Jan 20/14 30

Dear McDougall

Had a comfortable trip down and find June weather here today—it is really uncomfortably warm—I fancy it will be followed by a blizzard in a day or so.

My housemaid's knee is behaving very well.

I shall give a cheque to the Biltmore in the morning and will give you the amount at foot. Best regards.

Sincerely

(Sgd.) F. H. Walker

\$1038.05

No. 30
(Part)

Letter
F. H.
Walker to
J. A. Mc-
Dougall.
20th Jan.,
1914.

Hotel St. George,
Mustapha-Superieur

Mar 4-14

RECORD

In the
Supreme
Court of
Ontario

My Dear McDougall:

I duly received yours of Feb. 12th and read same with much interest.

The P. M. interest has finally reached Matuschka. The delay was, as I thought, caused by the negotiations imposed by the Income Tax law, but there seemed to be some unnecessary delay after this, but it was, of course, not of any consequence.

10 My Bank statement appears to be quite in order. I am glad you refused to pay Lamont the full amount asked for, as I fear he would be more free in his expenditure if he had more money on hand than he actually needed.

I told him to do everything necessary to get the cars in perfect condition, but I cannot imagine it could cost more than \$200 in all. When he asks for more money better have him show you how he has expended what you have already paid him. I have perfect faith in his integrity, but I fear he sometimes spends more money on the cars than necessary. I am glad to know the work on the different buildings has been going on so well in spite of the extreme weather—hope the houses may all be taken pretty promptly, otherwise it may prove a poor investment.

20 Your own house, I trust, is coming on as well as the rest, and you will get into it as early as you expected.

I am glad we escaped the severe weather; it must have been trying. When we arrived here we found the most ideal June weather and it lasted for couple of weeks, but unfortunately since then we have had very disagreeable weather—wind—rain and cold exactly our April weather—I have been having some most enjoyable golf—a very pretty little nine hole course about 2,200 yards, one of the prettiest courses I have ever seen. I have often wished you and Mrs. McDougall might have been here to help me enjoy it. Algiers is really the most attractive place in the winter, and I know I shall make a great effort to come here again next winter. We are leaving now tomorrow for San Remo to join the Matuschka party—shall be there three or four weeks, and then up to Paris and London, and then home by June first. Hiram and wife are with me and are leaving with us tomorrow. They are going to Monte Carlo for a few days and then to Paris. They intend to sail for home April 11. He has improved here wonderfully in the short time he has been here. He has played golf pretty steadily and it has done him a world of good. She, poor little woman, is about as she has been. I fear her only hope is a long rest and professional care in a good Sanatorium.

40 It is a very sad case. I trust everything is going on well with you and you are not being overworked. Mrs. Walker joins me in best regards to you and Mrs. McDougall. I am hoping you will both help me to a good deal of golf this coming summer.

Sincerely,

(Sgd.) F. H. Walker.

Exhibits

No. 30
(Part)

Letter
F. H.
Walker to
J. A. Mc-
Dougall.
4th March,
1914.

RECORD

*In the
Supreme
Court of
Ontario*

EXHIBIT NO. 31

Letter F. H. Walker to Plaintiff, July 1st, 1911.
(Read into Record in examination of Plaintiff, p, 281, l. 44).

Exhibits

EXHIBIT NO. 32

Nos. 31 & 32
3 Letters F.
H. Walker
to Plaintiff
(Filed by
Plaintiff)

2 Letters F. H. Walker to Plaintiff. Feb. 8th and "Friday".
(Read into Record in examination of Plaintiff, p. 283, l. 30 and p. 284, l. 4).

No. 33

EXHIBIT NO. 33

Commis-
sion evi-
dence (Lund,
Florigny,
Harriss,
Cundle.

London Commission evidence, Lund, Florigny, Harriss and Cundle.
(Read into Record, pp. 344, 356, 362, 369 respectively).

(Filed by
Defendants)

EXHIBIT NO. 34

A Bundle of cheques (not printed)

10

No. 34
Bundle of
cheques.

