66, 1932

In the Privy Council.

No. 18 of 1932.

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

BETWEEN

FLORENCE A. DEEKS - - - -(*Plaintiff*)-*Appellant*

AND

H. G. WELLS, THE MACMILLAN COMPANY INC., THE MACMILLAN COMPANY OF CANADA LIMITED, GEORGE NEWNES LIMITED, CASSELL & COMPANY, LIMITED - - - - - (*Defendants*)-*Respondents.*

RECORD OF PROCEEDINGS.

INDEX OF REFERENCE.

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EXHIBITS.

* Only eight letters appear in record.

* Copies pursuant to order of S.C.O.

EXHIBITS FILED WITH EVIDENCE ON COMMISSION IN ENGLAND.

* Copies pursuant to order of S.C.O.

EXHIBITS FILED WITH EVIDENCE ON COMMISSION IN NEW YORK.

FURTHER DOCUMENTS.

In the Privy Council.

No. 18 of 1932.

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

BETWEEN

FLORENCE A. DEEKS - - - -(*Plaintiff*)-*Appellant*

AND

H. G. WELLS, THE MACMILLAN COMPANY, INC., THE MACMILLAN COMPANY OF CANADA LIMITED, GEORGE NEWNES LIMITED, CASSELL & COMPANY, LIMITED - (*Defendants*)-*Respondents.*

RECORD OF PROCEEDINGS.

No. 1.

Statement of Claim.

In the Supreme Court.

No. 1. Statement of Claim, 3rd September 1927.

IN THE SUPREME COURT OF ONTARIO.

Amended this 10th day of May, 1928, pursuant to the Order of the Master, dated the 7th May, 1928.

E. HARLEY,
Senior Registrar S.C.O.

Between

FLORENCE A. DEEKS - - - - - - - - - *Plaintiff*

and

H. G. WELLS, THE MACMILLAN COMPANY, LIMITED,* THE MACMILLAN COMPANY, INC., THE MACMILLAN COMPANY OF CANADA, LIMITED, GEORGE NEWNES LIMITED and CASSELL & COMPANY, LIMITED - - - - - - *Defendants.*

1. The Plaintiff is an Author and a British subject, residing in the City of Toronto in the County of York.

* By Order of Supreme Court of Ontario dated 21st November 1927 service of the Writ of Summons upon MacMillan & Co., Limited, wrongly named The MacMillan Company Limited, was set aside.

In the Supreme Court.

No. 1. Statement of Claim, 3rd September 1927 —*continued.*

2. The Defendant H. G. Wells is an Author, residing in Easton Glebe, Dunmow, in the County of Essex, England. The MacMillan Company, Limited, are Publishers, having their Head Office and carrying on business in the City of London, England. The MacMillan Company, Inc., are Publishers, having their Head Office and carry on business in the City of New York in the state of New York, one of the United States of America. The MacMillan Company of Canada, Limited, are Publishers, having their Head Office and carrying on business in the City of Toronto in the Province of Ontario. The MacMillan Company, Inc., of the City of New York, and The MacMillan Company of Canada, Limited, are subsidiaries of The MacMillan Company, Limited, of London, England. The Defendants George Newnes, Limited, and Cassell & Company, Limited, are Publishers, having their respective Head Offices and carrying on business in the City of London, England.

3. The Plaintiff is the author of an unpublished work entitled " The Web " and is the owner of the copyright therein.

3. (*a*) The Plaintiff obtained an interim Copyright for the said work under the Copyright Act, Revised Statutes of Canada, 1906, Chapter 70, by registration dated June 28th, 1916.

4. The Defendants have, and each of them has, infringed the Plaintiff's proprietory rights and copyright in the said work by publishing and reproducing, or causing to be published and reproduced, without the consent of the Plaintiff, substantial parts of the said work in a book entitled " The Outline of History," of which said book the Defendant H. G. Wells is the author.

5. The Defendants have, and each of them has, also infringed the proprietory rights and said copyright by producing or causing to be produced and by exhibiting in public by way of trade, and by selling, exposing for sale and distributing substantial parts of the said work in the said book entitled " The Outline of History."

6. The Defendants have, and each of them has, published, sold and otherwise disposed of a work, namely, the said book entitled " The Outline of History," containing articles and passages, copied, taken or colorably altered from the said work, " The Web," of the Plaintiff, thereby infringing proprietory rights and said copyright.

7. The said Defendants have, and each of them has, further infringed proprietory rights and the said copyright by producing or causing to be produced, and by selling,

exposing to sale and distributing substantial parts of the said work "The Web," and articles and passages copied, taken or colorably altered therefrom in pamphlet form under the said title "The Outline of History" and in revised editions of the said book "The Outline of History."

8. The Defendants have, and each of them has, further infringed proprietory rights and the said copyright of the plaintiff by importing into Canada for sale the said work "The Outline of History," containing articles and passages copied, taken or colorably altered from the said work "The Web."

9. The said Defendants have, and each of them has, in its or their possession large numbers of copies of the said book entitled "The Outline of History," containing articles and passages copied taken or colorably altered from the said work, "The Web."

10. The Defendants the MacMillan Company of Canada, Limited, and the MacMillan Company, Limited, illegally used and appropriated the said work of the Plaintiff entitled "The Web," by withholding the same from the Plaintiff after demand was made of them by the Plaintiff for its return, and by exposing and exhibiting the said work "The Web," to the said H. G. Wells.

11. By reason of the infringement of her said proprietory rights and copyright as above set out, the Plaintiff has suffered damage in that she has been deprived of the opportunity to publish her said work "The Web," and has been deprived of the profits which would have accrued to her by reason of the publication and sale of her said work.

12. The Defendants threaten and intend to continue their infringement of the Plaintiff's said proprietory rights and copyright.

The Plaintiff therefore claims:

1. $500,000·00 damages;

2. Delivery up to the Plaintiff of all copies of the said book, "The Outline of History," and revisions thereof and other forms of the said work entitled "The Outline of History" now in the possession of the defendants, or of any of them.

3. An accounting of the proceeds realized by the Defendants, or any of them, from the sale of the said work, "The Outline of History."

4. An injunction to restrain the Defendants, and each of them, from any further infringement of the Plaintiff's said proprietory rights and copyright.

5. Her costs of this action.

6. Such further and other relief as to this Court may seem meet.

In the Supreme Court.

No. 1. Statement of Claim, 3rd September 1927 —*continued.*

The Plaintiff proposes that this action be tried at the City of Toronto in the County of York.

Delivered this 3rd day of September, A.D. 1927, by Johnston, Grant, Dods & MacDonald, 632 Bank of Hamilton Building, Toronto, Ontario, Solicitors for the Plaintiff.

No. 2. Statement of Defence of the Defendant, the MacMillan Co. of Canada, Ltd., 16th September 1927.

No. 2.

Statement of Defence of the Defendant, The MacMillan Company of Canada, Limited.

1. This defendant admits the allegations contained in paragraph 1 of the statement of claim in so far as it has no information to the contrary.

2. This defendant admits that it carries on business as a publisher in the City of Toronto but denies that it is subsidiary of The MacMillan Company Limited. This defendant admits all other allegations in paragraph 2 of the statement of claim in so far as it has no information to the contrary.

3. This defendant says it has no knowledge of the allegation contained in paragraph 3 of the statement of claim.

4. This defendant denies the allegations contained in paragraphs 4, 5, 6, 7, 8 and 9 of the statement of claim. This defendant admits that it has published and sold the work entitled "The Outline of History" by H. G. Wells but denies that the said book contains any passage or passages copied, taken or colourably altered from any work of the plaintiff or that in so publishing and selling "The Outline of History" this defendant has infringed in any way any copyright of the plaintiff.

5. This defendant denies the allegations contained in paragraphs 10 and 11 of the statement of claim. The plaintiff submitted a manuscript entitled "The Web" to this defendant for perusal. The said manuscript never left the possession of the defendant until delivered to the plaintiff nor were its contents ever divulged to any other person and the said manuscript was returned when demanded.

6. This defendant says that this action is improperly constituted, that if this defendant was guilty of any tort against the plaintiff (which this defendant does not admit but denies) it was entirely separate and distinct from the tort of any other defendant, except the defendant H. G. Wells, and the other defendants should not have been joined with this defendant in this action.

Delivered at Toronto this Sixteenth day of September, 1927, by McLaughlin, Johnston, Moorhead & Macaulay, Solicitors for the Defendant, The MacMillan Company of Canada Limited.

In the Supreme Court.

No. 3.

Order for MacMillan Co., Inc. of New York to enter a conditional appearance.

No. 3. Order for MacMillan Co. Inc. of New York to enter a Conditional appearance 24th September 1927.

IN THE SUPREME COURT OF ONTARIO.

The Master.

Saturday, the Twenty-fourth day of September, 1927.

Between

FLORENCE A. DEEKS - - - - - - - - - *Plaintiff*

and

H. G. WELLS, THE MACMILLAN COMPANY LIMITED, THE MACMILLAN COMPANY INC., THE MACMILLAN COMPANY OF CANADA LIMITED, GEORGE NEWNES LIMITED and CASSELL & COMPANY, LIMITED - - - - - - *Defendants.*

1. Upon the application of The MacMillan Company Inc., one of the Defendants, and upon reading the Affidavit of William Webster McLaughlin filed and upon hearing the solicitor for the applicant.

2. It is ordered that the Defendant, The MacMillan Company, Inc. be at liberty to enter a conditional appearance herein.

" CHARLES GARROW."

M.

Entered C.O.B. 97 page 187.
September 24th, 1927.
" M.S."

No. 4.

Statement of Defence of the Defendant, The MacMillan Company, Inc. of New York.

No. 4. Statement of Defence of the Defendant, the MacMillan Co. Inc. of New York, 5th October 1927.

1. This defendant has no knowledge of the allegations contained in paragraph 1 of the plaintiff's statement of claim.

2. In answer to paragraph 2 of the plaintiff's statement of claim this defendant says that it is a Company incorporated under the laws of one of the United States of America and carrying on business as a publisher in the City of New York, in the State of New York, one of the United States of America, but denies that it is a subsidiary of The MacMillan Company, Limited. This defendant has no knowledge of the other allegations contained in paragraph 2 of the plaintiff's statement of claim.

3. In answer to paragraph 3 of the plaintiff's statement of claim this defendant says that it does not know that the plaintiff is the author of the unpublished work entitled " The Web." This defendant says that neither at the time of the publication of the work " The Outline of History " nor at any time since did the plaintiff have a copyright in the Dominion of Canada to the said manuscript entitled " The Web." This defendant denies

In the Supreme Court.

No. 4. Statement of Defence of the Defendant, the MacMillan Co. Inc. of New York, 5th October 1927—*continued.*

that the plaintiff has had at any time a copyright in the United States of America for the said manuscript " The Web."

4. This defendant denies the allegations contained in paragraphs 4, 5, 6, 7, 8 and 9 of the statement of claim. This defendant admits that it has published the work entitled " The Outline of History " by H. G. Wells and distributed the said work in the United States of America, but denies that the said book contains any passage or passages copied, taken or colourably differing from any work of the plaintiff, and that in so publishing and selling " The Outline of History " this defendant infringed in any way any copyright of the plaintiff.

5. This defendant has no knowledge of the allegations contained in paragraph 10 of the plaintiff's statement of claim.

6. The contract between this defendant and the defendant H. G. Wells, for the publication and distribution of the said work " The Outline of History " was made in the United States of America and was absolutely independent of and had no connection whatever with any other contract made between the said H. G. Wells and any of the other defendants for publication and distribution of the said work.

7. The defendant says that this action is improperly constituted. That if this defendant was guilty of any tort against the plaintiff (which this defendant does not admit but denies) it was entirely separate and distinct from the tort of any other defendant, except the defendant H. G. Wells, and the other defendants should not have been joined with this defendant in this action.

8. If the plaintiff had a copyright in the manuscript entitled " The Web " which this defendant denies, this defendant was not aware of the existence of the said copyright at the date of the publication by it of " The Outline of History " and had no reasonable grounds for suspecting that a copyright subsisted in the said work " The Web."

9. This defendant pleads The Copyright Act, Revised Statutes of Canada, Chapter 70, and in particular Sections 6, 44 and 49 of the said Act, and also pleads The Copyright Act, 1921, 11 and 12, George V. Chapter 24, and in particular Section 21 of the said Act and amendments to the said Acts.

10. If this defendant was guilty of any tort against the plaintiff (which this defendant does not admit but denies) it was committed outside the jurisdiction of this Honourable Court and this defendant submits that this Honourable Court has no jurisdiction in the premises.

This defendant submits that this action should be dismissed as against it with costs.

Delivered at Toronto this 5th day of October, 1927, by McLaughlin, Johnston, Moorhead & Macaulay, 302 Bay Street, Toronto, Solicitors for the Defendant, The MacMillan Company.

No. 5.

Order for Defendants H. G. Wells, George Newnes, Ltd., & Cassell & Co., Ltd. to enter a conditional appearance.

In the Supreme Court.

No. 5. Order for Defendants H. G. Wells, George Newnes Cassell & Co. Ltd. to enter a conditional appearance, 4th November 1927.

IN THE SUPREME COURT OF ONTARIO.

The Master.

Friday, the 4th day of November, A.D. 1927.

Between

FLORENCE A. DEEKS - - - - - - - - - *Plaintiff*

and

H. G. WELLS, THE MACMILLAN COMPANY LIMITED, THE MACMILLAN COMPANY, INC., THE MACMILLAN COMPANY OF CANADA, LIMITED, GEORGE NEWNES LIMITED AND CASSELL & COMPANY, LIMITED - - - - - *Defendants.*

Upon the application of Counsel on behalf of the Defendants H. G. Wells, George Newnes Limited and Cassell & Company Limited, for an order rescinding the order made herein on the 12th day of October 1926 renewing the Writ of Summons, and for an order rescinding the order made herein on the 7th day of September, 1927, allowing the issue and service of a concurrent Writ out of the Jurisdiction on the said defendants, and for an order setting aside the service of the said Writ, or in the alternative for leave to enter a conditional appearance to the said Writ on behalf of the said defendants, in presence of Counsel for the plaintiff, and upon hearing read the affidavits of Frank McCarthy and Florence A. Deeks filed, and the exhibits therein referred to, and the material used on the applications for the respective orders aforesaid, and upon hearing Counsel aforesaid:

1. IT IS ORDERED that leave be granted the aforesaid defendants to enter a conditional appearance to the Writ of Summons herein, the said appearance to be entered within ten days from this date.

2. IT IS FURTHER ORDERED that save as aforesaid, this application be and the same is hereby dismissed.

3. AND IT IS FURTHER ORDERED that the costs of this application be costs in the cause.

"CHARLES GARROW,"

Master.

Entered C.O.B. 96 pages 470-1,
November 9th, 1927,
B.J.C.

In the Supreme Court.

No. 6. Reply to demand for particulars, 7th December 1927.

No. 6.

Reply to demand for particulars.

Par. 1. The Plaintiff was born in the Township of Williamsburg, in the County of Dundas, and her place of abode is at 140 Farnham Avenue, in the City of Toronto.

Par. 3. The work entitled " The Web " was made in the City of Toronto during the years 1913 to 1918. At the time of making the said work the Plaintiff was a British subject and had her place of abode at the City of Toronto.

Par. 4. (*a*) The Defendant, H. G. Wells, published and reproduced, or caused to be published and reproduced, substantial parts of the said work " The Web " in England during the latter part of the year 1919 and the years 1920 to 1927.

The Defendant, George Newnes Limited, published and reproduced substantial parts of the said work " The Web " in England in the latter part of 1919 and during the years 1920 to 1924, and possibly later but of which the Plaintiff is not now aware.

The Defendant, Cassell & Company Limited published and reproduced substantial parts of the said work " The Web " in England during the years 1920 to 1927.

Par. 5. (*a*) & 6. (*a*) The Defendant, H. G. Wells, published, produced, or caused to be produced, and exhibited in public by way of trade and sold, exposed for sale, distributed and otherwise disposed of substantial parts of the said work " The Web " in the work entitled " The Outline of History " and the said work entitled " The Outline of History " in England, Canada, and the United States of America, and other countries the latter part of the year 1919 and during the years 1920 to 1927.

The Defendant, George Newnes Limited, published, produced or caused to be produced, and exhibited in public by way of trade and sold, exposed for sale, distributed and otherwise disposed of substantial parts of the said work " The Web " in the work entitled " The Outline of History," and the said work entitled " The Outline of History " in England, Canada, and other countries the latter part of the year 1919 and during the years 1920 to 1927.

The Defendant, Cassell & Company Limited, published, produced or caused to be produced, and exhibited in public by way of trade and sold, exposed for sale, distributed and otherwise disposed of substantial parts of the said work " The Web " in the work entitled " The Outline of History," and the said work entitled " The Outline of History " in England, Canada, and the United States of America and other countries during the years 1920 to 1927.

Par. 7. (*a*) The Defendant, H. G. Wells, produced or caused to be produced, sold, exposed to sale and distributed substantial parts of the said work " The Web " and articles and passages copied, taken or colorably altered therefrom (1) in pamphlet form in the latter part of the year 1919 and the year 1920 and the years 1925 to 1927, and (2) in

revised editions of the said work " The Outline of History " during the years 1921 to 1927 in England, Canada, the United States of America and other countries.

The Defendant, George Newnes Limited, produced substantial parts of the work " The Web " and articles and passages copied, taken or colorably altered therefrom (1) in pamphlet form in England in the latter part of the year 1919 and the year 1920, and (2) in a revised edition of the said work " The Outline of History " in the year 1924, and sold, exposed for sale and distributed, or caused to be sold, exposed for sale and distributed, substantial parts of the said work " The Web " and articles and passages copied, taken or colorably altered therefrom (1) in pamphlet form in the years 1919 to 1927 and (2) in a revised edition of the said work " The Outline of History " in the years 1924 to 1927 in England, Canada and elsewhere.

The Defendant, Cassell & Company, Limited, produced substantial parts of the work " The Web " and articles and passages copied, taken or colorably altered therefrom in England (1) in pamphlet form during the years 1925, 1926 and 1927, and (2) in a revised edition of the said work " The Outline of History " in the year 1922 and in the year 1926, and sold, exposed for sale and distributed, or caused to be sold, exposed for sale and distributed, substantial parts of the said work " The Web " and articles and passages copied, taken or colorably altered therefrom in England (1) in pamphlet form in the years 1925 to 1927 and (2) in a revised edition of the said work " The Outline of History " in the years 1922 to 1927.

Par. 8. The Plaintiff is not aware of the part taken by the Defendant, H. G. Wells, in the importation into Canada for the sale of the work " The Outline of History."

The Defendant, George Newnes Limited imported into Canada for sale the said work " The Outline of History," containing articles and passages copied, taken or colorably altered from the said work " The Web " during the years 1920 to 1927.

The Defendant, Cassell & Company Limited, imported into Canada for sale the said work " The Outline of History " containing articles and passages copied, taken or colorably altered from the said work " The Web " during the years 1920 to 1927.

The said importation into Canada was made into the Province of Ontario as well as elsewhere in Canada.

Pars. 5 (*a*), 6 (*a*), 7 (*a*) & 8. Copies of the said work " The Outline of History " in pamphlet and in book form in the original edition and in revised editions and all containing articles and passages copied, taken or colorably altered from the said work " The Web," published or caused to be published and produced by the Defendant, H. G. Wells, and published and produced by the Defendant, George Newnes Limited, and published and produced by the Defendant, Cassell & Company Limited, were sold at various time in the years 1920 to 1927 in various book stores and dealers in the City of Toronto and including Britnell's Tyrrell's, McKenna's, The

In the Supreme Court.

No. 6. Reply to demand for particulars, 7th December 1927 —*continued.*

T. Eaton Co. Limited, The Robt. Simpson Company, Gordon & Gotch and The Imperial News Company.

Par. 9. The Defendants, George Newnes Limited, and Cassell & Company, Limited, have in their possession large numbers of copies of the said book entitled " The Outline of History " upon their respective premises and upon the premises of their agents.

The above particulars are not intended to be inclusive as the Plaintiff is not aware of all the times in which the said work "' The Outline of History " has been published in pamphlet or in book form, or of all the places the said book has been sold by the Defendants in these particulars referred to, or of all the places at which the said Defendants have in their possession copies of the said work.

Particulars of the substantial parts of the said work entitled " The Web," which have been published or reproduced, and of the articles and passages, copied, taken or colorably altered therefrom, contained in the said work " The Outline of History " are shown in Schedule " A " to these particulars.

The Plaintiff reserves the right to give further and better particulars of the matters herein dealt with as and when she may be advised.

Dated at Toronto, this 7th day of December, A.D. 1927.

JOHNSTON, GRANT, DODS & MacDONALD,
632 Bank of Hamilton Buildings,
Toronto 2, Ontario.
Solicitors for the Plaintiff.

No. 7. Statement of Defence of the Defendant, H. G. Wells, 22nd March 1928.

No. 7.

Statement of Defence of the Defendant, H. G. Wells.

1. This defendant admits that he is an author residing in Easton Glebe, Dunmow, in the County of Essex, England, and is the author of the work entitled " The Outline of History," but except as hereinafter specifically admitted denies all other allegations in the Statement of Claim contained.

2. In answer to paragraph 3 of the Statement of Claim this defendant says that he does not know that the plaintiff is the author of the unpublished work entitled " The Web " or that at the time of the writing of or publication of the work " The Outline of History " or at any time since that the plaintiff had a copyright therein in the Dominion of Canada, the United States of America or in the United Kingdom of Great Britain and Ireland, its colonies and dependencies, or elsewhere, and puts the plaintiff to the strict proof thereof.

3. In answer to paragraphs 4, 5, 6, 7, 8 and 9 of the Statement of Claim this defendant says that he is the author of and arranged in England for the publication and sale of " The Outline of History " in the United States

of America through MacMillan & Company, Inc., in Canada through MacMillan Company of Canada, Limited and in Great Britain through George Newnes, Limited and in the United Kingdom of Great Britain and Ireland, its colonies and dependencies, but not in the Dominion of Canada, through Cassell & Company, Limited, but had no arrangement of any kind with the MacMillan Company, Limited in regard thereto, but denies that he has ever reproduced, published, imported, exhibited in public, sold, exposed for sale or distributed or dealt with any copy or copies of the said work " The Outline of History " or any revised edition thereof in or into the Province of Ontario or any part of the Dominion of Canada, and this defendant denies that he has infringed the plaintiff's copyright (if any) as alleged, or at all. This defendant denies that the work entitled " The Outline of History " contains any substantial part of " The Web " or any articles or passages taken or colorably altered therefrom.

4. In answer to paragraph 10 of the said Statement of Claim this defendant specifically denies that the work entitled " The Web " was at any time exposed or exhibited to him or to any person in any way connected with him by The MacMillan Company of Canada, Limited, by the MacMillan Company, Limited or by any other Company or person, and states emphatically that at no time has he ever seen the said work.

5. In answer to paragraph 11 of the Statement of Claim this defendant says that if the plaintiff had a copyright in the manuscript entitled " The Web," which this defendant denies, this defendant was not aware of the existence of such copyright at the date of the writing or publication of " The Outline of History " and had no reasonable ground to suspect that a copyright subsisted in the said work " The Web " or that the work " The Outline of History " in any way infringed.

6. This defendant pleads The Copyright Act, Statutes of Canada, 1921, 11–12 George V. cap. 4, sections 21, 23 and 44. and Revised Statutes Ontario, 1927, ch. 106, secs. 48.

7. This defendant further says that if he was guilty of any tort against the plaintiff (which this defendant does not admit but denies) it was committed outside the jurisdiction of this Honourable Court and this defendant submits that this Honorable Court has no jurisdiction in the premises.

8. This defendant submits that this action should be dismissed as against him with costs.

Delivered this 22nd day of March A.D. 1928 by McCarthy & McCarthy, 46 King St. West, Toronto, Solicitors for the defendant H. G. Wells.

In the Supreme Court.

No. 8. Statement of Defence of the Defendant George Newnes, Ltd., 22nd March 1928.

No. 8.

Statement of Defence of the Defendant George Newnes, Limited.

1. This defendant admits that it is a publisher carrying on business in the City of London, England, but except as hereinafter specifically admitted puts in issue all other allegations in the Statement of Claim contained. This defendant carried on business at 8/11 Southampton Street, Strand, London, which is its registered and only address.

2. In answer to paragraph 3 of the Statement of Claim this defendant says that it does not know and does not admit that the plaintiff is the author of an unpublished work entitled "The Web" or that at the time of the publication of the work "The Outline of History" or at any time since that the plaintiff had a copyright in any such unpublished work in the Dominion of Canada, the United States of America or in the United Kingdom of Great Britain and Ireland its Colonies and dependencies, or elsewhere, and puts the plaintiff to the strict proof thereof.

3. In answer to paragraphs 4, 5, 6, 7, 8 and 9 of the Statement of Claim this defendant admits that in the latter part of the year 1919 and during the year 1920 but on no later date it reproduced published and sold in Great Britain the first edition of the work entitled "The Outline of History" by H. G. Wells but denies that it has ever reproduced published or sold or otherwise dealt with any second or revised edition thereof as alleged or at all or that it has ever reproduced published imported exhibited in public sold exposed for sale or distributed or otherwise disposed of or dealt with any copy or copies of the said work "The Outline of History" or of any revised edition thereof in or into the Province of Ontario or any other part of the Dominion of Canada or in or into any Country or place whatsoever outside Great Britain and this Defendant denies that it has infringed the plaintiff's copyright (if any) as alleged or at all. This Defendant denies that the work entitled "The Outline of History" contains any substantial part of "The Web" or any article or passages taken or colourably altered therefrom and says in the alternative that if the said work "The Outline of History" does contain any such matter this defendant had no knowledge thereof or that the said work or any part thereof was an infringing copy of the plaintiff's work or any part thereof. This Defendant does not admit that any copy or copies of the work entitled "The Outline of History" produced published or sold by it as aforesaid has been imported into or sold or otherwise dealt with in the Province of Ontario or into or in any other part of Canada but if such copy or copies of the said work has or have been so imported and/or sold such acts were done without the knowledge consent or authority of this Defendant.

4. In answer to paragraph 10 of the said Statement of Claim this defendant says that it has no knowledge of and does not admit the facts therein alleged.

No. 8. Statement of Defence of the Defendant George Newnes, Ltd., 22nd March 1928—*continued.*

5. In answer to paragraph 11 of the said Statement of Claim this defendant says that if the plaintiff had a copyright in the manuscript entitled "The Web," which this defendant denies, this defendant was not aware of the existence of such copyright at the date of the publication of "The Outline of History" and had no reasonable ground to suspect that a copyright subsisted in the said work "The Web."

6. This defendant pleads The Copyright Act, Statutes of Canada 1921, 11–12 George V. Cap. 4, Sections 21, 23 and 44 and Revised Statutes, Ontario, 1927, ch. 106, Sec. 48.

7. This defendant further says that if it was guilty of any tort against the plaintiff (which this defendant denies) it was committed outside the jurisdiction of this Honourable Court and this defendant submits that this Honourable Court has no jurisdiction in the premises.

8. This defendant submits that this action should be dismissed as against it with costs.

Delivered this 22nd day of March, A.D. 1928 by McCarthy & McCarthy, 46 King Street West, Toronto, Solicitors for the defendant George Newnes Limited.

No. 9.

No. 9. Statement of Defence of the Defendant Cassell & Co., Ltd., 22nd March 1928.

Statement of Defence of the Defendant Cassell & Company, Limited.

1. This Defendant admits that it is a Publisher, having its Head Office in the City of London, England, but except as hereinafter specifically admitted denies all other allegations in the Statement of Claim contained.

2. In answer to paragraph 3 of the Statement of Claim this Defendant says that it does not know that the Plaintiff is the author of the unpublished work entitled "The Web" or that at the time of the publication of the work "The Outline of History" or at any time since that the Plaintiff had a copyright therein in the Dominion of Canada, the United States of America or in the United Kingdom of Great Britain and Ireland, its Colonies and dependencies, or elsewhere, and puts the Plaintiff to the strict proof thereof.

3. In answer to paragraphs 4, 5, 6, 7, 8 and 9 of the Statement of Claim this Defendant admits that it has published and sold the work entitled "The Outline of History" by H. G. Wells in the United Kingdom of Great Britain and Ireland its colonies and dependencies but not in the Dominion of Canada, but denies that it has ever reproduced, published, imported, exhibited in public, sold, exposed for sale or distributed or otherwise dealt with any copy or copies of the said work "The Outline of History" or any revised edition thereof in or into the Province of Ontario or any other part of the Dominion of Canada, and this defendant denies that it has infringed the Plaintiff's copyright (if any) as alleged or at all. This Defendant denies that the work entitled "The Outline of History" contains any substantial part of "The Web" or any articles or passages

In the Supreme Court.

No. 9. Statement of Defence of the Defendant Cassell & Co., Ltd., 22nd March 1928—*continued.*

taken or colorably altered therefrom and says in the alternative that if the said work " The Outline of History " does contain any such matter this defendant had no knowledge thereof or that the said work or any part thereof was an infringing copy of the Plaintiff's work or any part thereof. This Defendant does not admit that any copy or copies of the work entitled " The Outline of History " produced, published or sold by it as aforesaid has been imported to or sold or otherwise dealt with in the Province of Ontario or into or in any other part of Canada, but if such copy or copies of the said work has or have been so imported and/or sold such acts were done without the knowledge, consent, or authority of this Defendant.

4. In answer to paragraph 10 of the said Statement of Claim this Defendant says that it has no knowledge of the facts therein alleged, and does not admit the facts therein alleged.

5. In answer to paragraph 11 of the said Statement of Claim this Defendant says that if the Plaintiff had a copyright in the manuscript entitled " The Web," which this Defendant denies, this Defendant was not aware of the existence of such copyright at the date of the publication of " The Outline of History " and had no reasonable ground to suspect that a copyright subsisted in the said work " The Web."

6. This Defendant pleads The Copyright Act, Statutes of Canada, 1921, 11–12 Geo. V., Cap. 4, Sections 21, 23 and 44, and Revised Statutes, Ontario, 1927, ch. 108, sec. 48.

7. This Defendant further says that if it was guilty of any tort against the Plaintiff (which this Defendant denies) it was committed outside the jurisdiction of this Honourable Court and this Defendant submits that this Honourable Court has no jurisdiction in the premises.

8. This Defendant submits that this action should be dismissed as against it with costs.

Delivered this 22nd day of March, A.D. 1928, by McCarthy & McCarthy, 46 King Street West, Toronto, Solicitors for the Defendant Cassell & Company, Limited.

No. 10.

Statement of Case by Counsels of Plaintiff and Defendants.

IN THE SUPREME COURT OF ONTARIO.

DEEKS *v.* WELLS.

Tried at Toronto, May 30th, June 2nd, 4th, 5th and 6th, without a jury.
R. S. Robertson, K.C. and P. E. F. Smily for Plaintiff Deeks.
W. J. Elliott, K.C. for Defendant Wells.
R. D. Moorehead and A. W. McLaughlin for Defendant McMillan Co.
E. V. McKague for Defendant Newnes Co. and Cassels Co.

Mr. SMILY: I am appearing, my Lord, on behalf of the Plaintiff, Mr. Moorehead is appearing for McMillan Company, Mr. Elliott for the Defendant Wells.

Mr. R. S. Robertson has been retained by the Plaintiff as Counsel in this case. Mr. Robertson has been detained in the case at Stratford.

HIS LORDSHIP: Have you agreed on some arrangement?

THE CLERK OF THE COURT: I do not know, my Lord. I have allowed the case to stand off until next Wednesday.

Mr. SMILY: My friend, Mr. Robertson's position is this. He has been tied up in the Cecil Hamilton prosecution in Stratford which has been running along for a much longer period than could be expected. Mr. Robertson expected to be finished doubtless next week. He tells me the Chief Justice fixed an appeal of his for the first thing on Wednesday morning, and that is the position he finds himself. He is free after that. I have asked my learned friend to allow it to stand off at least until Wednesday. We are all anxious to get it disposed of.

HIS LORDSHIP: Until Wednesday? I thought Mr. Robertson had a case fixed for Wednesday.

Mr. SMILY: He says it will be quite short, and it can come in. The case has been standing for some time, we are all anxious to get it disposed of. It is rather a heavy case, and Counsel having been retained, it is not very easy to make any other arrangement, my Lord.

HIS LORDSHIP: What do you say, Mr. Elliott?

Mr. ELLIOTT: I oppose any further enlargement for this case. It was arranged before with Mr. Robertson when it came before Mr. Justice Jeffrey six weeks ago, it was to be reached and this six weeks has long past which we arranged with Mr. Robertson. This case should come off before your Lordship.

HIS LORDSHIP: Was I a consenting party?

Mr. ELLIOTT: This case has been in the Courts here since 1925, my Lord.

In the Supreme Court.

No. 10. Statement of Case by Counsels of Plaintiff and Defendants —*continued.*

HIS LORDSHIP: I noticed that, and it has been now up for trial, I think this is the third occasion on which it has come up in the non-jury Court.

I cannot interfere with the convenience of Counsel. I make it a cast-iron rule if it is a question of convenience of Counsel, Counsel must settle amongst themselves. I will not adjourn any case for the convenience of Counsel unless Counsel are agreed.

Mr. ELLIOTT: I think my friend will agree with me, to be fair with us, that it was agreed with Mr. Robertson that this case should go on now, and it is unfortunate that Mr. Robertson is engaged elsewhere, but it has got to be just a wee bit of a scandal the way this case has been put off from time to time, and my instructions are to insist on the case going on, subject to what your Lordship may decide.

Mr. SMILY: I think I can throw some different light on the matter than Mr. Elliott has presented. It was agreed this case should be put on this week by Counsel, and I believe your Lordship was approached as to fixing it, and your Lordship declined and said it would have to take its turn in the week's list. We then approached the Registrar, and the Registrar said he would put it on after the cases that had been on the preceding week.

HIS LORDSHIP: That seems to be fair.

Mr. SMILY: Now, Mr. Robertson expected to be free at Stratford and he had this week clear. From the list which appeared from last week's list of these cases we thought we would not be reached for two weeks.

Our office had a case number five.

HIS LORDSHIP: You are acting in good faith.

Mr. SMILY: We made way in order that this case could be put higher up, and if our office had not made way, we would not be speaking to the case now.

HIS LORDSHIP: Are you ready now?

Mr. SMILY: I am not instructed as Counsel, and I cannot take the responsibility to proceed, it would be contrary to my duties.

Mr. ELLIOTT: My friend has had this case for three or four years.

Mr. SMILY: Our office has, but our office was not retained as Counsel. My point is I am not retained as Counsel, and it would be contrary to my duty to reverse those positions.

HIS LORDSHIP: How long could the case stand?

Mr. ELLIOTT: If the case were gone into seriously by the Plaintiff it would probably last three days.

Mr. SMILY: Two or three days.

HIS LORDSHIP: I have looked at the pleadings, and they do not disclose the particulars—the pleadings do not disclose the particulars.

Mr. SMILY: The particulars are filed in the Record.

HIS LORDSHIP: Yes, there are certain particulars, but they do not disclose the portions of your book which you say were stolen.

Mr. SMILY: No, that was a document that was gone into on discovery, my Lord.

HIS LORDSHIP: Where is that document?

Mr. SMILY: I do not know whether it was filed in Court, or not.

HIS LORDSHIP: Does it comprise the portions—

Mr. SMILY: Yes, my Lord, it comprises the passages.

HIS LORDSHIP: Are they more or less verbatim?

Mr. SMILY: No, there is not very much verbatim.

HIS LORDSHIP: You rather allege—

Mr. SMILY: A change around of location as our book was used as the foundation, in other words, the book was before Mr. Wells, and he seemingly used it as his matter and put it in to his own words.

HIS LORDSHIP: He reconstructed it?

Mr. SMILY: Yes, my Lord, putting it in to his own words.

I might say, as to procedure in the case, your Lordship, of course, will have that analysis, and we propose to call experts, literary men to give their opinion on the various passages, that will be explained.

Our client is most anxious to get on, it is not a case of the parties at all.

HIS LORDSHIP: I would not do more than put it over until Monday morning. I will not go further than that, Mr. Smily; I have had at one time and another a great deal to do with adjournments.

There will be an unfinished case, probably ahead of you. Subject to that case this will be next on the list so you can get ready for Monday.

May I have this in the meantime?

Mr. SMILY: I do not know that is complete, an analysis that was made at that time.

HIS LORDSHIP: I would just like to get the atmosphere.

Court resumed, Monday, June 2nd, 1930, 11 a.m.

Mr. ROBERTSON: Your Lordship has the names of Counsel appearing for the various defendants.

Before we go on with the Exhibits, I should like to say perhaps a little more than one generally does, because of the nature of the case, what we claim and how we expect to go about proving it.

As to the parties, I do not know if your Lordship knows one of the defendants is no longer involved in the action, the McMillan Company Limited, I think the second defendant named in the style of cause.

We might as well get that straightened out.

HIS LORDSHIP: The McMillan Company Limited—that is the English Company.

In the Supreme Court.

No. 10. Statement of Case by Counsels of Plaintiff and Defendants —*continued.*

Mr. ROBERTSON: That is the English Company, and by an order of the Master made some time back in the action they were eliminated.

HIS LORDSHIP: The United States Company and the Canadian Company are still in?

Mr. ROBERTSON: All the other parties are still in.

HIS LORDSHIP: Let me understand, Mr. Elliott appears for Wells?

Mr. ELLIOTT: I appear for Wells and for the defendant Newnes Company and Cassels Co. and Mr. R. D. Moorehead for the two McMillan Companies with A. W. McLaughlin.

Mr. ROBERTSON: The action as brought is frankly different from the ordinary infringement of copyright. The Plaintiff's work is an unpublished manuscript.

HIS LORDSHIP: But copyrighted?

Mr. ROBERTSON: She copyrighted the name before the completion of the manuscript.

Now, what she says is this, that the manuscript having been deposited by her in a manner that will be stated to your Lordship with the Canadian McMillan Company, that it remained in their hands, she gave it to them along about July or August of 1918. The completed manuscript, that it remained in their hands until the following Spring, 1919.

That in the meantime, some two or three months after she left the manuscript with them we have the first, we submit the first intimation of Wells beginning to develop an idea of writing a History of Mankind, and that his work was published first by Newnes in England in parts, that is in serial parts, that was beginning in the Fall of 1919. Afterwards Cassels published it in England as a book.

The McMillan Company, the Incorporated company published it in the United States and in Canada, and the McMillan Company of Canada, possibly, sold in Canada are involved in the use of the manuscript. Now, what we say is this—

HIS LORDSHIP: What do you say about the Canadian Company representing—

Mr. ROBERTSON: The Canadian Company, the McMillan Company of Canada possibly sold copies in Canada. I think we can establish that.

HIS LORDSHIP: Copies of the Wells' book?

Mr. ROBERTSON: Anyway, they are involved in the whole story because it was to them that Miss Deeks entrusted her manuscript, and if wrong use was made of it, they are the ones who must be accountable, because it was to them she gave it. We say our manuscript having been entrusted to McMillan for a particular purpose was used through them, and by the defendant Wells, and unfairly used by him in the preparation of his book. That, of course, is not exactly infringement of copyright. It is not the sort of action one brings under the Act, but it is a well known

form of action. It is rather an equitable relief the Law gives to one that is the author of a book.

HIS LORDSHIP: The manuscript was not copyrighted?

Mr. ROBERTSON: No, it is not under the Copyright Act we are suing, it is under another branch of Copyright Law, it is a well recognized right by an author of a manuscript to the property in it, and if anybody improperly, and without the permission of the author, takes that manuscript and uses it unfairly, various expressions are used by the Court in describing what is unfair use.

HIS LORDSHIP: It would be a breach of faith by McMillan.

Mr. ROBERTSON: In the first place, and a wrong thing to do on the part of Mr. Wells if he did so use it. That is the character of the action we bring.

Then as to the way we go about proving it. I say we will show that this Deeks' manuscript was prepared before Mr. Wells had written a line, and it was taken to McMillan and in their hands there in Toronto prior to Wells even starting to write. Then his correspondence is produced which will indicate—

Mr. ELLIOTT: My friend says she had written hers first, which is hardly accurate, because it will be shown as far back as 1913, long before these people ever thought of writing books, he started.

HIS LORDSHIP: Mr. Robertson is stating his case.

Mr. ROBERTSON: Of course, there will be a defence. I am not saying this is a one-sided case. We think we can show that is the state of affairs.

Then, I do not know that we will be able to get your Lordship a witness who will say that McMillans did send from Toronto to England this manuscript. We rather seek to make the connection between our manuscript and Mr. Wells altogether in another direction, that is, we say by expression of the work, he must have had it before him. We say this, first of all, your Lordship will appreciate, if a man is going to write a History of the World, there are a great many ways in which he might set about writing it. He might write it from various points of view, there are innumerable instances in the history of mankind that he might put in or leave out, depending somewhat upon their significance to the view point he was adopting. Now, we will say, first of all, and hope to prove this by evidence, that the plan of the two works is very similar indeed, the resemblance in the general plan; the things that are discussed, the things that are omitted, are such that it is beyond credence that it could be a mere result of coincidence. Then we go further than that, and we say that there are many resemblances, verbal resemblances, resemblances in expressions that are used, but I do not carry it thus far. We do not say that Wells was drawing from the events that he discusses necessarily the same lessons that Miss Deeks would. Wells was a man who has ideas.

HIS LORDSHIP: His philosophy was different.

In the Supreme Court.

No. 10. Statement of Case by Counsels of Plaintiff and Defendants —*continued.*

Mr. ROBERTSON: Wells is a man who has well-known ideas along lines of that kind, and his own ideas constantly appear beyond peradventure.

Another thing that is quite striking is that Miss Deeks, I think, puts forward women and the place of woman in history, and her importance. Mr. Wells apparently has quite contrary opinions about that sort of thing, and rather puts man in the front at different times.

HIS LORDSHIP: And puts man in the leading position.

Mr. ROBERTSON: And puts the woman in her place—your Lordship will bear in mind, when we are making comparisons in that way in detail, we are not contending at all that Wells did not do any work of his own, that he sat down and slashingly copied Miss Deeks' book, but we say further the use he did make of it amounted to an unfair use, I think I am fair in saying this, that if the resemblances are such as to lead your Lordship to the conclusion that Wells must have had her manuscript before him, I think there will be very little difficulty in reaching the second conclusion that he did not use it properly, because he has denied having it at all, and if he did have it, and denies it, it would not be unreasonable to reach the conclusion he denied it for a purpose.

We will also in evidence point to this sort of thing—Miss Deeks' apparently had ideas, which if not quite ideas of her own, were certainly ideas that were generally accepted by recognized authorities as to the connection between various parts of the history of mankind, various civilizations, which she followed in her book, notwithstanding that these are not to be found in recognized works, Mr. Wells has in some cases adopted the same plan that she did.

Then there are some curious things in the way of omissions—first of all in the particular sense they both omitted many matters of great importance, two things occur to me, just to illustrate—one is, take the history of the Hebrews—they both deal with Samuel and Saul and David and Solomon, but make a pretty clean jump from Solomon on to the Christian era, notwithstanding the great significance of the few hundred years intervening.

When it comes to modern history, the history of the United States, for example, they both deal with the revolutionary war, with the introduction by Munro of the beginning of the Munro Doctrine, and with the Civil War, and practically nothing else, but rather we will suggest rather a curious summary of the history of the Republic.

Then there are errors of this kind, that apart from the private ones that I have referred to, errors in dates—some curiosities in spellings of proper names that are significant, and will be pointed out.

Then apart from these coincidences which we submit are numerous enough and significant enough to be compelling as evidence, we will also offer to your Lordship evidence of this kind—that having in mind the work that Mr. Wells says he did as set out in his preface to his work, that it was humanly impossible for any man to have done that within the time within which his book was done unless he did follow as is complained and

from time to time make use of some such work as the manuscript of Miss Deeks.

Now, I do not intend to quote for the purpose of proving these things. Of course, your Lordship will have as primary evidence the manuscript and Wells' book, but we also propose to call as witnesses some experts of standing who will give evidence to point out to your Lordship the significance, in their opinion, as experts, of the sort of things I have been calling attention to, and that will be the main lines of the case that we will submit to your Lordship.

Mr. ELLIOTT: Perhaps your Lordship will permit me, just so that your Lordship will understand what the defence is, as well as what my friend says —we say that this Plaintiff's manuscript which is unpublished, never left the City of Toronto, that it was always in the City of Toronto, that it never crossed to the McMillan Company at London, that it was never seen by McMillan or by Mr. Wells, or by any of the people who assisted him in writing the "Outlines of History." We further say—

HIS LORDSHIP: Were the English McMillans the first publishers of Wells' book?

Mr. ELLIOTT: Yes, my Lord, it is published by Newnes in London, England.

HIS LORDSHIP: I asked if the English McMillans were the first publishers of Wells' book?

Mr. ELLIOTT: No, the McMillans of England did not publish it—it was first by the McMillans in New York—the first publication was by Newnes, then by Cassels, and subsequently by McMillans, New York, and we say that this manuscript of the plaintiff never left Toronto; never crossed the water; never was seen by Mr. Wells and a comparison of the different books show they are entirely distinct, different themes and different principles all the way through.

PLAINTIFF'S EVIDENCE.

No. 11.

Evidence of Florence A. Deeks.

Extracts from Deposition or Examination for Discovery (as agreed).

15th October, 1928.

FLORENCE A. DEEKS.

Examined by MR. ELLIOTT.

x x x x x x

6. *Q.* Then this action is over an alleged infringement of a manuscript of yours called "The Web"?—*A.* Yes.

7. *Q.* Have you got that here?—*A.* Yes. (Produced).

8. *Q.* That is the original manuscript of The Web?—*A.* Yes.

(Marked Exhibit 1.)

9. *Q.* That Exhibit 1 is the one you say you handed to McMillan & Company of Canada?—*A.* Yes.

In the Supreme Court.

Plaintiff's Evidence.

No. 11. Florence A. Deeks. Extracts from deposition or Examination for Discovery—*continued.*

10. *Q.* And this other is a copy of it (indicating)?—*A.* It was a facsimile. They were done together.

11. *Q.* (Mr. SMILY): A carbon copy?—*A.* Yes.

(Marked Exhibit 2.)

12. *Q.* Then Exhibit 2 is a carbon copy of Exhibit 1?—*A.* Yes.

x x x x x x

18. *Q.* What complaint have you got, Miss Deeks, against Mr. Wells in this action?—*A.* That portions of my book were used in the writing of The Outline of History.

19. *Q.* Outline of History being a Work of Mr. Wells?—*A.* Yes.

20. *Q.* And your complaint is then, as against Mr. Wells, that he used your manuscript, did he?—*A.* Yes.

21. *Q.* Your manuscript?—*A.* Yes.

22. *Q.* Exhibit 1?—*A.* Yes.

x x x x x x

24. *Q.* Do you suggest that Mr. Wells deliberately took that material out of your book?—*A.* I never said that.

25. *Q.* Well, what do you say as regards it?—*A.* I say that The Outline of History contains my book.

26. *Q.* Do you say, or do you suggest, that Mr. Wells had your manuscript and used it for that purpose?—*A.* Whoever compiled the Outline of History used my manuscript.

27. *Q.* Do you know who did compile The Outline of History?—*A.* It is said that Mr. Wells did it.

28. *Q.* Who is it said by?—*A.* Well, he put out The Outline of History under his name.

29. *Q.* And that is the reason you say that Mr. Wells took your material?—*A.* Yes.

30. *Q.* Do you know Mr. Wells personally?—*A.* No.

31. *Q.* Never saw him?—*A.* Never.

32. *Q.* Have you been in communication with him?—*A.* No.

33. *Q.* When you discovered this, did you write him about it?—*A.* No.

34. *Q.* Or caused anyone to write him?—*A.* No, not at the time.

35. *Q.* Would you tell me when you first became aware that Mr. Wells had used your material?—*A.* When I first read his book.

36. *Q.* When was that?—*A.* 1920.

59. *Q.* When you got the first copy you read it, and then you completed the revision of your own book and then you subsequently got another one?—*A.* Yes.

x x x x x x

150. *Q.* And is this the analysis of the two books that you complain of?—*A.* Those are verbal similarities.

151. *Q.* Are these the similarities that you purpose relying on at the trial to show that Mr. Wells either copies from your book, or you copied

from his?—*A.* Perhaps I might say that those are the chief verbal similarities.

x x x x x x

183. *Q.* Was it your own idea to write this book?—*A.* Yes.

184. *Q.* I suppose in your studies you had run across similar works, had you?—*A.* No history of the world in that line.

185. *Q.* There are numerous histories of the world?—*A.* Very few.

186. *Q.* Then what year did you arrive at the stage in which you thought it was completed?—*A.* I had the work planned—the frame work finished all the plan, and had it worked up to a certain point in 1918 and then I got it typed, but I did not consider it ready for publication.

187. *Q.* I think you told me that as late as 1920 or 1921, you were still polishing it up?—*A.* Yes, still revising it.

188. *Q.* Correcting probably some errors?—*A.* Yes.

189. *Q.* And shaping it so that it might be printed?—*A.* Cutting out some things and putting in others. The plan remained the same.

190. *Q.* Had you heard of anyone else getting out a similar work in 1918 or 1919?—*A.* No.

x x x x x x

194. *Q.* Then can I take it then that the whole idea as incorporated in your work up to 1918 is your own?—*A.* Yes

195. *Q.* You had not collaborated with other people as to what you should put in it?—*A.* No.

196. *Q.* It was the pure result of your reading and your own idea?—*A.* Yes.