(Filed by
Defendants)

THERE WAS NO EXHIBIT NO. 35

EXHIBIT NO. 36

Mrs. Walker's evidence taken on Commission.
(Read into Record, p. 502).

No. 36
Commis-
sion
evidence
(Mrs. Mary
G. Walker)
(Filed by
Defendants)

EXHIBIT NO. 37

Agreement made the First day of June, 1914.

No. 37
Partnership
Agreement
E. C. Walk-
er, F. H.
Walker and
J.H.Walker
(Filed by
Defendants)

BETWEEN:

EDWARD CHANDLER WALKER, of Walkerville, Ontario
Of the First Part, 20

FRANKLIN HIRAM WALKER, of Detroit, Michigan,
Of the Second Part,

AND

JAMES HARRINGTON WALKER, of Detroit,
Of the Third Part.

1. The parties hereto hereby agree to become co-partners under the partnership name of E. C. Walker & Brothers, for the purposes and upon the terms hereinafter stated.

2. The general business of the partnership shall be to look after such investments as the respective partners may transfer to it, and to invest and look after such moneys as the respective partners may entrust to it. 30

3. The partnership shall continue during the joint lives of the three partners, but any two may by notice to the other terminate the same at an earlier period.

Upon the death of any one of the partners prior to such determination, the executors of the deceased shall take the place of the deceased in the partnership, and the partnership shall be then continued under the same name during the joint lives of the two survivors, but any two of the then three partners may by notice to the other terminate the same, the executors of the deceased being for this purpose considered as one of the partners.

10 Upon the death of one of the said two survivors prior to such determination, the executors of the deceased shall take the place of the deceased in the partnership, and the partnership shall be then continued under the same name during the life of the survivor, but any two of the then three partners may by notice to the other terminate the same, the respective executors of the deceased respectively being for this purpose considered as one of the partners.

Upon the death of the last survivor the partnership shall be wound up unless the executors of the three otherwise agree.

20 4. The investments and moneys transferred or entrusted to the partnership by the respective partners shall be deemed partnership property. Proper accounts shall be kept with the respective partners of the investments and moneys so transferred or entrusted or withdrawn by them respectively, and of all other proper credits and debits, and the interest of the respective partners in the partnership shall be measured from time to time according to the amount of investments or moneys at the credit of their said accounts respectively, and the net income or receipts and profits of the partnership shall be divided from time to time at convenient periods among the partners according to their said respective interests in the investment producing such profit, and the losses shall be borne in similar proportions.

30 5. Should any partner desire from time to time to withdraw from the partnership a part of his interest therein (other than share of income or profits), he may inform the others of such desire, and the partners shall endeavour in good faith to provide for the withdrawal on equitable terms, but should the others decide that such withdrawal should not take place in whole or part, or until a future date or dates, such decision shall be observed.

6. In construing and acting upon this agreement, unless the context otherwise requires, the executors of a deceased partner shall be deemed and treated as one partner.

In Witness Whereof the parties have signed this Agreement.

40 In the Presence of
(Sgd.) J. A. McDougall

(Sgd.) Edward C. Walker.
(Sgd.) F. H. Walker.
(Sgd.) J. Harrington Walker.

EXHIBIT NO. 38
Cheque Book (not printed)

RECORD
In the
Supreme
Court of
Ontario

Exhibits

No. 37
Partnership
Agreement
E. C.
Walker, F.
H. Walker,
and J. H.
Walker.
(Filed by
Defendants)
—concluded

No. 38.
Cheque book
(Filed by
Defendants)

RECORD

*In the
Supreme
Court of
Ontario*

Exhibits

No. 39
Amend-
ment of
Style of
Cause.

EXHIBIT NO. 39

AMENDMENT OF STYLE OF CAUSE
IN THE SUPREME COURT OF ONTARIO

His Honour, J. J. Coughlin, Esq., Monday the 15th day of October, 1923.
Local Judge in Chambers.

BETWEEN:

WILLIAM ROBINS

PLAINTIFF,

AND

THE NATIONAL TRUST CO., LTD., Executors of the Estate of Ed- 10
ward Chandler Walker; Stephen A. Griggs, Executor of the estate of Mrs.
Stephen Griggs; The Churchwardens of St. Mary's Church, Walkerville; The
Board of Governors of the University of Toronto; The Board of Governors
of St. Andrew's College, Toronto; The Trustees of Hotel Dieu, Windsor; The
Churchwardens of All Saints' Church, Windsor; Stephen A. Griggs; The
National Trust Company, Ltd., Administrators of the Estate of Franklin
Hiram Walker; Harrington E. Walker, Hiram H. Walker, F. Caldwell
Walker and National Trust Co., Ltd., Executors of the Estate of James Har-
rington Walker; Edward Chandler Farrington; Elizabeth Buhl; May Walker;
Margaret Walker; Arthur H. Buhl and Detroit Trust Company, the last two 20
named as Executors of the Estate of Willis E. Buhl; Arthur H. Buhl; Law-
rence D. Buhl; Elizabeth Buhl Sheldon; F. Caldwell Walker; Mary Margaret
Small; Jennie Williams; Lucy Farrington; Board of Directors of the Detroit
Art Museum; Edward Lothrop Warner; Edward Walker Elliott; Elizabeth
Talman Walker; Harrington E. Walker; Hiram H. Walker; Mrs. James Camp-
bell; Susie Jenney; Alice Hoffe; Mary Griffin Walker; Lillie Brewster; Mary
W. Cassell; Countess Ella Matuschka;

DEFENDANTS.

Amended pursuant to order of the Honourable Mr. Justice Orde, bearing date
the 20th day of November, 1923. 30

This 26th day of January, 1924. (Sgd.) Henry Clay, L.R.E.

APPENDIX A

DEFENDANTS' EXHIBITS TO EVIDENCE OF ALBERT LUND AND
ALFRED EUGENE FLORIGNY TAKEN ON COMMISSION

RECORD

*In the
Supreme
Court of
Ontario*

LIST OF EXHIBITS

Defendants'
Exhibits to
Evidence of
Albert Lund
and Alfred
Florigny
Taken on
Commis-
sion.

- A.L. 1.—to be found at page 6 of Bundle marked A. E. F. 1.
 A.L. 2.—to be found at page 20 of Bundle marked A.E.F. 1.
 A.L. 3.—original answers to questions supplied by witness Albert Lund to De-
 fendants' Solicitors called for by Plaintiff's Counsel.
 A.E.F. 1.—A Bundle of documents comprising some original telegrams received
 10 by Hiram Walker & Sons, Ltd. and copies of original press copies of
 letters in the letter books of Hiram Walker & Sons, Ltd.
 A.E.F. 2.—Copy of an original press copy in a letter book of Hiram Walker &
 Sons, Ltd.

I have examined the copies of extracts and letters comprised in A.E.F. 1
 and the Exhibit A.E.F. 2, with the original press copy books of Hiram Walker
 & Sons, Ltd., and I hereby certify that subject to certain alterations made and
 initialled by me the said copies are accurate copies of the said press copies.

(Sgd.) Russell Davis

Commissioner.

2 May, 1924.

20

QUESTIONS to and ANSWERS by Captain Albert Lund, Director resident
 in London of Hiram Walker & Sons, Ltd.

QUESTIONS

ANSWERS

When did you first become acquainted
 with Edward Chandler Walker, the
 Testator?

About 40 years ago.

Where was he then living?

Walkerville, Ontario, Canada.

How often did you see him?

In some years several times—on an
 average of at least once a year, either
 here or in Canada.

30

Did you visit him at his private resid-
 ence? If so, where, how often, and
 when last?

I visited him several times in Canada—
 the last time being about 1912, when I
 had tea with him and his wife.