197. *Q.* Was there anyone else interested with you in this venture?—*A.* No.

x x x x x x

246. *Q.* Who was the first person that you submitted this manuscript to—I do not mean the critic—I mean any publishing house?—*A.* I think it was MacMillan—if it were not MacMillan it would be J. H. Dent & Co.

247. *Q.* Did you show it to Dent and Company?—*A.* Yes.

248. *Q.* When did you let them have it?—*A.* Well, I cannot just think of the date.

249. *Q.* Is Dent & Company a Toronto publisher?—*A.* They are English Publishers with a house in Toronto.

250. *Q.* Did you submit it to the English House or the Canadian House?—*A.* Just to the Canadian.

251. *Q.* When did you do that?—*A.* I cannot just recall the date. It was about the same time that I gave it to MacMillan.

252. *Q.* What did you give it to Dents for?—*A.* To read it and see if they thought it was all right to work up for publication.

253. *Q.* Who in Dents did you go to?—*A.* Mr. Button.

x x x x x x

263. *Q.* What did he tell you?—*A.* As nearly as I can tell you that it was not in a condition for publication.

264. *Q.* At that time?—*A.* Yes.

In the Supreme Court.

Plaintiff's Evidence.

No. 11. Florence A. Deeks. Extracts from deposition or Examination for Discovery—*continued.*

265. *Q.* Did he return the manuscript with his letter?—*A.* Yes.
266. *Q.* Have you got that letter?—*A.* I think so.
267. *Q.* Will you be good enough to let Mr. Smily have that so he will let me know if I can see it or not?—*A.* Yes.
268. *Q.* How long did this gentleman have it at Dents?—*A.* Over a week.
269. *Q.* Over a week?—*A.* Yes.
270. *Q.* Not as long as two weeks?—*A.* I do not think so.
271. *Q.* Do you know what he did with it during the time he had it?—*A.* No.
272. *Q.* Is there any suggestion that they might have sent it to their English house?—*A.* None.
273. *Q.* None whatever?—*A.* No.

x x x x x x

276. *Q.* The one which we know as Exhibit 2?—*A.* Yes.
277. *Q.* That is the carbon copy?—*A.* Yes.
278. *Q.* You hand it to the Methodist Book Room?—*A.* Yes.
279. *Q.* And who did you give it to there?—*A.* Mr. Moore.
280. *Q.* What is his position there?—*A.* I could not say.
281. *Q.* Had you known him previously?—*A.* No.
282. *Q.* And what did you tell him?—*A.* Just to look over it, and see if he thought it could be worked up for publication—as nearly as I remember.

x x x x x x

288. *Q.* How long did Mr. Moore have it?—*A.* A short time. I got nervous about it and got him to return it.
289. *Q.* You got nervous about it and got Mr. Moore to return it?—*A.* Yes—I thought—you see Mr. Moore had not time to go into it at once, he said " I have this and that to do first, and then I will be pleased to go through it."
290. *Q.* How long did you leave it with him?—*A.* I think it must have been perhaps two weeks.
291. *Q.* What did he report to you?—*A.* He gave it a very good report in many respects, but he felt that the time—at the present time—you see due to stresses of the War, publishers were cutting down publication, and they were very careful what they published so that they would not put out anything that would not have a remunerative sale.
292. *Q.* Did he write a letter to you?—*A.* Yes.
293. *Q.* Will you kindly let Mr. Smily have that letter?—*A.* Yes.
294. *Q.* At any rate, there was nothing doing there?—*A.* No.—he had not time to go through it carefully.

x x x x x x

528. *Q.* Then you were going to show me the letter from Dents?

Mr. SMILY: Unless it is to shew the dates I don't see just how these are relevant to the issues.

Mr. ELLIOTT: Miss Deeks does not seem to have any objection to producing them.

Mr. SMILY: I have no objection to your seeing them but I don't want it put in the record unless it is relevant. As I see it, what some other person thought as to the book does not affect the issue (producing document).

529. *Q.* I see in June 1918, Dents returned your manuscript?—*A.* Yes.

530. *Q.* And they did not want to publish it?—*A.* No.

531. *Q.* And they recommended that you should get some one in the United States to revise it?—*A.* Yes.

x x x x x x

535. *Q.* Then I think you were going to show me a letter from the Methodist Book Room?

Mr. SMILY: Well the same thing applies to that, but we will let you see it. (Producing.)

536. *Q.* Then I see, as you told us before, in 1918 you submitted it to the Methodist Book Room?—*A.* Yes.

537. *Q.* And then you took it away?—*A.* Yes.

538. *Q.* And in the interval they wrote you, on August 29th 1918, in which they intimated that they did not want to publish it?—*A.* Yes.

539. *Q.* And subsequently to that you went and got the manuscript?—*A.* Yes.

540. *Q.* And that is the end of your dealings with the Methodist Book Room?—*A.* Yes.

x x x x x x

550. *Q.* Then when you received this letter of the 31st of January, 1919, did you go to get your manuscript as indicated therein?—*A.* As nearly as I remember I wrote them after that.

553. *Q.* Can you give me the letter you wrote in reply to this one of January 1919?—*A.* I have not got a copy. I think I answered it, as far as my memory goes I wrote to the MacMillan Company after I got that letter, but I have not got a copy.

558. *Q.* Well, tell me to the best of your memory what you wrote—what was in the letter?—*A.* It would just be with regard to the manuscript and its return. That is as nearly as I can say.

559. *Q.* You mean that you wanted it back?—*A.* Oh, certainly.

x x x x x x

842. *Q.* You were going to tell us whether you were going to give us any further comparisons, or whether you were going to stick to what we have got?

Mr. SMILY: We have them here for you.

Mr. ELLIOTT: Some new ones?

Mr. SMILY: Yes, just a few.

Mr. SMILY produces Exhibit No. 3 and since the last examination has made certain additions which are indicated in the exhibit either by lead pencil or by pasting in a further sheet in some cases. It is agreed that these additions are to be written in, in red ink, in Exhibit 3, and where it

In the Supreme Court.

Plaintiff's Evidence.

No. 11. Florence A. Deeks. Extracts from deposition or Examination for Discovery *continued.*

is necessary to put an extra sheet in, the sheet is to be added and underlined in red ink; and it is agreed by Mr. Smily that Exhibit 3 as amended contains all the verbal comparisons of "The Web" in "The Outline of History" that the Plaintiff relies on, and it is agreed that the comparison is now complete, and Mr. Smily states these are the only ones they rely on.

x x x x x x

892. *Q.* Then what reason have you for saying that Mr. Wells used your manuscript?—*A.* From the similarities.

893. *Q.* And anything else?—*A.* The course which the manuscript took after it left my hands and was given to MacMillan & Company.

894. *Q.* You mean where it went?—*A.* Yes.

895. *Q.* I think you have told me that you submitted it to MacMillans in August, 1918?—*A.* The end of July or first of August 1918.

896. *Q.* And you got it back from Macmillans on April 3rd, 1919?—*A.* About that time.

897. *Q.* And where do you say it was in the interval between those two dates?—*A.* I do not know.

898. *Q.* As far as you know it was with Macmillan & Co. all the time?—*A.* I gave it to Macmillans.

899. *Q.* And you have no reason to believe that it ever left their possession?—*A.* I have reason to believe it did.

900. *Q.* What reason do you have for that belief?—*A.* I was told it did.

901. *Q.* You were told it did?—*A.* Yes.

902. *Q.* When were you told?—*A.* In 1925.

903. *Q.* Can you tell me the date in 1925?—*A.* In the fall.

904. *Q.* I see in the examination that you had with the other Macmillans that you put the date about October 14th, 1925. . . I presume that is correct, is it?—*A.* I should think it would be. (Copy of examination produced to witness and question and answer indicated therein). . . . I imagine that would be about correct.

905. *Q.* Is that the first time that you connected Mr. Wells in any way with your manuscript?—*A.* Oh no.

906. *Q.* Had you any suggestion before from any one that he had possession of it?—*A.* No.

907. *Q.* That is what I meant. This was the first time that you had any, what I might call direct evidence that it ever went to his possession?—*A.* I understand it was sent over in the beginning.

908. *Q.* Well I am dealing with the time you were told in October; that was the first time that you had any direct evidence that it had been sent to him at all?—*A.* Yes, I think it is—I never said it was sent direct to Mr. Wells.

Mr. SMILY: It is not suggested that it was sent to Mr. Wells. We have never suggested that it was sent to him.

909. *Q.* I appreciate what you say. You had no evidence that it went to Mr. Wells, but your information was that it went to Macmillan & Company in England?—*A.* Yes.

910. *Q.* Could you just tell me the language that was used when you were informed of that?—*A.* The person who told me said that this person said "I sent it to England myself."

911. *Q.* That is the language that was used?—*A.* Yes.

912. *Q.* And that is the whole of it?—*A.* "You don't think it would be made use of by them over there, do you "——"Of course it would."

913. *Q.* Who said that?—*A.* The two people that were speaking.

914. *Q.* Does that exhaust the conversation?—*A.* "Besides when it came back she said it was much thumbed and used and leaves were turned down, and she would not tell what was not true."

915. *Q.* So I take it when you say she, your informant was a lady?—*A.* No, that she referred to me. These two gentlemen were speaking. That was the conversation.

x x x x x x

923. *Q.* This person that said they sent it to England themselves, was that person employed in MacMillan & Company, with which you had left your manuscript?—*A.* Yes.

924. *Q.* And he stated this employee of Macmillans told this third party that he had sent it himself?—*A.* Yes.

925. *Q.* Did he say when?—*A.* No.

928. *Q.* And of course you know, but I presume you do not want to tell me the name of the employee of Macmillan & Company?—*A.* Yes.

929. *Q.* You do object to telling me that name?

Mr. SMILY: Yes, we object.

930. *Q.* I suggest to you, Miss Deeks, that it would perhaps assist both of us if you gave us that name? Do you still persist in not giving it?

Mr. SMILY: Yes, we object to giving you the name.

The witness refuses to answer in advice of counsel.

931. *Q.* Where were these two people when this conversation took place between them?

Mr. SMILY: That is, if Miss Deeks knows.

932. *Q.* Do you know?—*A.* I think on the golf course. I am not sure about that.

933. *Q.* You think it took place on the golf course?—*A.* I think it was on the golf course.

934. *Q.* And one of the gentlemen who was playing golf repeated it to you?—*A.* Yes.

935. *Q.* And whereabouts were you when the conversation was repeated?—*A.* In that gentleman's office.

936. *Q.* And was that office the office of Macmillan & Company?—*A.* No.

937. *Q.* Was it the gentleman that was in Macmillan & Company that repeated this to you?—*A.* No.

In the Supreme Court.

Plaintiff's Evidence.

No. 11. Florence A. Deeks. Extracts from deposition or Examination for Discovery—*continued.*

938. *Q.* It was not?—*A.* No.

939. *Q.* So then we have it this way: That the gentleman from Macmillans was playing golf with a second gentleman and they had a conversation on the golf links, and the second gentleman repeated the story to you?—*A.* Yes.

940. *Q.* And that as you have told us, was in October, 1925?—*A.* Yes.

941. *Q.* Then did you go to the Macmillan Company to verify that?—*A.* No.

942. *Q.* Would it not seem the natural thing to do, to verify it?—*A.* I don't know.

943. *Q.* But you have not gone to them to find out?—*A.* No.

944. *Q.* Or did you write the Macmillan Company of England, asking them anything about it?—*A.* No.

945. *Q.* It was after you had commenced your action was it, that you were told this story? The writ was issued on the 14th of October; was it before or after that conversation was repeated to you that you commenced your action?—*A.* I think the action was commenced but I do not think this person knew it was commenced at the time; they were almost simultaneous.

x x x x x x

956. *Q.* And you say that is the implication in that second paragraph, that you inferred from that, that it had to go to England?—*A.* Yes.

957. *Q.* And is that the only reason you have for thinking that it had to go to England?—*A.* I understood that all manuscripts of any account except Canadian school books, that were handed in to this house, had to be sent to England.

x x x x x x

964. *Q.* Then I would ask you again if you base that implication that it went to England on what is contained in the second paragraph of that letter?—*A.* On that and the belief that all those manuscripts were sent to England.

965. *Q.* That is what we have been discussing—you do not know where you got it from?—*A.* No.

966. *Q.* And this second paragraph in this letter, Exhibit 6?—*A.* No.

967. *Q.* So that is the sole reason excepting this conversation that you told us about some time ago, for your thinking that this manuscript went to England?—*A.* Those are the chief reasons.

968. *Q.* Well are there any others? You thought from the length of time they had it that they may have sent it to England?—*A.* Yes.

969. *Q.* But you had no knowledge that they did?—*A.* No.

Mr. SMILY: Except what has been stated.

970. *Q.* Then it boils down to four reasons why you thought it had gone to England. I will take them in order and see if you agree. First, you had it in your mind, and you do not know where you got the information, that all manuscripts excepting Canadian School books, had to go to England?—*A.* Yes, excepting Canadian School Books.

971. *Q.* Second, that the second paragraph of this letter of March 19th 1918, Exhibit 6, contains the implication that it had to go to England?—*A.* Yes.

972. *Q.* And third, from the length of time that they had it, you thought it might have gone to England?—*A.* Yes.

973. *Q.* And fourth, the conversation that you had with this gentleman who played on the golf course?—*A.* Yes.

974. *Q.* Now those are the four reasons?—*A.* Yes.

975. *Q.* Are there any others?—*A.* No other that I think of.

976. *Q.* Now do you know of any other, I have elaborated those four, and I would like to know if there are any others?—*A.* Well when I read the book and saw the similarities I concluded it had gone.

977. *Q.* Well we will call that the fifth; that you read the book "The Outline of History" and you knew of course what was in the manuscript, and it was in your mind then that it might have gone by reason of the comparisons?—*A.* I concluded myself, personally, that it had gone; either that or a copy—I concluded that my manuscript had gone.

978. *Q.* And you came to that conclusion by what you found in the two books?—*A.* Yes.

x x x x x x

991. *Q.* So your Web has thirty-four chapters?—*A.* Yes.

992. *Q.* And the Outline, you notice, has forty-one chapters?—*A.* Yes.

993. *Q.* And then did you divide the Web into books?—*A.* I did—three books.

994. *Q.* But is it not all one? Have you not got it all in one?—*A.* Well, I did have it, The Ancient World, The Middle Ages, and Modern Times.

995. *Q.* The Ancient World was Book 1?—*A.* Yes.

And the Middle Ages——

996. *Q.* And Modern Times was Book 3?—*A.* Yes.

997. *Q.* And "The Outline" as you note, is divided into nine books?—*A.* Yes, I noted that.

998. *Q.* So there is not much similarity in the chapters and the books?—*A.* Well the books would not make any difference, the dividing of the books.

999. *Q.* Then the Web has no maps or illustrations?—*A.* No.

1000. *Q.* And you notice that "The Outline" has two hundred and six maps and illustrations?—*A.* I never counted them.

1001. *Q.* Somebody has been counting them in that (referring to book, Vol. 2). Perhaps that is your figuring?—*A.* No.

1002. *Q.* At any rate there are two hundred and five according to this addition, maps and illustrations in the Macmillan edition. You make no complaint about any infringement of the maps and illustrations do you?—*A.* No.

1003. *Q.* Now do you say, is it your case, that in the interval of time between the time you left the manuscript with Macmillans and got it back, that sufficient time elapsed for it to be sent to England, used there, the idea

In the Supreme Court.

Plaintiff's Evidence.

No. 11. Florence A. Deeks. Extracts from deposition or Examination for Discovery—*continued.*

and material copied, " The Outline " written, two hundred and six maps and illustrations prepared, the book printed and in the market by November 1919; do you say that could be done in that time?—*A.* Do I understand you to mean from the time I gave it to Macmillans, until I received it back?

1004. *Q.* Yes?—*A.* Oh no.

1005. *Q.* So you say then work had been done on " The Outline " before that?—*A.* No, it was not published.

1006. *Q.* We agree that it was published in 1919, don't we?—*A.* Just the parts, not the book. The first part.

1007. *Q.* It did start to come out in parts in 1919?—*A.* November, 1919.

1008. *Q.* And what I would like you to tell me is, do you think it physically possible in the length of time from when you left it with Macmillan until you got it back, that it could possibly go to England and be used and the " Outline " written and all those maps and illustrations prepared, and get that on the market by November 1919; do you think that is possible?—

Mr. SMILY: That was not done.

You should not put a hypothesis that did not exist.

A. I did not understand your question.

1009. *Q.* I will divide it up. We are agreed that you sent the manuscript to Macmillan Company, you think in August—July or August of 1918, and we are agreed that you got it back about April 3rd 1919, and as I understand, you say your manuscript went to England and was used in the preparation of " The Outline "?—*A.* Yes.

1010. *Q.* And I ask you if it is physically possible for that manuscript to go in that time to England, and be used there, and the maps and illustrations and everything prepared and have " The Outline " on the market by November 1919?

Mr. SMILY: I object to that question, because my learned friend is putting a hypothesis that did not exist.

1011. *Q.* Well we are agreed on the dates, are we not?—*A.* I gave it to Macmillans about the first of August or the end of July, and received it back about the first of April 1919—Eight months.

x x x x x x

1012. *Q.* Do you know whether the whole book was prepared when the first pamphlet was printed in November 1919 of " The Outline "?—*A.* I understood that it was not.

1013. *Q.* Who did you understand that from?—*A.* I can not say. I understood that Mr. Wells put it on the market just as rapidly as he could.

1014. *Q.* Who did you understand that from?—*A.* I could not say.

x x x x x x

1120. *Q.* . . . You will notice, Miss Deeks, on the first or fly leaf of The Outline of History, there is a list of the editorial staff, Mr.

Ernest Barker, Sir H. H. Johnston, Sir E. Ray Lankester and Professor Gilbert Murray. Do you charge that any of those gentlemen used the Web in the construction of The Outline?—*A.* Oh no.

1121. *Q.* You do not?—*A.* No.

x x x x x x

1176. *Q.* Well then is it your case, Miss Deeks, that if the manuscript never was sent to England, and if Mr. Wells or his collaborators never used or heard of it when he wrote The Outline, that he is nevertheless liable to you?—*A.* Yes.

1177. *Q.* Why?—*A.* From the internal evidence.

Mr. SMILY: I don't think Miss Deeks understood the question. Mr. Elliott is asking you, Miss Deeks, if the manuscript was not sent to England.

1178. *Q.* (Stenographer reads question No. 1176)?—*A.* Well, my claim is that either the manuscript or the copy of it was sent to England and was used.

1179. *Q.* I quite appreciate that, but what I want to ask you is this: supposing that it was never sent to England, that Mr. Wells never saw it or heard of it, nor any of the men associated with him, do you still claim that he is responsible to you, if he had never heard of it?—*A.* I don't suppose he could be. x x x x

1366. *Q.* Well can you show me any place in your book where the exact language is used by you and Mr. Wells together?—*A.* Here is one part, just as I come to it offhand, on page 26 of the Mimeograph.

1367. *Q.* You are referring to which one?—*A.* You will notice that part "A large part of Southern Italy seceded from Rome"—the second section there.

1368. *Q.* You have 12 opposite it?—*A.* Yes, 12.

1369. *Q.* That 12 means?—*A.* Chapter 9, page 12.

1370. *Q.* You are referring now to page 12 are you?—*A.* Yes. Now as a small point, the work that I took that from said "a part of Southern Italy"; I don't know that it was a large part, it was a part of Southern Italy.

1371. *Q.* Then you say that language that you have underlined in black here, "A large part of Southern Italy seceded from Rome. Capua was the first to give offence"——That is your quotation?—*A.* That is mine.

1372. *Q.* You think that Mr. Wells copied your language——You have underlined in here at page 476 of Mr. Wells work, Exhibit 13, "A large part of Southern Italy came over to Hannibal, including Capua." Do you say that is copied?—*A.* I say that whoever wrote that sentence was working from a text that used those words.

1373. *Q.* Well that is quite possible. He might be working from the same text that you got yours from?—*A.* He does not say so.

1374. *Q.* Oh, I know, but then it is possible, is it not?—*A.* Well however, it is there.

In the Supreme Court.

Plaintiff's Evidence.

No. 11. Florence A. Deeks. Extracts from deposition or Examination for Discovery—*continued.*

1375. *Q.* Well what I would like you to do for me, Miss Deeks, is to show me any place in your work where Mr. Wells has copied your identical language. That does not do it?—*A.* Well we will go ahead.

Mr. SMILY: It is a matter of degree.

1376. *Q.* Show me any place where the identical language is used?—*A.* Page 28, the lower part.

1377. *Q.* You have it marked 7, "the aristocratic Sulla," and Mr. Wells has it marked 503, and you underline "the aristocratic Sulla" and then you say that Mr. Wells used "an aristocratic general, Sulla"?—*A.* Yes.

1378. *Q.* And do you suggest this was the same language that you used?—*A.* Yes.

1379. *Q.* Mr. Moorhead suggests and I will ask you, from what authority did you get the word "aristocratic"?—*A.* That is mine.

1380. *Q.* Well you did not know Mr. Sulla; you must have known whether he was aristocratic or not; where did you find that out?—*A.* All the history that I have referred to, spoke of Sulla as the noble Sulla, or the patrician Sulla; aristocratic was not a term used very much; no one speaks of Sulla as aristocratic.

1381. *Q.* But as a patrician he was one of the aristocrats of Rome?—*A.* Yes, but no one used the word aristocratic with regard to Sulla.

1382. *Q.* But the word aristocrat is a modern word as regards the aristocracy in England or some other country in modern times?—*A.* Yes; the reason I used it, I was trying to use modern terms.

1383. *Q.* And so was Mr. Wells?—*A.* Look at the top one please.

1384. *Q.* Well don't let us get away from this fellow until we get to the end of him. You complain there that in any of your reading you could not find that Sulla was described as aristocratic?—*A.* Yes.

1385. *Q.* But he was described as a patrician?—*A.* Yes, and a nobleman.

1386. *Q.* And you adopted the word, aristocratic, because it was a more modern description of a patrician or a nobleman?—*A.* Yes.

1387. *Q.* And you complain because Mr. Wells used the word "aristocratic" as regards Sulla?—*A.* Yes.

1388. *Q.* And because Mr. Wells used the word "aristocratic" in describing Sulla, you think he must have gotten that word from you?—*A.* I do.

1389. *Q.* Have you any other place in your work where you have used the word "aristocratic" in describing a man of this class?—*A.* No, no other place.

1390. *Q.* And do you know whether Mr. Wells used it or not?—*A.* No other place.

1391. *Q.* That you know of?—*A.* I have gone over his work thoroughly.

1392. *Q.* Now we have that similarity; tell me another similarity?—*A.* The top of the page.

1393. *Q.* Which page in your book?—*A.* Page 5.

1394. *Q.* And Mr. Wells one that is similar is page 494?—*A.* Yes.

1395. *Q.* And it is at the top of page 28 of this exhibit?—*A.* Yes.

1396. *Q.* And this says " a new democratic or popular party " etc.—— and you have the words " popular party " underlined in this?—*A.* Yes I used " popular party " a great deal.

1397. *Q.* And Mr. Wells says " Too many of our histories dealing with this period of Roman history write of " the popular party." Now because you used popular party there and he used popular party, do you say that he copied yours?—*A.* Read the next phrase.

1398. *Q.* " These modern phrases are very misleading unless they are carefully qualified." That is from Mr. Wells book?—*A.* Yes.

1399. *Q.* What do you say about that?—*A.* I think that whoever wrote that sentence was referring to the use that I made of " the popular party."

1400. Q. Well popular party is a word that is used in the histories of the period, is it not?—*A.* Some people do.

1401. *Q.* Well, I know, but it is in the histories and authorities that you went to and Mr. Wells went to?—*A.* I don't know about Mr. Wells.

1402. *Q.* He says so " Too many of our histories dealing with this period of Roman History write of " the popular party " ?—*A.* Yes.

1403. *Q.* So it must be there?—*A.* Well we will let it stand there.

1404. *Q.* Do you claim that because he used the word " the popular party " in his book and you use " popular party " in yours, that therefore he must have copied yours?—*A.* I feel that whoever compiled that had this to look to, and in conjunction with the other similarities it makes me feel that he took it from this.

1405. *Q.* Now is there any other place where you say——*A.* Page 29.

x x x x x x

1426. *Q.* Well will you show me where it is. Show me any mistake that you made that he made the corresponding mistake?—*A.* Turn to page 31.

1427. *Q.* Whereabouts on page 31?—*A.* I made Brutus the leader; I quoted there from Shakespeare.

1428. *Q.* That is your chapter 10, page 15?—*A.* Yes.

1429. *Q.* And what you say there is " It looked as if Caesar has so got the start of the majestic world . . . that he would keep them all in servile fearfulness " . . . And then " Lest he should prevent," said Brutus——The first is from page 15?—*A.* Yes.

1430. *Q.* And the second is page 17?—*A.* Yes.

1441. *Q.* Caesar, betrayed by subtle flattery " etc.——that is from Shakespeare?—*A.* Yes.

1442. *Q.* And that is your quotation?—*A.* Yes.

1443. *Q.* And what do you say that Mr. Wells used . . . At page 513?—*A.* Yes.

1444. *Q.* " Finally (ee B.C.) he was assassinated by a group of his own friends and supporters " etc. . . . Where was that mistake?—*A.* In making Brutus the leader; in implying that Brutus was the leader; I imply that he was the leader.

In the Supreme Court.

Plaintiff's Evidence.

No. 11. Florence A. Deeks. Extracts from deposition or Examination for Discovery—*continued.*

1445. *Q.* Where do you say that he is the leader?—*A.* Well just speaking of Brutus.

1446. *Q.* But Brutus was one of the conspirators, was he not?—*A.* Yes.

1447. *Q.* But you did not make him the leader, did you?—*A.* Well I don't just speak of it but I imply the leadership there.

1448. *Q.* Where do you imply that he is the leader?—*A.* Then "lest he should prevent, said Brutus"——I not only speak of him there as a conspirator but the most outstanding and leading one.

1449. *Q.* Can you show me where in this work you say that Brutus was the leader of the conspirators?—*A.* No, I don't use those words, but it is implied.

1450. *Q.* Then what do you say Mr. Wells did?—*A.* He says that Brutus was "the ringleader of the murderers"; he does not say anything about Casius, nor do I, and Casius was the leader, not Brutus.

1451. *Q.* I fail to see where you charge Mr. Brutus with being the leader of the conspirators; if you can I wish you would point it out to me?—*A.* I don't call him the leader, but it is implied; I did not mention Casius as the leader; I implied Brutus the leader.

1452. *Q.* And you think that because Mr. Wells uses, "Brutus, the ringleader of the murderers," that he copied that implication?—*A.* It was there to be copied.

1453. *Q.* Your implication?—*A.* Yes.

1454. *Q.* Now have you any other case in which you make mutual mistakes?—*A.* Of course in the very first chapter we use the old, out of date Nebular theory.

1455. *Q.* Well let us look at it. Do you make any mutual mistakes?—*A.* No, but we both used that.

Mr. SMILY: It is a mistake to use an out of date hypothesis.—*A.* No person uses it to-day.

1456. *Q.* Well is that a mutual mistake?—*A.* Well it is not the scholarship of the day in which we wrote.

1457. *Q.* Whereabouts is it in your book?—*A.* The very first chapter.

1458. *Q.* Well it is quite long, so we wont read it. You say that Mr. Wells in the Outline in his first chapter, at page 3, made the same mistake?—*A.* We both used the out of date nebular hypothesis of Le Place. It was out of date at the time of writing.

1459. *Q.* Where do you refer to that at all here. Where do you use the word Le Place?—*A.* I do not use the word Le Place.

1460. *Q.* Does he use the word Le Place?—*A.* I don't think so, but that is what it is.

1461. *Q.* You do not use the word Le Place?—*A.* No.

1462. *Q.* That is, you describe something, that the earth was thrown off from the Sun, don't you?—*A.* Yes.

1463. *Q.* And Mr. Wells described that the earth was thrown off from the sun?—*A.* Yes.

1464. *Q.* And all scientists agree to that, don't they?—*A.* We both adopt——

1465. *Q.* As a matter of fact, that is where the earth came from?—*A.* There are two other theories; I am not just—I could not describe the theories.

1466. *Q.* Well I understand that astronomers are all agreed, outside of the early Bibical story of the world, that it was thrown off as a spec or small portion of the sun?—*A.* Well of course Le Place had what is called the Nebular theory; then came Chamberlain in this century, and Jeans great star hypothesis.

1467. *Q.* Which theory did you adopt?—*A.* Le Place.

1468. *Q.* And after mature consideration you adopted that theory?—*A.* No, not after mature consideration, but it came to my hand first and I just put it down.

1469. *Q.* And what theory did Mr. Wells adopt?—*A.* The same.

1469. *Q.* Did he use the word Le Place?—*A.* It is not necessary to use the word Le Place to take his theory.

1470. *Q.* And you think that because you put it down that way Mr. Wells must have copied it from you?—*A.* Well it was there to be copied, in conjunction with the other things that I claim.

1471. *Q.* You say that was a mutual mistake?—*A.* I think so.

1472. *Q.* You don't doubt but that Mr. Wells went to the same authorities as you did on that?—*A.* Well the language is very similar.

1473. *Q.* I know, but great minds run in the same channel?—*A.* My mind is not great.

1474. *Q.* Well at any rate you have your idea about that. Now show me any other place where you made a mutual mistake?—*A.* Take page 38, the last one next the bottom—during the Christmas period."

1475. *Q.* That is at page 14?—*A.* Yes, page 14 of the book.

1476. *Q.* What chapter are we on now?—*A.* Chapter 13.

1477. *Q.* Chapter 13 and page 14 and Mr. Wells corresponding page is 58, Vol. 2?—*A.* Yes.

1478. *Q.* And you say that there is a mutual mistake there. Let us see what it is. You say "During the Christmas period A.D. 800, Pope Leo the Third, etc. . . . Now you say the Pope placed the crown on Charlemagne?—*A.* Yes, in A.D. 800.

1479. *Q.* That is the time, I take it you mean, where he attended Mass on Christmas morning and the Pope put a job up on him and put the crown on his head?—*A.* Yes, and made him the emperor of the Holy Roman Empire.

1480. *Q.* And you say that Mr. Wells says, "The Pope clapped a crown on his head" etc. . . . where is there any mutual mistake there?—*A.* We both accept the crowning of Charlemagne as the foundation of the Holy Roman Empire. It was a mistake.

1481. *Q.* Well you don't say so?—*A.* Well I say it now.

1482. *Q.* Well what you say now is "During the Christmas period" etc. . . . You don't say that he was the first——?—*A.* Well it had

In the Supreme Court.

Plaintiff's Evidence.

No. 11. Florence A. Deeks. Extracts from deposition or Examination for Discovery—*continued.*

never been spoken of before. We had always spoken of it before as the Roman Empire, and of the Emperor Charlemagne of the Franks; this is the first of the Holy Roman Empire.

1483. *Q.* As a matter of fact it was not the first of the Holy Roman Empire. There were emperors of Rome after Charlemagne?—*A.* Not of the Holy Roman Empire.

1484. *Q.* Well the Holy Roman Empire is rather a nebulous statement as to what it means historically?—*A.* Well it is always taken up in the history.

1485. *Q.* Well you don't think that this Charlemagne, by reason of the Pope putting a crown on his head, that that was the first of it?—*A.* Yes, it is implied there.

1486. *Q.* Well that would imply that there was a Holy Roman Empire before that, would it not?—*A.* Not necessarily.

1487. *Q.* At any rate you think that Mr. Wells in saying "So the Empire of Rome rose again as the Holy Roman Empire," you think that he made a mistake similar to yours?—*A.* Yes.

1488. *Q.* I can not see where you state in your little passage there that it was the commencement of the Holy Roman Empire?—*A.* Well Mr. Elliott, I will put it this way: that we both speak of the Holy Roman Empire there for the first time; we never spoke of the Holy Roman Empire before that moment, and there was no Holy Roman Empire before this moment, and we both accept this as the foundation of the Holy Roman Empire.

1489. *Q.* And you seriously mean to tell us that you think that is evidence that Mr. Wells copied your work in that respect?—*A.* Along with everything else, I consider that of importance.

1490. *Q.* Well we will deal with any other aspect of it, but dealing with this one alone, do you say that because of what you have just told us, that that is evidence that Mr. Wells copied your book?—*A.* I feel that that was copied from that.

1491. *Q.* Well now, give us another place where you made mutual mistakes, if there are any?—*A.* Do you count omissions as mistakes?

1492. *Q.* Oh no, we can not tell anything about omissions, you say you made mistakes, and you say Mr. Wells made mistakes, and that you made the same mistakes?—*A.* Yes.

1493. *Q.* Now if you can show me any more, please do so?—*A.* Well this is rather a minor thing, on page 30; I dont know that it is a very good one.

1494. *Q.* Whereabouts on page 30?—*A.* The top one.

1495. *Q.* About Sulla?—*A.* Yes, I speak of Sulla's death being due to debauchery and Mr. Wells does the same thing. Prof. Gilbert Murray takes exception to that and says it is generally believed that Sulla died from the bursting of a blood vessel. Of course, I was taking it from an out of date authority.

1496. *Q.* Now you say about Sulla, "but debauchery had numbered the days of the great warrior, Sulla, and he was therefore forced to abdicate

in B.C.75, and a year later he died." There where do you say the passage is where Mr. Wells has made the same mistake?—*A.* Well he says " presently he died, eaten up by some disgusting disease produced by debauchery." Mr. Gilbert Murray takes exception to that.

1497. *Q.* You say that because according to your account Sulla died—" Sulla had numbered his days by debauchery " and that Mr. Wells says that he died " eaten up by some disgusting disease produced by debauchery " that Mr. Wells must have gotten that out of your book?—*A.* It was there to be had.

1498. *Q.* Well where is the mutual mistake?—*A.* We both imply that he——the implication is that he died from his, I suppose, his warrior life, his life of debauchery.

1499. *Q.* Is not that true?—*A.* Prof. Gilbert Murray says no.

1500. *Q.* And how does Prof. Gilbert Murray know anything more about it than you and Mr. Wells?—*A.* Well Prof. Gilbert Murray is an up to date authority on that subject.

1501. *Q.* Mr. Moorhead has put before me The Outline, page 505, and there Mr. Wells gives his authority for it. Where did you get your authority for saying?—*A.* I do not remember.

1502. *Q.* Well he gives his authority as Plutarch. You have read Plutarch's Parallel Lives have you?—*A.* Yes.

1503. *Q.* And Plutarch in his book says that is so?—*A.* Yes I think he does, but that is not to-day's scholarship.

1504. *Q.* Well that would show where Mr. Wells got his information. He gives it here. He got it from Plutarch. And Plutarch says that he died " eaten up by some disgusting disease, produced by debauchery." So Mr. Wells shows where he got it from?—*A.* Yes; well that may be, but still if that is a mistake——

1505. *Q.* Well Mr. Wells having shown where he got his from—you could hardly expect him to say that he got it out of yours, when he got it out of Plutarchs?—*A.* Well I accept what Mr. Wells says there.

1506. *Q.* You accept that Mr. Wells did not take it out of yours but took it out of Plutarch's?—*A.* Well of course he may have got the suggestion from mine and turned up Plutarch; he says he does that sort of thing.

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1740. *Q.* Then what is your next?—*A.* Below the page.

1741. *Q.* The bottom half of page 46?—*A.* Yes.

1742. *Q.* And that I see is a continuation of your page 95 Volume 18?—*A.* Yes.

1743. *Q.* And page 186 of Mr. Wells book?—*A.* Yes.

1744. *Q.* In that section you deal with the voyage of Christopher Columbus and how delighted he was when he struck land?

1745. *Q.* And Mr. Wells in his book, deals with the same thing?—*A.* We deal with more, we deal with the start——" early on a beautiful Friday morning, the little expedition set sail."

1746. *Q.* And does Mr. Wells deal with Friday morning?—*A.* " the beautiful weather "——" the little expedition went south "——

1747. *Q.* He does not put in on a Friday morning?—*A.* No.

In the Supreme Court.

Plaintiff's Evidence.

No. 11. Florence A. Deeks. Extracts from deposition or Examination for Discovery—*continued.*

1748. *Q.* You dont claim that he used your language, at any rate?—*A.* Yes.

1749. *Q.* What part of it?—*A.* "The little expedition" and "the beautiful."

1750. *Q.* Well it was a little expedition; it was only three little ships, was it not?—*A.* Yes, it was.

1751. *Q.* And you do not mean to suggest that because it was a little expedition and you said so, and he said so, that he took the idea of the little expedition from yours?—*A.* Yes, that is what I mean to suggest.

1752. *Q.* Then what is the next?—*A.* Look at the last line, please.

1753. *Q.* The last line of yours?—*A.* The three last lines.

1754. *Q.* You say in this, "Christopher Columbus, richly attired in scarlet and carrying the royal standard of Spain landed"——?—*A.* Yes.

1755. *Q.* And Mr. Wells says "Columbus landed on the shores of the new world" and at page 187 he says "richly apparelled and bearing the royal banner of Spain." Well that is all a historical fact is it not?—*A.* Yes.

1756. *Q.* Why do you complain about Mr. Wells putting it in his book?—*A.* I am not complaining, only I am saying that from the form of that paragraph I conclude that he took it from this paragraph and copied it, that he has paraphrased mine and then copied it into this.

1757. *Q.* Tell me the next one?—*A.* The next page.

1758. *Q.* Page 47, at the top?—*A.* Yes.

1759. *Q.* Down to the first division?—*A.* Yes.

1760. *Q.* And this is page 96 of chapter 16?—*A.* And 97 and 98.

1761. *Q.* And Mr. Wells page 187?—*A.* Yes.

1762. *Q.* Now wherein is your complaint in this matter?—*A.* He has both my ideas and part of my language.

1763. *Q.* Let us deal first with the language. What is yours?—*A.* "Christopher Columbus was quite unconscious of the fact that he had discovered a great new world."

1764. *Q.* Then what does that——?—*A.* The last three lines—"Columbus died, ignorant of the fact that he had discovered a new continent."

1765. *Q.* You dont say that language is similar to yours?—*A.* I do.

1767. *Q.* Is there any other similarity of language there?—*A.* Yes "Believing that he had touched the shores of India he called the islands the West Indies."

1768. *Q.* And the language of Mr. Wells similar to that, where is it?—*A.* "The Islands that he found were therefore called the West Indies."

1769. *Q.* Well is that not so?—*A.* Yes.

1770. *Q.* You would not expect Mr. Wells not to tell about it, would you?—*A.* Oh, he might not.

Mr. Wells of course thinks that he started out to find Japan.

1771. *Q.* (Mr. McLaughlin.) You say Mr. Wells had a different idea?—*A.* Mr. Wells says he started out to find Japan.

1772. *Q.* Which is a different idea from yours?—*A.* Yes; I said he started out to find India.

1773. *Q.* So you and Mr. Wells differ there at any rate?—*A.* Yes, we differ there.

1774. *Q.* So he was not copying?—*A.* No, not there.

1775. *Q.* Is there any other similarity of language in this?—*A.* That is the main point.

1776. *Q.* Do you draw our attention to this as regards similarity of language alone or anything else?—*A.* Both ideas and language.

1777. *Q.* Now generally speaking you deal with the journey of Columbus here and his return home; that he had bad weather; Mr. Wells states the same thing?—*A.* Yes.

1778. *Q.* And you say because he does say that, you think he got it out of your book?—*A.* I would not put it just in that way, but when he was working on it I think he had this to work from and took it out.

1779. *Q.* Now where is the next similarity?—*A.* The very next one.

1780. *Q.* That is the middle paragraph?—*A.* Yes.

1781. *Q.* That is chapter 18, page 101 of your book and 102 and Mr. Wells book at page 187?—*A.* Yes.

1782. *Q.* What do you complain about here?—*A.* The same ideas taken.

1783. *Q.* You got your ideas as expressed in your book from your reading of various authorities?—*A.* I think that was just one section you asked that question——

1784. *Q.* But I mean generally, in writing your book you got your information and ideas from reading historical works on those subjects?—*A.* Yes.

1785. *Q.* And then I think you told me that you expressed those ideas in your own language in your book?—*A.* Yes, but sometimes I used bits of my own language that I did not get from any book at all, and Mr. Wells has some of these.

1786. *Q.* I notice in reading your manuscript that in very many places you simply copied the extracts from various books?—*A.* Yes.

1787. *Q.* And where you do express your own ideas you got the idea from reading works, and then you put those ideas down in your own language?—*A.* Sometimes I used a sentence that I got from nowhere but myself.

1788. *Q.* That is what I mean—it came out of your own head?—*A.* Yes, not from reading any books.

1789. *Q.* So dealing then with the middle paragraph do you claim that there is any similarity of language there?—*A.* Not particularly.

1790. *Q.* Well not at all?—*A.* Well it is very much condensed; this would appear very much like this.

1791. *Q.* But there is no use of the same words?—*A.* No, not exactly.

1792. *Q.* Then what you say is that the idea that you had is similar to the idea that Mr. Wells has expressed?—*A.* Yes, the same.

In the Supreme Court.

Plaintiff's Evidence.

No. 11. Florence A. Deeks. Extracts from deposition or Examination for Discovery—*continued.*

1793. *Q.* You express that when Mr. Columbus returned home, he created a good deal of interest and caused other people to try and emulate him?—*A.* Yes.

1794. *Q.* And Mr. Wells tells the same thing?—*A.* Yes.

1795. *Q.* And all that is true?—*A.* Yes.

1796. *Q.* Historical facts?—*A.* I believe so.

1797. *Q.* Then where is your next comparison?—*A.* The next one below.

1798. *Q.* The last one-third of the sheet?—*A.* Yes.

1799. *Q.* And that is your page 103 and Mr. Wells page 187?—*A.* Yes.

1800. *Q.* Now you tell me about a man by the name of Balboa—he went across the Isthmus of Panama . . . Does Mr. Wells deal with that gentleman?—*A.* No excuse me, except to say—instead of saying Balboa, Mr. Wells says "Spanish explorers."

1801. *Q.* And he deals with the discovery of the Pacific also?—*A.* Yes.

1802. *Q.* Both of which are historical facts?—*A.* Yes.

1803. *Q.* Well don't you think he had a right to tell about that?—*A.* Yes.

1804. *Q.* Well then would he not get the information from his reading the same as you did?—*A.* He would not put it in that form from any reading he could get it from.

1805. *Q.* Why so? I cannot follow you in saying the form is the same, wherein is the form the same?—*A.* I will read the first three lines of mine "In 1513 Balboa traversed the Isthmus of Panama and caught sight of the great ocean beyond" etc.

1806. *Q.* Then read for me now the language in Mr. Wells that you say is similar to yours?—*A.* "He came into the Pacific Ocean which had already been sighted by Spanish Explorers who had crossed the Isthmus of Panama" etc. That is my first four lines and Mr. Wells last four.

1807. *Q.* Well the language is not the same at all?—*A.* Very much the same.

1808. *Q.* Any other similarity between those two sections?—*A.* "which Magellan named Pacific, when about seven years later he entered it after sailing through the straits at the southern point of South America" . . . and Mr. Wells says "In 1519, a Portuguese sailor Magellan, in the employment of the Spanish King, coasted to the south of South America, passed through the dark and forbidding "Strait of Magellan" and so came into the Pacific Ocean, which had already been sighted by Spanish explorers who had crossed the Isthmus of Panama"—"The dark and forbidding "Strait of Magellan"—I think that is just thrown in.

1809. *Q.* You think the language is similar?—*A.* Yes almost identical.

1810. *Q.* In giving this picture in your language here, was that btained from your reading?—*A.* Yes.

1811. *Q.* The idea that he did this was not in your own mind?—*A.* No.

1812. *Q.* You got it from your reading?—*A.* Yes.

1813. *Q.* And it is a strong presumption that Mr. Wells got his from reading also?—*A.* He might have; what I am saying is the form of the sentence, the style, the language, the ideas, the everything.

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2071. *Q.* And what do you say as to that?—*A.* I describe the beauties —I tell of the beauties of Athens in words: Mr. Wells has the very same in pictures.

2072. *Q.* You mean these photographs that appear——?—*A.* Yes. At least I omitted one point, a very important one, that Mr. Wells authority speaks of, the Hall of Music I omitted that, and Mr. Wells authority speaks of it specially.

2073. *Q.* You think he had your book before him, or the artist whom he employed to make those pictures, used your word pictures to make them?—*A.* No, I say I consider that he took the lead from here.

2074. *Q.* Took the lead?—*A.* They took the idea from here and put it in.

2075. *Q.* In other words, the artist of Mr. Wells went over your word pictures and used those word pictures to draw those photographs? —*A.* I feel that way.

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2092. *Q.* It is what?—*A.* A contradiction of my work there, and a contrast.

2093. *Q.* You mean he contradicts what you said?—*A.* Yes.

2094. *Q.* He is getting obstinate now?—*A.* Not particularly.

2095. *Q.* Your suggestion there is that Mr. Wells, having read yours, thought it himself, well I won't copy that that way, I will put it the opposite?—*A.* Yes. Mr. Wells devotes 4 pages to that point.

2096. *Q.* Does he contradict you all the way through?—*A.* In great disproportion to its value.

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Examined by Mr. MUIRHEAD.

4017. *Q.* Then this particular exhibit 1 the purple copy went first to Dents?—*A.* Yes.

4018. *Q.* And from Dents came back to you?—*A.* Yes.

4019. *Q.* And from you to Macmillans?—*A.* Yes.

4020. *Q.* And from Macmillans back to you?—*A.* Yes.

4021. *Q.* And has been with you since?—*A.* Yes.

4022. *Q.* Never been anywhere else?—*A.* Never. No.

Evidence on trial of Action.

In the Supreme Court.

Plaintiff's Evidence.

No. 11. Florence A. Deeks. Examination-in-Chief.

Mr. ROBERTSON: Then I will call Miss Deeks.

June 2nd, 1930.

FLORENCE A. DEEKS, sworn.

Examined by Mr. ROBERTSON.

Q. Miss Deeks, you are the plaintiff in this case?—*A.* Yes.

Q. And you are a resident of Toronto?—*A.* Yes.

Q. And you are a British Subject?—*A.* Yes.

Q. You have lived in Toronto, and have always been a British Subject?—*A.* Yes.

Mr. ROBERTSON: I asked that because of the Copyright Act, My Lord.

Q. Then, did you prepare a manuscript on the subject of the History of Mankind?—*A.* Yes sir.

Q. And have you a copy of your manuscript here?—*A.* I have.

Q. Have you got it here?—*A.* I have.

Mr. ROBERTSON: I want to put it in as an Exhibit?—*A.* Which do you want, the one I gave them?

Q. You had better bring them both here. I will use them both, perhaps.

Let me have the other first, not the one that was not handed in.

You produce a bundle of manuscript—is this the copy of the manuscript of the work which you wrote?—*A.* An exact simile.

Mr. ELLIOTT: That is the one that is marked by Mr. Bruce (the Special Examiner)?

HIS LORDSHIP: Is it typewritten?—*A.* Yes.

Mr. ROBERTSON: Yes, my Lord, it is typewritten.

HIS LORDSHIP: The manuscript will be Exhibit 1.

Mr. ROBERTSON: *Q.* Now, just before we mark this, I notice just by a cursory glance at it, some pencil writing, and some ink interlineation as well—when were they made—before or after the manuscript?—*A.* That one is quite defaced in one way and another, but the one that I gave McMillan is exact as I gave it to them.

Q. Answer my question. The writing I see in pen and ink, and pencil in places?—*A.* Yes.

Q. Was it upon the original?—*A.* Yes.

Q. As it was handed to McMillan, it agrees with the writing?—*A.* Yes, exactly.

(Exhibit 1. Manuscript of Plaintiff's work "The Web.")

Q. Now, when did you set about the preparation of this manuscript?—*A.* I think it was in 1914, but it might have been in 1913.

Q. Yes, and will you tell us briefly how you proceeded with the work, for example, speaking broadly, what is the nature of the work?—*A.* I first undertook to feature feminism in history.

HIS LORDSHIP: To feature feminism?—*A.* Yes, the woman and her work in history.

In order to do that, I did not know how to work it, and I thought I would have to go back to Europe, then to Asia, then I said I will go to the beginning.

Mr. ROBERTSON: *Q.* Well?—*A.* So I went to the beginning, and I gathered notes, with different notes from different things and different sections, many and many notes, and I wrote them and re-wrote them——

Q. Wait a moment, for the purpose of doing that, or writing or drafting notes, what did you do—where did you go to get your data or information?—*A.* I gathered different books from the Library.

Q. Perhaps you could tell us?—*A.* I took a great deal out of Duruy's History of the World.

Q. Beg pardon?—*A.* I ended it by taking a good deal out of Duruy's "History of the World."

Q. Yes, you used that book considerably?—*A.* Yes.

Q. And did you use other books?—*A.* I used Mrs. Christie on the "Advance of Woman."

Q. Perhaps there is no objection to my saying you had lots of authorities?—*A.* Yes.

Q. I show you a list of authorities that have been prepared—are these the authorities that you used?—*A.* Yes.

Mr. ROBERTSON: *Q.* And I see a footnote added, and you will say whether this is correct—there were a number of other authorities—I trusted to memory without making a written list of them—in the course of time I have forgotten them—is that correct?—*A.* Yes.

Exhibit 2. List Authorities used by Miss Deeks: Duruy, "History of the World,"; Christie, "Advance of Woman"; Robinson, "Essay on History"; O. T. Mason, "Primitive Culture"; J. J. Christie, "The Golden Age of Greece" (I gathered Greece from various sources); Ferrero, "The Women of the Cæsars"; "Chamber's Encyclopedia"; Green, "Short History of the English People"; Smeaton, "The Medici"; Young, "The Medici"; "Martin Luther and the Reformation"; Washington Irving, Saunders, Elton and Winsor on "Christopher Columbus"; "A Christopher Columbus." by Cassel & Co.; Mrs. Snowdon, "The Feminine Movement"; "The Women of the U.S. at the time of Am. Revolution"; Gidero del Lungo, "The Women of Florence," and various periodicals.

Q. Some of these names mentioned, however, became of some significance afterwards—one is Duruy's, that is the American book?—*A.* Yes, an American publication.

HIS LORDSHIP: That list will be Exhibit 2.

In the Supreme Court.

Plaintiff's Evidence.

No. 11. Florence A. Deeks. Examination-in-Chief—*continued.*

Mr. ROBERTSON: *Q.* Then you say you made a great many notes—I assume notes of various periods of history?—*A.* Yes.

Q. Then, up to that time, had you prepared any plan for the work as a whole?—*A.* Oh, not then.

Q. Then, how did you proceed further?—*A.* After having all the notes taken in various ways, I tried to work them together as much as I could in chronological order.

Q. Yes?—*A.* And after working them over I think after about three years, I gradually evolved a plan upon which I settled at last.

Mr. ROBERTSON: This may help to fix a date, if nothing more—I produce a certificate of the Department, dated the 28th of June, 1916, for the registration of the interim copyright of the literary work entitled, "The Web," by A dull Weaver—you did not register the manuscript at that time, of course, this was a mere registration of the name?—*A.* No, I asked Mr. Dennison to get me——

Q. Answer my question—what did you register, just your application for the name, or did you send your manuscript?—*A.* I did not send the manuscript down.

HIS LORDSHIP: It does purport to be the registration of the work?—*A.* Yes.

HIS LORDSHIP: What is this—a certificate?

Mr. ROBERTSON: It is something like a caveat you file in the case of a patent, fixing a date, that is.

HIS LORDSHIP: It will be Exhibit 3.

Exhibit 3. Letter dated 28th June, 1916 from the Registrar of the Department of Agriculture, "I beg to inform you that the interim copyright of the Literary work entitled, 'The Web,' by a dull Weaver, has been entered this day on folio 1820 of Register of interim copyright number 8, in the name of Florence Amelia Deeks of Toronto, Ont., voucher for fee enclosed".

HIS LORDSHIP: It seems a protection, not only of the name, but of the work.

Mr. ROBERTSON: Then the plan, the scheme, the order of arrangement, where did you get that?—*A.* I worked that out in the course of probably three years, or a little longer, and I did not finally fix upon that plan until I just had the work typed.

Q. Did you find in the course of your work that anyone else had a similar plan?—*A.* Oh no.

Q. That your plan was original with you?—*A.* Absolutely.

Q. Of course the work speaks for itself as to what it says, and what it deals with, so I will not trouble you any further for the moment with that.

Then having spent these few years in your work, when did you have your manuscript far forward enough to take to a publisher?—*A.* In 1918.

Q. What did you do about it first, who did you communicate with, first?—*A.* I wrote to several publishers to ask them would they object to any quotations I had taken from some of their books?

Q. And in that connection did you write a letter to the McMillan Company?

Q. If you have a letter of February 22nd, 1918——

Mr. ROBERTSON: Perhaps, my Lord, it might be convenient—there are four or five letters here between the plaintiff and the McMillan Company, or their representatives—they are connected with the same subject—perhaps it would be convenient to make one exhibit of them.

HIS LORDSHIP: I should think so.

Mr. ROBERTSON: The first letter is February 22nd, 1918 from the plaintiff to Mr. J. Saul, the McMillan Co., Toronto, " Dear Sir, after a work of over three years, I have just completed a short History of the World along lines upon which, so far as I know, it has never before been written; and in so doing I have drawn rather largely for information upon your Greene's ' Short History of the English People ', and in certain places I have even quoted the direct words. Would you have any objection to this. I should be glad to let you read the manuscript and see exactly how I have written it; or if there should be anything else that you might care to have me do, and of which I may be entirely ignorant, I should be only too pleased to conform to your wishes in every respect. I now have it practically ready to submit to a publisher for reading, and I should be deeply obliged to you for a reply, or for any suggestion which you might be good enough to give. Yours most respectfully, Florence A. Deeks ".

The reply to that letter is March 19th, 1918 from the McMillan Company of Canada, per John Saul to the plaintiff, Editorial Department.

" I have been absent from Toronto the better part of two months, and have only just returned. This will explain the reason why your letter of February 22nd remained unanswered. I am just now picking up the threads, and among other letters lying on my desk awaiting my return I find yours. I regret very much the delay, but of course, you will quite understand.

" I think perhaps it would be best if you would drop down to the office sometime with your manuscript and let me have a look at it. Of course, you are quite aware that if your book was very much like Greene's ' Short History of the English People,' our English House would probably not sanction its publication. I would gather from your letter that you have not made very much use of the book, but I cannot tell properly until I have seen your manuscript. If you will telephone me, I shall be very glad to make an appointment."

Mr. ROBERTSON: Then, I find a letter of August 10th, 1918 from the plaintiff to Mr. Saul—something has happened in the meantime, I will ask about—" Would you kindly allow me to say further that the first few chapters of my work are perhaps the most raggedly written of all, and can be greatly reduced, but I hope that will not prejudice you with

In the Supreme Court.

Plaintiff's Evidence.

No. 11. Florence A. Deeks. Examination-in-Chief—*continued.*

regard to what follows, and with regard to the true possibilities of the whole three books."—that letter rather indicates that something had taken place in the meantime—perhaps you will tell us?—*A.* I gave Mr. Saul the manuscript.

Q. Please tell us a little more about that—you made an appointment, did you?—*A.* I think I did.

Q. And you went where?—*A.* Went down to McMillan's office and saw Mr. Saul in his office. I showed him the manuscript. He looked over it, and read portions of it, and then he kept it.

Q. Now, this was at the McMillan Offices?—*A.* At the McMillan offices.

Q. Mr. Saul was still with them?—*A.* Yes, in Toronto.

HIS LORDSHIP: This would be in the month of?—*A.* That would be the end of July or the first of August, I am not sure which, about that time.

Mr. ROBERTSON: *Q.* And your manuscript was then complete?—*A.* Yes.

Q. What did you discuss with Mr. Saul——

Mr. ELLIOTT: And the further letter of August 14th.

Mr. ROBERTSON: August 10th is this letter.

HIS LORDSHIP: You have not finished with the letter?

Mr. ROBERTSON: I wanted to clear up this conversation before I started the other——

Q. Was there anything in the conversation with Mr. Saul beyond the matter of your use of Green's "History." I am now asking you about the conversation when you took the manuscript down? Now, if you will just tell us what you remember of that conversation?—*A.* I talked over the manuscript. Mr. Saul opened it and read portions of it, and I also gave him a few verses at the same time. He handed me back my verses. He said, "We are not interested in poetry, we do not buy"—but he closed the manuscript and took it and kept it, and I left it with him for the express purpose of seeing if the English House would allow me to use their quotations——

HIS LORDSHIP: That is "quotations from Green's "History"?—*A.* From Green's "Short History", and if upon reading it, they felt the manuscript would justify the working of it up to a perfect finish, then I would be glad to have their opinion on that also.

Mr. ROBERTSON: *Q.* That is the question whether the thing would really be had?—*A.* Yes.

Q. That was discussed with Mr. Saul?—*A.* Yes.

Q. Do you recollect what he said about that?—*A.* I do not remember if he said anything there, anything about it, but he kept it to start with.

HIS LORDSHIP: Of course, he could not say definitely until he had looked in to the manuscript.

Mr. ROBERTSON: That is rather indicated by the next letter—the next letter is of August 14th, 1918 from the McMillan Company signed by John C. Saul—Mr. Saul described himself when he writes here as "Editor"—"Dear Miss Deeks, I am very sorry to say that I have not been able in the few days since I saw you, to go over your manuscript with any particular care, I have to make a hurried trip from Toronto leaving to-night, and shall be absent for two or three weeks. I shall be very glad indeed if you will allow the manuscript to remain where it is until I get back. I have your note of yesterday and will bear what you say in mind."

HIS LORDSHIP: This was what date?

Mr. ROBERTSON: August 14th, my Lord.

Q. Is there anything further here in regard to it. I have no copy of it. I have another letter here, of the 10th of August, probably the one that was intended.

Mr. ROBERTSON: Your Lordship will understand, and my learned friend apparently agrees with me, that when Mr. Saul says on the 14th, "Your note of yesterday," is referring to the letter of the 10th, which is not quite yesterday—then there is a letter of August 21st from the Plaintiff to Mr. Saul, "I am only too pleased to leave the manuscript entirely at your convenience, and I am very grateful for your willingness to give it a careful reading"——

Q. Then what happened next, so far as Mr. Saul or the McMillans are concerned? You had left the manuscript with them, and had this correspondence in August—when did you next see Mr. Saul or hear from them or from the McMillans?—*A.* I was away from home part of the time, so was Mr. Saul. I did not have any word from the McMillan Company, for, until, I believe, it was the 13th of January when they had had it for five months, and I wrote to them. I was feeling a little worried over it——

Q. You wrote a letter apparently on January 13th?—*A.* To Mr. Saul, I did that on January 13th, 1919.

Q. "After having forgotten my manuscript for some time, I have been reading it over again, and it seems to require so much revision, that I think I have been unwarranted in asking you to read it in its present condition. Just now I am inclined to rewrite it strictly along the line of "the rise and development of democracy as the World's civilizing influence, and the rise and development of militarism as a degenerating influence"—and leave woman out of it altogether, as my research along that line seems to be unreliable. This would probably reduce the book to half the size or less. I would not hurry you in the least with reading it, but if it be not asking too much when you do read it, I should be deeply obliged for your opinion in this regard, or indeed in any respect, or for any suggestion that you might be willing to give. Also I am wondering if it would be possible to get a reliable collaborator to help in the work of revision"——

HIS LORDSHIP: That don't mention that the manuscript had been returned.

In the Supreme Court.

Plaintiff's Evidence.

No. 11. Florence A. Deeks. Examination-in-Chief—*continued.*

Mr. ROBERTSON: No.

HIS LORDSHIP: You mean she was purporting to have been looking over her duplicate?

Mr. ROBERTSON: Yes, that is not the one the McMillan Company had. I will be putting that in in a moment.

Mr. ROBERTSON: *Q.* The next one is January 31st, 1919 from Mr. Saul to the plaintiff.

"Dear Miss Deeks; some time ago we received from you a letter with regard to your manuscript. I went over a portion of it at the time, and I really thought that for publication purposes it should be materially condensed. I am very glad indeed that you are undertaking to cut out the woman idea and also that you have found that you have not plumbed the depth of this question. I think you will find it much more satisfactory to better your studies as you suggested in your letter.

"After tomorrow I will be no longer connected with the McMillan Company of Canada, and I am just cleaning up everything before leaving. I am very sorry that I have no time to go more fully into the consideration of the manuscript, but after you have condensed it, I will be very glad, at any time, to discuss it with you. You will always find my address in the telephone book.

"I am leaving the manuscript here at your disposal, and if you will inform the McMillan Company what you wish done with it, your wishes will be carried out.

HIS LORDSHIP: Carry on.

Mr. ROBERTSON: *Q.* Well, what did you do then?—*A.* As far as I know, to the very best of my knowledge, I wrote to the McMillan Company with regard to the manuscript.

Mr. ROBERTSON: I ask my learned friend to produce it.

Mr. ELLIOTT: We have no letter before March 27th, 1919.

Mr. ROBERTSON: *Q.* Then, apart from your recollection of the letter which you say is possible—they say they have no letter—what, if anything else did you do before you heard from McMillans at the end of March?—*A.* Just as far as I remember, I wrote to them, and received a reply, which I received on the 27th of March.

Mr. ROBERTSON: I do not know if this is the reply or not.

The next is the letter of the 27th of March, 1919 from the McMillan Company of Canada, per Montrose W. Liston, Editor, "To the Plaintiff.

"Dear Miss Deeks, I have glanced through the pages of your manuscript, and wish to say quite frankly how it affects me, in reference to your idea of publication.

"You have embarked upon a sea of past, present and future. Your subject stretches from the beginning until now. It is evolutionary, psychological, metaphysical, speculative. It must be treated sectionally at encyclopædic length or you must be satisfied with just a mere skeleton

index of what you want to say. An intermediate course is useless where you could never hope to do ought but float hither and thither without definite purpose and in a diffuse way at last achieve nothing.

" Within such limits as you propose to yourself, and as would be necessary in a book for others to read in spare time, your plan is impracticable. Buckle's History of Civilization is a modest theme compared with yours. Your speculations as to development, as to causes, as to the birth and evolution of what is called the " World," etc. " calls spirits from the vastly deep " with the celerity of a conjuror or a magician in the Arabian Nights. There are no short cuts nowadays to understanding existence and ourselves with relation to all the springs of human action, even one tiny section of such studies demands volumes—not of speculation and dubious suggestions, but of closely ordered, scientific treatment and strictly logical conclusion. Think of all that is opened up by what you propose—what a complex problem. One side might be given to Herbert Spencer, another to the Astronomer Royal, a third to Alfred Russell Wallace, a fourth to Sir James Fraser (Folklore of the Old Testament) you cannot mix up something having reference to the Nebular hypothesis with the Gospel of St. John (Love one another). The issues are too remote for the covers of a volume, whether people would buy and read what you have to say, if they were not, is another matter, but also important here. So far, *my* view.

" Now the practicable. You enjoy writing your ideas and you are enthusiastic and a thinker. You could make a bright and entertaining sketch in " Lecture " form, of what you feel, and read it among friends, and at literary meetings and societies, or you could make a good " paper " as a subject for debate, and on these lines, I think you could condense and remodel your present copy, bringing it within the limits of an evening " paper " and it would be appreciated. Moreover you would set others thinking, at any rate, try this *first* and as you re-write, refuse all those conclusions that you do not find convincing to yourself. Charlotte Brontë used to put every sentence on a separate scrap of paper—then look at it, and refuse unless satisfied that is was indispensable. We don't do things in that way now, but in the sphere of work you have marked for yourself, you must beware of the " Pastor Russell " kind of evolution—or even that of a really great scholar in his day, Archbishop Usher, who recorded 4004 B.C. as the date of the beginning (I quote from memory). One can trust better " a thousand years in thy sight are but as yesterday."

" You may think me quite wrong. I do not mind; I may be. Who knows? " Que Scais-je " (Montaigne's Motto). Now set about your short, crisp lecture or pamphlet, " Love and War," and call in one morning when you have read this letter and let me know what you intend. Very busy here till next Tuesday or Wednesday. Phone on Tuesday."

HIS LORDSHIP: Apparently a literary gentleman.

Mr. ROBERTSON: Perhaps he got something from reading manuscripts.

HIS LORDSHIP: He had read more than manuscripts.

In the Supreme Court.

Plaintiff's Evidence.

No. 11. Florence A. Deeks. Examination-in-Chief—*continued.*

Mr. ROBERTSON: You got that letter?—*A.* As suggested in the letter I telephoned next Tuesday. I had an appointment I think for, I think the following Thursday—I went down to see Mr. Liston. He advised me to write, not along historical lines.

Q. I do not know that we are much concerned about some other book that did not get written—but what about this manuscript?—*A.* He asked the stenographer to get it.

Q. And you got it?—*A.* I brought it home with me. It was given me in wrapping paper.

Q. And you took it home?—*A.* Yes.

HIS LORDSHIP: That would be in April?—*A.* No, in about a week.

Mr. ELLIOTT: She got the manuscript.

HIS LORDSHIP: She got it on this visit, early in April?—*A.* Yes.

Mr. ROBERTSON: *Q.* And is this the manuscript now produced?—*A.* Yes.

This is not the wrapper it came in.

HIS LORDSHIP: The correspondence is now complete, I take it.

Mr. ROBERTSON: As Exhibit 4, my Lord.

Exhibit 4. Correspondence between plaintiff and representative McMillan & Co. (nine letters).

Mr. ROBERTSON: *Q.* Now the time you took the copy in and left it with Mr. Saul in August, 1918, in what condition was it?—*A.* Absolutely fresh from the typewriter.

Q. And when you received it back in the following April, in what condition was it?—*A.* There it is. It is there.

Q. Describe it—I mean as to its condition?—*A.* The (indicating) well, more or less worn, pages turned down, and it was done on the strongest paper I could get from Grand & Toy so it would take a good deal of use before it would show wear.

Q. It showed signs of use?—*A.* Yes, and the ends of the manuscript were turned up this way at the bottom end of it. It was quite turned up, like this, when I had it.

Q. We, of course, can see its present condition.

Q. What do you say as to its present condition, as to the condition in which it was when you got it back from McMillan?—*A.* I have been very very careful to keep it just in the condition it was in at that time, as possible.

Q. You have had other copies for use?—*A.* Yes, the other copy I used, was a blue carbon copy.

Mr. ROBERTSON: I will put this in now, as Exhibit 5. If you will leave it as it is, some places are turned down.

That is the manuscript?

HIS LORDSHIP: What is the purpose of putting in two manuscripts?

Mr. ROBERTSON: I thought as I put some weight on the condition of Exhibit 5, that is its appearance, it would be just as well for purposes of reference if we would use another copy.

Mr. ELLIOTT: I cannot hear a word, my Lord.

Mr. ROBERTSON: If there are signs of wear or use on Exhibit 5, they are perhaps some evidence of it, and that would be all wiped out by our use of it at this trial.

Mr. ELLIOTT: It would just show that somebody had dirty hands.

Mr. ROBERTSON: Your Lordship will bear in mind it is not entirely its condition we refer to.

I understand some of the witnesses will speak specially as to some of the passages turned down appearing in the other book.

HIS LORDSHIP: You have referred to it.

Mr. ROBERTSON: *Q.* Then, Miss Deeks, you got your manuscript back, and up to that time, had you heard anything of Mr. Wells and his book, the "Outlines of History"?—*A.* No.

Q. You had not heard of that?—*A.* In no way whatsoever.

Q. With your own manuscript were you doing any work in the meantime?—*A.* Well——

Q. Just briefly?—*A.* No, I did not take it up again.

Q. Until when?—*A.* I think it was the summer, early in the summer of 1920.

HIS LORDSHIP: You did not do anything more?—*A.* No, I was discouraged and I let it go.

HIS LORDSHIP: You just dropped it?—*A.* Dropped it for the time being.

Mr. ROBERTSON: *Q.* Then, when did you first learn of the book, "Outlines of History" by H. G. Wells?—*A.* I was working very hard on the revision in December, rather nearing completion.

HIS LORDSHIP: You started again to revise it?—*A.* I had started in the summer of 1920, and I was still working on it in December when the "Saturday Night" came in, and we saw a review of Mr. H. G. Wells, "Outlines of History."

Mr. ROBERTSON: *Q.* The Toronto Saturday Night?—*A.* Yes, and it contained a somewhat lengthy review of the "Outlines of History."

Q. By H. G. Wells?—*A.* Yes.

HIS LORDSHIP: If she would give that date?—*A.* I think it was December, 1920.

Mr. ROBERTSON: It was December, 1920, you saw the review?—*A.* I have the date down there.

Q. Then you did subsequently revise your manuscript?—*A.* Yes.

Q. And did you endeavour to publish it?—*A.* I did.

Q. And have you been able to——

HIS LORDSHIP: When did you finish your revision?—*A.* I dropped that revision and began again in 1923, and I finished that revision in 1925.

Q. Did it take you two years?—*A.* Just about two years to revise.

Mr. ROBERTSON: *Q.* Yes?—*A.* I then submitted it to various publishers, the leading publishers in the United States.

Q. I just want to ask one particular question in that respect—have you been able to have it published?—*A.* No.

Q. Why?—*A.* Because it resembled Mr. Wells' "Outlines of History" too closely.

Q. And what do you say as to your revision—the revised work—which you endeavoured to have published, as to whether it resembled the "Web," or did you use Mr. Wells' Book in your revision?—*A.* Oh no, I did not use Mr. Wells' book at all, but I discarded most of my old authorities for what you would call up-to-date authorities and scholarships.

Q. But your general plan of your work—what do you say?—*A.* A few verbal similarities remained, the main similarity was the plan.

Mr. ROBERTSON: *Q.* You still retained the plan?—*A.* I held to my old plan.

Q. Well then, did you see Mr. Saul further?—*A.* I saw him after I made out the analysis between my manuscript and the "Outline of History."

Q. Just a moment—that was the work—what took place? This would be after I understand, Mr. Saul had left the employment of McMillan——

However, my friend objects. I cannot offer it at this stage. If my friend calls Mr. Saul I will be able to call Mr. Saul again on that.

HIS LORDSHIP: Yes.

Mr. ROBERTSON: *Q.* Then, Miss Deeks, you have referred to an analysis that you prepared—have you a copy of that at hand?—*A.* Yes.

Mr. ROBERTSON: I understand my friend——

Mr. ELLIOTT: This is part of the particulars?

Mr. ROBERTSON: I only wanted to make sure my friend knew what I was referring to.

Q. This, that you hand me, Miss Deeks, is a copy of the analysis, as prepared early in the case, or before the case started?—*A.* Yes.

Q. A copy of which was given to the other side?—*A.* Of course, I did have an analysis of that before, which was a little fuller.

Mr. ELLIOTT: I would suggest that my friend should not put in that comparison—it is nearly one hundred pages, because it will take a month to go through that.

Mr. ROBERTSON: If you will allow me to say what I think, this case can be conveniently changed—I do not intend to take the witness through this comparison at the moment, at all.

HIS LORDSHIP: Is this a parallel column?

Mr. ROBERTSON: That sort of thing.

HIS LORDSHIP: Of "The Web," and "Outline of History"?

Mr. ROBERTSON: Yes, my Lord. I was going to ask to put this in and have her say it was correct, so far as the clerical work.

Also the witness has prepared a comparison of the plan of the two works, that is, taking the headings, the Wells' chapters—taking the headings of each chapter.

Mr. MOOREHEAD: I cannot hear on account of the rumbling of the traffic, and I was unable to hear what either the witness or the Counsel is saying.

Mr. ROBERTSON: What I am saying is this, I thought perhaps to put in as an Exhibit this analysis and ask the witness to say what it was, and to verify it, and then also to put in a similar plan, on a parallel column plan, of the two works, which is composed, I understand on one side of Mr. Wells' chapter headings and sub-headings as appear in his book.

Mr. ELLIOTT: That is compared with his.

Mr. ROBERTSON: On that hand, and on the other hand, Miss Deeks' summary of her own chapters and comparison in that way.

So we have this, as I think I am correct in saying, this is more a comparison of passages, the other will be a comparison of the general plan of the work.

HIS LORDSHIP: Of course, another way to do it would be for Counsel to spend three or four months, or longer, in reading these comparisons.

Mr. ROBERTSON: I thought if I put this in, my Lord, as Exhibits, and had them verified, then I should not take her through that, at any event, at this stage of the case, and I would then have sufficient bases here, to call my experts, who will take your Lordship much more quickly to the real significant things.

HIS LORDSHIP: What do you say to the suggestion of that, Mr. Elliott, and Mr. Moorehead?

Mr. ELLIOTT: This comparison my learned friend is strictly entitled to put in.

HIS LORDSHIP: This is an analysis and comparison.

Mr. ELLIOTT: If it is some other document than that, I have not seen it.

Mr. ROBERTSON: I think you have. I will show it you in a moment.

Mr. ELLIOTT: I think, if my friend wishes, this should go in.

Mr. ROBERTSON: It was used in England.

Mr. ELLIOTT: But the other could not be used any more than a check. We have the outline and the index in both books, a tabulated dealing with the subject, everything is there, and anything my friend's client could prepare against him on her own book.

HIS LORDSHIP: Was there a plan of the book submitted with the manuscript?

Mr. ROBERTSON: Oh yes, the plaintiff's book has it in chapters and subjects at the heads.

In the Supreme Court.

Plaintiff's Evidence.

No. 11. Florence A. Deeks. Examination-in-Chief—*continued.*

HIS LORDSHIP: Just the heading on the chapter?

Mr. ELLIOTT: My Lord——

Mr. ROBERTSON: I think my friend is wrong.

HIS LORDSHIP: Or what are you submitting now, Mr. Robertson?

Mr. ROBERTSON: I am submitting the comparison, my Lord.

HIS LORDSHIP: A comparative——

Mr. ROBERTSON: It is called a comparison of the "Outline of History," and the "Web."

Q. Now, Miss Deeks, in this exhibit you have set everything in parallel columns, extracts from the two works?—*A.* Yes.

Exhibit 6. Extracts from the two works in comparative columns.

Mr. ROBERTSON: *Q.* And on the left hand side of the page is what you have taken from your manuscript?—*A.* Yes.

Q. On the right hand side is that from Mr. Wells?—*A.* Yes.

Q. Yes, one thing more, by way of explanation, perhaps it matters not, except you have in some places attached an extra sheet, which is pasted on?—*A.* Yes, and some important parts of that——

Q. What is that?—*A.* In his original manuscript which is from the notes Mr. Wells sent out from England for our inspection——

Q. You were going to tell us?—*A.* Mr. Wells sent out the original manuscript and handwritten notes for us to examine. I went through it very carefully. I found most of it, was the same as the published text of the outline, still there were portions that were not, and in those portions I gathered pieces which come nearer to my work than the "Outline of History" did.

Q. Am I to understand what you have written on the opposite side are extracts from his draft manuscript?—*A.* Yes.

Q. This you say was sent out by him, sent out during this case?—*A.* Yes.

HIS LORDSHIP: When you speak of Wells' manuscript, is that different from the book, is it?—*A.* Yes, some of the earlier passages.

Mr. ROBERTSON: Your Lordship will find, when you come to examine this, you will find Miss Deeks, being human made mistakes, and in one instance I have in mind, Mr. Wells got the same extracts, at least made the same mistakes.

HIS LORDSHIP: Perhaps some previous author made the same mistake.

Mr. ELLIOTT: Perhaps Mr. Duruy?

WITNESS: No, I made it myself.

Mr. ELLIOTT: I object, my Lord. We were served with these particulars under the Order of the Court, and they should of course, form part of the record before your Lordship. If these particulars are being changed or added to with something we know nothing about, I object to their going in.

Mr. ROBERTSON: My friend misunderstands our true situation.

HIS LORDSHIP: What you say is the defendants have had copies of these typewritten comparisons?

Mr. ROBERTSON: Yes.

HIS LORDSHIP: That in some instances the plaintiff has pasted papers, indicating in detail rather the same things that appeared in Wells' manuscript, or the draft manuscript which do not appear in the book—is that it?

Mr. ROBERTSON: Your Lordship will see that is not adding anything to the particulars.

HIS LORDSHIP: In the meantime the book can go in, and if there is any occasion, this can be attached afterwards.

Mr. ELLIOTT: The only difficulty, we are in this position, with Mr. Wells, it would take a long time.

HIS LORDSHIP: We will let it develop. In the meantime, the copy will be put in as an Exhibit. I am not going to mutilate the exhibit now, these interlineations or pencil additions, the question as to them may be most reasonable.

Mr. ROBERTSON: Your Lordship will see, we are not either altering or adding to.

Q. Then, Miss Deeks, you made that analysis, that is correct?—*A.* Yes, it is correct.

Q. What you copied, you copied, and what you wrote on the opposite sheets are copies from the manuscript?—*A.* Verbatim copies, word for word.

HIS LORDSHIP: What do you say these pencil notes are, copies from Wells' manuscript?—*A.* The ones that are tacked on the third column.

HIS LORDSHIP: The pencil notes?—*A.* On the third column, notes which come nearer to "The Web," than his published history.

Mr. ROBERTSON: There are some in pencil in columns one and two.

HIS LORDSHIP: This is the third column, she states.

Mr. ROBERTSON: *Q.* Now, you have to tell me, Miss Deeks, whether in this Exhibit I put in, there is included the plan?—*A.* I think not, no.

Q. I thought my friend was in error there?—*A.* Yes.

Q. Just having a copy of that?—*A.* I could give one with just the headings. This is the sub-headings.

Q. I do not want something that is not necessary?—*A.* Can I explain to you?

Q. Not in the witness box.

Mr. ROBERTSON: The witness has a good many comments.

HIS LORDSHIP: Is this also in parallel columns?—*A.* Yes.

Mr. ROBERTSON: Yes.

Mr. ELLIOTT: Is this supplemental?

In the Supreme Court.

Plaintiff's Evidence.

No. 11. Florence A. Deeks. Examination-in-Chief—*continued.*

Mr. ROBERTSON: It is not supplemental, taking the first page, it begins by giving on the one side the contents of the first chapter of "The Web," it is called, "The Dawn," on the other side is the "Outline," and it gives the contents of the first chapter, it takes more lines, more than one chapter.

HIS LORDSHIP: A summary.

Mr. ROBERTSON: The Earth—in place and time—rock.

You cannot find in Miss Deeks's manuscript anything which compares with her column.

HIS LORDSHIP: This is more an analysis than the other?—*A.* Yes.

Mr. ROBERTSON: That is an analysis of the general content.

Mr. ELLIOTT: They would never let us have that. This is a new document.

Mr. ROBERTSON: Some such document was discussed on the examination of Mr. Wells.

Mr. ELLIOTT: It was the other paper.

Mr. MOOREHEAD: As she has stated, in examination for discovery, she has stated all the comparisons.

HIS LORDSHIP: 16—"The Web." and "Outlines"—that cannot be chapter 16 in both?—*A.* No.

Mr. ROBERTSON: At least not likely—I have not a copy, my Lord.

HIS LORDSHIP: What do you mean by these different headings, chapter 16 is "The turned tide," that is chapter 5 of "The Web"?—*A.* The material that is in there is largely that in these chapters under different sub-headings.

HIS LORDSHIP: When you used the word chapter 16?—*A.* That deals with (indicating) out of "The Outlines" with this.

Q. Listen to me, is that chapter 16 from Wells' book?—*A.* Yes.

Q. You put it in the middle. There is chapter 5, on the left hand margin, you have your own chapters and headings?—*A.* Yes.

Q. And then about the centre of the page?—*A.* That is the typist.

Q. You have the chapter of Wells' book?—*A.* Yes, and these later chapter headings had to be brought over to the right hand side of the page.

HIS LORDSHIP: I think this is harmless, Mr. Moorehead, it cannot do any harm.

Mr. ELLIOTT: I would just like to draw your Lordship's attention, to what happened in the preparation of this case. We were served with the document they put in as the last Exhibit Number six. And the examination for Discovery was going forward and Miss Deeks was asked if these were all the comparisons that she was going to submit to the Court in connection with her case and she at first did not want to do it, subsequently she gave us some more comparisons which fastened in in red ink in this document there. She then stated that was her whole comparison she was going to rely on at the trial, on that occasion.

HIS LORDSHIP: Mr. Robertson, of course the Counsel for the defendants are confronted with this rather elaborate document for the first time now. I think you ought to let them see it during the adjournment hour and go on with something else.

Mr. ROBERTSON: I was going to say this. While the document may be new to my learned friend, it is not new to the defendants. The plaintiff has not prepared a document to show, it is—this is merely a convenient way of putting before the Court what it would take much longer to describe.

HIS LORDSHIP: In three or four months.

Mr. ELLIOTT: Exhibit number six shows these comparisons.

HIS LORDSHIP: Let Mr. Elliott see it during adjournment.

Do you want this, Mr. Robertson? Just proceed with your examination. The plan is, I suppose, to reduce the case within some kind of limit, which would be rather to the service of the defendant than otherwise.

Mr. ELLIOTT: If my friend would have extra copies made.

Mr. ROBERTSON: I will be able to let you have a copy after adjournment. I asked there should be copies.

HIS LORDSHIP: I think the more surface the plaintiff exposes in her opening the better you would be pleased—the more surface that is exposed, the more particulars for cross-examination.

Mr. ELLIOTT: We will look over it during adjournment.

Mr. ROBERTSON: This is also to make it more convenient for the other witnesses to give their evidence. She has prepared this, and they have seen it.

I will let that matter stand, and I think that is all I want to cover with Miss Deeks. I thought as I suggested a little while ago, asking her to go in to the details of these matters.

Q. You never at any time did?—*A.* No sir.

HIS LORDSHIP: Mr. Elliott, you go on with the cross-examination, and we will just reserve this proposed Exhibit Number 7.

Cross-Examined by Mr. ELLIOTT.

Cross-examination.

Q. Then, Miss Deeks, you of course, believe that Mr. Wells had seen your manuscript in 1920?—*A.* I think he first saw it in 1918.

Q. When did you first see it—when did it first come to your attention, Mr. Wells' book, the Outline?—*A.* In 1920.

Q. And that is the time that you saw the Review in "The Saturday Night"?—*A.* Yes.

Q. And having read the Review, you got a copy of the book?—*A.* I did.

Q. And where did you get a copy of the book?—*A.* At The T. Eaton Co.

Q. Have you got that book that you got?—*A.* The first copy that I got at the T. Eaton Company I returned, and a few months later I got another copy, but I have that one.

In the Supreme Court.

Plaintiff's Evidence.

No. 11. Florence A. Deeks. Cross-examination—*continued.*

Q. Let me see what time in 1920—did you see it in the "Saturday Night"?—*A.* I think it was in December.

Q. December, 1920?—*A.* Yes.

Q. And then, having seen the Review in "The Saturday Night," you went to the T. Eaton Company and purchased the book, did you?—*A.* Yes.

Q. And what did you do with the book, did you read it?—*A.* I read it rapidly through.

Q. Yes, and then where is it? That book?—*A.* I returned it.

Q. You took it back to Eatons?—*A.* Yes.

HIS LORDSHIP: Sold it back to them?—*A.* I returned it, and the money was refunded.

Q. Your money was refunded, you were not apparently very much interested in it when you did not keep it, returned it and got your money back?—*A.* I was very much interested, but it suited my convenience.

Mr. ELLIOTT: *Q.* It suited your convenience, so we have that, then, that you, Miss Deeks, in 1920 saw this Review, and you were interested in it, and went to Eatons and got a copy of the book and went through it hurriedly and took it back and got your money back?—*A.* Yes.

Q. And apparently then, it did not strike you as being very similar to your "Web"?—*A.* It did strike me as being very similar.

Q. Had you completed "The Web," at this time?—*A.* I was working on the revision and I waited until that revision was ended before I got the books again.

Q. You were, however, in course of writing your book, "The Web," at this time?—*A.* Yes.

Q. And you did not complete the writing of "The Web," I think you told us, until 1925?—*A.* Oh, I completed that revision in a very short time.

Q. But authors revise their books several times, don't they?—*A.* Pardon?

Q. I say authors revise their books several times?—*A.* Well, I did.

Q. And in 1920 you were in the course of revising your book which you call "The Web" or "The Dawn"—what did you call it at that time?—*A.* "The Web."

Q. You were in course of revision of your book in 1920 when you saw this review of Mr. Wells' book?—*A.* Yes.

Q. Then you got the book, or the Outline, and you continued to revise——?—*A.* As soon as I finished my revision I got another copy of the Outline.

Q. As soon as you finished your revision, and you had Mr. Wells' book before you when you were revising your book?—*A.* Not at all.

Q. I thought you told me you were in the course of your revision in 1920 when you got the book from Eatons, then you finished your revision afterwards?—*A.* Then I returned the book, and then I finished the revision, and then I got another copy of the book.

Q. Then, when you returned the book, did you go on with your revision of "The Web"?—*A.* Until I finished it.

HIS LORDSHIP: She dropped the revision apparently until 1923?—*A.* I finished this revision, and then dropped it and took it up again in 1923, that was another revision, not the same.

Mr. ELLIOTT: *Q.* We will say your revision of "The Web" was in 1920?—*A.* Yes.

Q. And you were in the course of revising it then, when you got Mr. Wells' book?—*A.* Yes.

HIS LORDSHIP: I thought you told me you dropped the first revision, did not complete it, and began again in 1923—did you after the Wells' book came out drop your revision?—*A.* I finished that revision.

HIS LORDSHIP: You finished that revision?—*A.* I finished that revision, yes.

Mr. ELLIOTT: *Q.* Let us understand what you mean by revision—you go through the different chapters and add to your book or take away—that is what you call revision?—*A.* Improving the whole.

Q. When new information comes to you, no matter from what source, you run it in?—*A.* I think I generally chose my sources.

Q. You write it in, if you think it is going to improve it?—*A.* Yes.

HIS LORDSHIP: You made two complete revisions?—*A.* Yes.

Q. The first one you completed in 1920?—*A.* Yes.

Q. And then you revised it again in 1923, and now in 1925?—*A.* Yes, I——

Mr. ELLIOTT: *Q.* And how long after you returned the book to the Eaton Company before you bought the new book?—*A.* I should think perhaps two months, I should think it would be quite that.

Q. Would you let me see the copy you bought? (book produced).

Q. It was in two volumes, was it?—*A.* Yes.

Q. And this is the new work, McMillan Company's edition of 1921?—*A.* Yes.

Q. And who is that distinguished looking gentleman, whose picture is in the front of it?—*A.* Mr. H. G. Wells.

Q. That was not in the original book?—*A.* No.

Q. Then I see it is marked up in red ink and pretty well worn out—what occasioned all that?—*A.* I think those are the pages that are similar to "The Web," that I have underlined.

Q. Then you went on, having got these two books that you returned to Eatons in 1920—you went on revising your own book?—*A.* Not after I got these.

Q. You told us you had a revision in 1923, and another in 1925?—*A.* Yes.

Q. And so it must have been after that?—*A.* I told you I had cleaned up the first revision shortly, in 1920—I finished it after Christmas, in 1921, and I did not begin another until 1923 which I finished in 1925.

Q. Then you—the one you started in 1923 was after you had Mr. Wells' book?—*A.* Oh yes.

In the Supreme Court.

Plaintiff's Evidence.

No. 11. Florence A. Deeks. Cross-examination—*continued.*

Mr. ELLIOTT: You might as well put these books in.

HIS LORDSHIP: They will be Exhibit 8, and we will reserve Exhibit 7 for the plan.

Exhibit 7. Plan prepared by plaintiff of comparisons portions "The Web" and "Outline."

Exhibit 8. "Outlines of History" by H. G. Wells, two volumes.

HIS LORDSHIP: I suppose Mr. Wells was examined on commission?

Mr. ELLIOTT: Yes, my Lord.

Q. Then when you noticed these, as you say, resemblances, did you write him about it?—*A.* No.

Q. Did you make any enquiries from anyone that could give you any information as regards it?—*A.* I talked to Mr. Saul.

Q. You spoke to Mr. Saul?—*A.* Yes.

Q. But I mean representing Mr. Wells?—*A.* No.

Q. You never spoke to anyone?—*A.* No.

Q. Never wrote any letters to him? You did not think that would be the proper thing to do?—*A.* I did not do it.

Q. No, you did not do it. Then you said that you noticed these resemblances, came to this conclusion in 1920?—*A.* Yes, I wrote out my comparison, and had it ready by Christmas, 1921.

Q. Then, you did not think proper to write Mr. Wells, and you did not think proper to start any proceedings against Mr. Wells for five years from 1925?—*A.* I placed it in the hands of a lawyer in 1922.

Q. But you did not take any proceedings until 1925?—*A.* No.

Q. Then, having issued your writ on the 14th of October, 1925, you did not take your proceedings against Mr. Wells or Cassell & Co. and Newnes Limited, until the 8th of September, 1927, when you issued a concurrent writ for service on them?

Mr. ROBERTSON: That is when they were served.

Mr. ELLIOTT: *Q.* Now, that is when they were issued, 8th September, 1927.

HIS LORDSHIP: Who were in the first action?

Mr. ELLIOTT: They were all in the first action, but no writ for concurrent service in their jurisdiction.

Mr. ROBERTSON: The action was commenced.

Mr. ELLIOTT: *Q.* Now, Miss Deeks, what do you complain of that Mr. Wells has done in this case that he should not?—*A.* I say that Mr. Wells took my manuscript. He used the plan entirely the same as mine.

Q. I see?—*A.* He built up the plan with the material I used to build up my plan. He arrived at his plan, he left out of that plan omissions that I left out, and he ornamented that plan with details that I had ornamented it.

Q. Did you ask him if he did that?—*A.* I did not ask him.

Q. You went to England, and you saw Mr. Wells on his examination?—*A.* I did.

Q. And did you, on that occasion even ask Mr. Wells if he had ever seen your book?—*A.* I did not speak to him.

Mr. ROBERTSON: There were letters.

Mr. ELLIOTT: *Q.* You know that Mr. Wells states that he never heard of your book at all, or used it or saw it until this action started?—*A.* I believe he does.

Q. Now then, when do you say that this manuscript ever went to England?—*A.* I do.

Q. When did it go?—*A.* I cannot give you the date.

Q. You cannot give the date?—*A.* No.

Q. You left the manuscript down with McMillans——

Q. By the way, first, when was this manuscript typed, tell us? Your manuscript, when was it typed?—*A.* Early in 1918.

Q. In 1918, then what time in 1918 did you take it to McMillans?—*A.* At the end of July or early in August.

Q. 1918, yes—then you got a letter on January 13th, 1919, from McMillans?—*A.* On January 31st.

Q. 1919?—*A.* Yes.

Q. You wrote them on January 13th?—*A.* Yes.

Q. And you got a letter on January 31st telling you the manuscript was still there, January 31st, 1919, you got a letter from McMillans saying the manuscript was still there?—*A.* The letter don't just say that.

Q. Don't you think so?

Mr. ROBERTSON: Mr. Saul was cleaning out his desk and came across the manuscript.

Mr. ELLIOTT: *Q.* Do you know of that?—*A.* No.

Mr. ROBERTSON: "I am leaving the manuscript here at your service."

Mr. ELLIOTT: On January 31st you got a letter from the McMillan Company in which they tell you, "Some time ago we received from you a letter with regard to your manuscript. I went over a portion of it at the time, and I really thought that for publication purposes it should be materially condensed. I am very glad indeed, that you are undertaking to cut out the women's idea, and also that you have found that you have not plumbed the depth of this question. I think you will find it much more satisfactory to better your studies as you suggested in your letter.

"After tomorrow I will be no longer connected with the McMillan Company of Canada, and I am just cleaning up everything before leaving. I am very sorry that I have no time to go more fully into the consideration of the manuscript, but after you have condensed it, I will be very glad, at any time, to discuss it with you. You will always find my address in the telephone book.

"I am leaving the manuscript here at your disposal, and if you will inform the McMillan Company what you wish done with it, your wishes

In the Supreme Court.

Plaintiff's Evidence.

No. 11. Florence A. Deeks. Cross-examination—*continued.*

will be carried out. Yours very truly, " The McMillan Company of Canada, Limited (sgd.) John C. Saul, Editor."

HIS LORDSHIP: What is that date?

Mr. ELLIOTT: That is dated January 31st, 1919.

Q. Now you got that letter?—*A.* Yes.

Q. And you read it?—*A.* Yes.

Q. Then following on that letter, did you go to McMillans and ask them for that manuscript?—*A.* To the best of my knowledge I wrote to them.

Q. Have you a copy of your letter?—*A.* No.

Q. Tell me this, when you got that letter with the manuscript apparently there, did you go down and ask for it?—*A.* No.

Q. Why didn't you?—*A.* I did not believe it was there.

Q. You did not believe it was there, you think that the man who wrote that letter was misleading you, and that it was not there?—*A.* The letter stated, " I am cleaning up everything before leaving," so I expected if he were cleaning up everything, he would return my manuscript, and when it was not returned, I just thought it was the business way of doing things. They had had the manuscript for over six months. If it had been there when he cleaned up everything I would naturally have expected he would have returned it.

Q. Anyway, he says he has it at your Order?—*A.* Yes.

Q. You did not go down to speak to him?—*A.* No.

Q. And you did not even call him up on the telephone?—*A.* No.

Q. And you did not do anything further about it until the following March? On March, March the 27th, 1919?—*A.* As far as I know, I wrote them a letter.

Q. Yes, you wrote them a letter,—however, you think, you wrote them a letter, at any rate you got a reply, so they wrote you a letter on March 27th, 1919?—*A.* Yes.

Q. And from the date of that letter, January 31st, until March 27th, you had not been in communication with them, or asked them anything about this matter?—*A.* No.

Q. Then when you got the letter of March 27th, 1919——

HIS LORDSHIP: Is that the lengthy letter?

Mr. ELLIOTT: Yes, my Lord, from Mr. Liston——

Q. Had you known that gentleman before?—*A.* No.

HIS LORDSHIP: What had brought that letter out?—*A.* Unless it was an answer to mine, or unless the manuscript had been returned and he had it at that time, it was at that time it was ready to be sent back to me.

Mr. ELLIOTT: At that time you knew that Mr. Saul had been—resigned from McMillans?—*A.* Yes.

Q. And Mr. Liston was the new Editor?—*A.* Yes.

Q. And he writes this letter?—*A.* Yes.

Q. He comes into the picture the first time—he does not say I have a letter, he starts off, " I have glanced through the pages of your manuscript, and wish to say quite frankly how it affects me, in reference to your idea—

HIS LORDSHIP: As though this had been a matter which had been inherited by him from the former Editor.

Mr. ELLIOTT: He apparently was going through the manuscripts there, came across this manuscript there, knew it was from Miss Deeks and wrote her about it.

Q. Now, are you sure that that letter refers to your manuscript " The Web " ?—*A.* It was the only manuscript they had of mine.

Q. Didn't they have a manuscript there of yours called " The Dawn " ?—*A.* No.

He suggested in this letter that I write on " Love and War," and I wrote a heavy pamphlet on " Love and War " and submitted it to them.

Q. You called it " Dawn " ?—*A.* No.

Q. Did you have a manuscript called " Dawn " ?—*A.* " Dawn " is the subject of my first chapter.

Q. You mean it had two names?—*A.* No, the opening of the first chapter.

HIS LORDSHIP: The opening of the book is " The Dawn ".

Mr. ELLIOTT: *Q.* Then, on March 27th, you got the letter from Mr. Liston, and you went down and got your manuscript?—*A.* The week following.

Q. I have it, I think you told us, on April 3rd, 1919?—*A.* About that time.

Q. And who did you see when you went down?—*A.* Mr. Liston.

Q. Meeting him for the first time?—*A.* Yes sir.

Q. And he sent a young lady to the place where they kept manuscripts and got it out for you, and you took it away?—*A.* Yes.

Q. And did you think to ask them anything about where the manuscript had been all this time?—*A.* I did not.

Q. You had no doubt then it had left their office?—*A.* I thought it had been in England all the time.

Q. How?—*A.* I expected they would send it to England when I——

Q. Why did you expect that?—*A.* Because Mr. Saul said the English House would have to give their consent to the quotation from the Green's " History ".

Q. They would not have had to send it to England to do that?—*A.* I thought they would.

HIS LORDSHIP: Consent for extracts that you were using?—*A.* Yes.

HIS LORDSHIP: The English house was the publisher of that book?—*A.* Yes, and they have the copyright.

HIS LORDSHIP: Of course you do not know that Green's History of the English People did not have any copyright?—*A.* I did not realise it was exhausted.

In the Supreme Court.

Plaintiff's Evidence.

No. 11. Florence A. Deeks. Cross-examination—*continued.*

Q. It is now?—*A.* It is now. I did not know it was then.

HIS LORDSHIP: Is it not long exhausted?

Mr. ROBERTSON: It could not have been so very long exhausted. It is not so long since the author died.

HIS LORDSHIP: What is it, forty-two years?

Mr. ROBERTSON: It is fifty years or the author's lifetime.

Mr. ELLIOTT: It is so many years after the author's death, but not exceeding fifty years in all.

Mr. ROBERTSON: I thought it was his death.

Mr. ELLIOTT: *Q.* You did not ask Mr. Liston if it had been in England? —*A.* I never thought anything about it.

Q. Did you ask him?—*A.* No, I never did.

Q. Then, coming back to it, when did you say that it went to England—can you give us any idea when it went to England, according to your idea. —*A.* I do not know the date.

Q. You do not know when it went, or when it came back?—*A.* I cannot give you the date.

Q. Can you say positively, one way or the other, whether you know it went or not?—*A.* I know it went.

HIS LORDSHIP: You do not know from any direct information, as I understand you?—*A.* Yes.

Q. It is an inference you draw from the facts, is that right?—*A.* Yes.

HIS LORDSHIP: We will adjourn until two o'clock.

Court adjourned for one hour for lunch.

Court resumed two o'clock p.m.

FLORENCE A. DEEKS:—continued.

Cross-examination continued by Mr. ELLIOTT.

Q. You say, Miss Deeks, that Mr. Wells saw your manuscript?—*A.* Yes.

Q. And you say that in at least one occasion, that so as to disguise that he was using it, he put in the very opposite from what you had in your book?—*A.* It looks to me like that.

Q. You mean that in the instance that you gave, or whether there are others, I do not know of, that Mr. Wells would read your manuscript and would see a statement of fact put in your manuscript by you, and so as to mislead you he would put that in his book the very opposite?—*A.* I think so.

Q. I just recall the fact, an example, you told me on your examination at question 2092——

HIS LORDSHIP: This is almost as lengthy as the "Outline of History."

Mr. ELLIOTT: Very closely, my Lord.

Q. At question 2093 you drew my attention to chapter 24 of Mr. Wells book, and then the quotation in your book, and you answered, 2092, "It

is what you see, a contradiction of my work there and a contrast". I asked you, "You mean that he contradicts what you said?—*A.* Yes." That is right?—*A.* Yes, that is right.

Q. In other words, in this particular instance, whether there are others, what you say is that he puts in the very opposite to what you had so as to disguise it?—*A.* I think that is correct.

Mr. ROBERTSON: Of course, that is very unintelligible unless you refer to what they are talking about.

Mr. ELLIOTT: *Q.* Then let us take "The Web"—has it got maps?—*A.* No.