Did you know his brothers?
 If so, name them

Very well indeed—There were two,
 Franklin H. Walker, J. Harrington
 Walker, and they were most friendly,
 both socially and in business matters.

RECORD
 In the
 Supreme
 Court of
 Ontario

Defendants'
 Exhibits to
 Evidence of
 Albert Lund
 and Alfred
 Eugene
 Florigny
 Taken on
 Commis-
 sion.

Did you see them in company with the Testator? If so, when last prior to February, 1914, and what was your opinion as to their relations?

Did Testator discuss business matters with you? If so, state the general tenor of such conversations.

Did you correspond with him and receive letters from him? If so, were his letters those of any intelligent person? Can you produce such letters?

Do you know whether Testator suffered from any bodily ailment? If so, what, and between what periods and did it have any effect on his mental capacity?

Did you know or hear that he suffered mentally? Was he ever detained as being of unsound mind? If so, state periods.

Did you see him often during 1913 and up to the end of February, 1914?

Give instances during that period of any discussions with him shewing intelligent interest in business or other matters?

Several times frequently, the last time in 1912. Most brotherly.

Yes, as I am a Co-Director with him and his two brothers, in Hiram Walker & Sons, Ltd., of which he was President. He discussed general business matters in connection with the London Office, which is and was under my control. 10

Yes, most certainly, but after the lapse of time and several removals, I think I cannot produce his letters.

Not to my knowledge. Occasional chill caused by travelling. No operation. I should call him a healthy man.

No, I must have known, being a member of his Board of Directors, if this had been the case. His great hobby was collecting pictures, in which he showed great interest. On his last visit to England he visited picture galleries and presented me with a landscape oil painting. I think he used to buy pictures at Walford's, Pall Mall. 20

Early in June, 1913, he arrived in this country with his wife and stopped at Claridge's Hotel, remaining in this country about 14 days when he went to Paris and remained abroad till about the 10th October, 1915. During the time he was here I saw him daily, either at his Hotel or at the Office, 20 Cockspur Street, S.W., when he discussed business matters with me and the staff. After he left for Paris, we corresponded together frequently on business matters, I counselling him on various points and being guided by his advice, which I valued highly. He returned to this Country in October, 1913, and stayed, I 40

10

Did you continue to see him after February, 1914? If so, give particulars.

believe, at Claridge's Hotel for a few days, and I am told he came into the office and interviewed the staff on general business matters, and that he seemed to take as much interest in the business as usual. He and his wife had luncheon with me at the office, 20 Cockspur Street several times with other people, and also had tea with myself and wife and children at 33 Hans Mansion, my then residence.

20

Did he discuss with you as to his Will? If so, give date and particulars.

In September, 1913, I left this Country for Canada to attend the Annual General Meeting of Hiram Walker & Sons, Ltd. I didn't return to England until October, 1913, after he had left. I didn't see him again after that date, but we heard from him on the occasion of my eldest daughter's wedding in May, 1914, when he sent her a wedding present of £50. I think this money was paid upon his instructions by his brother, F. H. Walker, who was in this Country and attended the wedding.

State your opinion generally as to his mental capacity to make a Will on the 27th February, 1914.

No.

30

In my opinion up to September, 1913, he was in every way of ample mental capacity to make a valid will.

Alfred Eugene Florigny and Gilbert Silvester Harriss, members of the London staff, being respectively accountant and secretary of the London Office, saw the Testator during his visit here between June and October, 1913, and will testify that in their opinion he was in his usual mental state of mind.

Witness

40 R. G. A. Jackson,
So'cr.

2 Bond St.

Walbrook

10th Apr., 1924.

HIRAM WALKER & SONS, LIMITED,

by (Sgd.) Albert Lund.

Director resident in London.

RECORD Extract from Letter Written to Mr. Albert Lund by Mr. A. E. Florigny during
 In the Mr. Lund's absence from the office:
 Supreme Court of Ontario

16 Oct., 1913

Defendants' Exhibits to Evidence of Albert Lund and Alfred Florigny Taken on Commission.