Q. No maps in it. Has it got any illustrations?—*A.* No.

Q. The "Outline" has between 200 and 300 maps and illustrations?—*A.* Probably, I do not know.

Q. A very large number?—*A.* A large number.

Q. You are not complaining about these maps and illustrations?—*A.* Not at all.

Q. But you do complain of the artist who prepared the illustrations had read your book and saw the pictures, verbal pictures that you had painted in your book, and that he had used them for the purpose of drawing these illustrations?—*A.* I would not say that. I should say it looked as if whoever wrote the book might have suggested such and such points for illustrations.

Q. You told me that at question 2075, 2076, that someone who wrote that book took your word pictures, at question 2075—in other words, the artist and Mr. Wells went over your word pictures and used these word pictures to draw these photographs—your answer to me was, "I feel that way," and I asked you, "You may think that"?—*A.* Yes.

Q. That is right?—*A.* I think somebody wrote the History and suggested such and such a thing for illustration in that particular section, and the artist did the illustrating.

Q. And used your word pictures as described in your book to draw or paint whatever they were, made these pictures he put in?—*A.* Used pictures which corresponded with those word pictures of mine.

Mr. ROBERTSON: I would call my learned friend's attention to question 2073, the witness says, "No, that is not what she meant, the artist would hear her pictures.

Mr. ELLIOTT: My friend has not got the point at all. True she says he did not use her pictures, but at 2075 she says that the artist used her word pictures for the purpose of drawing a photograph—that is right?—*A.* I say that.

HIS LORDSHIP: She says she feels that way.

Mr. ELLIOTT: She feels that way.

Q. Then how many chapters has "The Web" got?—*A.* Thirty-four.

Q. And had you divided it into books?—*A.* Three books.

Q. And the "Outline" has forty-one chapters?—*A.* Forty-one.

In the Supreme Court.

Plaintiff's Evidence.

No. 11. Florence A. Deeks. Cross-examination—*continued.*

Q. And nine books?—*A.* I am not sure.

HIS LORDSHIP: Did you intend to have three volumes or one volume?—*A.* It really is suited for three volumes, but that would depend upon the publisher.

Mr. ELLIOTT: *Q.* So you do not complain about the division made by Mr. Wells in comparison with your book?—*A.* Not in books.

Q. And you told my friend when you put in your authorities added, they put, I think, twenty-two authorities put in in your Exhibit?—*A.* I do not remember the number.

Q. Twenty-two, were they that list here, Exhibit number 2—these are all the authorities you used?—*A.* I gave you those as the list of all I remembered.

Q. If you add them up you would say there are twenty-two authorities?—*A.* Yes.

Q. So you wrote your book, you told us, with reference primarily to Mr. Duruy's "World's History" that was the basis of your book?—*A.* I think probably I got most of my historical matter from Duruy.

Q. From Duruy, and then outside that, you used these books?—*A.* Yes.

Q. In this case, and you did not possess these books yourself, you went to the Toronto Library here?—*A.* Different places, and read these off the shelves.

Q. Got these off the shelves?—*A.* I would take them home.

Q. Take them home?—*A.* Usually.

Q. Then, how many authorities does Mr. Wells give in his book?—*A.* I have not counted them, but I should think there would be perhaps one hundred.

HIS LORDSHIP: A hundred, you say?—*A.* I should think perhaps a hundred.

HIS LORDSHIP: Does he enumerate them in his book.

Mr. ELLIOTT: He enumerates them in foot notes.

Q. I might tell you, Miss Deeks, there are hundreds?—*A.* I have not counted them.

Q. They are there in foot notes and other places about the book?—*A.* Yes.

Q. Now, you agree that he went more extensively into it than you did?—*A.* He might not have had one hundred, I do not know.

Q. What?—*A.* Yes, I agree to that.

HIS LORDSHIP: I suppose Miss Deeks will agree that Mr. Wells says he consulted these books?—*A.* Yes, that is the idea.

Mr. ELLIOTT: You noticed of course, he sets them out in his foot notes in the book, and refers to them?—*A.* Yes.

Q. And then of this large number, that are used by Mr. Wells, you have gone over them?—*A.* Yes.

Q. When you got the book, you took Mr. Wells' book and went to the Library and tried to find these various authorities that Mr. Wells referred to, and checked them up, did you do that?—*A.* With regard to finding out, yes.

Q. You took Mr. Wells' book with the great number of authors' names in it, and you went to the Library and you looked them up to see whether Mr. Wells had correctly quoted from them?—*A.* Yes.

Q. Then of all this large number of authors used by Mr. Wells, how many of those had you access to during the time that you were writing your "Web"?—*A.* I think Mr. Wells quotes from O. T. Mason.

Q. Yes?—*A.* I did take something from Mason at a very very early period.

Q. Any other books?—*A.* I think Taylor on that period, I used a little bit, and I think he quotes him.

Q. Is that all?—*A.* That is all I remember.

Q. So of the several hundred, whatever they are, they are cited by Mr. Wells, you only used these two, Mason's and Taylor's?—*A.* I think that is all.

Q. You quoted very extensively from Duruy?—*A.* Yes.

Q. Sometimes used half a sheet of Duruy's book?—*A.* I never took a whole page verbatim.

Q. Did you take very large pieces of it?—*A.* Yes.

HIS LORDSHIP: How many volumes is Duruy's in?—*A.* Just the one that I had, but it is thick.

HIS LORDSHIP: A large volume.

Mr. ELLIOTT: *Q.* Just go over that roughly, and tell me if that is a copy of your book "The Web"?

Mr. ROBERTSON: That is rather an impossible thing.

HIS LORDSHIP: Another copy of "The Web".

Mr. ELLIOTT: This is our copy, my Lord.

Mr. ROBERTSON: If my friend would say if he got it from us?

Mr. ELLIOTT: I am just asking the witness if she can recognize that.

HIS LORDSHIP: She might say it looks like it, but she cannot say it was unless she compared them.

Is this something made by you?

Mr. ELLIOTT: Yes, we had that made in England. It was used there.

HIS LORDSHIP: Perhaps you made this in the first instance, you would know?—*A.* I should say that was my book.

Mr. ELLIOTT: I have done myself the pleasure to read it over.

Mr. ROBERTSON: It should go in.

Mr. ELLIOTT: I am not putting it in.

Mr. ROBERTSON: I do not know why my friend asked the question if he is not going to put it in.

In the Supreme Court.

Plaintiff's Evidence.

No. 11. Florence A. Deeks. Cross-examination—*continued.*

HIS LORDSHIP: If Mr. Robertson asks for it.

Mr. ELLIOTT: If my friend wants it in, it can go in.

Mr. ROBERTSON: If my friend says it is to go in, I want to examine the witness something about it.

HIS LORDSHIP: Very well, we may have got right to the meat of the matter now.

Mr. ELLIOTT: *Q.* Now, Miss Deeks, the theory of your book, the "Web", is the theme, dealing with women in history?—*A.* That is one feature.

Q. That is the main theme running all through?—*A.* One of the main things.

Q. And when you wrote the "Web", started out to write it, your idea was to place in prominence the position of women in the affairs of the World?—*A.* Yes.

HIS LORDSHIP: Did you ever abandon that theme. I think Mr. Saul suggested that you should abandon it, didn't he?—*A.* In my last revision I made it very much less prominent.

Mr. ELLIOTT: But your last edition, of course, was long after this trouble arose?—*A.* The last edition?

Q. Now, I see in the first book of your "Web", in chapter 1 the heading is "The Dawn"?—*A.* Yes.

Q. And you, in that chapter deal with the female as the predominating influence in the world?—*A.* Yes, not in the first chapter, no, not the first chapter.

Q. Heading "The Dawn", book one?—*A.* Not the first chapter.

HIS LORDSHIP: In the first book?—*A.* In the first book.

Mr. ELLIOTT: *Q.* Then in chapter two, you deal there with the influence of women in the world?—*A.* Yes.

Q. You discuss specially the love of the beautiful?—*A.* I think it comes in prominently.

Q. And you discuss women as the architects and builders?—*A.* Yes.

Q. You describe how women instituted?—*A.* Milling.

Q. Medical science, they instituted medical science?—*A.* Yes.

Q. And the institution of poetry was also with the women?—*A.* Yes.

Q. That they were responsible for the clothes worn by the race?—*A.* Yes.

Mr. ROBERTSON: And still are.

Mr. ELLIOTT: And that they were supreme in Government in those days?—*A.* I did.

Q. And that they inaugurated Art?—*A.* Yes.

Q. And was the dominant factor in government?—*A.* Yes.

Q. Then in chapter three, you still continue the discussion of women and say that women discovered their mission, a big point, parenthood?—*A.* Yes.

Q. And you discussed that in your chapter?—*A.* Somewhat.

Q. And in chapter four, you discuss how man is now trying to assert his ascendancy for the moment, you call it——

Mr. ROBERTSON: Just there, my friend does not wait for an answer. He says that is what you dealt with——

HIS LORDSHIP: If there is no answer, of course, it goes for nothing.

Mr. ROBERTSON: I think neither my friend nor the witness is the one following the other, if the questions are to be of any value, the witness must understand them and answer them.

My friend is putting this as if that is what the chapter is about.

WITNESS: It is incidentally.

HIS LORDSHIP: Make your answers so the reporter will hear what you say, witness.

Mr. ELLIOTT: Miss Deeks, you will remember, the heading of that chapter is, "The Right of Might"?—*A.* Yes.

Q. That is what you call that chapter?—*A.* Yes.

Q. And in accordance with that heading which began from the horde man, is now working as an organization for women?—*A.* That comes into the chapter.

Q. Then in chapter four?—*A.* That was a special military mention.

Q. Then you entitled your chapter five, The Turned Tide?—*A.* Yes.

Q. That is man was commencing to assert himself?—*A.* Man was supreme.

Q. Man was getting some assistance?—*A.* Especially the militarists.

Q. And you quote there, you see, the title and some Histories of the Orient?—*A.* Yes.

Q. Then chapter six, you headed it "Ancient Europe"?—*A.* No.

Q. Perhaps you will remember what I tell you, what I think you described it as, you described three influences—first you described the early Christian culture?—*A.* Yes.

Q. You remember that?—*A.* Yes.

HIS LORDSHIP: Miss Deeks, you had better speak so the Reporter can hear you and Mr. Robertson, and also Mr. Moorehead, over there?—*A.* Oh yes.

Mr. ELLIOTT: Then you describe the early Christian culture, and your next subject is women generally?—*A.* Under a subject heading.

Q. Just incidentally?—*A.* Yes.

Q. And religion?—*A.* Yes.

Q. Then your chapter seven, you entitled your chapter "The Warrior's Advance"?—*A.* Yes.

Q. I presume that warrior was man again?—*A.* Yes.

Q. And you describe again the Siege of Troy?—*A.* Yes.

Q. And quite an extensive discussion of woman there in that chapter?—*A.* Yes, with regard to Helen of Troy.

In the Supreme Court.

Plaintiff's Evidence.

No. 11. Florence A. Deeks. Cross-examination—*continued.*

Q. Then in Chapter eight, you head your chapter Democracy and the Golden Age?—*A.* Yes.

Q. And you discuss there, as I gather it in five sections, the first was, you discussed the women of Greek Cities?—*A.* A cluster of women.

Q. A cluster of women in the Greek Cities, and Solon and Sappho?—*A.* Yes.

Q. And the Invasion of the Persians?—*A.* And Pericles.

Q. And Pericles, the Orator?—*A.* Yes, and Socrates.

Q. Then in Chapter nine Spartan Militarism?—*A.* Yes.

Mr. ROBERTSON: That is not the heading as I have it?—*A.* Spartan Militarism, or the annihilation of the State, I think I have them both down.

Mr. ELLIOTT: You kept close to Spartan Militarism?—*A.* Yes.

Q. And in connection with that, you discussed women, in that state—you gave a description of the attack on Grecian policy?—*A.* Yes.

Q. And Philip of Macedon and the Conquest of Alexander?—*A.* Yes.

Q. And Wars of Hannibal?—*A.* Yes.

Q. And Cato's Observations on Women?—*A.* Yes.

Q. And then in Chapter ten you entitled it, "A Rebound of Militarism"?—*A.* Yes.

Q. And in connection with that you discuss the Universal Power of Rome at that time?—*A.* Yes.

Q. And the new woman that was rising?—*A.* Yes.

Q. And I see in that chapter you have some quotations from Shakespeare on that?—*A.* Yes.

Q. Then in chapter eleven you head it, "Hope in Democracy"?—*A.* Yes.

Q. And in connection with that you discuss the marriage of Octavius and her influence on him?—*A.* Octavius and her influence on him. Livia's influence on Octavius.

Q. Also Julia?—*A.* Yes.

Q. She was the daughter of Octavius by his first wife?—*A.* I think so.

Q. Julia was Octavius' daughter and you discuss at considerable length Mary, the Mother of Christ?—*A.* Yes.

Q. Then in chapter twelve, you head it, "Doomed by Militarism"?—*A.* Yes.

Q. Do you remember that?—*A.* Yes.

Q. And you describe the unfortunate condition of women under Mars, as you call him, "God of War"?—*A.* I do not remember Mars, but I remember bringing women in there.

Q. And you incidentally deal with the rise of the Christian Religion at that time?—*A.* Yes.

HIS LORDSHIP: Mr. Elliott, what is the purpose of giving particularly all these features in this way, and getting the witness's assent to all these now?

Mr. ELLIOTT: I just want to show through all these things that the whole work is dealing with women.

HIS LORDSHIP: She admits that in a blanket form.

Mr. ELLIOTT: Yes, my Lord.

HIS LORDSHIP: How can you strengthen that by giving details of it. She admits that to be her theme, the place of women in history.

Mr. ELLIOTT: In doing this I was going to ask her if there was any similar dealing with these matters in Mr. Wells' book?

HIS LORDSHIP: Take it for granted now it was her theme, and she was putting the emphasis on the female sex, whereas Wells, if he put it anywhere put it generally. How do you distinguish that, because when she emphasizes her case, it was women.

Mr. ELLIOTT: I thought your Lordship would like to get the facts.

HIS LORDSHIP: You have developed that.

Mr. ELLIOTT: *Q.* So, Miss Deeks, after going through these various chapters, the theme all through your book at this time was women and their position in the world?—*A.* Was one of the themes, the position of woman and specially her position in democracy, and the position of man in general, and the leaders in particular.

Q. And I think you closed your book by a very charming description of a meeting in Toronto prepared by some Woman's Society?—*A.* The International Woman's Congress.

Q. You go into that, accidentally at last?—*A.* Yes.

Q. And your object in writing this book was to bring before your readers the best of women in ancient and modern times?—*A.* History in general has never had woman's position incorporated in it as a whole, and I endeavoured to do it as a whole, and her position seemed to fit in with democracy.

Q. Yes?—*A.* And democracy seemed to be opposed to militarism.

Mr. ELLIOTT: *Q.* And just as you put it, that was to set these things out you wrote that book?—*A.* I set these things out when I wrote the book.

HIS LORDSHIP: In other words, she had a motive besides the motive of writing history.

Mr. ELLIOTT: Yes.

Q. Then, you do not suggest, Miss Deeks, that Mr. Wells' book deals with any such proposition?—*A.* Mr. Wells' book omits women of course, altogether. He instances a few cases, a few names.

Q. As you put woman forward, he does not seem to deal with her at all?—*A.* In another way he does deal, it is in an uncomplimentary way, whereas I have overstressed the point. In that way Mr. Wells apparently overstresses it in the other way.

Q. So you are at opposite ends of the pole as regards that?—*A.* Yes.

Q. Now then, in this Exhibit, I think it is Exhibit six, that is in—the comparisons—now, what is this document that we have in as Exhibit six? Just take a look at it?—*A.* This shows the parallels of the two books from start to finish, from the first book to the end. This is the part that was taken

In the Supreme Court.

Plaintiff's Evidence.

No. 11. Florence A. Deeks. Cross-examination—*continued.*

from mine, "The Web." This was taken from the portion—these things I have taken were from Mr. Wells' original notes or his draft, sometimes handwriting, sometimes typing.

Q. Now this document, Exhibit six, with the exceptions of these additions, is a document we had before us on your examination for Discovery?—*A.* Yes.

Q. And during the course of that examination I think it was agreed that some little additions?—*A.* Yes.

Q. Were made, and put in in red ink?—*A.* Yes, they are at the back.

Q. That is all?—*A.* Yes.

Q. And that completed then your comparisons?—*A.* The comparisons of the passages. The plan is not in them.

Q. The plan is another proposition.

HIS LORDSHIP: What is the significance of these red pencil "U's"?—*A.* That is not mine.

Mr. MOOREHEAD: That letter is the first letter of the author where it came from, that is my own notes.

HIS LORDSHIP: What does "U" stand for?

Mr. MOOREHEAD: Stands for Professor Underhill's notes.

HIS LORDSHIP: "U" means "Underhill."

Mr. ELLIOTT: I think "N" means the Newnes Edition.

Mr. MOOREHEAD: Where?

Mr. ELLIOTT: *Q.* Then these documents pasted on were no part of the comparisons we had before us on the Examination on Discovery—these have been additions?—*A.* Yes, we did not have his notes at that time.

Q. You mean you did not have his manuscript?—*A.* We did not have Mr. Wells' manuscript at that time.

Q. But you of course, had his book?—*A.* His "Outline."

Q. And you just simply made these and pasted them on this original document?—*A.* Yes.

Q. And you of course, did not bring this to the attention of the defendant's solicitors?—*A.* In England?

Q. No here, this has all been done since the manuscript came to this country?—*A.* Yes.

Mr. ELLIOTT: I object to this now being part of this Exhibit?—*A.* We didn't have Mr. Wells' notes at the time I gave you that.

HIS LORDSHIP: I suppose that would not stand on the same footing as though Counsel had called my attention to these matters in the other Exhibit, the Wells' manuscript. The Wells' Manuscript will be an Exhibit, probably.

Mr. ROBERTSON: It is just another way of doing it.

Mr. ELLIOTT: *Q.* Where did you make these notes?—*A.* In Osgood Hall.

Q. Went through the manuscript there?—*A.* Yes.

Q. Who was with you when you did that?—*A.* My sister was always with me, but the gentlemen who were in the office there were around all the time.

Mr. MOOREHEAD: I cannot hear one word, my Lord.

WITNESS: I am sorry.

Mr. ELLIOTT: *Q.* Did you have any outside help with you when you made it?—*A.* Oh no.

Q. Then the Roman numerals are the chapters, are they?—*A.* Yes.

Q. And the brackets are the pages?—*A.* Yes.

Q. In both your work and the "Outline"?—*A.* Yes.

Q. Now you prepared this document, these parallel columns for what purpose?—*A.* For the purpose of showing that Mr. Wells' parallel passages so similar that I considered they were taken from mine.

Q. In other words, you would take a passage from "The Web," which we have here at page one, I take it, and that passage is from "The Web," on the left hand side, and then on the opposite side to that, you would take the passage from the Outline which you considered was similar to the one from "The Web"?—*A.* Yes.

Q. And that you continued all the way through this document?—*A.* Yes.

Q. And that was the object for which this document was prepared?—*A.* To show the "Outline" was taken from "The Web."

Q. Now, did you put your strongest case first, or did you take them in the order of your evidence? How did you work that? Did you put the strongest case you had on page one?—*A.* I began at the first chapter and worked it right straight through to the last chapter, and put each page as they both came, as near as it could be done.

Q. You followed each copy?—*A.* I took mine, and balanced Mr. Wells'.

Q. Because you would not find the same subjects treated consecutively?—*A.* Not absolutely.

Q. You would have to take either yours or the other first?—*A.* I think I did.

Mr. ELLIOTT: *Q.* So you base your case then, do you, on the comparison of these documents?—*A.* On the plan——

HIS LORDSHIP: She bases her case on two things. She says there was the possibility of this manuscript having found its way to London, in July—July, 1918, and February, 1919, and it was on the 8th of April, 1919, when she got it back.

She says her theory is, and she believes in her own mind the theory is true, the manuscript was sent to England and use was made of it there by Wells or his assistants, I suppose, and secondly I suppose whilst I have not got direct evidence, this was in fact a comparison of the texts, in parallel columns, and secondly on the whole of the comparisons, of plans, which is the same thing—that is your case?—*A.* Yes.

HIS LORDSHIP: Roughly?—*A.* Yes.

In the Supreme Court.

Plaintiff's Evidence.

No. 11. Florence A. Deeks. Cross-examination—*continued.*

Mr. ROBERTSON : It mentions they omitted significant things.

Mr. ELLIOTT : *Q.* So we have then, in this Exhibit six, all the comparisons and omissions and similarity that you rely ?—*A.* This does not take in all the omissions.

Mr. ROBERTSON : *Q.* Does it ?—*A.* Not all.

Q. What do you mean, to say that some things you both omitted to take ?—*A.* No, we both omitted great things.

HIS LORDSHIP : He omitted certain great things, and she omitted the same things.

Mr. ELLIOTT : *Q.* That is what you mean ?—*A.* Yes.

HIS LORDSHIP : Neither of these Historians were consulting original records. Both from the nature of things were dependent on previous narrative, and therein lies perhaps——

Mr. ELLIOTT : I think it important there, you have put the duty on us of going through these, and saying whether——

HIS LORDSHIP : Surely not. Surely that is a matter for Counsel, if it is to be done at all, to go through these notes in detail.

Mr. ELLIOTT : Certainly, I had it in mind there was no occasion to go into all that. At present we intend to call experts who will discuss things that are important.

It is so much better that we have them made.

I think Miss Deeks is the best expert on this point. She has made a study of it.

MR. ROBERTSON : There are other experts here.

Mr. ELLIOTT : Miss Deeks, I see you took a great deal of pains in preparing this——

HIS LORDSHIP : She must have put in an enormous amount of work. The work in preparing the manuscript and then in comparing it with this book.

Mr. ELLIOTT : *Q.* Will you then just tell me, Miss Deeks, will you show me in this, the strongest case you have got in these comparisons.

Mr. ROBERTSON : In her opinion.

Mr. ELLIOTT : *Q.* First, tell me this—do you claim that Mr. Wells copied your ideas ?—*A.* Oh, no—I am claiming that he copied my work as it stood in " The Web "——

Q. Did you claim that he copied your language ?—*A.* Very often.

Q. And do you claim that the ideas that you displayed in your book were copied by Mr. Wells in his book ?—*A.* Sometimes the conclusions that I drew, he drew, and the result I make, he makes.

Q. In the examination in a lot of these places, I asked you about it, and you said that he got his idea there ?—*A.* Perhaps I should have said he got his succession of items, or his statement of fact there.

Q. You remember telling me about the idea part ?—*A.* I think I do.

Q. Will you just tell His Lordship what you meant, he got his ideas from you?—*A.* I will take for example the History of Greece. I had taken unusual pains to gather together the facts about Grecian history. I gathered them from various places, and I compiled them into a long succession of facts on Greece's history, very many of those I compiled were of insignificance, and not worthy of putting in, and many are left out, Mr. Wells left out. He has exactly my compilation of facts from Grecian History, and that is what I put down.

Q. Well, one or two that you seem to be impressed with?—*A.* They were the first that I had found——

Q. Let us just look at it. Where does he take and copy your story?

HIS LORDSHIP: About page fifteen?—*A.* I think you might begin at page 13, really it begins at page 12.

Mr. ELLIOTT: Now, we will just turn to it. Now, whereabouts on page 12 is it?—*A.* Paragraph VI (3) section it begins.

Q. Do you mean with the section that is marked VI in roman numerals with (2)?—*A.* Yes.

Q. The roman numerals are VI and (2)?—*A.* Yes.

Q. Where does that extend to?—*A.* It goes to page 21, you might go over to page 23.

Q. Let us deal with it at page 21—now you give us this case as an outstanding one?—*A.* It is one of the outstanding ones.

Q. Now, let us look at it—you say that VI (2) on the left hand appear in your copy in " Outline it is XXII (304) on the right?—*A.* That was it. I say that these two sections there——

Q. You have to use what numbers of the section?—*A.* I say section VI (2) and VI (3) contains the statements of facts which are contained in Wells XXII (304).

Q. Now, let us see, you see it is this way—your note is, " Fresh from the hand of nature, the old gens order of society, they breathed the very spirit of freedom and life became one great wholesome effort," and the other one is?—*A.* Connected with the other.

Q. You would like me to read the other?—*A.* " The religion which the Greeks brought with them from Asia was the adoration of forests, mountains, winds, rivers and all the phenomena "—and then it goes over to the next page.

Q. That will do for now. You say that has been copied on the opposite page—and XXII (304) and XXII (304 and 5)—is that right?—*A.* I say that that section of Mr. Wells' contains the same statement of facts that are there.

Q. Now, let us see if he does. I have just read what you say, the language of VI (3), and you say they have changed it into, " They came into this inheritance of a previous civilization and with ideas and traditions of the woodlands still strong in their minds." And what you say is that what I have read just now is the same as what I read formerly—is that so?—*A.* I say that that contains the same statement, it is not put just the same, of course.

In the Supreme Court.

Plaintiff's Evidence.

No. 11. Florence A. Deeks. Cross-examination—*continued.*

Q. It is not the same at all?—*A.* It is not the same language, it means the same statement.

Q. How can you make the same statement——

HIS LORDSHIP: In substance she says it is the same?—*A.* In substance it is the same.

Mr. ELLIOTT: *Q.* Can I take that as one of your strongest cases?—*A.* Oh no.

Q. Tell me where I can get a stronger one in this document?—*A.* In regard to Greeks?

Q. No, in connection with these two books—show me any place where Wells has copied your book?

HIS LORDSHIP: Let us take it at random, take the middle of page fourteen.

Mr. ELLIOTT: The middle of page fourteen at (10).

HIS LORDSHIP: Yes, section ten, a chapter.

Mr. ELLIOTT: And on the opposite side (307) will you just try them, Miss Deeks?—*A.* I think that is a very weak one, myself.

HIS LORDSHIP: Pass by that. Pass to one that you think is stronger?—*A.* Suppose we take Columbus, that will be on page 45.

Q. Whereabouts on page 45?—*A.* The last paragraph.

HIS LORDSHIP: "Columbus became engrossed."

Mr. ELLIOTT: That is (84) of yours and (185) of Mr. Wells' is it?

HIS LORDSHIP: Yes.

Mr. ELLIOTT: *Q.* (84) says "Columbus became engrossed with the new idea that the earth was round, and that India extended far towards the West as a counter-balance to the European continent and that its farthest shore could be reached by sailing due westward—Columbus worked out—all his wonderful plans for——" Then you say that when Mr. Wells says, "A certain Genoese, Christopher Columbus began to think more and more of a voyage due west across the Atlantic. At that time nobody knew of the existence of America as a separate Continent. Columbus knew that the World was a sphere—and he supposed—that Japan—lay across the Atlantic——" Now, Miss Deeks, you say that is one of your strongest cases?—*A.* You will notice here a little similarity in language. "Columbus began to think more and more of a voyage due west," and "Columbus began to think of sailing due westward"—that is all I count on there.

Q. Surely that is what did happen. That is the way that Columbus did go?—*A.* Not one of Mr. Wells' Authorities used that language.

Q. But Mr. Wells does?—*A.* So does "The Web."

HIS LORDSHIP: Point out something else, Miss Deeks.—*A.* Then we will go right on down with Columbus, every sentence of Mr. Wells' "Columbus" is transferred from the Encyclopedia Britannica and "The Web"—shall I give you what he took from "The Web"?

HIS LORDSHIP: We are not much concerned with the Encyclopedia Britannica. I suppose perhaps it was an edition of the Encyclopedia whose copyright had expired.

Mr. ROBERTSON: I will ask one of the experts to give evidence on that particular matter.

Mr. ELLIOTT: *Q.* You used the Encyclopedia, didn't you in the writing of your work?—*A.* Oh no.

Q. I thought you told me you used the Encyclopedia Britannica?—*A.* Oh no, when I gave you my list of authorities, you said, "The Encyclopedia Britannica," and I said, "Perhaps so."

Q. You say this language also appears in the Encyclopedia?—*A.* Not at all.

Q. It does not appear——

HIS LORDSHIP: I suppose this story has been told ten thousand times.

Mr. ROBERTSON: If you take the language on page eleven, you will get something.

HIS LORDSHIP: Mr. Elliott wants to get something else.

Mr. ELLIOTT: You told us to come to page 46—what do you see there?—*A.* We both speak of "beautiful weather."

Q. Some place on page 46—that is about the middle?—*A.* Yes, that line.

Q. That is your part there starting, "Early on a beautiful Friday morning"?—*A.* The fact we both call the weather beautiful.

Q. Let us understand it first—that is your passage starting, "Early on a beautiful Friday morning"?—*A.* Yes.

Q. And what is the passage of Mr. Wells?—*A.* It says, "Early on a beautiful Friday morning," so and so, "the little expedition set sail." He says, "The little expedition went south to the Canaries and then set out across the unknown seas in beautiful weather with a helpful wind"—we both used the words, "Little Expedition," and the term "beautiful."

Q. That is proper?—*A.* I went through every book in the Carnegia Library which contains every book——

Q. Just answer this, the authorities agree it was beautiful weather?—*A.* No, they do not.

Q. Some say that it was a beautiful day?—*A.* No, none of them say that it was beautiful.

Q. In discussion of Columbus sailing, we agree that it was a small expedition, there were only three ships in it?—*A.* Yes, there were three ships.

Q. You cannot complain because he says it was a little expedition?—*A.* I do complain of it.

HIS LORDSHIP: And towards the bottom of this citation, Miss Deeks says, "Columbus richly attired in scarlet and carrying the Royal Standard of Spain landed," and Wells says, "And while the day was still young Columbus landed on the shores of the new World richly apparelled and carrying the Royal Standard of Spain."

In the Supreme Court.

Plaintiff's Evidence.

No. 11. Florence A. Deeks. Cross-examination—*continued.*

Mr. ELLIOTT: *Q.* Which is true?—*A.* Everybody does not speak of it.

HIS LORDSHIP: She relies on the "richly apparelled" and "bearing the Royal Standard of Spain."

Mr. ELLIOTT: *Q.* You took that out of some book?—*A.* I am not charging he took that from my book, but the one on the next page.

Mr. ELLIOTT: *Q.* (96) in yours?—*A.* Yes.

Q. And (187) in Wells?—*A.* Yes, 187.

Q. Just read me what you say?—*A.* "Columbus was quite unconscious of the fact that he had discovered a great new world, and believing that he had touched the shores of India"—"That he had discovered a great new world"—you stop there.

Q. Then, down below, page 187, then you go over to Mr. Wells, do you?—*A.* Yes.

HIS LORDSHIP: He says, "Columbus died ignorant of the fact that he had discovered a new Continent"?—*A.* Both are incorrect. Columbus knew that he had discovered a new continent later.

HIS LORDSHIP: I thought he did?—*A.* He did know it.

Mr. ELLIOTT: *Q.* How do you know?—*A.* According to the best authorities.

HIS LORDSHIP: Why do you state the very same thing?—*A.* I think, my Lord, it was a guess statement on my part.

Q. And you think that Mr. Wells is just as good a guesser as you are?—*A.* The next sentence telling that he had touched the shores of India.

Mr. MOOREHEAD: *Q.* What page?—*A.* Following right on.

Mr. ELLIOTT: *Q.* "And believing that he had touched the shores of India, he called the Islands the West Indies"—what does Wells say?—*A.* "The Islands he had found were therefore called the West Indies"—before that he had found India.

Q. And is that not the fact?—*A.* No, it is both incorrect.

Q. Do you mean to tell me, Miss Deeks, that the West Indies, down here in our Southern Seas, were not named because Columbus thought he had discovered India?—*A.* I do. They were named because Columbus thought from these Islands he would discover the road to India.

Q. Then give me another one, Miss Deeks, please?—*A.* Shall I take page 11?

Q. If you like.

Mr. ROBERTSON: You have another one on that same page?—*A.* Also in 1498 the Portuguese under Vasco de Gama sailed around the African Continent and reached Calicut on the Malabar Coast," in the second paragraph.

Mr. ELLIOTT: *Q.* (102) You pointed to me—and what part is Mr. Wells?—*A.* Right opposite, and look at the notes here.

Q. I am not troubling with those notes. That is an afterthought. Read me (102) what you say you wrote?—*A.* "Also in 1498 the Portuguese

under Vasco de Gama sailed around the African Continent and reached Calicut on the Malabar Coast——" Wells says, " In 1497 Vasco de Gama sailed from Lisbon to Zanzibar and then with an arab pilot he struck across the Indian Ocean to Calicut in India "—but in his first note——

HIS LORDSHIP: What does he say?—*A.* In his first note, I have here, Vasco de Gama sailed around the African Continent," and his next note, he has, " In 1498 Vasco de Gama sailed from Lisbon——"

HIS LORDSHIP: From Lisbon?—*A.* He saw his mistake later and corrected it in his published book, as 1497, that is a mistake I made myself. It was peculiar.

Q. Where did you get it from?—*A.* I got it from Duruy. Duruy had it in the end of the sentence, that is he landed in India in 1498, but by mistake I put it at the beginning of the sentence, which made it a mistake—at the beginning it was incorrect.

Q. Give us the next strongest?—*A.* In the next——

Q. You mean the one that starts " In 1513 "?—*A.* Yes.

Q. You read what you had in your book?—*A.* " In 1513 Balboa traversed the isthmus of Panama and caught sight of the great ocean beyond," take the last part of Mr. Wells', " An ocean which had already been sighted by Spanish Explorers who had crossed the Isthmus of Panama "—he changed Balboa for Spanish Explorers, which is the only change in the sentence.

Q. You think he did do that?—*A.* Yes.

Q. And you seriously say that is evidence that Mr. Wells——

HIS LORDSHIP: She says that is evidence to her mind that Wells had her transcript before him when he wrote that sentence?—*A.* That sentence, I think I took quite verbatim from Duruy. He did not see Duruy so he must have taken it from somebody else, and no one else had it.

Mr. ELLIOTT: *Q.* Where else?—*A.* Right on down. The same " Beyond which Magellan named Pacific, when about seven years later he entered it after sailing through the Straits at the southern point of South America "—and the first part of his sentence, " Magellan coasted to the south of South America passed through the dark and foreboding ' Strait of Magellan ' and so came in to the Pacific Ocean "—that is another sentence I have from Duruy, and I added to it that he came in to the Pacific. Duruy did not have it. I see Mr. Wells has the same as I have, just what I took from Duruy and adds what I put in myself.

Mr. ELLIOTT: *Q.* And I suppose the historical facts are true, are they not?—*A.* Yes, as far as I know they are true.

Q. Give us another one?—*A.* Well, we will take page 11.

Q. Why go back—we are at page 48—why go back to 11?

HIS LORDSHIP: Yes, back to 11?—*A.* The bottom of the page V (13).

HIS LORDSHIP: The witness is comparing chapter V (13) of her manuscript with Wells' Chapter XX (273).

In the Supreme Court.

Plaintiff's Evidence.

No. 11. Florence A. Deeks. Cross-examination—*continued.*

Q. Now, Miss Deeks, read from "The Web," from your book, your manuscript, what you say, first?—*A.* "Phœnician fleets sailed the Red Sea and found their way to the Indies, and their caravans traversed the land of Asia gathering up the best productions—ivory and gold dust from the land of Ophir, incense and spices from Arabia, the most beautiful of pearls from the Persian Gulf, precious stones and a thousand other precious wares from India, silk from China that sold for their weight in gold, furs from Tartary"—perhaps that is enough.

HIS LORDSHIP: All right.

Mr. ELLIOTT: *Q.* Now, give us the other one?—*A.* Mr. Wells had, "Phœnician shipping under Egyptian owners was making its way into the East Indies and perhaps even further into the Pacific. Across the deserts of Africa (that is the land of Ophir) and Arabia and through Turkestan, toiled the caravans with their remote trade. Silk was already coming from China, ivory from Central Africa, tin from Britain to the centres of this new life in the world. Men had learned to weave fine linen—they made the most beautiful pottery and porcelain; (I had spoken very generally) there was hardly a variety of precious stone in the world that they had not found and cut and polished".

Mr. ELLIOTT: These are all facts?—*A.* No, I think most of them are mistakes.

Q. Surely you would not make so many—you were right when you made your very graphic description there?—*A.* No, I was wrong.

HIS LORDSHIP: The ancients had a method of writing history differently from moderns, the ancients drew on their imagination very largely.

Mr. ELLIOTT: *Q.* You do not say that those facts are all incorrect?—*A.* I do not say all of them are, but I believe many of them are incorrect, besides the language which Mr. Wells uses corresponds.

Mr. ELLIOTT: *Q.* Miss Deeks, you were off there, let us get down to something. You got that out of some book?—*A.* I got it from Duruy.

Q. And Duruy got it from somewhere else?—*A.* I think he made a mistake.

Q. Duruy was not there, he must have got it from some other books?—*A.* I do not know where he got it from.

Q. He must have got it from somewhere——

HIS LORDSHIP: Are these samples enough for you, Mr. Elliott?

Mr. ELLIOTT: *Q.* Have you any stronger case than any of these—I want the strongest case you have?—*A.* There are several others.

Q. Give me the very strongest case you have got?—*A.* The first chapter is a very strong one.

Q. Is it the strongest one?—*A.* I cannot say it is the strongest, there are many strong points.

Q. Now, you have shown us these comparisons—now you have another case where the identical same language is used?

HIS LORDSHIP: She points to cases of the use of the same words, she is not pointing apparently to the use of the same sentences?—*A.* I have about one hundred identical phrases of which perhaps twenty-five were originally in "The Web."

Mr. ELLIOTT: *Q.* You charge that Mr. Wells had this book or manuscript of yours before him, and was copying it. Now, can you show me any place at all where, in a sentence, or two sentences, that he used the identical language that you were using in your book?—*A.* Oh no, he would not be so foolish as to do that.

Q. He would not be so foolish?—*A.* Oh no.

Q. He was too astute for that?—*A.* Yes.

Q. Then, can you show me any case where you both made a mistake, where you both made a mistake?—*A.* I told you of one just now, a minute ago, of the 1498.

HIS LORDSHIP: You say you have about one hundred sentences?—*A.* Phrases, I should say.

HIS LORDSHIP: Have you listed them?—*A.* Yes sir, I have them listed.

Q. Where are they. Mr. Elliott would like to see them, I am sure he would.

Mr. ELLIOTT: *Q.* Where are they, I would like to see them?—*A.* I have a more concise list, right here, Mr. Elliott.

Mr. ELLIOTT: This is the document you wanted to put in before lunch?

Mr. ROBERTSON: Oh no, the one I had is what is called "the plan."

WITNESS: Here is a more concise plan. Here is a list of thirty-six, and those that are marked in there were originally in the "Web".

Q. What is this stuff——

Mr. ROBERTSON: A lot of it is instructions.

Mr. ELLIOTT: *Q.* Now His Lordship will allow you, if you have any list of where the wording is the same, to let you use it?—*A.* There I give you these—this is only a partial list of similarities, and the red markings were originally mine.

HIS LORDSHIP: I think some of these are said to be the phrases that are said to be verbatim?—*A.* Yes, verbatim.

Q. Where are they? You are not quite coming to the question—Mr. Elliott was wanting to know whether you had sentences or phrases verbatim?—*A.* I just said I gave him something.

HIS LORDSHIP: Wait one minute—you are producing a list here of similar sentences?—*A.* Yes.

Q. For instance, your first one, from "The Web" is "concentrated into a focus of heat and light", and you trace that in the other into "a centre of heat and light" which is not verbatim, but very similar?—*A.* Part of it is verbatim, and quoting again from "The Web", says, "it became planets", and quoting from the "Outline", "it became planets"——

In the Supreme Court.

Plaintiff's Evidence.

No. 11. Florence A. Deeks. Cross-examination—*continued.*

And quoting from " The Web ", " As vessels were needed for cooking pottery was produced ", and quoting from " the Outline ", " They had no cooking instruments, they had no pottery and so on ".

Q. Cookery and pottery—is not that a fact ?

HIS LORDSHIP : All right, Miss Deeks, Mr. Elliott understands what you mean by that ?—*A.* Here is one sentence here, at page 68——

Mr. ELLIOTT : *Q.* What do you say about this, at page 68 ?—*A.* It is a phrase, at the foot of (85).

Q. At the foot of (85) of your book—what do you say ?—*A.* " President Munroe of the United States in 1823 "——

Q. Yes ?—*A.* Mr. Wells has, " President Munro of the United States in 1823 ". He gives as his authority Channing.

Q. He was President of the United States in 1823 ?—*A.* It is not the fact, it is the form of the sentence.

Q. How could you describe a man if he was not President of the United States—Mr. Channing describes it this way in his annual message of 1825.

Mr. ELLIOTT : Miss Deeks, you gave me this as an example of the use of language and because you say " President Munro of the United States in 1823,"—and you say that because these two phrases are the same he took it from you ?—*A.* I consider it one among a great accumulation.

Q. Have you any other one ?—*A.* I have given you a lot here.

Q. Have you any more besides these ?—*A.* Yes, I gave you the list there. Some are verbatim, and some are similar.

HIS LORDSHIP : Mr. Robertson, what about this " plan " of yours ?

Mr. ROBERTSON : When my friend gets through, as your Lordship suggested, I offered my friend a copy for his use during lunch, but he did not want to spoil his lunch, he thought it would take longer than that.

Mr. ELLIOTT : I draw your Lordship's attention to the arrangement that was made.

HIS LORDSHIP : I think, subject to all objections you had better look through it.

Mr. ELLIOTT : I saw there was a good deal of discussion about this on the Commission evidence when Counsel in England were examining.

HIS LORDSHIP : Using this very thing ?—*A.* Not using it at all, but using the comparisons that are in, and there was some suggestion of further evidence being given, both sides agreed they could not do it because it was distinctly agreed on this examination that all the comparisons were in and the arrangement as set out here in the examination for Discovery was between——

HIS LORDSHIP : That would not restrict Counsel on the argument calling attention to anything at all. This virtually is the same thing, but facilitates evidence and facilitates examination.

Mr. ROBERTSON : On the examination it was made perfectly plain.

HIS LORDSHIP: That will be Exhibit 7.

Exhibit 7. The Plan or framework of "The Web," and "The Outline of History".

HIS LORDSHIP: Mr. Moorehead cannot cover the same ground.

Mr. MOOREHEAD: I want to keep clear, so far as I can, my Lord.

HIS LORDSHIP: What do you want to refer to?

Mr. MOOREHEAD: I want to go further into this letter of March 27th, and I want to go into some of her evidence to my learned friend, her passages, the passages from "The Web", and the passages——

HIS LORDSHIP: Go on and cross-examine as far as the publisher is concerned, you will have something to say about the correspondence—you represent who?

Mr. MOOREHEAD: The McMillans.

HIS LORDSHIP: All right.

Cross-examined by Mr. MOOREHEAD.

Q. Miss Deeks, you spoke this morning about a letter of March 27th, 1919?—*A.* Yes, a letter from——

Q. A letter from Mr. Liston of the McMillan Company to yourself?—*A.* Yes.

Q. You remember about that letter?—*A.* Yes.

Q. Did you, after you had taken the copy, the purple copy of your manuscript, "The Web", to McMillan subsequently take to them a manuscript called "The Dawn"?—*A.* No, I took to them a manuscript called "Love and War."

Q. You are quite sure about that?—*A.* Yes.

Q. What manuscript was it you took to them, marked in their memo book on the 26th of March, "The Dawn"?—*A.* I did not give them anything.

Q. Beg pardon?—*A.* I did not give them anything.

Q. On the 26th of March?—*A.* Returned to me on the 15th of July.

When Mr. Liston discouraged about revising this manuscript and suggested I should write a large pamphlet on "Love and War", I did it, and I submitted it to Mr. Liston. I imagine that is what that refers to.

Q. What does this manuscript of the 26th, refer to?—*A.* That refers to "Love and War".

Q. And that is something you had handed in subsequently to the time you had handed in "The Web"?—*A.* Yes.

Q. Now, do you remember when you had that returned to you, do you remember when you had that returned to you?—*A.* I do not remember.

Q. Take a look at that letter—is that your letter?

HIS LORDSHIP: Is that your letter?—*A.* I would say yes.

Q. July 15th—now, you see the receipt on the back of that letter?—*A.* Yes.

In the Supreme Court.

Plaintiff's Evidence.

No. 11. Florence A. Deeks. Cross-examination—*continued.*

Q. That is your signature?—*A.* Yes, excuse me. (Witness looks at letter) Yes.

Q. Now, that receipt is dated July 15th, 1919?—*A.* Yes.

Q. Now, what is that receipt for?—*A.* That would be the "Love and War" pamphlet.

Q. The "Love and War"——

HIS LORDSHIP: What are you going to do? Why are you going to put it in—what has it to do with the case?

Mr. MOOREHEAD: Because I wish to show "The Web" was returned on a different date to the date she says.

HIS LORDSHIP: That is done already. She says the "Web" was returned in April.

Mr. MOOREHEAD: In July.

Exhibit 9. Letter dated 15th July, 1919.

Mr. MOOREHEAD: That is the receipt at London. The letter itself is not dated, but that is the time she got back this manuscript, "Love and War"——

Q. On July 15th?—*A.* Yes.

Q. And that is the manuscript that Mr. Liston is talking about in this letter of March 27th?—*A.* It must be.

Q. "I have glanced through the pages of your manuscript"——

HIS LORDSHIP: That letter has been put in this morning does not refer to "The Web" at all.

Mr. ROBERTSON: The witness has not said that, and I do not think she will.

HIS LORDSHIP: Ask her.

Mr. MOOREHEAD: *Q.* This letter of March 27th referred to the return of manuscript?—*A.* The July letter?

Q. No, the letter of March 27th?—*A.* The March 27th.

Q. As to—?—*A.* That is "The Web".

Q. You are sure about that?—*A.* Sure.

Q. Then this is a photostatic copy, I will prove it later on, taken from their manuscript book. You will see that "F. F. Deeks, 140 Farnham Avenue, The Dawn, 26. 3. 19 vault. Returned July 15th, 1919"?—*A.* It is wrong.

Q. It is not correct?—*A.* It is wrong, not correct, absolutely wrong.

Q. What is wrong with it, Miss Deeks?—*A.* Because I brought it back as I told you this morning when I was there, after I received that letter.

HIS LORDSHIP: The witness said she received that manuscript back in April. You say in July?

Mr. MOOREHEAD: We say so, so far as "The Web", we will give evidence to show she received it back on the 5th of February, 1919, that is what our records show, and this other record she is now talking about,

received back in July, is another matter altogether, " The Dawn ", it has nothing to do with " The Web ".

HIS LORDSHIP : She does not say she received " The Web " in July, she just speaks of April ?—*A*. April, in April.

HIS LORDSHIP : And she points to a letter in March, saying she may get the manuscript on calling for it ?—*A*. The 27th of March.

Mr. ROBERTSON : It is at the end of it.

Mr. ELLIOTT : The letter of January 31st, 1919 says she can have the manuscript if she came for it.

HIS LORDSHIP : April ?—*A*. March 27th shows I got it.

HIS LORDSHIP : How large a book was your " Love and War " ?—*A*. Just a large pamphlet.

Q. A pamphlet ?—*A*. Just like that (indicating).

Q. This letter of the 27th of March appears, obviously to the " Web ", I should think.

Mr. ROBERTSON : Your Lordship will see the concluding paragraph perfectly plain, because " The Love and War ", had not taken form. It says, " Now set about your short crisp lecture or pamphlet " Love and War ", and call in one morning when you have read this letter and let me know what you intend."

Mr. MOOREHEAD : I understood the witness to say this morning " The Dawn " was a revision of the first " Web " ?—*A*. No, " The Dawn ", was the first chapter of my " Web ".

Q. Then how does this " Dawn " get " F. F. Deeks, 140 Farnham", " The Dawn, 26. 3. 19 vault "—that is when it went into the vault, and returned July 15th, 1919 ?—*A*. I cannot possibly explain it. I do not know anything about it. I should think it would be——

Q. But " The Dawn ", was the name of the first part of your subject ?—*A*. It was, the subject of my first chapter was, I think " The Dawn ".

Mr. ROBERTSON : That is probably when it came back from England, I would suggest, it went into your vault.

WITNESS : That might be it, because the letter was written on the 27th of March.

Mr. MOOREHEAD : *Q*. You of course, got the letter from Mr. Saul of the 31st of January ?—*A*. Yes.

Q. Telling you it was there at your disposal ?—*A*. Yes.

Q. I think you stated this morning you did not believe that letter was correct ?—*A*. I do not think it was correct.

Q. Did you think it worth your while to ask Mr. Saul ?—*A*. Oh no.

Q. You did not call ?—*A*. No.

Q. You did not telephone ?—*A*. Oh no.

Q. At that time, did you think it was not correct when you got it ?—*A*. Why I——

Q. Why so much hesitation—you surely know whether you did or did not ?—*A*. I think I——I just read——.

Q. When you received the letter?—*A.* I think I just read that letter—

Q. Answer my question—when you received the letter, did you think it was not true?—*A.* I——

Q. That is a simple question? I say, when you received the letter, did you think it was not true?—*A.* My impression was, if it was there he would have sent it back to me.

Q. That is the impression you had at the time you got this letter on the 31st of January?—*A.* I think that was the impression I had then.

HIS LORDSHIP: What was the impression?—*A.* That he was clearing up everything. He would have sent it back to me if it had been there, and it was just a business way of writing his letter.

Mr. MOOREHEAD: *Q.* Now, what reason did you have at that time for thinking it was not there?—*A.* Because he did not send it back when he was clearing up everything.

Q. Then if you thought he did not have it why didn't you make sure by going down and seeing?—*A.* Well, I was busy at other things, and I was not revising, and I think I had lost interest in it, and I think I just let it go for the time being.

Q. You told my friend, Mr. Elliott, this morning, when you first saw the "Outline of History" at the end of 1920?—*A.* Yes.

Q. I think you told him that you revised your book in 1920?—*A.* Yes.

Q. I think you told him that you revised your book in 1923?—*A.* My final revision.

Q. You did make in 1925?—*A.* That took me from 1923 to 1925.

Q. Now, when you saw the "Outline of History" in 1920——

HIS LORDSHIP: I do not think that I will allow Mr. Moorehead to go beyond the publishing. You are now going into questions between author Wells, and this witness, I think that was exhausted by Mr. Elliott. The Counsel for the defence must agree not to cover the same ground.

Mr. MOOREHEAD: I just wanted to ask one or two questions.

HIS LORDSHIP: If just one or two, go ahead.

Mr. MOOREHEAD: *Q.* Did you, when you first read "The Outline," think that he had taken from your work his frame work, or his phrases?—*A.* When I read it through first the whole thing struck me as similarity to mine which should be investigated. I felt that it covered the whole thing.

Q. Now, just one more question, and I am through—for a time did you have an expert, Professor Kennedy, help you to revise, to a very considerable extent your whole work?—*A.* Yes in 1923 to 1925.

HIS LORDSHIP: Very well.

Mr. MOOREHEAD: My friend, Mr. Elliott, has covered some of these comparisons. I have prepared, some happen to be the same, I cannot attempt, I have picked up some twelve, fifteen or eighteen, some designedly and some at random—I had the parallel passages of Miss Deeks in "The Web," and "Outline," and also the parallel passages of Botsford, Breasted and Goodspeed.

HIS LORDSHIP: Show them to Mr. Robertson, and later on—This is not the time, but finally, later on, when you come to your defence.

Mr. MOOREHEAD: Page, chapter and all.

HIS LORDSHIP: Hand it to me now, and it may be gone into in your defence.

HIS LORDSHIP: Anything else, Mr. Robertson?

Mr. ROBERTSON: Yes, my Lord, two or three questions.

Q. Miss Deeks, your attention has been called to the fact, while you saw Mr. Wells' book in December, 1920, that your action was not commenced until 1925—have you anything you want to say in explanation of that?—*A.* I completed the revision I was at early in 1921.

Q. Well?—*A.* Then, I took up making up the analysis, this comparison.

Q. Well?—*A.* I had that finished by 1922.

Q. By 1922?—*A.* It was in the hands of the lawyer, but there was illness in the family, and one thing and another, I think, and I just let it pass off, and I got so interested in making the book to the best of my ability that I got expert help in 1923 and completed the next revision in 1925.

HIS LORDSHIP: There is no question of the Statute of Limitations.

Mr. ROBERTSON: My friends all set up the section of the Copyright.

I am only asking the witness now to answer me—my friend Mr. Elliott sought to draw from the witness now with reference to the letters whether Mr. Wells had been brought in to the matter, served a writ in 1927—now, I ask my friend to produce the letters written in 1925, unless my friends say they were written in 1925——

Mr. MOOREHEAD: I omitted to ask this lady where that original went before we got it.

Mr. ROBERTSON: Perhaps my friend will dispense with the production of the letter.

I understand letters were sent to each of the defendants on behalf of Miss Deeks in October, 1925.

Mr. ELLIOTT: There is no doubt of that. We admit that the formal letter was sent to the defendants that they had been instructed to take proceedings.

HIS LORDSHIP: After the writ was issued?

Mr. ROBERTSON: I think I shall put it, at least in the very way in which the original writ was issued.

Mr. ELLIOTT: Yes, we each received letters.

Mr. ROBERTSON: *Q.* Then with reference to the passages that you pointed out in your analysis, comparisons which appear at the foot of page 11 there—that is a description of the commerce of the Phœnicians—you recollect what I mean?—*A.* Yes.

In the Supreme Court.

Plaintiff's Evidence.

No. 11. Florence A. Deeks. Re-cross-examination.

Q. Now, I want to ask you if in connection with that you observed anything in connection with the transcript after it came back to you?—*A.* The page was turned down at the corner.

Q. The page?—*A.* Where this passage occurs in my manuscript, that page was turned down.

Q. When the manuscript was returned to you?—*A.* Yes.

HIS LORDSHIP: Mr. Moorehead, you wanted to ask something.

Re-cross-examined by Mr. MOOREHEAD:

Q. Miss Deeks, you stated to His Lordship this morning, you gave the manuscript to McMillans in July 1918?—*A.* The end of July, or early in August.

Q. And it came back very much mussed up?—*A.* Yes.

Q. Now, did you send this manuscript to any other firm of publishers before McMillan?—*A.* I gave it to Dent & Company in Toronto and they had it a few days.

Q. A few days—would you not make it longer than that?—*A.* It might have been a week, more or less.

Q. Then it came back from them?—*A.* Yes.

Q. To you?—*A.* Yes.

Q. And from you to McMillans?—*A.* Yes.

Q. And the copy?—*A.* The copy?

Q. You had a blue copy, a purple or a red, you call it, the purple was the original, you call it?—*A.* Yes.

Q. And the blue was the copy?—*A.* Yes.

Q. What happened the blue copy?—*A.* Oh, I kept that, and gave it to somebody else.

HIS LORDSHIP: All right.

Mr. MOOREHEAD: One more question.

Q. Did the purple copy, after it came back from McMillans, go to any other expert?—*A.* Sir Bertram Windle looked over the purple copy. He is the only one who has used the purple copy at all in making comparisons.

Q. Was that sent in 1923, the purple copy, to the United States?—*A.* No, the purple copy never went to the United States.

Introducing further Exhibits.

HIS LORDSHIP: Very well. The next witness.

Mr. ROBERTSON: Very well, witness.

I want to put in some documents, my Lord. It would be convenient now, perhaps to put in the letters written by Mr. Wells, or written to him. I will give the dates of them, my Lord. The first is a letter noted or said to have been written in 1918, by Henry S. Canby to Mr. Wells——

Mr. ELLIOTT: It is July, July 10th, 1918.

Mr. ROBERTSON: I understood there was no date to it?

Mr. ELLIOTT: They are all pinned together.

HIS LORDSHIP: Now you are putting in a number of letters?

Mr. ELLIOTT: You might put them in together, a great many of these letters are connected with the Commission evidence of Mr. Wells, and it was arranged over there they were to be—these are, some of them in bad state of repair, and perhaps my friend would agree, where they have copies in the Commission——

Mr. ROBERTSON: You can put these, giving dates, and have them all in.

HIS LORDSHIP: The file that you have is in a file already.

Mr. ELLIOTT: No, it is just the original Exhibit of Mr. Wells.

HIS LORDSHIP: Go ahead, pursue your own course, and when you have given the dates of the letters and read them, as you suggest, attach them, and put them in together, as Exhibit 10.

HIS LORDSHIP: They are all letters of Wells?

Mr. ROBERTSON: Or to him.

And I might say this, I am putting in the correspondence now, which is of a date prior to publication of his work, and my object is to show when he set about it.

HIS LORDSHIP: The Wells correspondence will be Exhibit 10.

Exhibit 10. Correspondence of H. G. Wells and to him.

Mr. ROBERTSON: The first letter my friends say is dated the 10th July, 1918, it is the letter from Henry S. Canby and addressed to Mr. Wells, and reads this way——

HIS LORDSHIP: What is the date of this letter?

Mr. ROBERTSON: My friend says the 16th of July, 1918.

"Dear Mr. Wells, I cannot but feel, as a result of our discussion at the Reform Club last night that an admirable and highly useful result would be an article by you on (for example) "How American History Should be Taught" in a time of crisis which would serve, in eighteenth century fashion as a prospectus of the book of which we talked, or at least could get to the light a few ideas which seem to me most valuable for America just now. Wont you do such an essay and let us publish it in the "Yale Review" for September or December, just sending advice extracts to the Press all over the country so that abundant comment may be had?

"We could offer you only twenty pounds for it—our honorariums never being of Saturday Evening Post magnitude—but you would do a service to mutual understanding worth infinitely more. Most of our articles by Britishers have been by men who know precious little about America. I hope you will feel inclined, Yours sincerely, Henry S. Canby."

The next letter is October 2nd of the same year.

In the Supreme Court.

Plaintiff's Evidence.

No. 11. Introducing further Exhibits—*continued.*

Mr. ELLIOTT: There is no year on this one. It is a letter from Sir Edwin Ray Lankester.

"My dear H. G., I am bustled off my head and legs by business and friends"—some personal matters I will pass. There is only one paragraph, "I like your idea of a History of Man. It should include all the present romance of mixed races and nationalities and savages and a sort of travellers' geography—picturesque——"

Mr. ROBERTSON: And the next letter is from Mr. Wells to Mr. Brett. Mr. Brett is an officer of McMillans Incorporated.

HIS LORDSHIP: And the date is what? 10

Mr. ROBERTSON: The date is October 20th, 1918.

Mr. ELLIOTT: I have not got that.

HIS LORDSHIP: Go on.

Mr. ROBERTSON: "Dear Mr. Brett; Every book can't be a Britling. I know you will do all you can to keep my end up over there.

"I'm very much taken up with work for the League of Nations Movement here, and I have been writing very little. But there is an idea that I have in hand that I wish I could talk over with you. We think here that the time draws near when instead of the History of England, and the History of the U.S.A., and the History of France and so on, children all 20 over the World ought to learn the History of mankind, and I believe that it is up to me to plan to write the first school "History of Mankind."

It will have to be an illustrated book, and I see it as a book of about two hundred thousand words and about one thousand maps, illustrations, full page or smaller. What do you think of the project? It might be produced, first of all as the sort of book that is given to a boy as a prize, and then, if opportunity arose, inserted it in schools in a cheaper edition. I want you to think it over, something of the sort I feel I must do, because it is one of the things in which I can show the way to well qualified but less broadly imaginative men. Yours very sincerely." 30

HIS LORDSHIP: Who is writing this letter?

Mr. ELLIOTT: Mr. Wells.

Then a letter on October 31st, 1918 from R. A. Gregory to Mr. Wells. This is from the Publishing Office of McMillan and Company, Limited, dated October 31st, 1918. H. G. Wells.

"My dear H. G., I hope that you will always write to me for any information I am likely to be able to provide?

The instructive meteorological diagram you saw at the recent Exhibition at King's College was prepared by the Meteorological office. It has been reproduced as one of the meteorological charts issued by the office, 40 and you will be able to obtain a copy of the chart by applying to the Secretary, Meteorological Office, S. Kensington, S.W.7. What you should ask for is the chart showing temperatures and other particulars relating to the exploration of the atmosphere at different heights. I have a lantern slide of the diagram.

" As to the second point, you will find in my " Vault of Heaven " several comparative particulars relating to the sun and planets. As you may not have the book, and I am sorry not to have a copy here myself, it may be sufficient to say that the sun's diameter—866,000 miles—is 109 times the diameter—7,900 miles—of the earth, so that if the earth is represented as a ball one inch in diameter, the sun would be represented by a globe one hundred and nine inches, or about nine feet in diameter. On the same scale of one inch to the diameter of the earth, the distance between the two balls would be about three hundred and thirty yards. You take the earth as a ball one foot in diameter, the sun has of course a diameter of one hundred and nine feet, and the distance between the two would be about three thousand nine hundred yards. On this scale the nearest star would be about five hundred thousand miles away. A one foot globe at Buckingham Palace would represent the earth if the dome of St. Pauls represents the size and relative distance of the sun. The astronomical unit usually employed is the distance of the earth from the sun, 193,000,000 miles. If this is taken as one inch, then thirty inches bring us to the orbit of Neptune, and the nearest star is at a distance of about four miles.

" I am sending you a copy of my edition of Huxley's " Physiography " which you may find of use in connection with the book you have in hand."

Mr. ROBERTSON : The next letter is from Mr. George P. Brett of the McMillan Company, New York, to Mr. Wells, dated November 8th, 1918.

" Dear Mr. Wells, I have just received your letter in regard to the book which you think of writing to be called the History of Mankind, or some such title.

" In the meantime, you will have received my letter telling you that Joan and Peter was doing better and it now looks as if the book might go to a third edition very soon, about one-half of the second edition just ready being already sold.

" There is no doubt in my mind that your plan for the book on the History of Mankind is a very feasible one, and I should think that the book would interest young and old readers alike, although at first it might be difficult to have the book studied in schools, as part of the regular course, yet I should not be afraid to venture that in the long run the book itself, or some modification of it might find use in this way. At any rate, I make no doubt the book would be recommended for school reading, and this might itself result in a considerable sale.

" Your letter tells me nothing of the way in which you intend to write the book, and of course, it might be prepared from the standpoint of Social History of Mankind. The Material History of Mankind, or the purely natural development of Mankind from its physical standpoint.

" Naturally one would suppose that you would be more likely to trace the history of mankind from the standpoint of its social development, but I should much like to have from you, if you have time for it, a little outline of just what your book is to be so that one might perhaps consult one or more of the well known educational authorities on this side and see as to

In the Supreme Court.

Plaintiff's Evidence.

No. 11. Introducing further Exhibits—*continued.*

whether such a book could perchance be actually used in the schools themselves.

" In any case, however, whether this be so or not, I think that the book should be written, and I earnestly hope that you will undertake it for a valuable and constantly increasing public must be found, it seems to me, for a work of this character.

" Hoping that you will give me, by and by, a few more details about the book, and awaiting these anxiously "——

Then a letter—the next letter I have is Sir Edwin Ray Lankester of November 10th—I do not think there is anything in that.

Then a letter of the 13th November from Sir Frank Newnes to Mr. Wells, " Reference to your letter to me about your proposed History of Mankind, and our conversation at the Club, I have since laid the scheme before my colleagues. From what I have been able to tell them of it, they are interested and like the idea very much.

" I should like to see you again and go into more detail and endeavour to put the whole thing in a more concrete form.

" I am trying to get leave for Friday, and anticipate being successful, and could you lunch with me that day with me at the Reform Club say at 1.15 (or as we now write it in the Army 1315) and have a talk. If at the last I am detained I suppose I can phone you at St. James' Court."

Then a letter, I may as well put them both in—a letter from Mr. Wells to Brett——

His Lordship: I gather you are not suggesting that Wells had his idea of the " Outline of History " from your client, but you are suggesting his having this idea——

Mr. Robertson: This came in convenient.

His Lordship: This came in conveniently.

Mr. Robertson: That is as far as I need go.

Then a long letter of November 30th, 1918 full of details from Mr. Wells to Mr. Brett—full of these details of this work, and he will want to look at illustrations.

His Lordship: He was thinking of it.

Mr. Robertson: Then a letter of December, 1918—day of the month not put in my copy, from Mr. Wells to Mr. Brett, " I had a letter about my plans for the Spring some weeks or so ago. I've been thinking that over. The unusual history is going to be a long business. . . I shall call it either the " Outline of History", or the " Shape of History". But of that more later. Meanwhile I think I shall push the work on my modern Book of Job novel which I shall call the " Undying Flame." That I think I can have ready for publication in May or June. I have been lucky in what I have done. I like it a lot, and I fear that there is quite forty thousand—either finished or in shape. It wont be one of the big books in size. It will be about seventy thousand words, and it will be a sort of cousin of " God the Invisible King " and " The Soul of a Bishop ". Job is a schoolmaster."

I will call your Lordship's attention, that during this period Mr. Wells was writing another work.

Then the letter from Mr. Brett to Mr. Wells of the 20th December, 1918 —after dealing with the other book he goes on, " I am enclosing to you herewith a suggested contract for the publication of the " History of Mankind " because while we are very glad to accept your suggestion that the book should be published under the regular agreement between us, there are certain special matters in connection with the publication of this book which should be dealt with by special agreement."

Then the agreement—perhaps my friends would produce that. The agreement between Mr. Wells, and the McMillan Company of New York?

HIS LORDSHIP: For the writing?

Mr. ROBERTSON: For the publication of the book.

Mr. MCKAGUE: The original agreement is attached to the Commission.

HIS LORDSHIP: Is attached to your evidence.

Mr. MCKAGUE: Mr. George Brett, the President of the Company.

Mr. ROBERTSON: Then, if I may put them in, a letter from Mr. Brett to Mr. Wells, without reading it, January 7th, 1919, and a letter from Mr. Wells in reply to Mr. Brett's letter of December—the letter from Mr. Wells to Mr. Brett being dated January 10th, 1919, the matter is still incubating a bit, and he also refers to the other book, "The Undying Fire", which was apparently not quite complete.

Mr. ROBERTSON: Then the Wells manuscript, that ought to be produced by my learned friend. I think they should put that in.

Mr. ELLIOTT: It is part of the evidence of Mr. Wells. It is here, and it can be put in anywhere.

Mr. ROBERTSON: I put it in.

Mr. ELLIOTT: It is in these books—nobody will ever read it.

HIS LORDSHIP: Do you want that marked as a separate Exhibit?

Mr. ROBERTSON: Yes, my Lord.

Exhibit 11. Manuscript, " Outlines of History " by Mr. Wells.

Mr. ROBERTSON: Then I think my friends did admit, perhaps, formally in the pleadings, the publication of this Exhibit. I put in Exhibit 8, is the " Outline of History ".

HIS LORDSHIP: The United States Edition—published by the American McMillans?

Mr. ELLIOTT: Yes, my Lord.

Mr. ROBERTSON: I thought perhaps I could save struggling with unnecessary Exhibits by also agreeing to the English Edition, the text of it, and the press of which are the same.

I have another copy I can put in.

Mr. ELLIOTT: I would not like to do that without knowing.

In the Supreme Court.

Plaintiff's Evidence.

No. 11. Introducing further Exhibits—*continued.*

Mr. ROBERTSON: The title page is different, because it is a special edition. I have the introduction and text and title of contents——

HIS LORDSHIP: Put it in, the English Edition.

Mr. ELLIOTT: The Newnes' edition, two volumes.

HIS LORDSHIP: The "Outline of History" by H. G. Wells, first edition, volumes one and two will be Exhibit 12. And the Cassels Edition—is that the second?

Mr. ELLIOTT: Revised and corrected edition is called.

HIS LORDSHIP: That is probably the second edition, the Cassels Edition, Exhibit 13. All right.

Exhibit 8. Vols. I and vol. II "The Outline of History," Wells, U.S. Edition.

Exhibit 9. Letter (receipt) by plaintiff to Mr. Liston of MacMillan Co. 15th July, 1919.

Exhibit 10. Letter 16th July, 1918, Oct. 1918, 20th Oct. 1918, 31st Oct. 1918, 8th Nov. 1918, 13th Nov. 1918, 30th Nov. 1918, 19th Dec. 1918, agreement Mr. Wells; 7th Jany. 1919, 10th Jany. 1919 (to be assembled).

Exhibit 11. Wells Manuscript.

Exhibit 12. "The Outline of History" H. G. Wells, vols. I and II, F. H. N.

Exhibit 13. "The Outline of History," H. G. Wells, Revised and corrected Edition. (Cassels Edition.)

Mr. ROBERTSON: Then I will call Professor Irwin.

Florence A. Deeks (recalled). Examination.

FLORENCE A. DEEKS, recalled. 6th June, 1930.

Examined by Mr. ROBERTSON.

Q. Miss Deeks, you are already sworn, and are still on oath. Now I want to refer you to Exhibit 22. First of all, I want to ask you, looking at the exhibit, I see there is an entry spoken of yesterday of the receipt of the manuscript called The Web on August 8th, 1918, then there is entered opposite that, in another handwriting, under the heading "Disposition" the words "Returned, February 5th, 1919." The question I want to ask you is Was that manuscript returned to you on February 5th, 1919?—*A.* No.

Q. When did you get it back?—*A.* I received it back when I went down to the Macmillan office to have my interview with Mr. Liston; it must have been early in April.

HIS LORDSHIP: That is as she said before.

WITNESS: Yes.

Mr. ROBERTSON: *Q.* Then I call your attention to another entry later—your initials are not perhaps right?—*A.* No, F.A., it should be.

Q. 140 Farnham Avenue, the same address, a manuscript entitled The Dawn is entered as being received on the 26th March, 1919. Did you take any manuscript into Macmillan's at that time?—*A.* No.

Q. Did you ever take a manuscript called "The Dawn"?—*A.* Never.

HIS LORDSHIP: What is the whole entry there, is it under "D" also?

Mr. ROBERTSON: Yes, the second following entry. There is just one entry in between, and the following entry is this: "F. Deeks" the name of the author, the address 140 Farnham Avenue; title of manuscript "The Dawn"; date received 26/3/19. Then the word "Vault"; and then "Returned, July 15th, 1919."

HIS LORDSHIP: You never had such a manuscript?—*A.* No, never.

Mr. ROBERTSON: Although you have already told us "The Dawn" is the name that appears upon the opening part of the manuscript of "The Web," ?—*A.* The title of the first chapter.

Q. Then did you, at any time, take another manuscript, not called "The Web" a different manuscript, to the Macmillans?—*A.* Later in the year.

Q. About what time, as well as you remember?—*A.* Possibly June.

Q. Was it after you had had the manuscript of The Web returned to you?—*A.* Oh yes.

Q. The name of that manuscript was what?—*A.* Love and War.

Q. Is that the manuscript or the article or work which you were requested to put your time on in the letter of Mr. Liston?—*A.* Yes, that is the manuscript.

Q. The letter of March 27th, 1919?—*A.* Yes.

HIS LORDSHIP: What is the whole entry there—you read that entry, did you not?

Mr. ROBERTSON: There is not any entry of that manuscript in here, that I know of. I think my friend had something else, but I have forgotten. It is not entered in this book.

Mr. ELLIOTT: You might ask her if that is the one which she brought the second time?

Mr. ROBERTSON: *Q.* My friend wants to know if this manuscript, which is entered here as "The Dawn" as received on the 26th March 1919, was the manuscript "Love and War"?—*A.* Oh no.

Q. In other words you did not take in any manuscript at that time?—*A.* No, nothing.

HIS LORDSHIP: How do you fix the date when you took in the Love and War manuscript?—*A.* It was summertime, and the date they say it was returned was July 15th or 16th. I think they had it about a month.

Mr. ROBERTSON: That may not be the same thing at all?—*A.* Oh no, it may not.

Q. Then a letter was put in here from Mr. Liston to you, of the latter part of March 1919, the 27th I think?—*A.* Yes.

In the Supreme Court.

Plaintiff's Evidence.

No. 11. Florence A. Deeks (recalled). Examination—*continued.*

Q. And the reference in that letter to your putting your time upon it goes on to say: Now set about your short crisp lecture or pamphlet Love and War, and call in one morning and let me know what you intend. What I want to know, Miss Deeks, is with reference to that pamphlet or lecture "Love and War," had you submitted any such manuscript as that, a manuscript which was afterwards reduced to that, at the date of March 27th, 1919?—*A.* I did not give anything else to Macmillan & Company.

Q. Here is a letter of March 27th, 1919, to you, in which he says to set about your short crisp lecture or pamphlet "Love and War"—up to this time had you submitted any manuscript of any kind on the subject of love and war?—*A.* None whatever.

Q. Then just one matter more. This same letter, in an earlier part, begins in this way: You have embarked upon a sea of past, present and future. Your subject stretches from the beginning until now. What manuscript of yours does that relate to?—*A.* The Web.

Q. Had you any other manuscript that could be so referred to?—*A.* No.

His Lordship: What was the scheme of the manuscript "Love and War"—was that a romance?—*A.* No, it was more of a little scientific sketch. It was not a romance. I do not think I have read it since then, but I think I traced war from its beginning on, and then traced love as it were from its beginning on, and showed the difference between the two. I think that is it. I have the manuscript. It was just a short pamphlet.

Q. Could you explain how Mr. Liston would know anything about that pamphlet "Love and War" if he did not have it before him when he wrote his letter of 27th March?—*A.* No I do not know.

Mr. Robertson: *Q.* Had you seen Mr. Liston?—*A.* No, I met him for the first time when I went down to get the manuscript.

Cross-examination.

Cross-Examined by Mr. Muirhead.

Q. Now, Miss Deeks, there is a letter of yours undated—this is Exhibit Number 9—this letter is headed "140 Farnham Ave., Toronto

> "Dear Mr. Liston: I am sorry not to have this article typewritten, and I even ran out of writing paper—but perhaps you will be good enough to give me some further suggestions upon which I might re-write it. I am enclosing a few verses also. I wonder if you could do anything with them.
>
> Yours very truly, Florence Deeks."

On top of this in lead pencil is the following:

> "Am writing returning these if Mr. Wyse agrees.
>
> M. W. L."

Q. That would be M. W. Liston?—*A.* I suppose so.

Q. On the back of that letter I see your signature to a receipt dated July 15th 1919?—*A.* It looks like mine.

Q. There is no doubt about it being your name, is there?—*A.* I should say it is mine.

Q. "Received Miss Deeks' MS. from the Macmillans this date." That entry corresponds to the date which the record book says here?

HIS LORDSHIP: That is "The Dawn."

Mr. MUIRHEAD: Yes, The Dawn, 26/3/19, Vault, and returned July 15th, 1919. Do you think there can be any doubt about that that receipt refers to the one and the same thing?—*A.* I gave them no manuscript on the 26th.

Q. I did not ask you that. Seeing your own receipt here, dated the 15th July, 1919, are you in any reasonable doubt as to having got it back, and seeing it in the record book of July 15th, that that is The Dawn?—*A.* I know it is not.

HIS LORDSHIP: Have you the manuscript still of "Love and War"?—*A.* I think I have. I have not got it here.

HIS LORDSHIP: I think you had better put it in.

Mr. MUIRHEAD: What is the meaning of this part of your letter "Perhaps you will be good enough to give me some further suggestions upon which I might re-write it." Does that mean that they had given you some suggestions?—*A.* Yes, he had in the last letter which he wrote, on the 27th March.

Q. What suggestions had he given you in regard to writing this manuscript "Love and War"?—*A.* He suggested the title.

HIS LORDSHIP: Unless this was the suggestion that you now set about your short crisp lecture or pamphlet "Love and War," it would almost seem as if these entries in the book and this letter, were all designed to lend mystery to these transactions.

Mr. MUIRHEAD: I take it that that letter does not suggest that he has already been reading this lady's pamphlet about love and war. This letter does suggest that he has been already reading it, and that he should give her some further suggestions as to how "I might re-write it." What was it you got when you signed that receipt?—*A.* Love and War.

Q. And there is no entry in the book here about it.

HIS LORDSHIP: There may be something in the manuscript which would clear it up and I suggest that you put in the manuscript.

Mr. ELLIOTT: You still have that manuscript?—*A.* I think I have.

Mr. ELLIOTT: That is all, thank you.

Mr. ROBERTSON: Thank you.

In the Supreme Court.

Plaintiff's Evidence.

No. 12. W. A. Irwin. Examination-in-hief.

No. 12.

Evidence of William Andrew Irwin.

WILLIAM ANDREW IRWIN sworn.

(Examination-in-Chief.)

Examined by Mr. ROBERTSON.

Q. Professor Irwin, you have been in what position at the University of Toronto?—*A.* I began there as Lecturer in the Department of Oriental Languages, and being there six years climbed up finally to the position of Associate Professor, and I now hold that rank, an Associate Professor.

HIS LORDSHIP: For Oriental Languages?—*A.* Yes.

Mr. ROBERTSON: *Q.* How long since you became Lecturer?—*A.* I have just completed my eleventh year with the University.

Q. And I believe you are about to leave Toronto University to go to the University at Chicago?—*A.* Yes.

Q. In the same branch of learning?—*A.* Yes, I will go there as the full Professor in the Department of Oriental Languages.

Q. Will you tell us something of your Academic career, where you started?—*A.* I entered the University of Toronto in the Autumn of 1908 and specialized as an undergraduate in the Language course in the Oriental Languages, graduating with Honours in 1912.

Then I had a couple of years interval when I was in the Prairies—I came back to full Graduate work in 1914, continued here two years, of graduate work, took my Master's Degree in 1916, in August of 1916 I went to the University of Chicago for further graduate work, continued there until 1918, two years of work at Chicago, and since that time returned to the University of Chicago two or three years, somewheres for the graduate work.

Q. Now, have you seen Miss Deeks' manuscript, of the work called "The Web"?—*A.* Yes, I suppose I might answer it this way, Mr. Robertson, a manuscript which purports to be a true copy.

Q. If necessary I could call Miss Deeks—what you got you got from her?—*A.* Yes.

Q. We will assume for the moment, it is a copy of what we have in here as an Exhibit.

Then have you also seen Mr. Wells' book, the "Outline of History"?—*A.* Yes.

Q. And have you done something in the way of making a comparison?—*A.* Yes, I worked at it rather intensely for the past five or six months.

Q. Now, are you able to say from a comparison of the work and assuming that Miss Deeks' manuscript was written as now stated in the evidence, and that Mr. Wells' work was begun not later than the latter part of 1918, are you able to tell His Lordship whether in your opinion the manuscript of Deeks was before or in the hands of the writer of the "Outline of History"?—*A.* I would say, your Lordship, the evidence is

overwhelming that it was in the hands of the author of "Outlines of History" before he wrote, and during the time that he was writing.

Q. Now, will you give His Lordship your reasons for so stating—just a moment——

Mr. ROBERTSON: Mr. Irwin has prepared, my Lord, in typewritten form, a report of what he has to say. I thought it might be much easier followed if your Lordship had a copy of it, and I have supplied my friends with a copy. Of course, the witness will speak of this in his evidence.

HIS LORDSHIP: It is in the nature of a report?

Mr. ROBERTSON: It is in the form of a report of what he has got to say.

HIS LORDSHIP: I should think Mr. Elliott would be glad to have the opportunity of cross-examining on that.

Mr. ROBERTSON: *Q.* Have you a copy for His Lordship and these further gentlemen?

HIS LORDSHIP: Rather a lengthy document.

WITNESS: I must just state I propose to diverge slightly at some points, and enlarge some others, but essentially it is a statement of what I propose to submit.

HIS LORDSHIP: We shall not be able to finish with this witness to-night.

Mr. ROBERTSON: I told Mr. Moorehead I would give him my copy to-night.

Mr. MOOREHEAD: I assume there will be certain portions which will have to be checked with other authors to determine whether or not——

HIS LORDSHIP: Suppose it is so—suppose he takes two or three days to do so, or to examine this witness in great detail, you will only have your wits to guide you, whereas if he discloses all his weaknesses as well as all his stress in this document.

Mr. MOOREHEAD: I would be satisfied if I had a copy of the document.

Mr. ROBERTSON: I thought I was helping my learned friend.

HIS LORDSHIP: Yes, I think so.

Mr. ROBERTSON: Then——

HIS LORDSHIP: It is unusual, Mr. Robertson.

Mr. ROBERTSON: This is unusual evidence to give.

HIS LORDSHIP: But we do not want to be all summer trying this case.

Mr. ROBERTSON: Now, I might say, there are some things in this that are hardly the subject matter of evidence, if your Lordship will look at the top of page two—the first sentence is not the sort of thing a witness says in the box—that is, he sought to weigh it judicially.

HIS LORDSHIP: It is not an unusual thing for the Court to ask an expert witness questions which involve the very point in the judgment of the Court. That is not unusual.

In the Supreme Court.

Plaintiff's Evidence.

No. 12. W. A. Irwin. Examination-in-Chief—*continued.*

Mr. ELLIOTT: As far as I have looked at it, I find it is prepared more as a brief than opinion, it is an argument.

HIS LORDSHIP: You will have all the advantages of attacking all the weak points, as Mr. Robertson will concede there may be places that you can attack, joints in the armour.

Mr. ROBERTSON: I think my friend is entitled to say as much in defence.

HIS LORDSHIP: I think if I were a defendant I would welcome this.

Mr. ELLIOTT: The only thing I suggest is, as my friend Mr. Moorehead has said, perhaps my friend Mr. Robertson is going to take the rest of the day.

HIS LORDSHIP: If not, we will have him brought back tomorrow.

Mr. ELLIOTT: What I meant is, after the close, we might have an opportunity tonight of going through this document.

HIS LORDSHIP: Surely his cross-examination will not be closed until you have had an opportunity of going through the document over night. I will not promise it longer than that.

Mr. ROBERTSON: *Q.* If you will start at the head of page two, Professor Irwin, the first page is entirely historical——

You will understand while these are your opinions, you are under oath in giving them?—*A.* Quite so.

Q. Then will you proceed. I shall ask questions here and there, but if you will proceed to just read this, and stop at such points as I say where I want to enlarge it myself?—*A.* Yes.

Q. And if you will indicate to the reporter when you do that, what page you are on, and what part of the page, so he will not have to copy this all out.

WITNESS: It is perhaps, worth emphasizing that I have sought throughout to weigh the matter judicially. It was not my function to make out a case for or against anybody. Indeed in my approach to the problem, I undertook to ignore as far as I could Miss Deeks' charges, setting myself rather the task of finding my own conclusions on the sole basis of the character of the two documents. My task was to answer these questions: do the features of these two documents indicate relationship? If so, what is that relationship? With this purpose, I gave but casual attention to Miss Deeks' own comparisons; Mr. Wells' evidence I did not read until I had been at work for some time. My method was to place the two works side by side, compare parallel passages, and draw my own conclusions.

In two regards alone have my findings been definitely and admittedly dependent on Miss Deeks' story. I had hoped that evidence of dependence, if found might be of such a character as to show the direction of that dependence. In general I have been disappointed here; there are a few similarities which seem to favour the theory of borrowing by outline from "Web," rather than the reverse, but in the main my findings on this are inconclusive. Consequently I have assumed that Miss Deeks can establish satisfactorily two points; first that her manuscript antedated the writing

of Mr. Wells' "Outline" by an adequate period; and second that the work that she put in my hand is a true copy of that original manuscript to which she claims he had access. My conclusions then are based upon these assumptions and claim validity only as they may be sound. Without further explanation it is then to be understood that I ignore any possibility of the "Outline" having been prior to Miss Deeks' work.

It would seem at the outset that any advantages that I may possess for such an investigation would be highest in regard to that field of history with which I am most familiar, viz. the Near East."

Mr. ROBERTSON: If you like, Mr. Irwin, we will assume your familarity?—*A.* Yes.

HIS LORDSHIP: You were going to give that. We will leave that to cross-examination?—*A.* Very well.

Q. Bear in mind if you want to indicate any particular point upon which you would like to be cross-examined, Mr. Elliott would like to have you make it known?—*A.* He may cross-examine me if he wishes.

Q. If that is the purpose—you need not extend it there. Go on.

WITNESS: "So I begin here (that is with the history of The Near East) but presently enlarged my scope slightly, so that ultimately my study has embraced in general the topics represented by volume 1 and chapter XXXII—XXXIV of Vol. II of Mr. Wells' Outline, excepting accounts of India and the Far East——"

Mr. ELLIOTT: *Q.* "India or the Far East?—*A.* I have changed that to India, because it is a little more what I want.

HIS LORDSHIP: Perhaps I ought to say, Mr. Robertson, in addition to what I have just said, if we shall not be able to finish this reading this afternoon, if the witness will perhaps indicate to you before you close his examination this evening any points upon which he would like to expand it, if you think it worth while to expand these points, you can raise these points before he closes his examination.

WITNESS: Pardon me, was your suggestion, as I come to certain points, I simply indicate to Mr. Robertson?

HIS LORDSHIP: No, only Mr. Robertson will show you after the Court rises.

WITNESS: "It is to be understood then that the conclusions to which I have come are based upon and refer to these portions of the two works"—

"It is readily recognized that the investigation encounters somewhat acute initial difficulties.

"First; it would seem inherently improbable that a great and well-known author such as H. G. Wells should lean upon the unpublished manuscript of an obscure writer, the more so that his circle of friends is said to embrace a group of brilliant literary men, and in addition he claims in the writing of the "Outline" to have enjoyed the collaboration of scholars of the highest repute. To this, however, the following considerations are relevant. We are not concerned here with Mr. Wells' reputation built

In the Supreme Court.

Plaintiff's Evidence.

No. 12. W. A. Irwin. Examination-in-Chief—*continued.*

up by his numerous and diverse literary works, great as they may be; the question rather is whether Mr. Wells of the "Outline of History" has shown himself there a master of literary craft and an expert in historical science so far removed from the level of Miss Deeks' works that his having borrowed therefrom is *a priori* absurd and the answer must be an emphatic negative. The "Outline" is a very shoddy ill-digested piece of work devoid of literary excellence. I cannot recall a single passage that commends itself as the work of an artist. As history it is commonplace in the extreme. The work has no merits that would preclude it being dependent upon an unknown writer. Indeed on the contrary, the striking deficiencies and inaccuracies of Mr. Wells' treatment, taken in connection with his imposing array of scholarly collaborators implies rather cogently that there is something deeply wrong."

Mr. ELLIOTT: My Lord, this could never go in as evidence in chief from any witness, and it is rather abusive, and I do not think it should go on the record, because there is nothing to substantiate it, and it is a thing that you would not expect from any man who professes to be a Professor at Toronto University.

WITNESS: My Lord, may I reply to that——

Mr. ELLIOTT: I think it is scandalous that a libel like this can be read in open Court. It is not evidence my friend could get in if he was examining.

Mr. ROBERTSON: It is exactly the questions one would first begin to ask on the subject, whether or not the work was of a high class, whether or not he is an expert in that particular branch of history, or that the work was one that seemed to be a work of very high craft.

Mr. ELLIOTT: He expresses himself in abuse.

HIS LORDSHIP: Perhaps, Mr. Elliott, from your point of view these sentences may just illustrate what I said a little while ago. These may be joints in the armour you know.

Mr. MOOREHEAD: My Lord, I would like to join in the objection, in saying it should not go in as evidence.

Mr. ELLIOTT: It makes a person a little indignant to think of a man representing himself as a professor at the University of Toronto——

HIS LORDSHIP: Never mind, the critics are not very tender of one another.

Mr. ELLIOTT: It gives one his complaints——

HIS LORDSHIP: Get on.

WITNESS: "With advisers such as those, why did he not produce a first class history of the World? We shall be obliged to return to this point again and again and estimate its implication that his strange obtuseness was due to his leaning heavily on another work. Then finally this is to be considered, that for any man who is ready to make illegal use of another's work, there is distinct advantage of choosing the work of an

obscure individual; the probability of detection and punishment is reduced in direct proportion to his or her obscurity.

And *second*: There is the difficulty of the necessary and legitimate similarities of these two works,"——

If I might just in one sentence of description—I think that is a matter of which Mr. Elliott was speaking when he spoke of these things as——

HIS LORDSHIP: Go on.

WITNESS: "There is the difficulty of the necessary and legitimate similarities of these two works. Both purport to survey the history of the World; hence their subject matter is identical. There must, of necessity be hosts of similarities. The investigation then is complicated by the need of differentiating between essential and non-essential resemblances. Actually the difficulty here is much less acute than may appear. The subject matter is so vast as to defy complete recounting. The selection of material may then provide an index of relationship; then also order, arrangement and detail of treatment of the various themes. This is readily illustrated and tested by a comparison of any of the several well-known works that undertake in whole or in part the objective of these two. It will be seen that they differ widely; while telling the same story they find ample room for wide individual diversity.

Third: There is the question of what sort of similarities constitute evidence of inter dependence. Coincidence is a fact of the history of human thought. One must reckon always with the possibility of admitted similarities being due to the normal and independent reaction of different minds to the same situation. Coincidence, however, is a weak vehicle, it carries only so much weight. When more is put upon it it breaks down, not necessarily by the improved cogency of considerations which it is asked to explain, but merely by the added weight. The argument then will be cumulative as well as qualitative. As similarities increase in number but also in peculiarity, in intrinsic unimportance, in non-essential detail and in fallacy, in the same proportion will the argument from coincidence fail, until, it may be, breaking down completely, it leaves the claim of interrelation a proven case.

Fourth: But after established interrelation is the question of dependence: may this interrelation not be due merely to a use of common sources? This is a question which in general cannot be finally answered from the documents themselves. One must glean the admitted and possible sources wherever available, and by careful weighing of the passages determine what has been the direction and degree of influence. For this I have found Miss Deeks' and Mr. Wells' statement of authorities highly valuable, but have sought to carry the investigation at times even beyond these admitted sources.

At first glance at the two works one is impressed most, not with their similarities but with their differences. They differ in bulk. The "Outline" is much larger. They differ also in proportion. This is perhaps best illustrated by the account of pre-human life upon the world. "Web"

In the Supreme Court.

Plaintiff's Evidence.

No. 12. W. A. Irwin. Examination-in-Chief—*continued.*

passes the matter over hurriedly in a little more than one page; " Outline " gives roughly five chapters (III-VII), more than forty pages with a wealth of detail scarce even hinted at in " Web ". They differ too, to some extent in point of view, and special emphasis, and certainly in vastly the greater bulk of the two works. The thread of the account, the actual phrasing and succession of ideas are such that it would probably never occur to the casual reader that there may be any significant similarity whatever. It is to be admitted in regard to my own study that at just about this point I was ready to hand the material back to Miss Deeks and report to her that I could see nothing relative to her charges, but just then I hit upon certain peculiarities in the account of a period with which I am familiar. They were so strange as to carry strong presumption of interrelation. They proved the clue in following up of which I have found another side to the comparison of the two works; a side of remarkable similarities.

First, in the larger features of the two works I have noted a number of resemblances; to some of these I shall have occasion to return later, but for the present their citation will suffice——

I wish to show them, and if it be the wish of yourself and Counsel, I would like to follow up, just a little, when I come to the end of this statement—

1. They have the same scope; beginning with the formation of the solar system they survey the making of the earth, the evolution of rock, and the long course of human career.

2. Their plans are very similar: much more so than a mere chronological sequence would demand. Of this we shall have much more to say later.

3. They have the same theme or purpose (as distinct from their ostensible topic): purporting to be outlines of history in the strict sense neither is, but both use a sketch of history on which to hang or by which to expound a particular theme, and that theme is the same in both, viz., man's struggle for social values. Within this again both have a common emphasis: both point from history the wickedness of war. This is not unusual in social studies produced under the shadow of the great war, but it is far from inevitable in works of history. The great Cambridge Ancient History, the first volume of which appeared in 1923 which then must have been in preparation while Wells was writing, if not Miss Deeks also, has no such emphasis. In one aspect of this social interest the two works diverge widely; The " Web " stresses feminism to exaggeration; Wells, in the main, will have none of this.

4. Both neglect to the point of omission all that phase of human achievement that may be called cultural. In striking contrast to better histories in the field, some of which Mr. Wells puts forward as his authorities, we have very little about Art, Architecture, Literature, and, notwithstanding certain apparent exceptions very little about religious

development—and I wish to add also, little or nothing about philosophy, and the whole history and development of human thinking.

5. As histories both are sadly out of balance. They both give undue bulk and emphasis to Europe and Western civilisation. This may well be elucidated under a number of sub-headings.

(*a*) Both give inadequate treatment with the ancient East with its four thousand years of great achievement.

(*b*) Both give disproportionate space to Greece, Macedon and Rome although " Outline " apologizes for this in regard to Rome.

(*c*) Both overlook " Achaemenian Persia "—though I might explain that is a great Persian Empire—a period from 538 to 321 B.C.—save as an adjunct to Greek history, and both largely ignore later Persian history.

(*d*) Both neglect the Seleucid and Ptolemaic empires—I might explain these are the two great empires, Seleucid of India and Syria and Ptolemy of Egypt—save for casual reference in the account of Rome. Both have undertaken to redeem this by some emphasis upon the Alexandrian Museum.

(*e*) Both offer very unsatisfactory treatment of Israel and Juda: They give large bulk to the early period, they stress Samuel, Saul, David and Solomon, and then trail off into a cursory survey with most casual reference to the great work of the Prophets. At the captivity both dropped the story with scarcely comment to cover all the long and important period until the birth of Jesus.

(*f*) Both give only casual reference to the Ottoman Turks, though their place in European history was for three centuries of almost prime importance.

(*g*) Both neglect Tamerlane: " Web " does not mention him. " Outline " gives him one quite inaccurate paragraph (II p. 132). We will develop that later.

(*h*) Both neglect almost totally the Near and Far East after Roman times, save that " Web " refers to Mohammed; " Outline " gives him and his work a chapter, and another to the Mongols and then refers to the Far East in its account of XIX centuries.

Now it is at that point I would like to diverge a little, if it is worth while in regard to the identity of the two plans. I propose to come to it in a little detail towards the end of my evidence, where I will survey them in some detailed manner, and point out very striking similarities.

For the present this—they make a most unusual beginning, a very remarkable beginning in undertaking to survey the history of mankind, they start away back with the beginning of the solar system, and then from that, with long interval from that until the coming of man, much the same general scheme—there is a wider difference there than a little later on, but the same approach to it, and then coming into human history, you will find step after step there tracing practically identically the same points, and points where the plans of both are wrong, sadly out of proportion with implications that simply they are contradictory of known facts of

history upon that point, in a detail where both go wrong here, and the peculiar thing is, in the face of these works which Mr. Wells submits as his authorities, he has refused to follow the correct course of his authorities, has chosen rather to go wrong with Miss Deeks' plan.

I could develop that further, but as I come to it a little later, there is nothing further I should say on it now.

Mr. ROBERTSON: It comes in very fully later on.—*A.* Thank you.

" It will be seen from this that the two works are very deficient as Histories of the World, and that their deficiencies parallel rather closely. However, for the present I wish to establish from this no more than that the two are of one class. Whatever significance may attach to such general resemblances, whatever cogency indeed may exist in peculiarities of plan, really conclusive evidence will be found, if at all in details of related passages affording minute similarities of ideas, words, literary structure, etc.—possibly I should explain here I have slightly altered my reading here.

HIS LORDSHIP: Go on.

WITNESS: Going to a study of detailed passages, because in a close detailed study of words and phrases and succession of ideas, we will have there what will constitute, I think I may say, conclusive evidence, and to these we now turn—we come first then to the opening of the two works—" Web ", page 1, and " Outline " page 3—which really is the first printed page of the work.

I would like to read a little of this, just to let them make their impression—reading first from " The Web ", " In the beginning ! ! !—There floated in the immensity of space a speck, comparatively, but in reality a prodigious " nebulae " which in the course of time became concentrated into a focus of heat and light known as—the sun. The sun as it pursued its immeasurable path through space, at times threw off masses of cosmic matter, and these masses became planets "—then pass on a sentence, " Thus the sun and its planets form the wonderful solar system which we call ours—and which is surrounded and adorned by multi-millions of stars scintillating in the incomprehensively great and well regulated universe beyond "—and then a list of the planets. So much from " Web " for the moment.

" The earth on which we live is a spinning globe, vast though it seems to us, it is a mere speck of matter in the greater vastness of space ".

Then he has a paragraph developing the character of space in which he brings in the fixed stars and this sentence, or number of sentences, " These fixed stars are so far off, that for all their immensity, they seem to be, even when we look at them through the most powerful telescopes, mere points of light ". And then the next sentence, " nebulae ", in the next paragraph, " one star, however, is so near to us that it is like a great ball of flame. This one is the sun ". Passing over to page four he starts the page, " These are difficult figures for the imagination ", then he goes on there to develop the immensity of space. On page five he has a little about

the three coats of the earth to which we will return later, and at the bottom of page five, he comes to this, strangely enough, " vast ages ago the sun was a spinning, flaring mass of matter, not yet concentrated into a compact centre of heat and light, considerably larger than it is now, and spinning very much faster, and that as it whirled a series of fragments detached themselves from it, which became the planets. Our earth is one of these planets ", and the balance of his chapter concerns itself with the slowing down of the solar system.

I return then to my manuscript, " The first thing to note here is the identity of beginning of these two ostensible histories of mankind: both immersed themselves in the measureless ages before the World was. It is nothing short of an absurd beginning. One is reminded of the Professor lecturing on the French Revolution: at the end of the first term he had advanced as far as the times of Rameses the Great: it is the more remarkable in that Wells, by his evidence, appears to have been pressed by his publishers to observe a limit of two hundred thousand words, yet here he throws away space on quite irrelevant and unnecessary preliminaries. However, too much must not be made of this; it is a somewhat notable similarity, but then a few (I have inserted the phrase a few) other histories of the World have made the same start, or at least referred to it. To some of these we shall have occasion to turn in a moment." And this comment there—it is notable at this point that the work which Miss Deeks has used as her authority, Duruy's Outline History of the World, the later edition began at the same point. The later edition, I think the edition of 1912 has abandoned this preliminary material but begins there with human life.

Mr. MOOREHEAD: *Q.* What is that again?

WITNESS: This is a later edition of Duruy's History of the World, the same work.

HIS LORDSHIP: All right, get on.

WITNESS: My point is, the significance of my point is, his publisher should have abandoned that early thought, it is significant of the trend of thought.

" In the meantime it is to be noted that Wells' explanation (in his evidence) of this feature of his work is less than satisfactory. He invokes the example of Helmholt, but the inference of Helmholt is to deprecate this course. He implies rather that the correct point of departure is a study of geography—enthropogeography (I have the Helmholt work here I could read the passage if it is necessary).

HIS LORDSHIP: Get on.

WITNESS: It is notable too that both " Web " and " Outline " present the old La Place theory of the origin of the solar system. Mr. Wells in his examination excuses his course on the ground that Jean's or (Chamberlain's) theory was made public just about the time of the printing of " Outline " hence was too late for him to use, but this is much less than the fact. In the Grolier Society's book of History—a work of popular

In the Supreme Court.

Plaintiff's Evidence.

No. 12. W. A. Irwin. Examination-in-Chief—*continued.*

style—the first volume of which was published about 1914, Jean's and Chamberlain's views are presented and discussed as scientific theories even then beyond the stage of novelty.