"Mr. Edward C. Walker has given instructions for one bottle of Epicure and two bottles of C. C. W. to be sent to Mlle. Hoffe, Paris, the word "Epicure" not to appear on the bottle of Epicure. We are sending the Epicure from here, and are arranging with Messrs. Leete & Sons to deliver two bottles of C. C. W. at Paris, all charges paid."

COPY:

2nd June, 1913.

10

Edward C. Walker, Esq.,
 Claridge's Hotel,
 W.

Dear Mr. Walker,

I duly received late this afternoon your telegram reading:—"Arrived both well address Claridge's Hotel. E. C. Walker," and much regret that I am unable to meet you on your arrival at Paddington, as I have a dinner engagement.

No doubt you will remember that I have removed from 5, Ashburn Place, and our present address is 33, Hans Mansions, Hans Crescent, S.W., and our telephone No. is Kensington 2087. 20

I have an appointment at 11 o'clock tomorrow in the City, one at 12 noon at the office, and another at 2.30 in the City, but I hope you and your wife will be able to take luncheon at these offices at one o'clock, as I shall be disengaged from 12.30 to 2.00 p.m.

It was my intention to motor Dr. Brodie, who is now in London, to the Derby on Wednesday next, and needless to say how pleased I should be if you could accompany us.

With kind regards to you and your wife,

I remain,

30

Yours very sincerely,

(Signed) Albert Lund.

COPY:

11th June, 1913.

Edward C. Walker, Esq.,
Claridge's Hotel,
Brook St.,
W.

RECORD

*In the
Supreme
Court of
Ontario*

Dear Sir:

We beg to hand you herewith a letter addressed to Mr. F. Gilbert, in your
care,

10

Yours very truly,

Hiram Walker & Sons, Lim'd.
by Albert Lund,
(Signed) A.F.

enc.

Director resident in London.

Defendants'
Exhibits to
Evidence of
Albert Lund,
and Alfred
Eugene
Florigny
Taken on
Commis-
sion.

(There are 18 other letters of this character, addressed to Mr. Walker at Claridge's Hotel, Paris and Dinard, which are not printed).

COPY:

26th June, 1913.

20 Edward C. Walker, Esq.,
Hotel Astoria,
Paris.

Dear Mr. Walker,

In reply to yours received this morning I would say that I this morning called upon Messrs. M. Wildsmith & Sons, and now enclose their receipt for 16/6, which I will keep an account of until your return to London. I also enclose their account for a pair of shoes, amounting to £2.3.9 which are now ready; no doubt I shall hear from you in due course as to what you would like done with them, and whether you wish me to pay the bill.

30 London is very crowded at present on account of the visit of the French President, and it is extremely hard to get about.

I saw Mr. Frank Walker off yesterday from Waterloo by the 9.25 a.m. train.

Trusting that you and your wife are thoroughly enjoying your stay in Paris; I remain,

With kind regards,

Yours sincerely,

(Signed) Albert Lund.

encs.

RECORD COPY:

In the
Supreme
Court of
Ontario

Defendants'
Exhibits to
Evidence of
Albert Lund
and Alfred
Eugene
Florigny
Taken on
Commis-
sion.

Edward C. Walker, Esq.,
Hotel Astoria,
Avenue des Champs Elysees,
Paris.

1st July, 1913.

Dear Mr. Walker,

I enclose you M. Wildsmith & Sons' receipt, copy of which I have kept, and they are today forwarding the pair of shoes to you; you will notice that I have added 1/6,—the amount of their charges for postage.

10

I think the enclosed notice will be of interest to you, by which you will note that your oil properties in Trinidad are going to be taken over by the Central Mining & Investment Corporation, Limited.

Kind regards,

Yours sincerely,

(Signed) Albert Lund.

2 encs:

COPY:

23rd September, 1913.

Edward C. Walker, Esq.,
Hotel Royal,
Dinard, France.