With whatever of cogency may be felt to inhere in these considerations, we go on to a close examination of the two treatments. Here we find the same detailed ideas, the " Outline " expanding and expounding certain of them as the immensity of space, the relatively thin film of atmosphere surrounding the earth, allowing for a few other minor comments likewise related to the main ideas it remained then that with but one exception the slowing down of the solar system to which " Web " does not allude the totality of ideas of the two is identical. Now this is notable : for granting their common point of start it was by no means necessary that they should include all these ideas and exclude all others. The treatment in related works is in contrast."

I have a number of other words here, not to waste the time of the Court, a little later I want to read perhaps selections from two or maybe three of them. I have others, but won't take up your time with them, and when I come to read them, the reading will be relative to this point as well as at the point at which I bring it in.

" But even more important is the detail of presentation of these ideas. Both start with a floating (or spinning) cosmic body which both describe as " a speck," *comparatively* (or *as it seems to us*) which though *vast* or *prodigious* is small in " *the greater vastness* or *immensity* of space." My alternate wording, you see at once is the different wording of the other book.

" Now those two sentences are identical ".

It is quite out of the question that they arose independently. There is certainly some common source or suggestion back of their resemblance. But we go on, " Web " is here speaking of the sun; " Outline " of the earth, but at the foot of the page 5 it turns to tell of the sun, and then it gives us palpably and identically this same sentence of " Web ", reshaped it is true but retaining an astonishing verbal identity. Note these parallels and resemblances."

WITNESS : If I might just read these two sentences to make their own impression again, reading first from " The Web ". " In the beginning there floated in the immensity of space a speck, comparatively, but, in reality a prodigious nebulae which in the course of time became concentrated into a focus of heat and light known as—the sun." Then " Outline ", " they consider (he is referring to astronomers) they consider that ages ago the sun was a spinning, flaring mass of matter, not yet concentrated into a compact centre of *heat and light*, considerably larger than it is now, and spinning very much faster."

I return to my manuscript, these comparisons :—

Web—In the beginning.	Outline—vast ages ago.
Web—floated.	Outline—spinning.
Web—concentrated into a focus of heat and light.	Outline—concentrated into a compact centre of heat and light."

WITNESS: Just one comment there again (at the bottom of page 11) observe there then the detailed identity there. He did not even change the order of the words there, heat and light, the only change in these two phrases, instead of " focus ", he writes, " compact centre ", and the context is the same, the very same context gives us a part of two sentences practically identical.

HIS LORDSHIP: Go on.

WITNESS: Web—Masses of cosmic matter "—that is in the next sentence in Web. " Outline "—mass of matter."

The full effect is secured best by reading the two sentences in close sequence. It is seen both start in the primordial ages when the sun was but " a flaring mass of matter ", or a " prodigious nebulae ", which later " concentrated into a focus (or compact centre) of heat and light".

It is to be observed then that both immediately, Web in the next sentence, Outline in this same one speak of the formation of the planets by the detachment of certain fragments. Both mention the earth as one of these, and both refer verbally in this same context to the solar system.

Now these passages take us a step further. The interrelation here cannot be explained as dependent upon a common mere suggestion; the dependence is documentary. Either, one is dependent upon the other, or both have used a common source and followed it closely.

As corroborative of this position we pick up other similarities in the two accounts: the word " immensity," Web line 1, Outline page 1, line 11.

Nebulæ, Web, line 2—Outline page 1, line 15—both refer to the stars, Web, line 12, and Outline page 1, line 5.

Both describe the movement of the planets about the sun: " revolve," Web, line 7—" circle," Outline page 4, line 14.

Note the similar climactic sentence structure (I mean how the sentence comes to climax and in the other to a culmination), " concentrated into a focus of heat and light known as the sun," Web lines 3 and 4—" Flaring centres of heat and light, the fixed stars," Outline page 1, line 5.

" Incomprehensively great . . . Universe." Web, line 12, and " difficult figures for the imagination." Outline page 4, line 1.

Compare too, Web, page 1, lines 1 to 6 of paragraph 2, with Outline page 5, lines 5 to 8 and line 12. Web reads, " The earth, therefore, was a tiny fragment of the sun which, as it cooled became extinguished and gradually concentrated into a solid crust of land covered with water above which, however, high portions of that land emerged, and thickly enveloping it all was the air—a gaseous fluid saturated with carbonic acid and nitrogen." Comparing the Outline, " Its surface is rough, the more projecting parts of the roughness are mountains and in the hollows of its surface there is a film of water, the oceans and seas. This film of water is about five miles thick at its deepest part—that is to say the deposit oceans have a depth of five miles. This is very little in comparison with the bulk of the World.

" About this sphere is a thin covering of air, the atmosphere "——

In the Supreme Court.

Plaintiff's Evidence.

No. 12. W. A. Irwin. Examination-in-Chief—*continued.*

Then turn to my manuscript—" We have here the same three layers of the World : the rough surface of land, the pockets of water and the film of air. They are presented in the same order, and it is of importance to note that Miss Deeks claims this order is an original feature where she deliberately diverged from her authority, and as well the order is in the reverse of that in the Encyclopædia Britannica article on Earth."

Mr. Wells has very frequently cited the Encyclopædia as his authority, but here he is closer to Web than to the Encyclopædia.

HIS LORDSHIP : We will stop here, Mr. Robertson.

As to the Exhibits, the Court Officials say they do not want to take the responsibility of these Exhibits—the parties, I understand value them very highly—unless they have access to the Sheriff's vaults, and the Sheriff's vaults close at five o'clock.

Do Counsel desire they should be kept out.

Mr. ELLIOTT : The only one I value is the original manuscript of " Outline."

Mr. ROBERTSON : They are all original manuscripts. It is well they should be taken care of.

Mr. ELLIOTT : I think if the original manuscript were to be put in the vault the rest could be kept out.

HIS LORDSHIP : Arrange with the Court officials to give them time enough to get them in to the vault.

HIS LORDSHIP : Court will adjourn until half past ten on Wednesday.

PROF. W. A. IRWIN.

Examination resumed by Mr. ROBERTSON.

Mr. ELLIOTT : What page will he take up ?

Mr. ROBERTSON : Thirteen.

Q. You were proceeding with your opinion. I think you had reached page 13 of the document which you were dealing with. Will you continue ? —*A.* I think I had come on page 13 to some point in the first paragraph there. I shall pick up at just the point which I had marked when I had left off.

I was commenting on the order, that the order in this particular passage is just about the reverse of what you have in the Encyclopædia Britannica, which Mr. Wells intimated as one of his authorities.

Mr. ELLIOTT : Are you reading ?

The WITNESS : I will take up immediately in the last of the paragraph :

Observe too the same structure of sentence in regard to the atmosphere :

> " The air, a gaseous fluid saturated with carbonic acid and nitrogen."

"A thin covering of air, the atmosphere"—from the Outline. That is, both qualify the word "air" with a descriptive expression in grammatical apposition.

Now it is to be granted that the detailed plans of the entire passages in two works differ considerably, but yet the difference is such as might well evolve from the scheme of "Web." Starting with the earth, as against the sun in Web, Outline runs through just about identically the ideas of Web, expanding the conception of the vastness and emptiness of space, and the smallness of the locale of life, and then returns to Web's scheme and goes through it again this time in full imitation centering upon the sun. So that examined carefully the difference of plan is mainly one of re-duplication.

It is worth while to cite here a few parallel accounts in other works. The uniqueness of the record in these two and their identity is then the more apparent.

If I may, I will give up the reading just for a moment, and turn——

HIS LORDSHIP: I had a copy of Professor Irwin's report and a copy of the parallel columns with the papers on my desk. I can follow it. Go on.

WITNESS: I have brought along a number of works in which there are accounts of the creation of the world which are quite comparable in their general purpose, that is they are popular, simple surveys of their subjects. That is, the writers there have undertaken to do just the sort of thing that both Mr. Wells and Miss Deeks were doing here. I suppose it would be relevant to read all of these, but I do not want to waste the time of the Court in that way.

HIS LORDSHIP: We must have some limit.

WITNESS: So that if I may, there are brief statements in three of these works which I would like to present.

The first is the work on History, The Grolier Society's Book of History, of which I spoke. I want to read a passage from it, which is quite independent and tells just the sort of thing which Mr. Wells is thinking about. The other two are related in the way I have explained to Mr. Wells' account, and the comparisons are of some value. I suppose, particularly for the full effect of this comparison, I should read again the accounts in Web and Outline, but I pass by that.

Mr. ELLIOTT: Have these books been used by either of the authors?—*A.* Mr. Wells does cite this as one of his authorities. That is a composite work by Professor Lull of Yale. The first article is by Mr. Barrell.

HIS LORDSHIP: That is, Evolution of the Earth by Lull?—*A.* Mr. Wells cites it under the name of Burrell. There is a little work by Hoyland, A Brief History of Civilization. This other one I bring in as an entirely outside work, just to illustrate the point that a man in telling the thing in the same popular way does not need to say the thing in the same way as Mr. Wells did. That is Volume 1 of the Grolier Society's History. The date is not given but it brings the material down to about 1914; some later items are, in the later volumes, in 1915; I think I am safe in saying

In the Supreme Court.

Plaintiff's Evidence.

No. 12. W. A. Irwin. Examination-in-Chief—*continued.*

1914. Here is a passage which I wish to cite as a reasonable starting point, at page 79 of the Grolier book.

HIS LORDSHIP: What is the title of it?—*A.* The Book of History. The title of this particular chapter is The Coming of Man and the Beginning of the Earth, by Professor Sollas: "Laplace assumed as his starting point the existence of a nebula, formed of incandescent gas, and extending beyond the limits of the outermost planet of our system. It was in rotation about a central axis, and possessed in consequence a disklike or lenticular form. Radiating its heat away in all directions through surrounding space, it grew continually colder, and in cooling diminished in bulk. As a consequence of this contraction its rate of rotation increased, till at length the centrifugal force of the outermost part became so great that it could no longer continue to follow the contracting mass within" . . . .

I had intended reading about twice as much, but I think that is sufficient. He is telling the same story in very different language. The point is that there is no need to use the words which Mr. Wells used in telling the story.

HIS LORDSHIP: Deeks used the word "nebula"?—*A.* Wells had it in the plural, but it is perfectly grammatical there as he uses it.

I turn then to the Hoyland book, A Brief History of Civilization. My point of contact here is that the work published in 1925 carried a foreword in which he explains that he is heavily indebted to Wells Outline of History; and one needs to look into it but a very short distance to realize that the entire thing is just an outline.

Q. How could this be of any significance as bearing upon the question raised as to the resume of the Outline?—*A.* This illustrates how a man's mind will work when he is frankly copying. I want to make the point of the distance between this and Mr. Wells, as approximated between Mr. Wells and Miss Deeks.

HIS LORDSHIP: The difficulty is that if we pursue all the ramifications of discussion and exhaust all the things that appeal to you in detail, we shall consume an enormous amount of time, bearing in mind that we are dealing with eternity, almost.

Mr. ROBERTSON: I have not yet read from Mr. Wells' depositions, and he says at one place in his examination for discovery, in answer to the question, How is it you do it in this way that Miss Deeks did it? What other way was there to do it? The point is that a man might write an account of all this and not write it in the way that Miss Deeks wrote it.

HIS LORDSHIP: Of course there is only one story, but it might be put in a multitude of forms.

Mr. ROBERTSON: We say that it is almost impossible that two people writing independently on the subject could have been so close on the whole of the history of mankind, and it is not found anywhere else.

Mr. ELLIOTT: My friend should not give evidence.

HIS LORDSHIP: I do not want to interfere, Mr. Robertson, with what is no doubt a carefully thought out plan of presentation; but the cross-examination is often much longer than the examination in chief.

Mr. ROBERTSON: We have taken great care, and since the witness was in the box we have seen if something should not be done to shorten it. The Professor is not going to make it any longer than is necessary to state his point.

HIS LORDSHIP: There are practical limitations which, of course, are not binding upon Miss Deeks or Mr. Wells.

WITNESS: I will observe your wishes and shorten it as much as I can. This then is the account which this writer produces as a resume of Wells' account:

> "Countless ages ago the sun, the earth, and all the planets, with their moons, formed one huge mass of flaming gas. As it gradually cooled, this mass of incandescent gas, which was revolving rapidly, threw off fragments, which, gradually solidifying, became the planets and their moons. Being very much smaller than the parent-mass, these outling members of the Solar System (as the whole is called) cooled much more rapidly than the sun in the centre. Thus in time our earth reached its present state."

And so it goes on but I think I will drop it at that.

HIS LORDSHIP: That is one theory of one school of thought?—*A.* Yes. The copy of Mr. Wells is quite distinct—his words are framed together very differently.

Now the other one is this, which Mr. Wells does cite as one of his authorities. I think he has a footnote at the end of the first chapter by Professor Barrell, in Evolution of the Earth, published under the name of Lull; the first essay is by Barrell, once again to compare his account of the Laplace theory—this will be on pages 10 and 11:

> "Laplace postulated an original nebula as a very hot, gaseous mass extending beyond the orbit of the farthest planet and possessing a uniform rotation throughout, as if it were a solid body. Its size was the result of a balance between expansion from its heat and contraction from its gravitation. As it lost heat it contracted, with the same energy of rotation that it possessed before, necessarily revolving on its axis in a shorter time. At last a stage was reached where, in the equatorial belt, centrifugal force balanced gravitation and the matter subjected to this balance of forces could sink no further."

Mr. ELLIOTT: *Q.* What page is that from?—*A.* From the bottom of page 10 over on to page 11. I think that makes my point. There is one other little comparison, but the point I was making, I think, is sufficiently made.

There are a few features in Barrell's whole chapter that are worth speaking of in connection with Wells's story.

In the Supreme Court.

Plaintiff's Evidence.

No. 12. W. A. Irwin. Examination-in-Chief—*continued.*

In addition to a comparison of the bulk of the sun to the other bodies of the Universe, he has there a reduction of the bodies of the solar system to a small scale, so that we could realize their relative size. It brings the earth down to about the size of a pea, and brings everything else down to that scale. You see at once that is closely related to Wells' first chapter. Wells has the same idea.

It seems, then, that Wells really was using Barrell, as he claims. I do not think he was, for reasons such as these—if I might qualify that, I might say this, that I think if he used it at all it was only in the sense that he had read it a long time before, and remembered certain features and wrote from his recollection of those features. And the reasons I believe he was not using Barrell as an authority at hand are these: Barrell presents the Laplace theory and goes on at once to criticize it; and he presents several other theories and really places more value upon the other theories. The Laplace theory, according to Barrell, was outgrown; but it is the Laplace theory which Wells uses.

Beyond that there is this peculiar feature of it. In his evidence, Mr. Wells was asked to explain how it was that he used that Laplace theory, why he did not say something about Chamberlain and Jeans' two books, his explanation was, Oh, Jeans' work came out in 1919 and it was too late to use. But here is the precise work which he claims as his authority, and he did not use it. I think it is rather cogent evidence that he was not using Barrell as an immediate authority.

Now, just one other consideration there, perhaps not quite so cogent as that, but I think worth noting, that the whole structure of Barrell's chapter, the succession of ideas, is totally different from Mr. Wells' chapter. And with that I return to my manuscript, beginning again, then, at the top of page 14:

> "The conclusion is inescapable. We have here documentary interdependence. No brushing aside as "common knowledge" will suffice."

In referring to "common knowledge" I am referring to Mr. Wells' explanations. He wants to explain these as though they were common knowledge.

> "Close detailed, even verbal and phrasal identities such as we have here in such numbers do not arise other than by documentary inter-relation."

Now one other digression, for a brief moment, if I may. I want to speak briefly of a matter which, your Lordship, I feel that I ought to apologize for. I recall the Old Testament warning, Let another and not thine own mouth, praise thee.

In presenting here the opinion which I have just read, I am not giving you a garbled, offhand opinion, of some mere novice in this work. I have a right to speak in matters of this sort. I may claim a specialized training in work of this sort for more than 20 years past. Whether there is the further qualification of some native ability for it, obviously, I leave to the Court

to decide for itself; but I think I may, even with some natural reticence, stress this, that I think I have had an unusually good training for a work of this sort. As an undergraduate, as a graduate student, both on the staff of the University of Toronto and the University of Chicago my academic work has circled about this ground. In the work of Oriental languages we are faced all the time with subjects of this sort, the internal evidence of documents. I speak as one who has a right to speak.

HIS LORDSHIP: I assume that was the reason, perhaps, why you were selected.

THE WITNESS: Thank you. Returning to the document:—

"The question then remains of the identification of this documentary authority. Miss Deeks puts forward Duruy's General History of the World as her one source. Certainly she drew from it and drew heavily. But Wells contends in his evidence that he did not use, nor even know Duruy, and indeed at several points his work agrees with Miss Deeks' as against Duruy. The possibility of another writer having drawn on Duruy with the same heavy dependance of Miss Deeks and yet by coincidence having adopted the same features of original divergence from his, is so remote as to merit no consideration. Still stronger is the improbability of some source back of Duruy which will explain the similarities of Web and Outline. The argument then is simple: the similarities of Outline to Web are due to some documentary source which Mr. Wells used. That source was not Duruy, it was not a source of Duruy——

Mr. ELLIOTT: How do you know that?—*A.* I have spoken of that just now.

HIS LORDSHIP: Let us reserve that for cross-examination.

THE WITNESS: "It was not some unidentified dependant of Duruy; there is no possibility left but that it was Web."

Mr. ELLIOTT: I thought that was what the Court had to decide.

HIS LORDSHIP: Oh, well, experts can anticipate the views of the Court. I suppose that is what they are brought here for. Go on.

THE WITNESS: "Briefly, these two parallel passages prove conclusively that Mr. Wells used Miss Deeks' work. If that be all the case requires, we need go no farther unless indeed to swell the total of evidence.

"There is, though, yet another phase of the question: How did he use it? The answer demands no intricate argument. The detail of verbal similarities, the identity in order of minor ideas, the sentences of similar structure show clearly that Wells' rewriting of Miss Deeks' story is not a re-telling of a remembered account read yesterday or even an hour ago. Making all allowance for possible unusual feats of memory the situation quite clearly was that the manuscript of Web was at hand as he wrote, if indeed it did not actually lie open before him. In any case his reading of this particular passage of it was so recent that his writing was to all intents and purposes a copying and expansion thereof.

In the Supreme Court.

Plaintiff's Evidence.

No. 12. W. A. Irwin. Examination-in-Chief—*continued.*

The second point: We pass on now to page 57 of Outline. There is there a passage parallel to material on pages 2 to 3 of Web. In the Outline page 57, lines 10 to 16: 'It was half ape, half monkey; it clambered about the trees and ran, and probably ran well, on its hind legs upon the ground. It was small brained by our present standards, but it had clever hands with which it handled fruits and beat nuts upon the rocks and perhaps caught up sticks and stones to smite its fellows. It was our ancestor.

Through millions of simian generations,' etc." In the Web, page 2, from line 17 to page 3, at line 8:—

> "And in the course of, probably, millions of years an animal was developing with a relatively enormous brain case, a skilful hand, and the distinct pecularities of male and female. Both male and female, together, dwelt in caves and trees, and roamed the forest feeding on nuts and fruits and living much the same as the man-like ape of Borneo today, the gorilla and the chimpanzee of Africa who live in families—the female caring for the little ones, and the male usually scurrying the forest in search of food for them, although he is quite unconscious of his fatherhood and often even quite indifferent to the welfare of his consort and offspring. Thus those animals developed an inveterate tendency to throw stones, flourish sticks, and in general defeat aggression and supply their needs and desires by means of not only physical strength, but also of wit, and, in conformity with the law of cause and effect, they steadily progressed by imperceptible degrees until finally they emerged from the animal into mankind—savage mankind, it is true, but nevertheless mankind. The physical change from animal to human was extremely slight,—not even a step, as was also the advance in instinct—that first gleam of intelligence."

My argument goes on the presumption that these passages are at hand and can be referred to.

HIS LORDSHIP: Both books are in?—*A.* Yes.

> "It is seen at once that Outline is much more compact and omits certain ideas of Web, such as the diverse habits of the sexes, and the progress of biological evolution, but these differences are minor. The striking thing is the close identity of ideas, at certain points their identity of order and even in some cases identity of wording. The following tabulation will show this. For full cogency it must be remembered that the entire passage in Outline occupies only seven lines:
>
> Web: Millions of years.
>
> Outline: Millions of simian generations.
>
> Web: An animal with a relatively enormous brain case; a skilful hand.
>
> Outline: One particular creature . . . it was small brained by our present standards, but it had clever hands.
>
> Web: Dwelt in caves and trees and roamed the forest.

Outline: It clambered about the trees and ran, and probably ran well on its hind legs on the ground.

Web: Feeding on nuts and fruits.

Outline: It handled fruits and beat nuts upon the rocks.

Web: Much the same as the man-like apes of Borneo today.

Outline: It was half ape, half monkey.

Web: Tendency to throw stones, flourish sticks, and in general defeat aggression.

Outline: Caught up sticks and stones to smite its fellows.

Web: Emerged from the animal into mankind.

Outline: It was our ancestor."

Mr. ELLIOTT: He was a nice animal to have as an ancestor.

The WITNESS: "But in addition there are a few points not easily tabulated. Web's emphasis upon the role of 'wit,' 'instinct' and 'intelligence' in this evolution, compare Outline's two section headings here: 'tradition comes into the world,' and 'An age of brain growth.' Note too how both, just as in the first passage discussed, qualify an adjective with a comparison. Web speaks of this creature's 'relatively enormous brain case' and Outline reversing the direction of contrast says 'It was small brained by our present standards.' Observe too the climactic structure of both passages: in both the reader is held in suspense until, the description ended, it is announced by Web, 'they emerged into mankind': by Outline 'It was our ancestor.' There is too a close detail of succession of ideas midway in the passages, if we but ignore the material in Web which Outline omitted, thus: The brain, the clever hand, fruit and nuts, sticks and stones, and fighting. There are included in Web's order at this point, two other ideas which we have listed as paralleled by Outline: habitation in caves, trees and forests, and also the anthropoid apes. Apart from that slight disarrangement this simple passage is a transcription in identical order, and in closely related when not identical phrasing.

Here again documentary inter-relation is proven beyond possibility of dispute. The question is one of sources. Web used Christie's Advance of Woman and also a passage in James Harvey Robinson's essay on The History of History, quoted in Thomas's Source Book of Social Origins. Robinson in turn has quoted from Sir Ray Lankester's Kingdom of Man. Her sources then are Christie, Robinson and Lankester; she has leaned heavily on them, some of Lankester's words coming through this double citation with accurate reproduction. Beyond these sources is her own original touch. Wells, as before, declares no sources."

HIS LORDSHIP: Was not Lankester one of Wells' collaborators?—*A.* Yes sir, but my point is that at this point in the argument he does not cite him nor cite this particular work. And you will observe that since writing that, I have struck out the words "as before." I realized that Wells had cited Barrell.

From Christie Miss Deeks drew only the reference to fruits and nuts; this is not in Robinson. It may be assumed that with his apparent

In the Supreme Court.

Plaintiff's Evidence.

No. 12. W. A. Irwin. Examination-in-Chief—*continued.*

misogynist bias Wells did not use Christie. The question then is, Did both use Robinson? But we have these agreements of Web and Outline as against Robinson.

First, Millions of years (or generations). Robinson speaks only of "millenniums."

Second, the creature's simian character. The nearest Robinson comes is to refer to its hands.

Third, Dual arboreal and terrestrial habits.

Fourth, Fruits and nuts. These as human food are mentioned in Wells' authority quoted on page 82 of his work, evidently Worthington Smith.

Fifth, The climactic structure of the passage.

So clearly the resemblances are not due to a common use of Robinson. And when we turn to Lankester the argument is weakened only by the elimination of this fifth point. Clearly then the common source was likewise not Lankester, either ultimately or mediately. Then there is the possibility again of the unknown source which had accidently given the same original features as Miss Deeks, but again this is so remote as to be negligible. So we find conclusive evidence here again that Mr. Wells has taken a passage from Miss Deeks, only thinly disguising his plagiarism by a few slight alterations and, as above this is written so immediately from Miss Deeks' passage that he must have turned practically direct from her manuscript to his own writing.

Third. We move on now to pages 98 to 100 of the Outline. The parallel passage is on pages 5 to 6 of Web, although there is another related one on page 13. Web is here eulogizing savage woman, and her importance in the evolution of what later became civilization. She ascribes to her the following inventions or discoveries: building huts, agriculture, including seeds, and also roots and tubers, implements, water conduits, milling, medicine, baskets, fire, cooking, pottery, domestication of animals, preparation of spices, sweets and bread, weaving, clothing, canning and use of skins for clothing and tents. In the supplementary list on page 13, housing, agriculture, and artistic sewing and dyeing as the beginning of painting. The implication of the entire account is that life in that age was idyllic and woman was highly cultured.

Now, Mr. Wells' passage here, as distinct from previous comparisons, denies all this. In such generally deprecatory tones, he refers to intelligence, art, domestication of animals, cooking, pottery, housing, tools, skin tents, bow and arrow, cultivation of grain and vegetables, women, clothing, sewing, painting and printing designs on skins, textiles.

There is it is granted, no reason why Outline should not have come at about this point, to some discussion of the character of savage life. Nor can it be denied that his authorities probably provide a basis for most everything he has said here. The peculiarity is the concentration of all these points in one compact passage. And there are, too, certain strange features of the treatment which, to say the least, correspond to Web's ideas. Perhaps the most striking is his comment on women. The whole

tenor of the passage is a disparagement of savage intelligence and its attainments; the information at this point that the women were small squaws and grossly fat is dragged in. The same remark applies even more emphatically to the astonishing detail that the women were smaller than the men. Who cares whether they were or not? What has it to do with the main theme here? These ideas have no logical connection whatever so would seem to be suggested by some authority which Wells is following. And certainly Web provides just the required example. In connection with this passage of eulogy of women's attainments it tells us, page 8, that " she became physically more finely developed and often even stronger than he," and on page 13 refers to " the diminution of her size and physical strength," when men took over agriculture. Other features of note, common to both, are reference to grains and vegetables in agriculture; association of the invention of tools and implements immediately or implicitly with building; connection of painting with the ornamentation of skin clothing.

The passages lack that compact sequence and identity of idea, and more particularly similarity of phrasing which we have found hitherto. The possibilities of suggestion from independent sources are in the same proportion less easily checked. So on the whole the argument is less cogent. However, with the fact established that Mr. Wells was using Web there is strong a priori probability that the resemblances at this point are again due to such use. This would most readily explain his mood of contradiction here; he has found in Web information that he knows to be wrong so he denies it with emphasis; there was no pottery, no cultivation, no buildings, etc. His disparagement of women then becomes funny; he seems to say, Yes, your fine woman who was a paragon of virtues—she was nothing but a squaw and too fat at that!

And with that I think I will just omit the next page and not go into the discussion of it. It is cumulative. There is a great bulk of cumulative evidence which I am passing over, little points which in themselves do not prove dependence, but the great number of these minor similarities are pretty hard to explain other than on the basis of relationship.

There is a strong cumulative argument on the basis of these minor similarities. I pass over these too and come to what I have numbered as Four, on page 22.

The accounts of ancient Egypt provide some remarkable parallels of information, though little of verbal identity. It is to be noted that Outline has material not found in Web, as also Web has a little not represented in Outline. The similarities which we shall note pertain obviously to aspects of their common material, but as well to the omission by both of highly important facts.

The first point to examine is of a preliminary character. Both works give Egyptian history a lower antiquity than Babylonian; this is apparent not alone in their order,—I mean that both come to the discussion of Babylonian history first,—but by definite statement: Web, page 22, last paragraph, line 1; Outline, page 184. The prevalent view at the time of their writing was the reverse, and all three of Wells' ostensible authorities,

In the Supreme Court.

Plaintiff's Evidence.

No. 12. W. A. Irwin. Examination-in-Chief—*continued.*

Breasted, Hall and Browning, turn first to Egypt. On the other hand, in Helmholt's arrangement of topics we come to Babylonia at the opening of Vol. III, and Egypt near the end, but he certainly implies no chronological sequence by this, and the content of the accounts of the earlier periods of the two lands leave one baffled as to priority.

To digress there just a moment, Helmholt, of course, is cited by Wells as one of his authorities, and the fact that Helmholt does bring Babylonia at the beginning of his volume and Egypt at the end is immaterial. Between the two he has a mass of material about savage Asia and savage Africa and a lot of things; but the plans are so different that it has no bearing at this point.

But even more notable is Wells' inconsistency. On page 184 he speaks of the excavations at Nippur having unearthed evidence of a city " as early as 5000 B.C., and probably as early as 6000 B.C., an earlier date than anything we know of in Egypt," but later, after a paragraph on " Stone Age remains in Egypt . . . of very uncertain date " both Palæolithic and Neolithic (hence obviously of great antiquity) he states that " about 5000 B.C. or earlier the traces of these primitive peoples cease and the true Egyptians appear on the scene " (page 197).

It may possibly be argued that he means that 6000 B.C. is the date he is comparing with Egyptian beginnings, and that there he has in mind these " true Egyptians " who came, perhaps he would say, not much " earlier " than 5000 B.C. But the defence is pretty thin. Setting the two statements side by side in this fashion one is convinced that they represent garbled and undigested opinions passed on hastily and without thought. The next sentence I have slightly altered. He found his Babylonian date in the account of the Nippur excavations. On the other hand, 5000 B.C. for Egyptian beginnings is given by Miss Deeks and by none of his reputed authorities so far as I know.

To digress again for a moment, there is one other little point there about that date from the excavations at Nippur. I found the passage to which he refers. I can give counsel the exact reference, if they wish it. In that passage the author makes no comparison with Egyptian beginnings, but he simply states that they found materials as old as 5000 or 6000 B.C. I will give you the exact quotation, if you wish. That is a passage which Mr. Wells is using there, whether immediately or through his recollection of more or less reading; so that his comparison with the Egyptian date is purely his own, not taken from his authority, and yet there, in the content of his description, he gives you what amounts to an inconsistency, he gives you the beginning of civilization 6000 B.C., with beginnings of civilization going back beyond that; and yet he gives you the beginning of things in Babylonia very much older. He is taking in some account, of which he has not given us the authority and the only authority I know of for that is Web.

Resuming, there are three great periods of ancient Egypt. The Old Kingdom or Pyramid Age about 3000—2500 B.C. The Middle Kingdom or Feudal Age, about 2000—1800 B.C., and the New Kingdom or Empire about 1580—1100 B.C. Immediately preceding the Empire was the famous

invasion and dominance of the Hyksos or So-called Shepherd Kings. I hope that that brief statement in regard to Egyptian history will make my argument intelligible. There is a wealth of information I could give you, if necessary.

The two accounts of the Pyramid Age we may pass over——

HIS LORDSHIP: That is the two accounts in these two works?—*A.* Yes. They have little of definiteness for our purpose. It is to be noted, however, that both ignore the Middle Kingdom completely: Outline, page 199: Web, pages 38, 43. This is the more remarkable in that it was a period of very important social and intellectual development. If Mr. Wells were really following any of his imputed authorities, his oversight here would be unintelligible. I mean there that all his authorities deal with the Middle Kingdom, and they stress the social and intellectual attainments of the Middle Kingdom, and more so because it has the social values which Mr. Wells wants, and yet he ignores it. Both too make the Hyksos Invasion contemporary with the First Dynasty of Babylon. See the Outline, page 199, and Web, page 43, lines 4 and 3 from end, page 46, lines 1 to 4, and page 51, line 16.

The accepted dates are about thus:

First Dynasty of Babylon, 2225 to, I have it here, 1986,—it should be 1926. Hyksos Kings, 1700 to 1580.

Mr. Wells himself accepts these dates. He dates Hammurabi about 2100 (see the Outline page 191, second line from end). And the Hyksos expulsion about 1600. His imputed synchronism is therefore inconsistent with his own statements. Evidently it is then but another instance of material accepted uncritically from some source that he is following; but I fail to find this in any of his authorities; I know of no one who has an idea at all comparable, and I am familiar with Egyptian history and the authorities there, as I have worked in this field for years. Web and Outline then here agree as against all authorities.

HIS LORDSHIP: And both wrong?—*A.* Both wrong.

The account of the XVIII Dynasty has a number of remarkable and distinctive agreements. And may I explain there that the XVIII Dynasty was the first great dynasty of the Empire period; beginning about 1580 B.C. it continued until about 1350 B.C. Significant but not decisive is their treatment of the great conquering activity of these kings. Both treat it in a preliminary note. Outline says, "Egypt became a great and united military state and pushed her expeditions at last as far as the Euphrates." Web at the same point summarizes: the date 1703 (for Web the beginning of the Empire) marks the beginning of a wonderful military civilization; presently, however, it adds that "Thothmes I. commemorated his victories by columns on the banks of the Euphrates and Nile, and Thothmes III. conquered Western Asia and the Soudan, and set the frontiers of Egypt wherever he pleased."

A small point is the blunder of Outline in making Amenophis III. a son of Thothmes III. He was a great grandson. Web, while not stating

In the Supreme Court.

Plaintiff's Evidence.

No. 12. W. A. Irwin. Examination-in-Chief—*continued.*

the relationship, names them in immediate connection. The cogency of this point is weakened by two facts, first that many other outlines follow the same omission of the two intervening Pharaohs; and second, that the successor of Thothmes was his son Amenohpis II., not III. Yet the point, while not conclusive is at least corroborative.

Highly significant is the treatment of the career of Thothmes III. He is the greatest conqueror of Early Egypt; he is sometimes dubbed The Napoleon of the Ancient East. We have somewhat detailed and colorful accounts of his 17 great campaigns by which in the years 1479 to 1459 he completely sugjugated all Palestine and Syria to the Euphrates. A great annual flood of tribute was turned into Egypt and of this the king bestowed fabulous sums upon the Theban priesthood and the establishment of the temple of Karnak and the capital. All histories emphasise these facts,—not omitting Wells' authorities; but strangely his account is meagre and pacific; "Thothmes and his son Amenophis rules,"—observe, he does not say "conquered,"—"from Ethiopia to the Euphrates . . . they were great builders . . . Amenophis founded Luxor and added greatly to Karnak." It is true Web differs here to the extent of stating that Thothmes *conquered* Western Asia, though giving no details. Now here again we have an agreement of the two: agreement in an omission of such importance as to amount to an error. And no basis for this omission can be found in any admitted or potential authority of Wells.

The names used of these XVIII Dynasty monarchs is also notable. Our uncertainty as to the vocalization of Hieroglyphics gives us a wide differentiation of spelling of Egyptian names among even our best authorities. I think everybody knows that by hieroglyphics I refer to the picture writing of ancient Egypt. It was a very imperfectly developed alphabet. They had pictures for words and for syllables, and actually in some cases pictures for letters. There was progress towards the development of a true alphabet, but they were very weak on vowels. They had characters for a few vowels, but most of their words were written with consonants, and we have merely to guess in most cases what the vowels were.

Mr. ROBERTSON: *Q.* I suppose that implies that there was a great diversity in spelling of names?—*A.* I have gone through the authorities that Mr. Wells claims to have used, and some others, and these are the forms employed there for specifically the names of these kings. Of the two here cited, we get more commonly Thutmose, Thutmosis and Thothmes. Amenophis and Amenhotep. The possible combination of these forms results in this pecularity that not one of Wells' authorities uses the same names as he. But again he agrees with Web.

Helmholt gives us Amenophas, Thotmothesis; Browning gives Amenophis, and Thutmofis. Hall gives Amensophet, Thothmes, and so on.

HIS LORDSHIP: Is that not enough on the general statement?—*A.* Very well, your Lordship.

Mr. ROBERTSON: While these people sometimes agree on one name——*A.* They do not agree on both.

Q. And this is their way of spelling?—*A.* Yes.

HIS LORDSHIP: As in Arabic?—*A.* With the exception that there are vowels in Arabic.

Q. Web and Wells agree in the spelling?—*A.* Yes.

In regard to these Egyptian names, there is, though, a much more important feature, perhaps the most important single feature of the two accounts of Egypt, and indeed of such a character as in itself almost to prove interdependence. Incidentally it was this which first arrested my intention to hand back Miss Deeks' manuscript with a negative report. It is the name Hatasu. Web characterizes her as "Regent"; Outline properly as "Queen." Web knows only that her "exploits were carved on the Temple of Deir-el-Babari at Thebes"; Outline tells us that she was aunt and stepmother of Thothmes III. and that on her monuments she is represented in masculine garb and with a beard. It is admitted the accounts are different. But again the important things are omitted by both; her very famous expedition to Punt, her building of the unique temple at Deir-el-Babari, only hinted at by Web alone, and her erection of a pair of great obelisks at Thebes. The first at least of these should have been noted; it would have taken no more space than Outline's quite worthless comments. However, the similarity which I wish to emphasize is the name. Though I have worked in this field for twenty years, I never saw or heard of that name until I met it here. It appears in none of Wells' authorities, nor in any other authority of recent times. Only by special investigation did I discover it, and that in old histories of 1890 and earlier. Since that time the accepted form on the name has been Hatshepsut.

In the XIX Dynasty we find again a consideration comparable with some that we have seen. Web summarizes that Rameses II was "a warlike prince and a great builder" at page 52, and "the Pharaoh who knew not Joseph," page 53. The Outline gives us a minor verbal identity in stating that he was "a great builder of temples," supposed to have been "The Pharaoh of Moses." The only additional information provided is that he "reigned seventy-seven years"—observe his arithmetic—"about 1317 to 1250 B.C." Just as in the case of Thotmes III this is amazing in its deficiency. No modern account of Rameses, worth anything, will omit reference to his struggle with the Hittites; and most will include the fight at Kadesh and the treaty some 17 years later. But Wells knows nothing of this; and Web likewise.

Now, to sum up these similarities. We find two sets of facts to account for, first, that in a remarkable succession of points the two documents agree while diverging from all the authorities in the field; and on the other hand there is matter in each which does not agree with or correspond to anything in the other.

The agreements are so numerous and so peculiar as to provide again conclusive proof of inter-dependence; the question of authorities has already been assessed, so we can briefly summarize that we find proof that Outline was using Web.

In the Supreme Court.

Plaintiff's Evidence.

No. 12. W. A. Irwin. Examination-in-Chief—*continued.*

But what of the differences? The material in Web not represented in Outline deserves no discussion; simply he chose not to use it. However, Outline used some other source as well. He has information that he did not secure from Miss Deeks. It will be observed however that this is generally of a very vague character. It will meet the situation if we ascribe it to what Mr. Wells calls " general knowledge." The one point in this class that would seem to demand documentary source is his dating of Rameses II; he is precise that his reign was " about 1317 to 1250." Now these are the dates given by Carl Niehbuhr in Helmholt's History, and nowhere else that I can discover, and strangely enough Wells agrees with Niehbuhr in two other small points where he diverges from Web, in regard to Pepi's long reign and Hatshepsut's beard. For the rest, though, he is remote from Niehbuhr's account. I mean in the immediate context of those passages, in the balance of the sentences in which the two works give that information. If he really used Niehbuhr's account, it was only through recollecting long previous reading. And indeed these two latter points are so minor that they could have been gleaned from anywhere, from conversation or, in the case of the beard, from a visit to a museum.

In regard to the conversation, Mr. Wells does admit in his evidence that certain of his information was carried from conversations with certain of his friends and not from books at all. In regard to the visit to the museum, I mean that all of the great museums that have any Egyptian stuff at all will have some of Hatshepsut fitted out with a beard.

And the dates which he gives for Rameses are admittedly vague; about 1317 to 1250 B.C. He may here be but guessing from some loose knowledge that Rameses' reign lasted sixty-seven years and fell partly in the thirteenth century. " 1250 " is a dangerously indefinite figure; it is the middle of the century. I mean that if he simply hit on that by guesswork, by reckoning sixty-seven years for the reign he got the other date. However this may be, we certainly can find nowhere in Mr. Wells' imputed authorities explanation of the peculiarities of his treatment. On the other hand, these bear all the marks of a loose accumulation of " general knowledge " gleaned heterogeneously from a variety of sources, oral, pictorial and written through probably several years. With this meagre equipment, and having very recently read Miss Deeks' account, if not indeed having it actually open before him, he wrote his own by merely summarizing and slightly re-shaping hers and adding a few embellishments from his mental store.

Fifth, the Outline, page 273, lines 8 to 18; Web, page 59, lines 5 to 20.

We have here another pair of passages of quite remarkable similarity.

May I again omit the actual reading? It will be equally cogent, I think.

HIS LORDSHIP: Certainly.

WITNESS: Both speak of Phœnician shipping to India. I believe this was the question about which Mr. Elliott was enquiring yesterday, and I believe it may be of interest to him.

Immediately following his mention of caravans. Web says they traversed Asia, but in its summary of their merchandise mentions also Ophir, Arabia and Tartary. The Outline gives the same geographic distribution, saying Across the deserts of Africa and Arabia and through Turkestan. Of Web's list of commodities Outline uses immediately only two; they are in reverse order but their description is the same, silks from China and ivory from Central Africa, or Ophir. He has also " tin from Britain," but this is suspiciously of the character of " general knowledge." In the next sentence he claims, " There was hardly a variety of precious stone in the world that they had not found and cut and polished." This parallels significantly the Web's inclusion here of pearls from the Persian Gulf, precious stones and a thousand other precious wares from India. Then among supplementary materials, Web tells of " glassware and purple," and the " skill of the Sidonians, especially of the women "; comparable to this is the Outline's weaving of " fine linen and delicate fabrics of colored wool," its bleaching and dyeing and its beautiful pottery and porcelain.

There are a few unusual features of the brief passages. That ivory was secured from Africa alone is very dubious, the more so when Outline dates this condition in the fourth century B.C. Indian sources must then have been available, if indeed they had not been so all through history. The silk trade from China is here practically an anachronism; later in Roman times it was unquestionably of great importance, but at this time, if it existed at all, which is doubtful, it was very small. Then it is odd that both should speak of Phœnician shipping to the East, in the passage scarcely more than implying its western voyages. It existed; that cannot be denied; but one becomes cognizant of it only after considerable investigation. And it is not at all the aspect of the Phœnician enterprise that would naturally occur in the writing of a florid summary of this sort; there we should expect rather the western trips. Then too, the ascription of caravan trade to Phœnicians, which the Web gives us explicitly and the Outline at least implies, is a clear blunder. The Phœnicians were seamen. The overland trade was in the hands primarily of Babylonians and Arameans, then of a number of minor interests.

Once again our conclusion must be that we have clear proof of documentary inter-relation. The close similarities of the two brief passages in connection with their several peculiarities amounting to errors leave it out of the question that the resemblance here is the result of coincidence. On the other hand, I have searched Mr. Wells' imputed authorities and widely beyond these for a possible explanation of his passage; the encyclopedias and several histories all fail to provide anything to the point. Even where Phœnician commerce is listed and discussed the account is remote from his treatment. The more cogent then is the implication of its close resemblance to Miss Deeks' description. Once again she drew from Duruy. It is worth while to read the passage here; it demonstrates the identity of the three. Duruy was unknown to Wells; therefore we must conclude that he used the Web. I shall, however, omit the reading of that passage, your Lordship.

In the Supreme Court.

Plaintiff's Evidence.

No. 12. W. A. Irwin. Examination-in-Chief—*continued.*

HIS LORDSHIP: Give the page, if you wish, and we will mark Duruy as an exhibit?—*A.* It is page 37 of Duruy.

HIS LORDSHIP: Duruy will be Exhibit No. 14.

Exhibit No. 14. Filed by Mr. Robertson: Duruy.

WITNESS: It is at page 37 of this edition, and page 38 of the other edition. You had better use this edition, because it has the other material which the other one has not, and it is at page 37 of this edition.

Shall I go on, your Lordship?

HIS LORDSHIP: Yes.

MR. ROBERTSON: I wish, of course, to put in the statement made by Mr. Wells on his Examination for Discovery, at the proper time.

WITNESS: Now, the close identities of the two passages are of brief compass, not more than a sentence or two; and in the balance of resemblances we find rather a free re-shaping. On the other hand the context of the description in the two works is totally different. These are the facts from which we must make our deductions as to the character of Mr. Wells' use in this place of Web. The brevity of the close identities would seem to permit of a more remote reading than demanded by passages 1 and 2 above. In 1 and 2 I am referring to my own enumeration here.

HIS LORDSHIP: Yes.

WITNESS: However, the difference of context would seem to push that reading too far off to explain these identities—that is, suppose he had read the Web's passage just before starting this chapter, unless his memory is one of most unusual power the similarities would be much less close than we actually find. The situation will however be satisfied by this theory. In his reading of Web this passage had attracted him; he had made a note of its character and location—the difficulty of locating passages in this manuscript, unprovided as it is with index or table of contents, implies strongly that his notes on relevant passages were written, not mental. Then coming to this section 8 he realizes that this summary of Phœnician commerce is just the thing he wants; he turns it up, refreshes his memory with a hasty glance, then pushing the manuscript aside writes this concluding section of his chapter.

Sixth. The history of the Hebrews.

The accounts are quite different in the early period. Miss Deeks gives full value to the biblical stories; Mr. Wells assumes on whatever grounds, a more critical attitude. But the stories of Samuel, Saul, David and Solomon provide basis for comparison.

(*a*) Samuel. Web, page 62, Outline, pages 285 and 286.

The first thing that strikes us is the extreme meagreness of both accounts; they do not so much *describe* Samuel's career, as they *allude* to it. And the allusions are identical. For both he is the last of the Judges; both refer to his years of government; the Web says "his wise administration"; and the Outline says "his rule." Both relate the rise of the kingship and both explain it as an imitation of the other nations. Moreover in both we

have a climactic structure; "forced to give them a king . . . hence a formal monarchy was founded"—I think that is from Web, but I haven't it noted; and from the Outline "a king arose."

There are a few comments here. First, this explanation of the kingship is only one of two given in the biblical account; it is the other that is favored by present-day scholarship and in particular by Mr. Wells' imputed authority, the Encyclopedia Biblica. Then, next, Samuel was much more important than this cursory treatment implies. Wells squanders a whole page on two quite unnecessary biblical quotations. With space to spare in that fashion there is no apology for his giving so little to Samuel. Moreover, the significant thing about the scriptural passages which he quotes is that Miss Deeks refers to one of them, when she cites the phrase, "like other nations"; and she might be understood as alluding to the other in her statement that "the rights and duties of the kingly office were written down" for Wells' second quotation is Samuel's description of the character and conduct of the prospective king.

Totalling up, then, the similarities of account and of omission, it is apparent that the two treatments are one.

(*b*) Saul.

Again we note the inadequacy of the accounts, and once again this is disguised in the Outline with a biblical quotation. Beyond this the similarities are less marked than in regard to Samuel, but some exist. The Web says Saul shook off the yoke of the High Priest. The Outline speaks of "the plain issue between the more ancient rule of priestcraft and the newer fashion (sc. kingship) in human affairs." Both summarize Saul's reign as a failure, then refer, in different terms, to his difficulties with David, and then to his defeat and death at the hands of the Philistines—and that is all.

(*c*) David.

Outline gives him five lines, after squandering three pages on quotations! The Web has two pages, but one is taken up with selections from the Psalms, a large part of the other with a sketch of Phœnician civilization; there remains then only some eight lines. This common brevity is in itself a very strong resemblance, for David was really a great character and deserves, even in works of this compass, respectable treatment.

The content of the two is likewise similar, though not identical. Web has facts not represented in the Outline; but Outline has nothing distinctive except a couple of erroneous opinions, which again are in sharp conflict with his imputed source.

I have brought here an actual quotation from his source, which indicates —if you will take my word for it I will pass it over. Both begin with a remark on David's successful rule. After an interval the Web mentions his alliance with Tyre, and follows at once with a glowing eulogy of the Phœnicians. The Outline turns to this as a second comment but gives us the odd view that David became a vassal of Hiram. This, it is true, is in harmony with his dislike of the "great man" idea of history, but being so glaringly contradictory of the view of Encyclopedia Biblica, may very well have been suggested by the Web's glorification of Phœnicia.

In the Supreme Court.

Plaintiff's Evidence.

No. 12. W. A. Irwin. Examination-in-Chief—*continued.*

(*d*) Solomon.

Here the Web is still brief—less than a page; but the Outline has spread out over three pages. The two, however, are so similar in their subject matter, save for certain gratuitous opinions of Outline, that the brief account of Web might have served as a plan for Outline. The following analysis will show this situation.

If I may, I will take the analysis as read and go on.

HIS LORDSHIP: Very well.

Analysis.

Web	*Outline.*
Accession	Accession
Despotism	Slaughters brothers
Relations with High Priest	Replaces chief priest
	Murders Joab
	Recasts religion
Built navy	Alliance with Hiram; shipping, wealth, gang labor
Founded Palmyra	
Built temple	Palace and temple
Alliances; Tyre, Egypt, Egyptian marriage, idolatry	Marriages, idolatry
	Egyptian princess
	Egypt.
His fame	His reputation
Taxation and oppression	Waste and oppression
Rebellion and external troubles	Rebellion

WITNESS: Now, the obvious conclusion from this striking resemblance is weakened by the fact that a topical analysis of I Kings 1 to 11, will give almost the same outline. There are though certain points where Outline and Web agree in divergence from the biblical order and content. At once we miss the Queen of Sheba and the famous dispute over the baby. The omission of Solomon's vision at Gibeon or at most a casual reference to it, is also notable though perhaps less cogent. The biblical order too introduces Solomon's shipping near the end of the story, just after the Egyptian invasion. The association of this, however, with mention of the Phœnician alliance is not unnatural; but the fact remains that the Outline while similar to the biblical analysis is even closer to Web. Some details are even more significant.

Corresponding to Web's reference to reduction of the High Priest, we have in Outline the replacing of Abiathar by Zadok, the murder of Joab at the altar, and the statement, "Then Solomon sets to work . . . to recast the religion of his people." We are ready then to hear in the next sentence of this "recasting"; but to our surprise we do not get it. Instead we have the alliance with Hiram, the shipping on the Red Sea, wealth gang labor, timber in the Lebanons, a sententious comment from Wells' Originality and the building of the palace, before we come to the building of the temple,

which is related in such manner as to show that this is the long-announced " Recasting." Now why this interval? It is an odd procedure, unless the explanation be that between the High Priest and the building of the temple the Web has Solomon's navy and the founding of Palmyra.

There are as well two passages of striking verbal similarities. The Web, at page 65, " received into his harem a princess of declined Egypt." The Outline, pages 288 and 289, to receive a Babylonian princess into his harem . . . the steady decline of Egyptian prestige.

The Web, page 65, " to maintain his outward splendor he so impoverished his people with taxation and oppression that they rose in rebellion." The Outline, page 290, his kingdom long oppressed by taxation to sustain his splendors breaks off.

One more peculiarity.

The Web says, at page 65, that Solomon's foreign marriages were the occasion of the introduction of idolatry into Israel. The same is implied though not explicitly stated in Outline's paragraph " Neither Solomon's establishment of the worship of Jehovah in Jerusalem upon this new footing, nor his vision of and conversation with his God at the opening of his reign, stood in the way of his developing a sort of theological flirtatiousness in his declining years. He married widely, if only for reasons of state and splendor, and he entertained his numerous wives by sacrificing to their national deities, to the Sidonian goddess Astaroth, to Chemosh, a Moabitish god, to Moloch, and so forth? The Bible account of Solomon does, in fact, show us a king and a confused people, both superstitious and mentally unstable, in no way more religious than any other people of the surrounding world." That is from page 288.

I digress here. The facts are totally different. Idolatry had been in Israel for centuries.

(*e*) It would be in order to speak here of the sequel, the accounts of the history of the divided kingdoms, but this is perhaps best reserved for our discussion, presently, of the plans of the two works. For the present it suffices that both are strikingly deficient, and in the same way.

To summarize the history of Israel, then.

There is no denying that Wells had at places full recourse to the biblical narratives. He used sparingly some modern source also, in particular in his account of Shishak's invasion of Judea, and the criticism of the narratives of Solomon's reign. It does not seem that this source was the Encyclopedia Biblica, to which he directs us. For the period which we have examined in detail, he is not in the least dependent upon this. The brevity of the two accounts, at points, seems to lessen the certainty of interdependence, but it is to be noted that that brevity still gives us essentially the same selection of facts. And at certain points, as in regard to Samuel and Solomon, we find important verbal identities. There is not a doubt that here again Mr. Wells has used the Web; and the features demand that he had it on his desk, framing his treatment by its general form and turning to it under each succeeding head for suggestion and direction.

In the Supreme Court.

Plaintiff's Evidence.

No. 12. W. A. Irwin. Examination-in-Chief—*continued.*

By saying " it does not seem " I mean I have looked up the Encyclopedia Biblica somewhat carefully and cannot find it.

Seventh. The History of Greece.

I would like to make a comment just here. I am not in the last claiming that my evidence is all of equal cogency, and I will make this concession to opposing counsel, that the argument from the History of Israel is a degree less cogent than some of the others that I have quoted, but nevertheless I think it is sufficient that I may conclude here that none the less Wells was using the Web in his Outline.

Seventh. The History of Greece.

We may well subdivide this.

(*a*) To the close of the Persian wars. The question here is most conveniently opened with an analysis of the two accounts, topic after topic, and I will pass it over as read.

Analysis.

Web :— Chapters VI and VII, pages 86 and following	Outline :— Chapter XXII
Aryan migrations.	Aryan migrations.
Early Greek civilization and society; the place of mothers.	Early Greek civilization and social structure.
Religion.	Religion.
Rise of man and military chiefs.	Nobles and commons.
Geographical divisions and city states.	Constitute city state.
Athens.	Athens.
Migration into Italy.	
Sale and capture of women.	
Trojan war.	
Wars in Greece and rise of Sparta.	
Greek unity, oracles, games.	Greek unity, games.
Women; Panatheneia.	
Athenian boys.	
Success of warriors in Rome.	
Abolition of Roman kingship.	
Solon's laws and women's influence.	Lydia.
Persian war.	Rise of Persians.
	Crœsus and Cyrus.
	Invasion of Europe by Persians.
	Persian war to Plataea and Mycale.
	Later Persian history.

WITNESS: The Outline expands certain points dealt with very cursorily by Web. The treatment of Persia is altogether more full. As well he has given a section to Lydia, who Web does not mention. However, it is just here that she records that " Solon went away to study the wisdom of the east," page 116—and it is well known that he visited the Lydian Court. This remark could then function as a suggestion for a description

of Lydia. Web, on the other hand, has its special emphasis upon women, but more evident as difference is the inclusion of early Italian history and the Trojan war. Outline has chosen to handle these topically; they are found elsewhere. So in our comparison of content and order of these chapters we are justified in ignoring them. Making then these allowances we discover this astonishing result, that the two treatments are practically identical in content and order. A very important consideration is that in both the great Achaemenian period of Persian history is dragged in here merely as a subsidiary of Greek history, and that it is given attention at no other point. We shall return to this later.

Now a few details.

Both begin not with the barbarian Greek tribe in the Balkans, but with their remote Aryan ancestors. This is peculiar. Still more odd is that both start this account with practically the same inconsequential remark. Web says, " In order to understand the Greece of this period take a brief glance into the past. At a very remote date, probably somewhere about the time that the Aryans turned east . . . " Outline begins, " And now our history must go back again to those Aryan-speaking peoples of whose early beginnings . . . " Another feature is the description of the proto-Hellenic dispersion. While the two works diverge widely in their choice of original Aryan habitat,—Web taking Turkestan, and Outline Western Europe, the more remarkable then is it that they give the same picture of the movements constituting the background of Greek emergence. Both speak of tribal ranges or migrations north of the Black and Caspian, on the one hand, and east and south of these seas on the other. Both ignore the hindrance to primitive migration constituted by the Bosphorous and Dardanelles. For both, the northern tribal lands are semi-circular. Web says they " circled," page 86; Outline speaks of the " arc-like dispersion," page 317. The description while somewhat apposite for Web's idea, is really strained for that of Outline. There is again a suggestive parallel between a couple of Web's passages descriptive of early Greek mentality, and a sentence of Outline : " Fresh from the hand of nature . . . they breathe the very spirit of freedom . . . " page 87 . . . " the adoration of forests, mountains, winds, rivers and all the phenomena of nature," page 88, of the Web. Outline's passage is on page 304 : " They came . . . with the ideas and traditions of the woodlands still strong in their minds."

To revert, I can cite case after case across the history of the centuries where migration by the best military men came to the Bosphorus and the Dardanelles and tried frantically across into Europe and could not do it. And yet these people, dealing not with a civilized people with all the resources of civilized nations, but dealing with barbarians, bring them on and gayly jump them across the Bosphorous and Dardanelles without a word of explanation.

The Outline puts these Aryan barbarians in Europe, somewhere about Germany or in that region. To get beyond the Caspian, then, there migration east would be a straight line and not an arc, as he describes it. On the

other hand, Web puts the primitive home of the Aryans somewhere east towards the border of Persia. Obviously then they must first get around and circle about and come down to the Balkans.

I again read :—

All these parallels, while not of the closer verbal sort are yet significant; and the more so that Miss Deeks claims originality in her passages. Now on page 342 of Outline we have a matter for which the parallel in Web is outside these present chapters, it is on page 147. It relates to career of Cyrus the younger, famous through Xenophon's Anabasis. Let us examine first Outline's account. He is giving us a hasty summary of the Persian monarchs subsequent to Xerxes. "An Artaxerxes, a second Xerxes, a second Darius pass across the state . . . a second Artaxerxes and a second Cyrus his brother, fight for the throne . . . this second Cyrus collected an army of Greek mercenaries and marched into Babylonia and was there killed at the moment of victory over Artaxerxes II."

Now what are we to deduce from this as to the status of Cyrus? Was he recognized as king of Persia? He is certainly included among the kings and is called "Second Cyrus" in direct parallel with "second Darius," etc., he apparently also is on an equality with Artaxerxes; they "fight for the throne." The situation is tantalizingly ambiguous, yet logical probability inclines towards Wells' meaning that Cyrus the younger was Cyrus II, king of Persia. Now this conclusion so hard-won from Outline is granted free in Web : "It was with thirteen thousand Greek mercenaries that Cyrus, king of Persia, made his way as far as Babylon where he died and the famous retreat of the 10,000 Greek followed . . . "

But Cyrus never was king! We are driven to conclude that here again the two works agree in defiance of history. Moreover the accounts of the career of Cyrus are very similar: Greek mercenaries, Babylonia, his death, the immortal retreat,—hackneyed phrases; but why did both avoid mentioning that the battle was at Cunaxa, and numerous other colorful things that they might have said?

The argument here again is of a somewhat different sort. We must concede a large freedom in Mr. Wells' details. By freedom I mean freedom from Miss Deeks; I mean they were original. There is but little of close verbal or phrasal resemblance; the closest we come is in the opening sentences of the two chapters, and in this account of Cyrus. But the remarkable similarity of the analyses is very cogent evidence of dependence, and the few details which we have noted, as inconsequential as they may be individually, are corrobative of the conclusion that Mr. Wells has based his account on that of Miss Deeks. His procedure evidently was that after reading her chapters he analysed them topically, and using this scheme freely re-wrote the story; in a few places recollection of details of her sentences coloured his phrasing, and even, in the case of Cyrus, his information. We find then, at this point, a dependence different from that which we have discussed above. It is not necessarily here to postulate the open manuscript of Web lying at hand as he wrote; indeed the probabilities are against this. Its use is more remote; it functioned rather

as a guide in formulating his own scheme of discussion, and as well by the impression upon his mind of certain details, such that when composing his own work he may really have been unconscious that at these detailed points he was drawing from Miss Deeks' work.

(*b*) The age of Pericles.

HIS LORDSHIP: This is where Mr. Elliott specializes!

WITNESS: I must go cautiously then, my Lord.

There is a remarkable idea occurring in this section in both works. It will serve to open the discussion.

Outline, on page 345, says of Aspasia's relations with Pericles that for legal reasons he could not marry her, but she was "in effect his wife"—a most astonishing phrase. The temper of to-day does not hesitate to use a more unpleasant word. Why did not Mr. Wells say frankly that she was his mistress? Why did he not call her a "courtesan"? Both epithets are applied in Encyclopedia Britannica articles, and Mr. Wells, by his evidence, leaned heavily on the Encyclopedia. That he should have refrained through delicacy or modesty is ludicrous. Julius Cæsar's relations with Cleopatra were much the same, and Wells has stigmatized them as "amorous pleasantries"—page 510. Plutarch, too, to whom Wells refers, makes it clear that Aspasia's character for even that age of easy morals as not above reproach, and that she drifted about readily from one man to another. Then why was she "in effect" Pericles wife? The qualifying phrase "in effect" reveals that Wells felt there was something wrong. He knew the nature of her position, yet he persists in calling her a wife. Why so? He did not need to bring in the idea of marriage here at all,—he did not for Cæsar. Weighing all the possibilities it seems most probable that the astonishing rendering is due to the influence of a source which Wells is following. And it is remarkable that this odd idea appears in Web also, save that there it is presented without apology. We are told that Pericles "married" Aspasia.

Now it is notable in itself that both these works should mention Aspasia at all. She was quite unimportant. She is completely ignored in such survey histories as Breasted, Browning,—Wells' sources—and Goodspeed. How much more remarkable that both should have this odd idea of marriage to Pericles. But further, the entire accounts of her run closely parallel. Thus:—

Again I think I can save time, since I have it down here, by not reading it out?

HIS LORDSHIP: Yes.

Analysis.

Web.	Outline.
Knowledge of politics.	Her wisdom.
Influence upon her husband.	Accused of instigating a war.
Made her house a resort for learned and distinguished men.	Gathering about him men of unusual gifts.
Anaxagoras . . etc., rejoiced to be in her society and to learn from her.	All the great men knew her and several have praised her.

In the Supreme Court.

Plaintiff's Evidence.

No. 12. W. A. Irwin. Examination-in-Chief—*continued.*

WITNESS: Now, Outline has information not contained in Web, *e.g.*, the Samian war. He refers to Plutarch, which admittedly is the ultimate source; but his brief account is very far from being a transcription or even digest of Plutarch, though it could be an expansion of Web.

There are a number of further parallels with regard to Pericles. Web, page 125, refers to his conduct under a scurrilous attack; Outline quotes this incident from Plutarch. Web refers (*id.*) to his "dignified and princely mien"; Outline comments that he was "superior in his demeanor," page 347. Web, page 126, says, "He invited to Athens all the distinguished persons of Greece, and provided means for the encouragement and development of their talent and genius." Outline, page 346, has it that he "let loose the genius of men about him and attracted men of great intellectual vigor to Athens." This last pair of resemblances is particularly striking.

Now, if we turn to an analysis of the discussions we find again much of similarity. Since Wells has treated under separate topics a number of matters interwoven in the texture of Miss Deeks' account, such as Plato, Socrates, Drama, etc., the comparative analysis will concern mainly section 1 of Mr. Wells' chapter. The result of the comparison is this: The schemes while not so closely related as in regard to the earlier period of Greece, are yet similar. Particularly notable in the two is the tantalizing intermixture of narrative with discussion. I mean that when I first came to an examination of these two chapters I wanted to get at the narrative and I found myself lost in a mass of features as to Pericles, and went on and on and found that the line was very thin between discussion and narrative. I found the same type of treatment.

Now what are we to conclude here? The matter is complicated by the immense bulk of literature available as source material, and hence the near impossibility of checking up positively on all of it. The high point of the evidence is admittedly the account of Aspasia's marriage. Miss Deeks drew it from Christie's Advance of Women, a work which it may be assumed Mr. Wells did not use. Beyond this I do not know of it. Granting the measure of necessary reserve admitted just now, I yet feel that this passage shows interdependence. Incidentally it is of interest to observe that here we have one of the few cases to which I referred at the outset, where the character of the resemblances indicates the direction of dependence. The idea is natural in Web; it is forced, exotic and requiring qualification in Outline. It is out of the question that Outline here is the source from which Web then borrowed, but the reverse is intelligible.

The evidence then points rather strongly toward Mr. Wells having been here again conversant with Web. His dependence however is more slight, amounting to no more than some effect upon his plan and the shaping of a few ideas.

Eighth.—We may pass more hurriedly over the balance of the works, as far as our concern at present with details of treatment is concerned. In the accounts of Macedonia I have found little to note beyond certain features of plan. In Roman history there are a great number of minor

similarities; the two which appeal to my mind as most interesting in their essential inconsequential character are that both works mention the age of Julius Cæsar at the time of his dallying with Cleopatra,—the Web, page 181; the Outline, page 510,—and that both make clear that Boadicea's revolt occurred in the reign of Nero,—it would have been so easy to throw her in, in the fashion to which we are accustomed, as merely a feature of the indefinite Roman period of early Britain; or indeed she might readily have been omitted entirely. The two treatments contain in common much petty detail of this sort, the common stock of Roman history it is true; but that both these outline histories of the world give the same small stuff about Rome is an interesting coincidence. And this is heightened by the fact that Outline itself apologizes for the disproportionate space that Rome is engrossing,—pages 522 and 523. There is high probability of interdependence in these Roman chapters, but the matter cannot be established with the conclusiveness of earlier passages. The argument here rests in a measure upon them, rather than affording clear independent proof.

The chapters upon Christianity, Islam, and the Mongols provide no detailed evidence that I have discovered.

To summarize this side of the investigation: It is proven beyond a doubt that Mr. Wells had access to Miss Deeks' manuscript; and that he shaped certain of his passages in close dependence upon hers. The detailed similarities at these points show that the manuscript of Web was at hand as he wrote, and the dispersion of these key passages throughout a large part of this earlier section of the two works, as well as their linking up by a considerable number of minor similarities which I have not listed demonstrate that his reference to Web was no chance or sporadic thing but that the manuscript was one of his authorities, constantly available, lying close at hand at his work table and referred to repeatedly if not steadily throughout the progress of his writings. Sometimes it lay open before him and his writing was palpably a disguised copying of Miss Deeks' passage; at other times he made notes of her treatment and wrote more freely from these notes.

Opportunity to follow an interesting line of examination for corroboration of these findings has more recently been possible for me. The evidence here is not literary, but physical. I have secured from Miss Deeks the manuscript which she claims to be the identical document that was submitted to the publishers in 1918——

Mr. ROBERTSON: Possibly the witness should not give us evidence as to the physical appearance of the manuscript, or any opinions based upon that. I think there is a little of that in this paper?—*A.* Yes, this paragraph relates entirely to that and drawing corroborative evidence.

HIS LORDSHIP: Is that the paragraph running over on to the next page?—*A.* Yes, that runs down to the close of page 50.

HIS LORDSHIP: We will strike out that paragraph beginning with the word "Opportunity" and ending with the words "literary argument," beginning on page 49 and ending near the bottom of page 50.

In the Supreme Court.

Plaintiff's Evidence.

No. 12. W. A. Irwin. Examination-in-Chief—*continued.*

WITNESS: Very good. Then I proceed:

There remains another side to the enquiry, which I have left to this point, partly in order that we might approach it with the full cogency of Mr. Wells' indisputable use of Web; but as well because it will show us just what was the most significant element in his borrowing. This side of the question is that of the plans. How far is his plan identical with hers? And, where they do correspond, should we conclude that this is due not to the inescapable requirements of the subject matter but to his borrowing from Miss Deeks' work? We have already noted certain general features of resemblance of the two; we go on now to a more careful examination of their choice and ordering of topics.

I had a digression I wanted to make there. May I discuss it, Mr Robertson?

Mr. ROBERTSON: What was it you wanted to say?—*A.* If Mr. Robertson approved of it, I would simply refer to it and pass on with my reading.

HIS LORDSHIP: I think you might pass on.

WITNESS: I have here the tables of contents and analyses of several similar works; some of them Mr. Wells advances as his own authorities. On that I think I may say that in every case the plan is much farther from Mr. Wells' plan than is Mr. Wells' plan from Miss Deeks'.

HIS LORDSHIP: Mr. Elliott may refer to them, if he desires.

Mr. ROBERTSON: I will get these from you again. There is nothing at the moment.

HIS LORDSHIP: Very well, witness.

WITNESS: The common point of commencement of the two works was pointed out some time ago. Its peculiarity we noted. It is, however, not unique; a few others have adopted the same course. As unnecessary as this course was, it must be granted then that there was no reason why it should not equally have occurred to Mr. Wells and have been accepted of him quite independently of his knowledge of Miss Deeks' beginning. It is to be noted, too,—I want to point out this one qualification of the concession I made there. These other works that do this, independently of Mr. Wells, are comparatively few, only very few.

HIS LORDSHIP: Very well.

WITNESS: It is to be noted too as of some relevancy that the immediately subsequent material, that relative to the evolution of animal species, is of quite different compass in the two. On the other hand, it has been demonstrated that as a matter of fact Mr. Wells did know of Miss Deeks' point of approach before he began to write. Moreover, he found her treatment of this initial topic so commendable that he adopted it practically entirely. The difference between this fact, and his having taken from her the idea of such a beginning is then pretty thin. It hangs on the answer to this question, Did Mr. Wells have this idea in mind before he became acquainted with Miss Deeks' work? It is a question difficult

to answer. On the one hand I understand that Mr. Wells is reputed to have long entertained some popular interest in science, perhaps even in biology, but for evidence whether this interest, whatever it was, may have suggested a scheme of discussion such as we find in Outline we have, as far as I know, no source but his examination of last summer. There he claims, questions 1 to 9, to have entertained for many years an intention to write a history of the world, but that it was an entirely shapeless thing in his mind. It did not formulate itself concretely until the summer of 1918. Now it is true we cannot discover the date on which Miss Deeks' manuscript came into his hands, much less when he decided that it had features which he could use. That it was in his possession in October is quite certain, since he was at work then, and was using it for his first chapter. By October he was hard at work. Perhaps I should say there that I may be slightly mistaken in saying " by October "; it may have been in November. I leave myself open to be corrected by the evidence on that point.

By October he was hard at work and made the same beginning as he found in Miss Deeks' work.

The problem narrows down then to these facts: that some time during that summer his purpose and his plan became clear. As I have said, by October he was hard at work and had made the same beginning as he found in Miss Deeks' work and had actually adopted in surprising detail her treatment of that beginning. In strict logic that situation is still short of proof that this feature of his plan is taken from her, but for practical purposes the distinction is so narrow that it may be ignored, and we may conclude here a dependence of plan.

With this as a commencement, there was a certain inevitability about what should follow. It was necessary to speak of the formation of the surface of the earth, the evolution of life, the emergence of earliest man, the stone ages and then the beginnings of civilization. The fact of some such general line of advance in the two works, then, gives us nothing further for our purpose. Closer examination is necessary.

The first peculiarity to arrest us is the practical omission of the first of these subsequent topics. Neither document gives appreciable space to the making of the earth. Yet surely this is a very important step in the process, and really much more relevant to the theme of the works than the astronomical material with which they begin. Yet Web passes it over with but a part of a sentence relative to the " concentration of a solid crust of land," and the emergence above water of high portions of that land,—page 1. Outline has, as we have seen, a passage paralleling this; and then in Chapter 2 certain supplementary information which, however, is only incidentally an account of the making of the world, as we know it, for the section is entitled " The first living things," and commences, " We do not know how life began upon the earth."

We find then that both works, with a common start, have a peculiar omission of matter which their schemes really require. This is the more notable in that it is this material, or closely related material, that Helmholt

In the Supreme Court.

Plaintiff's Evidence.

No. 12. W. A. Irwin. Examination-in-Chief—*continued.*

takes as the logical beginning of history; he gives large emphasis to what he calls anthropogeography. We have then the peculiar situation that the astronomical commencement to which Helmholt merely alludes, and at once turns from, Wells seizes upon; whereas the making of the earth, in preparation for life, and the influence of geography upon life, which for Helmholt is of prime importance, Wells ignores. Yet in his examination, at page 11, he puts forward this work as his authority at this point. Quite clearly it was not. He is following some other model.

And I wish to add that I invoke also Wells other reputed authority in my argument, the book from which I cited passages this morning, of Barrell. The second chapter in that book deals precisely with what Wells was dealing with. If he used that book as his authority, there is no reason why he should have left it out.

In the discussion of lower forms of life there is wide difference between the two works. Web has but a page, Outline five, or perhaps we should say six, chapters. This is though but a difference of detail of treatment; for our point here we note that they are discussing the same theme; in a sense a required theme, it is true; but however that may be, they are at least in agreement.

In the accounts of savage man it is to be freely granted once again that there are differences of detail. Outline contains much that is not represented in Web. But on the other hand in their parallel material there is some quite significant similarity, the most obvious being that both close this part with a discussion of the races of mankind and an account of Aryan migrations,—Web, at page 17; Outline, chapters 13 and 15.

Between these topics Outline has a chapter on Languages, a matter to which Web has alluded a little earlier, but with this difference, the two have framed the latter part of their discussion in this section on an identical plan. It is a notable resemblance, because the feature is largely superfluous. As to migrations it was not in the least necessary that works of this compass should make these immediately precede civilization; and particularly irrelevant are Aryan migrations. I am not aware of another work in the field, unless perhaps Duruy, which does this. The topic " Races " is perhaps more in place, though even it could have been omitted with little sense of deficiency.

However, there is a much more important aspect of this immediate prelude to civilization. Turning to Outline's Scheme of Contents, we find that Book III undertakes to give us a survey of the earliest civilizations. The book as a whole is entitled The Dawn of History, and its second chapter —chapter XVI, is on The First Civilizations. The subsequent chapters deal ostensibly with various aspects of these civilizations. It is Chapter XV then, the opening chapter of the Book, which particularly arrests attention. It is the one to which we have just referred on Aryan migrations. Now, if this had been the last chapter of Book II instead of the first of Book III it would even then provide a notable parallel to Web's treatment—the sort of similarity we have discussed just now. But placed as it is, it constitutes

a situation that is simply astonishing. The implication of such an arrangement is that these "First civilizations" to which we go on were Aryan, that the Aryan migrations give us the necessary background for an understanding of the achievements in historic times of Babylon, Egypt, and the rest. Now of course this is glaringly false. The inhabitants of these lands were anything but Aryan. Of the ten sections into which Wells divides Chapter XVI, only one, section 4, is concerned with Aryans, and that section occupies barely more than thirteen lines in a chapter of twenty-five pages. There might have been included here an account of Achæmenian Persia—of this omission we speak in a moment—this would have given a little further basis for the introduction that Chapter XV provides for this book, but even then it would have been sadly out of balance and quite anomalous. The lack of this, notwithstanding the modest support found in the section on India, leaves the placing of this chapter XV nothing less than an egregious blunder, and strangely it is a blunder which Outline shares uniquely with the Web. There, on page 12, we are told that "A very early migration of this white race"—which just above has been equated with the Indo-Europeans—"inhabited the land called Chaldea or Babylonia." So that the cat is out! There, beyond a doubt, is the source of Outline's erratic feature.

Now, another aspect of this same Chapter XVI: Why the omission, save for incidental and casual mention, of Achamenian Persia? It was not because of excessive length of the chapter, for though it runs to twenty-five pages several other chapters are actually much longer. Nor was it for chronological reasons, for in this very chapter on "First Civilizations" he brings the history of Egypt down to the present day! There is no adequate excuse, and by all canons of historic sense and propriety, a full section here should have been given to the Persia of Cyrus, Darius, Xerxes and the rest. But we search in vain for this until at length we locate a sort of half-hearted treatment not in Book III but in Book IV, Chapter XXII; there the Persians are dragged in as a side issue to Greek history. For anyone with the least appreciation of ancient history this is nothing less than absurd.

Now it is true, this arrangement perpetuates a popular misunderstanding, as well as the classical tradition and centring of history. And Wells as an Englishman may very well have been nurtured in that atmosphere. Yet even so, his action is inexcusable when we examine his reputed authorities. Neither Breasted, Browning nor Hall, nor any other historian of today, will provide a shred of justification for his course. But Web does! It is exactly the order followed there; Persia is omitted from the earlier period and is brought in only incidentally in the account of Greece.

Another strange omission from this Chapter XVI is the pre-Greek civilization of the Aegean, the so-called Minoans. True, we find them in Chapter XVII, but that does not satisfy. They have a right to stand among "The First Civilizations," and though they were a "sea people" and a "trading people" their relegation to such a classification is equivalent to an omission. Moreover, Chapter XVII is a sort of hodge-podge. They are forked in there along with Phœnicians, Carthaginians, Aramæans and

In the Supreme Court.

Plaintiff's Evidence.

No. 12. W. A. Irwin. Examination-in-Chief—*continued.*

whatever else, sailors, traders, camel drivers and a motley array of nondescripts raked up through the East from China to Spain. And to the Carthaginians he gives ostensibly equal rights with Rome in Chapter XXVII. This then is no supplement to Chapter XVI; but really what it implies, a dissertation on an aspect of Ancient Civilization. Here we have a parallel though not a precise identity with the plan of Web. The early Aegean civilization is omitted entirely by Miss Deeks, save for reference to the Trojan war, but at just this relative position, after the decline of Egypt, she does draw in the Phœnicians and eulogizes them. Her difference in regard to the Aegeans is then not nearly so significant as these three similarities: both omit the Aegean people from the list of early civilizations, both treat later maritime activity, and both give the Phœnicians a higher prominence than would be accorded by authoritive historians. Moreover this emphasis upon the Phœnicians would equate topically the entirety of Outline's Chapter XVII, for it is an account of a sea people who are represented also as a trading people. Or, to put the matter the other way, at just this point in her history Miss Deeks has an arresting passage in which she turns from the main thread of advance to describe a "Sea" and "Trading" people. Mr. Wells does the same, differing from Miss Deeks mainly in including here a people for which her plan gave him no guidance but which he should really have put in Chapter XVI.

HIS LORDSHIP: Two o'clock.

(Court adjourned at 12.45 to 2.00 p.m., Wednesday, June 4th, 1930.)

Toronto, Wednesday, June 4th, 1930.

Afternoon Session.

W. A. IRWIN.

Examination resumed by Mr. ROBERTSON.

Q. Will you just continue?—*A.* And now from omissions to an inclusion: The presence of India among these "first civilizations" is at least notable, and the more so in view of the important omissions we have just discussed. Yet there is so little occasion to put it here that Wells can find little to say and passes the topic off with little more than mention of Aryan migrations and the promise that later we will find some real history in India. Now the one justification for this inclusion, which I can find in Wells' reputed authorities is the action of Winwood Reade, who on pages 43 and 44 refers to India along with Babylonia and Egypt, yet it is indicative of his emphasis that his rather full list of topics in his Table of Contents contains here not a word about things in India. It is but by a very generous concession then that we can find justification for Mr. Wells' course in his authorities. But once again he agrees with Web in a point that is peculiar: Miss Deeks gives large emphasis to India of this period.

The title of Reade's book, which Wells cited as an authority, is the Martyrdom of man. I have the volume here to be referred to, if it is desired.

And two more peculiarities of treatment of this Chapter XVI, these of a more detailed sort. Both works take up Babylonia first of these " First Civilizations "; though this course is in opposition to Breasted, Browning, Reade and Hall, all listed by Wells as his authorities. Indeed I know of no general history of the Near East that agrees in this regard with these two. Both works also pause at their account of Assyria to moralize on the evil of warfare, its destructiveness of civilization, Web at page 61, and Outline at pages 194 and 195.

The subsequent material in this Book III of Outline may all be grouped under one head as a social dissertation. The chapters on Writing (XVIII), Religion (XIX) and Social Classes (XX), are palpably nothing but that; for " Writing " reaches a climax in " The place of writing in human life," and " Religion " is treated sociologically rather than speculatively. Web has likewise at this point a social digression, though for Miss Deeks the theme is the decline of woman's place. A more precise resemblance is that Web, at the end of Chapter V, as we have noted above, page 84, summarizes the results of the long course of the ancient civilizations, and astonishing as it may appear, at the very same relative point just at the close of the history of the Ancient East, Outline has, in Chapter XX, section 8, " A summary of five thousand years." True it is a somewhat natural thing to do. One might well be impelled to summarize and moralize at this point; and further it is granted that Breasted does this—Ancient Times, page 217. Yet there is most meagre evidence, if any, that for all his professions Mr. Wells used Breasted at all, and, on the other hand, natural as this summary may be, it would not be in the least strange to omit it. The identity of the two plans in this point must not then be deprived of any of its cogency.

We have here then, in their common schemes of treatment of the Ancient East, a succession of peculiar omissions, inclusions and errors. No one can survey such an array of unusual features without conviction that their independent occurrence is quite out of the question. Our results here, in this larger survey of the matter, are not less cogent than in the case of the detailed and even verbal similarities of the opening passages of the book. And here, as there, the evidence warrants the conclusion that we have found definite proof of dependence, that Mr. Wells for his treatment of the Ancient East took over Miss Deeks' plan, making but a few minor revisions or additions.

We go on now to Book IV of Outline, which is entitled Judæa, Greece and India. The grouping together of these three seems odd, but it provides nothing for our purpose. We come to details of the plan.

The history of Israel is treated only here, in Chapter XXI; there is nothing further until, in the first section of Chapter XXX on the Beginnings of Christianity, the writer glances hastily at Judea at the Christian era. There is then in his account a deep hiatus. From the Fall of Jerusalem to Christian times we are given practically nothing; as far as assigned topics go, nothing at all. Yet there is much in the interval that demands attention even in a work of this compass. Moreover, in the discussion which Mr. Wells does give of Ancient Israel there is one very serious omission, namely,

the work of the Prophets. True, he sets down one topic for this, Topic 4 of Chapter XXI, " The importance of the Hebrew Prophets." But any merit pertaining here belongs entirely in the topic, for the material it covers is lame in the extreme; its contents betray an incredible ignorance of the subject; none but Ezekiel and Amos are mentioned by name, and their total value is that " Ezekiel was of the priestly class and priestly sympathies, and Amos was a shepherd." Notwithstanding, then, the bluff of the topic, we may say that the most significant feature of the life of Ancient Israel, Hebrew prophecy, is omitted. In both these regards the Outline is in complete harmony with the Web.

The history of Greece, we have already seen, provides certain similarities. Both go back for their beginning to the remote Aryan ancestry of the Greeks; and both include in this section practically the entirety of their record of Ancient Persia. And in the detail of topical treatment of Greece we have already seen that there is remarkable coincidence.

In regard to Alexander and the Macedonian Empires, there are a few points to note. In the accounts of Alexander's career there is a striking omission in which both agree. We are giving nothing of his activity in Central Asia. Web, at page 151, jumps with a mere phrase from the burning of Persepolis to the invasion of India, later supplementing this with the remark that Alexander " conquered a stretch of territory that exceeded in vastness any empire that had hitherto existed." Strangely, Outline does the very same thing; it stops, at page 385, at the burning of Persepolis, undertakes a pretentious survey of Central Asia as a background to the story of Alexander's further activity—page 387, paragraph 2, line 1—and then never goes on to this save only for casual reference to his " march in Central Asia." But just as Web, it jumps to " his raid through the Punjab," at page 388.

Subsequent to the death of Alexander, we look for a history of the great empires into which his conquests presently broke up, but we find it in neither work. Section 6 of Chapter XXIV of the Outline is entitled " The Successors of Alexander," but this is every whit as delusive as that noted just now on the prophets. For the purpose we seek, there is little more than the summary that " the Ptolemaic and Seleucid empires lasted for a considerable time." However, later in the account of Roman history, both words have casual reference to the Seleucid rivalry with Rome. Then, as if to redeem this oversight, both Outline and Web delay over one single feature of these Macedonian empires, the intellectual life of Alexandria. Outline gives an entire chapter to it, Chapter XXV; Web gives most of a page—page 155.

In the history of Rome there is less to comment. We have already noted a mass of petty detail common to both, that, in connection with our other evidence, implies that Mr. Wells was accepting suggestions from Miss Deeks' discussion. The discussion of early Christianity likewise we pass over with but the remark that both give notable space and emphasis to what was for its contemporaries a very obscure movement. In this degree of emphasis, Outline is again at variance with his authorities.

To the points of comparison that yet remain within the limits of my scope of enquiry, I referred at the outset. My purpose here in recalling them is to give them more full presentation and apply their meaning and cogency to the argument now in hand. They are mainly of the nature of omissions or insufficient treatment. At about this point Eastern history begins to fade completely out of the consideration of both writers. The major exception is Islam. Web has a brief survey, and Outline has a chapter, XXXII, which it may be granted is, for the compass of his history, a sufficient prominence. Then, too, both note the Mongol conquests. Web's treatment again is very brief, but Outline purports to give once more an entire chapter—Chapter XXXIV. Beyond this we have practically nothing; there are a few hints and references, but on the whole it is a fair generalization that fifteen if not twenty centuries of the great civilizations of Asia are ignored. Both writers swing off to the West, and for the balance of their interest it is to them the world.

Of important significance are the omissions of highly important matters, among which may be referred to the following :—

(*a*) The career of Tamerlane, one of the greatest military men of all history, master of a realm immensely greater than Alexander's, is ignored completely by Web, and might better be by Outline; the half page which he gives to the topic is palpably no more than a garbled, inaccurate afterthought—Volume II, page 132.

(*b*) The Ottoman Turks, makers of a very great empire, and of deep and far-reaching influence upon the course of history, are brought into both histories alike only in casual reference to such themes as the Fall of Constantinople.

(*c*) Persia is neglected shamefully. We have already noted this in regard to the Achæmenian period. And we can offer no complaint that the Parthians are given little attention. But Sassanian and Islamic Persia have been very great periods of a great and cultured people. Web omits them entirely; Outline has three pages—Volume I, pages 616 to 619. Part of this neglect is the very shallow treatment of the great Zoroastrian religion, to which Outline gives less than one page—at pages 624 and 625—of very thin stuff; Web's emphasis is comparable.

(*d*) India, China and Japan, and all Central and Eastern Asia are likewise passed over as negligible, until in recent times they take a place in the expansion of the West.

Now, to summarize the comparison of the Plans of the two works: Certain differences have been noted, as a larger space and emphasis to some topics by the Outline, and an inclusion of others not represented in the Web. Yet it must be pointed out that all such differences are insufficient to counter-balance the large identity of structure of the two. We have found at point after point an amazing agreement as to selection of topics, as to order of presentation, and in the main as to proportionate emphasis. This agreement was frequently followed into peculiarities amounting even to errors, and this in the face very often of the combined authority of the

In the Supreme Court.

Plaintiff's Evidence.

No. 12. W. A. Irwin. Examination-in-Chief—*continued.*

best works in the field, and more particularly of works which Mr. Wells claims as his sources. These phenomena have been so numerous as to defy all explanation save that of dependence. Making all allowances for differences, it yet remains that the two works have one and the same plan; and that plan, we must conclude, Mr. Wells took from Miss Deeks.

Mr. ROBERTSON: Here, I think, perhaps—certainly the next page—is hardly a matter for opinion evidence.

HIS LORDSHIP: Do you wish to excise some part of this? Perhaps it is all right, stated as his conclusions.

WITNESS: So the conclusion of the entire investigation, my answer to the problem which Miss Deeks set me last November, is this :—

1. Mr. Wells had read Miss Deeks' manuscript before commencing his work on what we now know as The Outline of History.

2. He analyzed her manuscript and made written notes of features which attracted him.

3. With but unimportant revision he adopted this analysis as a plan for his own writing. His use of the plan of Web was such as to justify the epithet " slavish."

4. Certain passages in The Web he took over in detail. He re-wrote them in such fashion as might be hoped to obscure their dependence, but they remain a palpable copying.

5. He kept her manuscript readily available as he wrote, apparently at times it was actually open before him, and he made frequent reference to it.

6. He used The Web as his chief source and authority. He followed it very much more closely and continuously than he did any of the works to which he refers. Indeed, of some of these I can find no evidence of use whatever. His citation of them is no more than a bluff. I note that the word " no " is omitted.

Why Mr. Wells came to make this use of The Web is a question that obviously I am unable to answer fully. There is some light shed upon it, however, by this examination which we have been pursuing, particularly when supplemented by his evidence given last summer. He claims, as we have already noted, that the writing of a history of the world was an ambition of his of many years, but that prior to 1918 he had never formulated definite plans for the book. This ambition may have been developing in his mind during the course of the Great War; or again it may have been still as vague and remote as it had remained for years, when in the summer of 1918 the manuscript of The Web came into his hands.

In any case, the reading of Miss Deeks' work would be just the stimulus required to bring these old intentions to a focus of decision and action.

Mr. ELLIOTT: Of course this is not evidence. I am not objecting to this, because it is quite evident that this witness is carried away and wants to make a speech, I think; but it is quite evident that this is not evidence.

WITNESS: Do you wish me to make an explanation, your Lordship?

HIS LORDSHIP: No, Mr. Elliott may wish to ask you something upon cross-examination. If Mr. Robertson desires these pages to go in, and Mr. Elliott does not object, I shall not interfere. It is argumentative of course.

Mr. ROBERTSON: There is some evidence on the next page that I want to bring forward.

Mr. ELLIOTT: I would not want all this to go in without my objection being noted.

HIS LORDSHIP: We will note your objection, Mr. Elliott. It may shorten Mr. Robertson's argument. Go on.

WITNESS: It is quite clear that he regarded Miss Deeks' manuscript very highly; no man would make such extensive use of it otherwise. It must have roused him to a realization of the possibilities in publishing such a work at that time. But this is to be considered as well: having undertaken the project, he wrote under very high pressure. The published Outline bears indubitable marks of hasty production. Moreover, the time which his evidence allows for the actual writing strongly corroborates this. Somewhere about October of 1918 he is fairly started; by the next July the work is complete save for some minor revision. My reference there is to the Counsel's summary, paragraph 3.

Mr. ROBERTSON: I do not know what the reference is to Counsel's summary, but it is to a letter which is in.

WITNESS: In about nine months he produced a manuscript of about half a million words, surveying all the intricate and recondite subjects entailed in a history, not of mankind alone, but of the earth. It is simply stupendous. And, if I understand aright his testimony, he denies that he dictated to stenographers; on the contrary he wrote it entirely himself in longhand. The reference is to Question 77 in his examination.

To do that in a bare nine or ten months is a task that might well stagger one. The mere writing was exacting. There could have been no time whatever for exhaustive reading, for collation of authorities and maturing of views and modes of expression. These things can be done only through years of quiet work, not in a few hectic months of feverish activity. He made his task one of urgency, snatched hastily at facts and views drawn from where he might, padded it out with old hobbies and half-baked opinions of his own, and feverishly kept his pen-hand busy.

Why he rushed the work through at such a pace he does not say, but the fact that he did so is established. For some reason he felt that speed was of importance. It may have been that he felt the market was peculiarly ripe for his purpose, and that he must hasten before the public mood changed; it may be that it is his habit to work in this hasty fashion. But there is no evidence against the view, and probabilities favor it strongly, that his reason was an anxiety to forestall the publication of The Web. He must have known that he could retain the manuscript in his possession but for a limited time.

In the Supreme Court.

Plaintiff's Evidence.

No. 12. W. A. Irwin. Examination-in-Chief—*continued.*

Mr. ROBERTSON: I think the rest of it need not go in.

HIS LORDSHIP: Very well, stop there and leave the rest out.

Mr. ELLIOTT: There is only one more sheet of it, and he might as well finish it.

Mr. ROBERTSON: No, in my opinion, it is not at all in the nature of evidence that is admissible.

Q. Professor Irwin, had you access——

Mr. ELLIOTT: Just a moment. This document, I understand, is going in?

HIS LORDSHIP: You have the right to it. The reporter, I think, has taken the whole of it. You have the right to have it in.

Mr. ROBERTSON: Of course I have no objection to putting it in.

HIS LORDSHIP: I suppose the only proper way would be for the reporter to introduce the manuscript with the interpolations in the appropriate places. There would be no objection to have the witness' marked copy as Exhibit No. 15.

WITNESS: The matter that it was agreed to delete, I have not marked out, but I think I could do that in a moment, if you wish.

HIS LORDSHIP: It is on my page 49, the one paragraph, ending towards the foot of page 50.

WITNESS: Beginning with the words, "Opportunity to follow an interesting line of examination," and ending with the words "corroborate with some little cogency the literary argument" at the end of that paragraph.

HIS LORDSHIP: Draw your pen through that paragraph. Then on page 67, in the third line from the bottom of the page, beginning with the words "regarding it as of high merit" and down to the end.

Mr. ROBERTSON: And I think there was a little at the first?

WITNESS: We omitted page 1. Shall I strike that out also, your Lordship, as I did not read it?

HIS LORDSHIP: All right, strike it out.

Mr. ROBERTSON: Did you begin reading at the top of page 3?

WITNESS: No, I began at the top of page 2.

Then, on page 9, your Lordship, I believe a paragraph about the middle of the page I did not present as it is here. I presented it orally. I refer to the paragraph beginning with the words, "It will be seen from this that the two works."

HIS LORDSHIP: Score out that paragraph, and then that will appear in the notes. I have marked it to see the revised statement of this paragraph. All right.

WITNESS: I think this copy is correct, now.

Exhibit No. 15. Filed by Mr. Robertson. Prof. Irwin's manuscript.

Mr. ROBERTSON: *Q.* Then, Professor Irwin, did you prior to or during the course of the forming of your opinion in this matter, have access to the comparison, the analysis, prepared by Miss Deeks, of these two works, which we have in here as Exhibit No. 6,—you know the document I mean?—*A.* I believe I do, yes. Miss Deeks brought me down considerable material of one sort and another, and that among the rest, and it was available for me during the time I was at work.

Q. Then you have referred from time to time, in stating your opinion, to comparisons, literal comparisons, that is where the language or the literary form was similar. Have you set forth all of these which have influenced your opinion in what you have stated?—*A.* No, very far from it. In this statement I have simply selected the ones which I considered more cogent, or ones fairly worth while.

HIS LORDSHIP: You have written a book fairly large now. You could have written volumes, I suppose?—*A.* Yes.

Mr. ROBERTSON: *Q.* Was your opinion influenced or made any stronger by these other similarities which you have not specifically mentioned?—*A.* Yes, it was. As I intimated this morning, individually I felt that they fell short of conclusiveness, but certainly there was a cumulative argument; but I felt that in what I have presented there was a great mass of what I might call detailed similarities.

Cross-examination.

Cross-examined by Mr. ELLIOTT.

Q. You apparently have taken a considerable length of time with this proposition which was laid before you?—*A.* I have.

HIS LORDSHIP: I think he said six months, did he not?

WITNESS: I was speaking loosely. It was practically that. Miss Deeks came to me some time at the latter part of November last year.

Mr. ELLIOTT: And I see you have dated the document the 15th of May, so I presume you have been all that time at it. How did you come into this proposition at all?—*A.* Do you want the story of my connection with it?

Q. If you would be good enough to let me have it.—*A.* One day last November, 1929, there was dropped in my door a little note, Please call such and such a number. I called it, and a lady replied, Miss Deeks, and said, I want to see you about a very important matter. When can I see you? I thought over my timetable and said, I will see you this afternoon,—I think it was that afternoon. In any case I gave her an appointment for that same day. She came down promptly, and we had a chat in which she outlined the story of her manuscript, and her view that Mr. Wells had used it, and asked me if I would undertake to act in what has come to be called,—I hesitate to use the word,—an expert for her. I consented.

Q. Why did she wish it on you particularly?—*A.* As far as I recollect, she intimated that some authorities about the University to whom she had gone for guidance, had sent her to me.

In the Supreme Court.

Plaintiff's Evidence.

No. 12. W. A. Irwin. Cross-examination—*continued.*

Q. And did she also intimate to you that she had been to authorities in the United States?—*A.* We have had a number of conversations. I am only hesitating about the detail of this precise conversation. Is that what you have in mind?

Q. No, I want your general instruction. Did she tell you she had been to experts in the United States at any time prior to seeing you?—*A.* Yes, I think I may say that would be correct. We have had, of course, a great many conversations and she has told me a good deal about the history of her manuscript, and so on.

Q. And did she tell you that she had been to see some prominent experts in the United States prior to coming to you?—*A.* I do not know whether I would describe them as prominent experts. She has mentioned seeing different individuals in the United States. I did not know them, myself.

Q. Did she speak to you of criticism or report of these other experts?—*A.* I cannot say positively. She gave me quite an amount of material that I never used. It lay on my shelf, and I simply noted the title. I did not know the individuals, and I have never read it to this day.

Q. Did she show you the reports?—*A.* That is what I mean, that it is possible that the reports were among this material that I did not use. I do not know.

Q. Did she tell you that she had submitted it to different experts and that they had returned her manuscript to her and told her that there was no connection between the two?—*A.* No, she certainly did not.

Q. She did not tell you that?—*A.* No. May I complete that? She did tell me that having submitted it to certain experts they were quite enthusiastic in support of her charges.

Q. Did she tell you that she had submitted it to prominent experts in the United States who had reported that there was nothing in her claim at all?—*A.* She reported to me that she had submitted it to a number of individuals, one of whom I might mention, in Toronto, and that she had submitted it to others in the United States, who had supported her claim.

Q. Did she tell you ot any that did not support her claim?—*A.* No.

Q. Do you know Professor Archibald Freeman?—*A.* I do not think so. That does not sound at all familiar.

Q. Do you know Professor R. M. McIver?—*A.* I have seen him. I am quite familiar with his name. I do not claim to know him personally.

Q. Did she give you the report that was supplied by him?—*A.* No.

Q. Do you know a gentleman by the name of Professor Harry L. Barnes?—*A.* Only by name.

Q. Did she give you a report that she had received from him?—*A.* So far as I know, she did not.

Q. You would know?—*A.* Only on this basis, that if it was among the material which I did not use. My belief is that she did not.

Q. What material did she give you?—*A.* Oh, I could not give you a catalogue of it here now.

Q. Did she give you her book,—what she called The Web?—*A.* This is the first part of the actual one that was given to me.

Q. Is this all that she gave you?—*A.* No, she gave me the other two like that.

Q. Where are they?—*A.* I think they are here.

HIS LORDSHIP: We have two copies of this manuscript in now, have we not?

WITNESS: I would believe that these are they. Not having used them or not having marked them up in any way, I could not identify them as distinct from other copies.

Mr. ELLIOTT: The great study which you have given these things, as indicated by your evidence,—you surely would recognise the copies which you used?—*A.* My study was almost exclusively in Book I, the one which you received first.

Q. You dealt with Book I, and you say your study was almost exclusively on Book I of Miss Deeks' Web?—*A.* Yes.

Q. And there are three books——

HIS LORDSHIP: This, then, has been in London? It indicates that on its face. Apparently it was used in London.

Mr. ELLIOTT: I guess that is just the name of the solicitors. It was used in London.

HIS LORDSHIP: This manuscript was all re-typed?

Mr. ELLIOTT: I think, when my friend instructed that firm of solicitors, this was sent to them, and they put their face on to it.

Q. Then you tell me, Mr. Irwin, that you confined yourself almost exclusively to Book I of Miss Deeks' manuscript?—*A.* Yes.

Q. And as regards Books II and III, we need not bother you, because you did not deal with them?—*A.* As far as my evidence is concerned, that is correct. I am qualifying that only to the extent that I looked in them only here and there to follow up something at the time.

Q. You did not make an investigation like you did in Book I?—*A.* No.

Q. I see that Book I—perhaps you can tell us more quickly how many chapters there are there.

HIS LORDSHIP: In the detailed manner in which this witness has dealt with Book I, perhaps it would be convenient to have that book also in that form.

Mr. ROBERTSON: Excepting that other witnesses may deal with other parts.

WITNESS: Before that is put in, may I remove one of my notes, which is quite immaterial to that?