20

Dear Mr. Walker,

I have been considering the question of "Epicure", and enclose herewith several rough sketches for a label using the word "Liquor" in each case.

From information I have received from The Trade Mark Owners' Association it appears that it would only be possible to register the signature, which, I would suggest, should be prominently shown on the label in some distinctive style of handwriting.

I am under the impression that the label as a whole could be copyrighted, which process would prevent anyone using a replica of it.

30

Should you wish any further information on this subject during my absence Mr. Harriss is familiar with the matter.

With kind regards,

Yours sincerely,

(Signed) Albert Lund.

encs:

POST OFFICE TELEGRAPHS

RECORD

September 27, 1913

Paris 20997 22 27 9h50

Capt. Lund care Broomcorn, London.

We are well Mr. Walker sends good wishes bon voyage from Mrs. Brewster and myself —M. Walker—

In the
Supreme
Court of
Ontario

Defendants'
Exhibits to
Evidence of
Albert Lund
and Alfred
Eugene
Florigny
Taken on
Commis-
sion.

COPY:

10th October, 1913.

Edward C. Walker, Esq.,
Hotel Meurice,
Rue de Rivoli,
Paris.

10

Dear Sir,

We beg to confirm our telegram to you of this morning, reading as follows:—

“Detroit cable addressed you reads great need five hundred dollars
“quick will you cable help. Fred Delano. Broomcorn.”
and we now beg to hand you the original cable.

Yours very truly,

Hiram Walker & Sons, Lim'd
By (Sgd.) Albert Lund,

A.F.

Director resident in London.

20

enc:

COPY:

14th November, 1913.

Edward C. Walker, Esq.,
“Willistead,”
Walkerville,
Ontario.

Dear Sir,

We beg to enclose herewith a statement of disbursements made on your behalf during your stay in Europe, which, we trust, you will find in order.

At your convenience will you kindly instruct us as to whether you wish the

30

RECORD

*In the
Supreme
Court of
Ontario*

Defendants'
Exhibits to
Evidence of
Albert Lund
and Alfred
Florigny
Taken on
Commis-
sion.

amount in question transferred to the debit of the Head Office account, as has been done in previous instances.

We are, dear Sir,

Yours very truly,

Hiram Walker & Sons, Lim'd

by (Sgd.) Albert Lund,

A.F.

Director resident in London.

enc:

APPENDIX B

CANADA

PROVINCE OF ONTARIO

IN HIS MAJESTY'S SURROGATE COURT OF THE COUNTY OF
ESSEX

RECORD

*In the
Supreme
Court of
Ontario*Copy of
Probate
(See
Exhibit
No. 5).
Printed by
request of
Respond-
ents.

BE IT KNOWN that on the eleventh day of September, in the year of our Lord one thousand nine hundred and fifteen, the Last will and testament of EDWARD CHANDLER WALKER, late of the town of Walkerville, in the County of Essex and Province of Ontario, Gentleman, deceased, who died on or about the eleventh day of March, in the year of our Lord one thousand nine hundred and fifteen, at the City of Washington, in the District of Columbia, U.S.A., and who at the time of his death had a fixed place of abode at Walkerville, in the said County of Essex, was proved and registered in the said Surrogate Court, a true copy of which said last will and testament is hereunder written, and that the administration of all and singular the property of the said deceased and any way concerning his will was granted by the aforesaid Court to

National Trust Company Limited

of the City of Toronto, in the County of York, the Executor named in the said Will, William M. O'Connor, the Treasurer of the said Company having first sworn that the Company will well and faithfully administer the same by paying the just debts of the deceased and the legacies contained in his will so far as they are thereunto bound by law and by distributing the residue (if any) of the property according to law and will exhibit under oath a true and perfect Inventory of All and singular the said property, and will render a just and full account of their administration whenever thereunto lawfully required.

(Sgd.) "Henry Clay"

Registrar of the Surrogate Court of the
County of Essex.

(Seal)