Exhibit No. 16. Filed by Mr. Robertson. Typewritten manuscript of Book I, The Web.

In the Supreme Court.

Plaintiff's Evidence.

No. 12. W. A. Irwin. Cross-examination—*continued.*

Mr. ELLIOTT: Miss Deeks supplied you with Book I and what else?—*A.* The Outline of History, she supplied me with that——

Q. Let me see the copies that she lent you?—*A.* This is Volume I, and I believe this is the actual Volume II that she gave me.

Q. So that Miss Deeks supplied you with Volume I and Volume II of the Outline of History printed by the Macmillan Company.

HIS LORDSHIP: That is the complete work, of course?

Mr. ELLIOTT: Yes, the complete work, printed by the Macmillan Company in 1920 in New York?—*A.* I believe that is correct.

Mr. ELLIOTT: I believe this is already in, my lord.

Q. Now what else did she supply you with?—*A.* With this analysis, to which Mr. Robertson has referred, and also with some statement of authorities——

Q. Have you got those?—*A.* I may have that here. This material is so voluminous and mixed up——

Q. Give me a description of it?—*A.* The thing I am looking for is this, typed quotations from certain of the authorities, as to certain parts.

Q. Are you referring to the comparisons which she gave you at that time?

HIS LORDSHIP: The list of authorities already in as an exhibit?—*A.* No, it is not that.

Mr. ELLIOTT: *Q.* If you can find that, let us have it. It contained authorities that she referred to?—*A.* Authorities that she confessed she had used, and obviously that is incorporated to some extent. I have referred to that again and again.

Q. And with what else did she supply you?—*A.* One other thing I remember; she supplied me with what purported to be a copy of Mr. Wells' examination taken last summer, and also a copy of the Counsel's Summary, which has been referred to. Beyond that there is other material, but my memory will not be sufficiently accurate to say what was there.

Q. Was this Counsel's Summary instructions to you as to what you should find?—*A.* No, it was simply a summary of the evidence taken in England and its bearing, and certain conclusions from it.

Q. Have you got that here?—*A.* I think I have. I believe this is the document.

Mr. ELLIOTT: I would put this in, my lord.

HIS LORDSHIP: That is not evidence, unless Mr. Robertson consents. It is something prepared for the action.

Mr. ELLIOTT: Unless my friend consents, I would not put it in.

Mr. ROBERTSON: I see the first page is not here?—*A.* No.

Mr. ROBERTSON: I have no objection to this going in. I have taken over the Brief of Counsel who is in England at the present time.

Exhibit No. 17. Filed by Mr. Elliott. Counsel's Summary of English examination.

Mr. ELLIOTT: *Q.* Now we have all the material in excepting some small incidental stuff that you have.—*A.* I suppose we may leave it in that way. My point is that the balance of it I cannot detail.

Q. Then we need not bother about that. Did she supply you with any books or documents?—*A.* Later on she secured from the library for me certain of the books which she had actually used herself.

Q. Then, having all that material together, what were you instructed to do?—*A.* I suppose I might say the instruction was to examine it and see if there was anything to her case.

Q. Do not suppose?—*A.* You must remember this was just a free conversation about six months ago.

Q. What were you employed for?—*A.* As I recollect the conversation at that time I was asked to examine this and see what evidence was in the documents.

HIS LORDSHIP: To see whether she had a case or not, to advise her by a report as to whether she had a case to take to Court?—*A.* No, I would not say that. I had nothing whatever to do with advising her to go to Court. She simply asked me to act as her expert in the case which was coming on.

HIS LORDSHIP: I think that is clear.

Mr. ELLIOTT: *Q.* And whatever the instructions were, they are embodied in this document which is Exhibit 15, which you have been reading to us in the last day or two?

HIS LORDSHIP: Supplemented by his oral evidence?—*A.* If you want a statement of my instructions as I understood them it is briefly on that page which was not read.

HIS LORDSHIP: On the first page.

WITNESS: You see in one sentence there I have said she asked me to undertake a study of the two works for evidence bearing upon this contention.

Mr. ELLIOTT: I see you have headed your document, "Evidence of W.A.I."—that is you?—*A.* Yes.

Q. So that this document which you have was following out your instructions for evidence to give in this Court?—*A.* Yes.

Q.—Then at page 2 of this document, Exhibit No. 15, you base your whole evidence and statements contained in this document on the truth of two assumptions, the first you state to be that her manuscript ante-dated the writing of Mr. Wells by an adequate period—is that your first assumption?—*A.* Yes.

Q. If it is true, then, that it did not ante-date Mr. Wells' Outline, then your whole contention and evidence falls to the ground?—*A.* No, I would not say anything of the sort.

Q. You have said it now, have you not?—*A.* No, I did not. I would say this, then, that that constitutes a totally new problem which I must be given time to investigate.

In the Supreme Court.

Plaintiff's Evidence.

No. 12. W. A. Irwin. Cross-examination—*continued.*

Q. You have investigated it?—*A.* No.

Q. You say here, "I have assumed that Miss Deeks can establish satisfactorily two points"—now your first point is this, "That her manuscript antedated the writing of Mr. Wells' Outline by an adequate period." That is your statement there is it not?—*A.* I believe so.

Q. Then, if that is not so, your whole evidence and this statement fall to the ground?—*A.* Not necessarily.

Q. If that assumption is not true——*A.* The situation is this, if that assumption falls to the ground there is a new problem before me which I must be given time to investigate, and that problem would shape up differently, and probably much of that which I have put in would be valuable, but with slightly different emphasis. But to say that my evidence falls to the ground, absolutely no.

Q. If that first assumption which you have made there is not true, the present evidence and statement made by you does not apply to the case?—*A.* The present evidence and statement would require revision.

Q. Then you speak as to that first assumption that you have made, and you say first that her manuscript ante-dated the writing of Mr. Wells' Outline by an adequate period. What would be an adequate period?—*A.* A period adequate for the purposes of the case.

Q. How long a time?—*A.* Oh, do not ask me that.

Q. You had to come to some conclusion as regards that when giving your evidence?—*A.* Oh no. All I had to come to the conclusion about is that it was an adequate period.

Q. You won't tell me, then, what would be an adequate period?—*A.* A little while ago you were objecting because you thought it was not evidence. Now why do you ask me to give what is not evidence?

Q. Just listen to the questions and do not argue with me. I have asked you a simple, plain question: What is an adequate period?—*A.* My answer is that in days and weeks and hours I do not know. It depends upon the man's ability to read it. I mean a period sufficient for the purposes of the contentions in this case.

Q. You are familiar with the dates, are you not, of the dealings with this manuscript?—*A.* I have heard of them.

Q. The plaintiff tells us in her examination that she delivered her manuscript to MacMillans of Toronto in August of 1918, July or August of 1918. Hold that in your mind.

His Lordship: The end of July she says.

Mr. Elliott: If it is shown in evidence by Mr. Wells that a substantial part of the Outline of History was written at that time, then your evidence would not apply?—*A.* I would not say that either. I would say once again that I must have opportunity to study, granted you prove these are facts, what are the facts of the case and what part of The Outline of History he had actually written and things of that sort.

Q. Then the plaintiff produces for us a letter dated January 31st, 1919, which shows that her manuscript was then at MacMillans in the City of Toronto.

Mr. ROBERTSON: I object that is not what the letter shows. There may be something to be implied from the letter, but it does not prove any fact at all.

Mr. ELLIOTT: *Q.* Then take it for granted that on the date that she received that letter of January 31st, 1919, her manuscript was in the possession of MacMillans in the City of Toronto. Have that in your mind now; and have also the date of August 1st, 1918. Do you say, to use your own expression, that adequate time had elapsed from July or August, 1918, for Miss Deeks' manuscript to go to London, to be used there in writing, as you say, the Outline of History, and returned and be in Toronto again on January 31st, 1919? Could it be done?—*A.* First of all, then, too, why not for the purposes of the question assume that the moon is made of green cheese? That is quite as relevant. You are taking assumptions there that you might argue from, and you see your assumption is of no value. My answer is that I am not going to accept assumptions of that sort.

Q. Not even when I give you the dates?—*A.* You gave me one rough date and one assumption and asked me to give you some opinion on your assumptions.

Q. I want you to assume it?—*A.* No, I refuse to assume it.

Q. And you refuse to tell me, to use your own language, whether an adequate time had intervened between July or August, 1918, and January 31st, 1919, for that manuscript to have gone to London and be used in writing The Outline, and returned to get back to Toronto before January 31st, 1919?—*A.* I will answer that, but do not ask me to say Yes or No.

Q. You refer to "adequate time"—could that be done as a physical possibility at that time?—*A.* I have already dealt with that question of adequate time, and I refuse to be drawn into any more statement about it. What adequate time was in days and hours, I do not know, and neither do you, but that must be judged by so many considerations that you cannot be tied down to days or hours. Get over that thing and let us get down to something else.

Q. That is the best you can do to help me on that, is it?—*A.* You can put it in that way.

Q. Then I will leave it in that way and go to something else. You, of course, not reading those two volumes that you have told us about, you read Mr. Wells' introduction?—*A.* Yes.

Q. It starts, I see, in Roman numerals, at V and goes on to X in the first volume. You notice that Mr. Wells in this introduction does not claim to be writing a book for professors and experts.—*A.* I think I would grant that. Of course you will understand that was read some time ago.

Q. He says: "It is written plainly for the general reader."—*A.* Very good.

Q. So that something which was written for the general reader would somewhat jar the soul of a professor, when it is on his ground?—*A.* Not necessarily. Many popular works are of high scholarly value.

In the Supreme Court.

Plaintiff's Evidence.

No. 12. W. A. Irwin. Cross-examination—*continued.*

Q. Then you notice that he had each chapter of his book thoroughly revised and criticized by eminent men?—*A.* I notice that he gives a list of eminent men who he said collaborated with me. Whether each chapter was revised or not I do not know.

Q. This is what he says at page VIII: "There is not a chapter that has not been examined by some more competent person than himself and very carefully revised."—*A.* It would not require very much competency. Very well, if he says that he says that.

Q. You were not over there?—*A.* No.

Q. Then he refers to some distinguished assistants, and he selects a few of them, Sir E. Ray Lankester,—is he not a very able and eminent writer?—*A.* I have one of Lankester's books here which I used in my argument.

Q. He is an honourable man and one who could be well associated in a work of that kind?—*A.* I have no reason to doubt.

Q. Then Sir H. H. Johnston,—you know him?—*A.* Very slightly. I will take your word for it.

Q. I want yours?—*A.* I know very little about him.

Q. Professor Gilbert Murray,—do you know him?—*A.* I know of his work.

Q. Where is he associated?—*A.* He is a great authority in the Hellenic field.

Q. And one who would have your esteem?—*A.* I think I might say so much.

Q. And an honest writer?—*A.* I am not in a position to answer that. Understand that when saying that I am not casting any aspersions.

Q. And Mr. Ernest Barker?—*A.* I do not know him.

Q. Of Cambridge University?—*A.* I do not know him.

HIS LORDSHIP: I understand these names are put forward in Mr. Wells' Advertisement?

Mr. ELLIOTT: In his Introduction.

HIS LORDSHIP: Yes, which is really an Advertisement, with the idea that the mention of them would approbate his work to some degree, and he would expect that a large number of readers would be familiar with some of these names. Perhaps no one person would be familiar with all of them, but all of them were men of some standing.

Mr. ELLIOTT: Yes. I do not speak with any great degree of knowledge excepting having read a lot of his books; and he does not claim to be a geologist, for instance, or an historian in many things.

HIS LORDSHIP: Mr. Wells is essentially a fiction writer, I take it.

Mr. ELLIOTT: And he naturally had to call in experts on a great many of these things.

Mr. ROBERTSON: And then he did not adopt their opinions.

Mr. ELLIOTT: I do not want to read over all these names; there are some outstanding ones, Sir Richard Gregory, who is very well known—you know of him?—*A.* No, I do not.

Q. You know of men like Professor J. L. Myres?—*A.* I know J. L. Myres, and may I speak about J. L. Myres?

HIS LORDSHIP: No, I do not think it is necessary. It would be interesting no doubt.

WITNESS: It was really relevant to the case.

HIS LORDSHIP: Mr. Robertson may ask you about it afterwards.

Mr. ELLIOTT: *Q.* Then Mr. Wells further states, as you probably are aware, that "he has met with scarcely a single instance of irritation or impatience on the part of specialists whose domains he has invaded and traversed in what must have seemed to many of them an exasperatingly impudent and superficial way"?—*A.* I could believe it would appear so.

Q. And he acknowledges it?—*A.* Yes. Was your point there about the lack——

Q. You just give your evidence, and do not bother about the points. Then having those men's names associated with Mr. Wells, at page 4 of your statement you state the following:—

> "The Outline is a very shoddy, ill-digested piece of work, devoid of literary excellence; I cannot recall a single passage that commends itself as the work of an artist. As history it is commonplace in the extreme. The work has no merits that would preclude its being dependent upon an unknown writer."

That is your opinion of this work?—*A.* That is my summary based upon months of intensive study and familiarity with the work.

Q. And that is directly aimed at Mr. Wells?—*A.* That is not directly aimed at anybody, but that is a summary of my study of The Outline of History.

Q. And do you include in that statement the other gentlemen mentioned by Mr. Wells?—*A.* I include in that purely The Outline of History.

Q. The Outline of History is the work of the brain of these men?—*A.* I am not concerned with that. I am concerned only with The Outline of History.

HIS LORDSHIP: Wells does a chapter and submits it to Lankester not for style but to be informed whether or not he is correct in his summary of the situation of the matters dealt with, which may be assumed, I suppose, to be within Lankester's province. It is not Lankester's business to re-write the chapter or to say to Wells "Your style is rotten." He simply approbates the facts, I suppose.

Mr. ELLIOTT: Yes.

Q. Your next statement in regard to that is this:—

> "Then finally this is to be considered, that for any man who is ready to make illegal use of another's work there is distinct advantage in choosing the work of an obscure individual; the probability of detection and punishment is reduced in direct proportion to his or her obscurity."

In the Supreme Court.

Plaintiff's Evidence.

No. 12. W. A. Irwin. Cross-examination—*continued.*

Do you mean by that that if Wells stole this material from Miss Deeks, he picked on her manuscript so as not to be detected?—*A.* I mean by that, Mr. Elliott, that having picked on her manuscript there was a distinct advantage there.

Q. That on account of the obscurity of this lady he would not be detected—is that what you tell us?—*A.* Just wait now. I am not saying that on account of this obscurity he picked upon this work. He picked upon this work for whatever reasons he used in picking upon it; but that is one of the considerations to be considered upon it.

Q. In this long criticism which you have here, did you read all the authorities which Mr. Wells refers to?—*A.* I think you said yesterday that there was something——

Q. Do not think anything about it?—*A.* You must permit me to answer as I will. I will not have words put in my mouth.

Q. Let us come to an understanding. I want you to answer my question. Please answer.

His Lordship: I do not mind a wrangle between Counsel and the witness, but I want to have some regard for the reporter.

Mr. Elliott: *Q.* Did you read all the authorities referred to in Mr. Wells' Outline of History?—*A.* I am going to answer you. First of all understand this, that there are a good many considerations enter into that, before I can answer it; and if I ask you another question, you understand it is to clear up a point so that I can answer it; and when I go back in that way, I am coming to an answer to a question, and then you will get an answer. So you let me ask you a question.

Q. Did you read all the authorities referred to by Mr. Wells in his Outline of History?—*A.* My question is: Did you claim yesterday that Mr. Wells submitted something more than a hundred authorities?

His Lordship: The question seems to be a very simple one. I suggest to you that you answer it directly, and then you make an explanation?—*A.* I will. No, I did not. Since Counsel has not asked another question I suppose I am still free on this answer?

His Lordship: If you wish to make any explanation.

Mr. Elliott: That is all, my Lord.

His Lordship: Mr. Robertson may bring something out, if he wants to. Mr. Muirhead, have you anything to ask?

Mr. Muirhead: I have nothing to ask.

Re-examination.

Re-examined by Mr. Robertson.

Q. First of all, you have said that Miss Deeks asked you if you would act as an expert or something of that sort, in this action. In anything that she asked you to do or that you consented to do, did you in any way compromise your own independence of opinion?—*A.* Absolutely no.

Q. My friend, Mr. Elliott, asked you as to your knowledge or as to what had been communicated to you as to consultation with other experts

prior to seeing you, and you said that among others one Toronto expert was mentioned?—*A.* Yes.

Q. The question I want to ask you about that is, Do you know whether that Toronto expert is still living?—*A.* No, my understanding is that he is not living.

Q. It was Sir Bertram Windle?—*A.* Yes, Sir Bertram Windle.

Q. Then with reference to the collaborators or the persons mentioned in the introduction by Mr. Wells as having had something to do with his work, first of all I want to ask you whether in its character, so far as you have examined it critically, it in your opinion bears signs of criticism and revision by first-class men in the various departments?—*A.* To answer it in general terms, first——

HIS LORDSHIP: What has that to do with the case?

Mr. ROBERTSON: It is merely in reply, my learned friend having put it to the witness.

HIS LORDSHIP: He often goes outside.

Mr. ROBERTSON: The witness had said in quite plain terms in his examination in chief that the work was not good history——

Mr. MUIRHEAD: I cannot hear my friend.

Mr. ROBERTSON: The witness had said the work was not good history, and then to meet that my friend asked as to these names.

HIS LORDSHIP: Supposing the work was absolutely devoid of interest?

Mr. ROBERTSON: It makes some difference in the plaintiff's case as to whether this work is also the revised work of great men. It would very seriously impair the value of this witness' opinion if it should be that.

HIS LORDSHIP: I should doubt if this witness could say that the men who were mentioned in the introduction of Wells' book had not revised the chapters, for the reasons I gave a moment ago, that they would not be concerned about the style. Perhaps it would be shorter to let you ask the question.

Mr. ROBERTSON: *Q.* What do you say as to the text of the work?—*A.* I say there is a peculiar situation there, that Mr. Wells has the habit of citing a number of footnotes, the opinions of certain of his authorities, which very frequently are initialled by one or another of these scholarly collaborators; and those footnotes or opinions of the scholarly collaborators are again and again—I will not say always, because that is a sweeping statement—but very often in direct contradiction of the text; and instead of working that into the text he lazily puts it into the footnote and lets it go.

An astonishing illustration of this is a letter from Sir Gilbert Murray, in Greek history. He has a whole section there in one chapter which is more or less a letter from Sir Gilbert Murray, which is in contradiction of something which he had said. Instead of going at it and correcting it, he simply puts in Sir Gilbert Murray's letter and lets it go.

In the Supreme Court.

Plaintiff's Evidence.

No. 12.
W. A. Irwin.
Re-examination—*continued.*

Q. My friend mentioned the name of a collaborator. Professor J. L. Myres?—*A.* Professor Myres is the author of the first chapter in the Cambridge Ancient History, and it has a chapter on the Geographical Backgrounds of Human Life, precisely the point which Mr. Wells omits, the deficiency which we saw in Wells' plan. Wells left it out, and Myres is rated as one of Mr. Wells' authorities.

Q. There was something you were going to add to the answer to my friend's last question.

HIS LORDSHIP: You were asked if you had read all the authorities?—*A.* In saying I have not read them all, obviously I have not read the books through from cover to cover; I have had something else to do in the last six months; but I have tried honestly to read his sources and to run through them and pick them out carefully. I am not claiming to have read them all carefully. In cases of that sort I have based no opinion upon that; but where I have claimed cogency, I have been very careful to go into his authorities quoted, and to go into them as carefully as possible.

HIS LORDSHIP: Using your own good judgment as an expert in this line of criticism, you made the explorations which you thought necessary of the material so as to enable you to arrive at a conclusion?—*A.* Yes, my Lord.

Mr. ROBERTSON: In cases where you have used the argument that The Web and The Outline are in agreement, but they are both in disagreement with the known authorities, in that sort of instances did you read and search the other authorities upon the point?—*A.* I searched them. Some of it it was not necessary to read; I have known them well for years.

HIS LORDSHIP: He has been living with this subject for years.

Mr. ROBERTSON: That is all, thank you.

No. 13.
Lawrence J. Burpee.
Examination-in-Chief.

No. 13.

Evidence of Lawrence Johnston Burpee.

LAWRENCE JOHNSTON BURPEE, sworn.

Examined by Mr. ROBERTSON.

(Examination-in-Chief.)

Q. Mr. Burpee, you reside in Ottawa?—*A.* Yes.

Q. And you have done some writing yourself?—*A.* Yes.

Q. You are the author of certain works?—*A.* Yes.

Q. Along what line?—*A.* Mostly history. Specifically the history of Western America—Northwestern America.

Q. Then you are connected with some well-known societies?—*A.* Yes, I am a Fellow of the Royal Society, and also happen to be Honorary Secretary to and member of the Council of the Royal Society of Canada. I was

President of the Canadian Historical Association, which I think I may say I was chiefly instrumental in founding; and was President of the Canadian Authors' Association also; and am at the present time editor of the Canadian Geographical Journal.

Q. And as incidental to other activities, your business office is with the International Joint Commission?—*A.* I am Secretary for Canada of the International Joint Commission.

Q. Then, Mr. Burpee, have you seen the manuscript of Miss Deeks' work, called The Web?—*A.* Yes, I saw it first in 1926, and made an examination of the manuscript, and compared it with Mr. Wells' book.

Q. That is The Outline of History?—*A.* The Outline of History, and wrote an opinion at that time. I have that opinion with me here.

Q. Have you done work upon it since?—*A.* Subsequently I made a short analysis of the manuscript and the book; and then, within the last month, I re-examined it and wrote a short additional opinion.. At this latter time I had the advantage of seeing the Examination for Discovery of Mr. Wells.

Q. And getting some further facts?—*A.* Yes.

Q. May I ask you this question, first: As the result of the examination and comparison of the manuscript with the Outline of History, in your opinion is there any relation between the two?—*A.* Yes, as I have stated in the opinion and as I still feel, I think The Outline of History shows a very clear—very many evidences of its dependence upon the manuscript called The Web.

Q. Assuming for the moment, for the purposes of the question, that The Web was a completed manuscript prior to the commencement of the other work, The Outline of History, what do you say?—*A.* I did not get the drift of your question.

Q. Assuming, then, that The Web was a completed manuscript before Mr. Wells began his work on The Outline of History, that is the writing of it, what do you say as to the relationship?—*A.* I would assume that either Mr. Wells himself or that someone acting on his behalf had had access to the manuscript called The Web and made a very complete study of it.

Q. You say you assume,—it is your opinion I want to get?—*A.* That is my opinion. I have referred to the alternative that either Mr. Wells or somebody else acting on his behalf, when I said I assumed.

Q. I want you to tell His Lordship upon what you base your opinion, and for that purpose possibly His Lordship would allow you to do it in the way that is most convenient to you, if you have something that you wish to refer to in whole or in part, or if you prefer just to state it?—*A.* I feel, sir, that I would probably save time of the Court if you would permit me to read from the opinion which I prepared in 1926.

Mr. ELLIOTT: I did not hear what you said.

WITNESS: I said I would probably save the time of the Court if His Lordship would permit me to read the opinion which I prepared in 1926.

Mr. ELLIOTT: Have you a copy of it?

In the Supreme Court.

Plaintiff's Evidence.

No. 13.
Lawrence J. Burpee.
Examination-in-Chief—*continued.*

Mr. ROBERTSON: No, I think not.

HIS LORDSHIP: It is not very regular, but I think it is quite an expedient procedure, and if I were opposing counsel I would welcome it.

Mr. ELLIOTT: I think it is the most expeditious way, but like in the other document I feel something will get in that is not evidence.

HIS LORDSHIP: You can leave something for the trial Judge. You will reserve all your objections to whatever is not evidence.

Mr. ELLIOTT: Very well, my Lord.

Mr. MUIRHEAD: I would join in that, my Lord.

HIS LORDSHIP: If there is anything in this which is not evidence, it is objected to.

Mr. ROBERTSON: I would suggest, in order to eliminate something that is not evidence, that you start at the top of page 4?—*A.* I think I should say, in justice to myself as well as to Professor Irwin, that I had the advantage of hearing him today. So many grounds of similarity appear in the opinion I have written which are in his evidence, I think it is in justice to myself as well as to him that I should say that I had never met Professor Irwin before today. I had never seen his opinion nor he mine.

HIS LORDSHIP: You knew nothing of it?—*A.* No, nothing beyond that I understood from Miss Deeks that he had been asked for an opinion.

HIS LORDSHIP: Then you may proceed and read from your memorandum.

Mr. ROBERTSON: If at places in your reading it is desirable or desired to supplement or explain it, do so, but indicate it to the reporter.

HIS LORDSHIP: Then the reporter will take it.

WITNESS: I have read and compared The Web and The Outline, in both cases having seen them for the first time and approaching them with no preconceived ideas as to the character, scope or language of either. I have then critically examined and analysed two typewritten analyses prepared by Miss Deeks, one a comparison of the framework of the two books, and the other a detailed examination of their substance.

This was written in 1926, and since then, I believe, Miss Deeks has prepared other material.

I might say here that I had never heard of Miss Deeks or of The Web up to the time that she asked me to make this examination, and I approached the task with the feeling, almost the conviction, that the charge was incredible.

The impression left upon my mind by the detailed study of all this material is that, to a considerable extent, the plan, scope, spirit and language of The Web have been incorporated in The Outline. Each of these might be elaborated almost indefinitely, but after Professor Irwin's very complete analysis, with which I am in substantial agreement, that does not seem to be necessary.

HIS LORDSHIP: Having heard his evidence and having heard his report for the first time today?—*A.* Yes. These last words are an interpolation which I wrote after hearing him this morning.

Individual coincidences, which I have referred to in the earlier pages which I am not reading, do not necessarily appear to be plagiarism. They are probably coincidences and nothing more. But here the thing, to my mind, gets beyond the reasonable bounds of such an explanation. One finds the same general plan, a distinctly original treatment of an unusually broad and intricate subject; striking similarities in the framework; similarities in treatment; and also dissimilarities, perhaps equally significant, as the stressing of woman's place in the history of the world, in The Web, and its avoidance in The Outline; and coincidences of language until it becomes impossible to regard them any longer as coincidences.

Equally striking is the appearance, at least to some extent, of the same underlying thought in both works, the rather unusual idea of the history of the world considered as a web or fabric into which is woven the story of man and his deeds and misdeeds. One might take each item in these different lines of comparison separately, or even perhaps each line of comparison, and possibly remain unconvinced; but the cumulative effect of the whole is overwhelming, to my mind. I think it must be patent to everyone who reads and compares The Web and The Outline that they are not only curiously alike in plan and structure, but equally unlike any previous attempt at an outline of world history.

As to the underlying idea, while it cannot be said that the conception of a history of mankind as a web or fabric lies behind The Outline to the same extent or in so definite a way as it does behind The Web, the thought would seem to have been unquestionably in the mind of the author of the former work. One finds many such phrases scattered through The Outline as these: "The weaving of mankind into one community," "a complex of notions and traditions was being woven as a net is woven to catch and entangle men's minds," "people found themselves entangled in an inexplicable net," "these troubles interwove with the feudal conflicts of the time," "a new order draws mankind together with its net," "the network of complex mental processes," "the legendary net that gathered about Buddha," "the snare of all historical writers," "Octavian's net closed slowly round his rival," "network of one of the new religious movements," "the small cultivator was held in a network of restraint," "the Northmen . . . interwoven with the Turkish migrants like warp and woof," "men are born a most varied multitude enmeshed in an ancient and complex social net," "Napoleon . . . was in the net again, and this time he was not to escape," "he had woven a net to bind his race together but it was a net about his feet," "the web of a mean suggestion," "of millions of such stitches is the fabric of this history woven," and frequent use of such words as "intertwined," "entangled," "woven," "spinning," "enmeshed," "fine-spun," "warp and woof," "threads," "binding together," "fabrics," "network," and the like, all leading back to the same general idea.

In the Supreme Court.

Plaintiff's Evidence.

No. 13. Lawrence J. Burpee. Examination-in-Chief—*continued.*

HIS LORDSHIP: Are these all quotations from The Outline?—*A.* Yes, my Lord.

In regard to similarities in the actual language employed by the authors of The Web and The Outline—that is, the presentation of similar ideas in the same sequence and clothing them in substantially the same form of words—the instances are far too numerous to even begin to present them here. In this respect probably more than in any other, the significance of the comparison lies not so much in the individual example, which in itself may be often insignificant and unconvincing, as in the piling up of many such instances. Once more, it is the cumulative effect of very many similarities, in this as in other directions, that compels one to the conclusion that some of those who were engaged in preparing material, at some stage, for The Outline, must have had access to the manuscript entitled "The Web."

This opinion was dated January 11th, 1926. And shortly after that I compared a comparison of parallel passages in The Web and in The Outline.

Supplementing my conclusions dated January 11th, 1926, I submit the following parallel passages from The Web and The Outline of History. References to the latter are to the 2-Volume edition of 1921 published by Macmillan. These extracts are offered as characteristic examples, not as an exhaustive list of parallel passages. The preparation of an exhaustive list would be a very tedious and laborious task. Miss Deeks' analyses are very much fuller than mine, but even hers are far from exhaustive. These parallel passages support my conclusions, but at the same time I wish to make it clear that the latter are based upon a study of the two works, and represent the impression left upon my mind by the piling up of a very large number of resemblances, many of which, as I said before, are trifling, but in the mass become convincing.

HIS LORDSHIP: These parallel columns, I think, might very well be taken as read.

WITNESS: I have just another paragraph before I reach them.

So far as the general plan is concerned, any attempt at a parallel would have to follow some such lines as Miss Deeks has developed in her short analysis. To my mind her analysis makes it sufficiently clear that the two works are substantially alike in plan and scope, while varying in the space given to particular periods. I am therefore content to rest this point in my conclusions upon her short analysis.

As to the thought that runs like a thread through The Web, the idea of the story of the world as a fabric into which have been woven the thoughts and deeds of countless generations of men and women, the following parallels are suggestive: and then the parallel passages follow and run through the next five pages.

HIS LORDSHIP: The parallel passages?—*A.* Yes, sir.

HIS LORDSHIP: I think we need not read those now.

WITNESS: They are similar in character.

Mr. ROBERTSON: Without reading them, I would ask you whether there are any particular ones that, beyond resemblances in expression or in thought, have resemblances in the way of error or in dates or names?—*A.* Yes, there are cases which seem to me, sir, to have more than ordinary significance; cases where both Miss Deeks and Mr. Wells seem to have fallen into the same error in history. I do not know whether these particular points have been brought forward by the previous witness or not.

HIS LORDSHIP: Mr. Irwin instanced a number of these.

WITNESS: Yes. This is quoting from Miss Deeks' manuscript: I am not writing the language, but summarizing it: From the Web:—

> "The pope . . . sent him (Chief of the Franks) the keys of the tomb of St. Peter . . . with a letter . . . offering him the sovereignty of Rome. . . . The Chief of the Franks died . . . His successor . . . consulted the pope about keeping the Crown; the pope replied that the title belonged to him who had the power . . . During the Christmas period of A.D. 800, Pope Leo III placed upon his head the crown of the Cæsars. Thus . . . Charlemagne was now emperor of the Holy Roman Empire."

Then Mr. Wells:—

> "He sent to the pope to ask who was the true king of the Franks, the man who held the power or the man who wore the crown, and the pope decided in favour of the Mayor . . . Leo III sent the keys of the tomb of St. Peter . . . to Charlemagne as the symbol of his sovereignty of Rome . . . on Christmas Day in the year 800, . . . the pope . . . clapped a crown upon his head and hailed him Cæsar . . . so the Empire of Rome rose again as the 'Holy Roman Empire.'"

As to the Holy Roman Empire, my comment upon that is that Hayden's Dictionary of Dates, and other authorities, say that the Holy Roman Empire dates from 962, when Otto or Otho the Great was crowned at Rome by Pope John XII. There would thus appear to be the same error in The Web and The Outline.

HIS LORDSHIP: I would suggest that you put in these portions which Mr. Burpee has read, with the parallel columns attached.

Mr. ROBERTSON: The comment is there, and I thought we needed to elucidate what the point was.

WITNESS: The parallel passages and the comments are in there.

The Web.	The Outline.
Thus the web of humanity as it is unfurled before the world to-day is so tattered, torn and drenched. (210)	The weaving of mankind into one community does not imply the creation of a homogeneous community. II (593)

In the Supreme Court.

Plaintiff's Evidence.

No. 13.
Lawrence J. Burpee.
Examination-in-Chief—*continued.*

The Web.	The Outline.
The warrior was still spinning the web of his own selfishness and cruelty. (31)	Beneath the political and military net that held her down. II (251)
Trapped in the net which the warrior had spun. (10)	As a net is woven to catch and entangle men's minds. II (243)
the web of a high destiny. (9)	the web of a mean suggestion. I (376)
Their history became closely interwoven with. (12)	Religion and education those closely interwoven influences. II (581)
The rarest stitches which the linen manufacturer, the carpet and cloth weaver use. (9)	Of millions of such stitches . . . is the fabric of this history woven. I (274)
weaving around him an invisible mantle. (116)	People found themselves entangled in an inexplicable net. I (495)
Everything worn by General and Mrs. Washington . . . was made there (on the plantation). (36)	Something homespun about these makers of America. II (303)
She remained always with her daughters and handmaidens carding wool, spinning and embroidering. (10)	The women span, wove and embroidered. I (172)
The golden threads . . . binding together the various elements. (30)	He had woven a net to bind his race together. I (130)
They were even now woven into a power. (10)	The fate of the chief figures is interwoven with. I (514)
The warrior kept spinning his web. (2)	It was a net about his feet. I (130)

The following are offered as a few of many similarities in idea and language :—

There floated in the immensity of space a speck comparatively, but in reality a prodigious nebula which in course of time became concentrated into a focus of heat and light known as the sun. (1)	Vast ages ago the sun was a spinning flaring mass of matter not yet concentrated into a compact centre of heat and light. I (5)
An animal was developing with a relatively enormous brain case, a skilful hand and . . . which dwelt in caves and trees and roamed the forest for nuts and fruits . . . developed a tendency to throw stones, flourish sticks . . . steadily progressed . . . until they emerged into mankind. (2)	One particular creature . . . was half ape, half monkey; it clambored about the trees and ran. . . . It was small brained by our recent standards, but it had clever hands with which it handled fruits and beat nuts upon the rocks, and perhaps caught up sticks and stones to smite its fellows. It was our ancestor. I (57)

The Web.	The Outline.
Tribal wars were engaged in for the purpose of seizing women . . . the captured women . . . were adopted into the tribe on terms of equality . . . but more and more it became the custom to apportion the women to officials, who became . . . leaders, chiefs and generals. Thus was inaugurated slavery. (IV 2)	In the earlier days of war . . . the captive women and children were assimilated into the tribe. But later many captives were spared to be slaves because they had exceptional gifts or peculiar arts. It would be the kings and captains who would take these slaves at first. (I 256)
Joshua made them that day hewers of wood and drawers of water . . . and thus was slavery instituted among the Jews. (V 12)	the villagers and townsmen are reduced to servitude . . . become hewers of wood and drawers of water. (I 187–8)
Phœnician fleets found their way to the Indies, and there caravans traversed the land of Asia gathering . . . ivory and gold dust . . . silks from China. (V 13)	Phœnician shipping . . . was making its way into the East Indies . . . Across the deserts of Africa and Arabia and through Turkestan toiled the caravans with their remote trade; silk . . . from China, ivory from Central Africa. (I 273)
The Greeks preserved their national unity by means of . . . their language, religion, games, amphyctionic councils . . . and in order to consult the oracle . . . at Delphi people flocked. (VII 9)	There was always a certain tradition of unity between all the Greeks based on a common language and script . . . the shrines . . . in Delos and at Delphi . . . were sustained by leagues of states or Amphictyonies. (I 313)
His (Socrates) teaching was to bear rich fruit in the work of Plato. (VIII 16)	The influence of Socrates also began to bear fruit. . . . This old questioner . . . was the centre of a group . . . one stands out as the greatest, Plato. (I 355)
Venality got such a hold upon men that everything was for sale, and as the king of Persia had gold he bought it all. (VIII 18)	One took Persian money; Everybody took Persian money; What did it matter. (I 363)
Pericles became so popular . . . that the aristocratic party dared not attack him except through his friends . . . they accused Phidias of introducing likenesses of himself and Pericles on the shield of the goddess, and flung him into prison. There he died. (VIII 12, 13)	Pericles was attacked by his enemies without effect, and so they then began to lop away his friends. . . . On the shield of the goddess, Phidias had dared to put portraits of Pericles and himself. . . . Phidias died in prison. (I 348)

In the Supreme Court.

Plaintiff's Evidence.

No. 13. Lawrence J. Burpee. Examination-in-Chief—*continued.*

The Web.	The Outline.
After Alexander subdued Greece he crossed over into Asia . . . and when he sent to Greece ordering his name to be enrolled among the deities, the inert Spartans agreed. (IX, 4)	Greece was stunned, and Alexander was free to go on with the Persian campaign. . . . The Greek states remained inert thereafter. (I 378)
(In Rome) as in early Greece the state was subject to law. (VI 11)	The early phase of Roman affairs . . . was closely parallel . . and as in the case of Greece. . . . (I 456)
Wealth and plunder . . . poured into the state treasury. . . . A mercenary rabble who cared nothing for the state, and recognized only the leader whose hand offered them booty and gold. (X 3)	The paid soldier first appeared . . . and to pay was added booty . . . a new kind of army altogether, no longer held together in the solidarity of a common citizenship . . . their leaders . . . secure them pay and plunder. (I 486)
Roman society was beyond cure—a festering mass of corruption. (X 9)	All Italy . . . was festering with discomfort, anxiety and discontent. (I 495)
Rome after gaining the military sovereignty of the world was tearing herself to pieces. (X 11)	the Normans, who were tearing Italy to pieces. (II 76). Men who tore Christianity to pieces. (I 593)
Silks from China that sold for their weight in gold. (V 13)	By the time silk had ended its journey to Rome it was worth its weight in gold. (I 530).
The pope . . . sent him (Chief of the Franks) the keys of the tomb of St. Peter . . . with a letter . . . offering him the sovereignty of Rome. . . . The Chief of the Franks died. . . . His successor . . . consulted the pope about keeping the crown; the pope replied that the title belonged to him who had the power. . . . During the Christmas period of A.D. 800, Pope Leo III placed upon his head the crown of the Cæsars. Thus . . . Charlemagne was now emperor of the Holy Roman Empire. (XIII 12–14)	He sent to the pope to ask who was the true king of the Franks, the man who held the power or the man who wore the crown, and the pope decided in favour of the Mayor. . . . Leo III sent the keys of the tomb of St. Peter . . . to Charlemagne as the symbol of his sovereignty of Rome . . . On Christmas day in the year 800, . . . the pope clapped a crown upon his head and hailed him Cæsar . . . so the Empire of Rome rose again as the "Holy Roman Empire." (II 47–58)

NOTE.—Haydn's "Dictionary of Dates" and other authorities, say that the Holy Roman Empire dates from 962, when Otto or Otho the Great was crowned at Rome by Pope John XII. There would thus appear to be the same error in "The Web" and "The Outline."

The Web.	The Outline.
New ideals arose . . ., this ideal had been presented in Hebrew theocracy and Christianity, in Greek philosophy and art, and in the Roman struggle for freedom . . . and it had been kept alive through the long centuries . . . thus there was inaugurated a nobler ideal of duty in conduct and a new ideal of beauty in art. (XVI 56–7)	A new and harder and more efficient type of human community . . . its main root ideas in the Greek republics . . . in the great Roman republic, in Judaism, in Islam . . . and this struggle of mankind . . . has been kept alive age after age . . . first intimations had already dawned of an ideal of government . . . the modern ideal, the ideal of. (II 142–7)
Florence reposed . . . amid the glory of her brilliant galaxy of stars . . . Donatello . . . Michael Angelo . . . Leonardo da Venici. (XVII 69)	Western Europe broke out into a galaxy of names that outshone . . . one of the most splendid of this constellation is Leonardo da Venci . . . these are but some of the brightest stars. (II 175)

NOTE.—The author of " The Web " is here dealing with the renaissance, and the author of " The Outline " with what he calls the renascence—the two words being generally regarded as synonymous. The former devotes a chapter to " Democracy and the Renaissance," and the latter one to " The Renascence of Western Civilization," and in a foot-note points out that Renascence is not to be confused with Renaissance.

The Hanseatic League came into existence . . . its counting houses were in London, Bruges, Bergen and Novgorod. (XVI 58)	The confederation of the Hansa towns . . . had depots in Novgorod, Bergen, London and Bruges. (II 182)
The Portuguese became wonderful navigators. . . . In 1417 they had discovered the Madeira Islands . . . the pope offered the king the sovereignty over all lands which should be discovered from the Canary Isles as far as the Indes. (XVII 81) they began to take possession of the Azores. (82)	The Portuguese put out to sea to the west and found the Canary Isles, Madeira and the Azores. (II 185)

NOTE.—The Canary Islands were discovered, not by the Portuguese, but by the Normans. Here again the same mistake would seem to have been made.

Columbus richly attired in scarlet and carrying the royal standard of Spain, landed. (XVIII 95).	Columbus landed, richly apparelled, and bearing the royal standard of Spain. (II 187)

In the Supreme Court.

Plaintiff's Evidence.

No. 13. Lawrence J. Burpee. Examination-in-Chief—*continued.*

The Web.	The Outline.
In 1513 Balboa traversed the isthmus of Panama and caught sight of the great ocean beyond which Magellan named Pacific when about seven years later, he entered it after sailing through the straits. (XVIII, 103)	In 1519 a Portuguese sailor, Magellan . . . passed through the dark and forbidding Strait of Magellan and so came into the Pacific Ocean which had already been sighted by Spanish explorers who had crossed the isthmus of Panama. (II 187)

NOTE.—The linking together of Magellan and the Panama expedition are somewhat suggestive of a paraphrase.

The Balkan states except Roumania . . . rose against Turkish cruelty; and having subdued the Ottomans they fought one another over the spoils. (XXXIV 207)	The three states of Serbia, Bulgaria and Greece fell upon Turkey. . . . Later . . . they quarrelled among themselves over the . . . spoils. (II 502)

I must once more point out that these few examples, taken almost at random, give no adequate idea of the extent of the similarities in these two books—it is the cumulative effect of many such examples that compels one to the conclusion that the " Outline " leans heavily upon the " Web."

The WITNESS: Then, in the present year ——

HIS LORDSHIP: This is a third document?—*A.* Yes, sir. I was informed that the case was being brought up here, and was asked to make a further examination, and I prepared these sheets as supplementary to what I have already given.

Reading over what I had written in 1926, and after once more examining " The Outline " and " The Web " ——

HIS LORDSHIP: When was the second instalment?—*A.* That was within a few weeks after the first, in 1926.

Q. That was a supplement at that time?—*A.* Yes, sir.

Q. And now, when was this last one?—*A.* This is in 1930.

Reading over what I had written in 1926, and after once more examining " The Outline " and " The Web," I can find no grounds for changing the opinion then reached. I should like the privilege, however, of adding something to what was then said.

As one who has done a certain amount of writing, for the most part in history, I have been trying to visualize Mr. Wells' task in preparing " The Outline of History." He has been an outstanding novelist for many years past, but up to the time this book was published had no pretensions to consideration as an historian. His Examination for Discovery discloses the fact that he began writing his " Outline " in November, 1918, and completed it in July, 1919, that the idea of preparing such a history occurred to him a month or two earlier, but in October, 1918, he was still trying to persuade other people to undertake it; that he wrote the entire work himself, and that it runs to 250,000 words.

To get some idea of what this means, I have ventured to contrast it with my own experience. In 1908 I published a book on the history of the exploration of North-Western America called " The Search for the Western Sea." It contains something under 200,000 words. I had been studying the period with which it attempts to deal for some years, and spent eighteen months in the actual writing of the book. Now, my field was only a very small corner of the domain of history; while Mr. Wells' field was the whole story of mankind, from prehistoric times to the present day. My book cost me eighteen months' hard work, and comparatively speaking it was a very simple task. His was written in something over eight months, although it deals with an extraordinarily difficult and complicated subject. With the time at his disposal, it would have been a heavy undertaking to have written a popular novel of the same length. When one remembers what he was actually doing, it sounds miraculous.

Think of it; we are asked to believe, that with no background as an historian; with no time to collect, study and digest his material—he says himself that up to October, 1918, his time had been very fully occupied with the League of Nations movement; Mr. Wells sat down to a work that no historian would dream of undertaking without years of most careful preparation, and, unaided, completed it in less than nine months. It is not even certain that during these nine months his undivided attention was given to this particular work.

May I go a little further. In practice the writer of a work on universal history must rely upon secondary authorities. It would be quite impracticable, and in many cases impossible, to go back to the original documents. We may therefore concede that Mr. Wells did not have to use any of his nine months in digging up and studying original documents. But the secondary authorities, when we are dealing with world history, will embrace an almost incredible number of books and other printed material. If I may go back to my own case, I consulted hundreds of books in writing, " The Search for the Western Sea," and that book, as I have already said, deals with only an extremely small part of the field covered in the " Outline of History."

It is not necessary to assume that Mr. Wells would have to consult all the books that have been published in every branch of history, even if that were humanly possible; but it is necessary to assume that he would be on familiar terms with all the books that count in that very wide and complicated field. And no one who has carefully read the " Outline of History " can escape the conclusion that the author of that work either had gone himself very deeply into his subject, or that someone else had done it for him. All the evidence we have tends to deny the first alternative. The time within which his book was written precludes the possibility of Mr. Wells having made a deep or prolonged study of his subject at that time; and there is nothing to suggest that he might have done it before. For years past he had been very busily engaged in writing books of imagination rather than of fact, and he would have neither time nor occasion for studying the material relating to world history. We are therefore

In the Supreme Court.

Plaintiff's Evidence.

No. 13. Lawrence J. Burpee. Examination-in-Chief—*continued.*

thrown back upon the second alternative, that someone else must have done it for him.

Mr. Wells insists that he had no collaborators.

HIS LORDSHIP: That is, no ordinary collaborators?—*A.* Yes, that is what I understand, that he wrote each chapter and referred each chapter for criticism.

Q. It is said here that he prepared each chapter in longhand?—*A.* I did not notice that. I think he said somewhere that he prepared it in manuscript, and that his wife did the typewriting.

Mr. ELLIOTT: To clear that up, do you remember reading in Mr. Wells' evidence that he was writing along the lines of The Outline as early as 1893?—*A.* I did not see that.

We seem to be on the horns of a dilemma, with no way of escape, unless we conclude that Mr. Wells' memory must have played him false, and that he actually had a collaborator, though an unwilling one.

In the Introduction to the Outline he describes it as "an attempt to tell . . . the whole story of life and mankind so far as it is known to-day." Obviously he does not mean that to be taken too literally, as it could not then be compressed within two, or even two hundred, volumes. What he has done, presumably, is to select what seems to him the most vital elements in the long and extremely complex story of mankind, and arrange them in a certain order. Now it need hardly be said that that particular selection and arrangement cannot be regarded as inevitable; that another historian attempting the same thing would be most unlikely to make the same selection or adopt the same arrangement.

Mr. Wells could not have been serious when, in his Examination for Discovery, in answer to the question: "May I take it that this scheme was your own idea?" He replied "It seemed to me an idea that must have occurred to thousands of people," unless he chose to put the most limited interpretation upon the word "idea," an interpretation certainly not justified by the context, or was, if it is not uncharitable to suggest it, perhaps throwing a red herring over a trail that led back to one person rather than thousands.

Faced with an immense volume of facts, traditions, opinions, the accumulation of thousands of years, one historian will decide to use certain of these and reject others, will arrange what he selects according to a certain plan, and will give a certain emphasis to one, and more or perhaps less to another. It is not reasonable to suppose—it is hardly even conceivable—that another historian, working quite independently, relying upon his own judgment, influenced only by his own point of view, will make the same selection, or anything very much like the same selection, from that tremendous body of information, arrange it in anything like the same way, and repeatedly put approximately the same emphasis upon given facts or incidents. Yet that is substantially what we find in comparing Mr. Wells' Outline of History with Miss Deeks' The Web.

As one who has read with pleasure many of Mr. Wells' books of fiction, it is only with the greatest reluctance that I have been forced to the conclusion that his Outline reveals much unacknowledged indebtedness to The Web. One finds it in the plan, the framework of the book, and one finds it persistently in the details.

HIS LORDSHIP: You will want to mark this memorandum as an exhibit, will you?

Mr. ROBERTSON: Yes, beginning at the top of page 4.

Exhibit No. 18. Filed by Mr. Robertson. Mr. Burpee's memorandum of opinion.

Q. This is still your opinion, Mr. Burpee?—*A.* Yes sir.

Mr. ELLIOTT: It is impossible, my lord, to cross-examine the witness without reading over the manuscript. Possibly your Lordship would permit me to cross-examine this witness in the morning.

HIS LORDSHIP: Have you another witness you can go on with now?

Mr. ROBERTSON: I am afraid not, without getting into more difficulty.

I might read portions of Mr. Wells' Examination for Discovery.

Mr. ELLIOTT: And I read the Examination in Chief?

HIS LORDSHIP: Yes, you might let Mr. Burpee stand down.

(The witness stands down.)

Mr. ELLIOTT: May I have the opinion?

Mr. ROBERTSON: I have not got it all.

I have another witness, but it would pile one trouble on top of another if I were to put him in now.

HIS LORDSHIP: Perhaps that witness has heard the examination of these two witnesses.

Mr. ROBERTSON: No, he is on another part.

HIS LORDSHIP: Will we be able to finish this case this week, do you think?

Mr. ELLIOTT: Oh yes, I think so. We have two full days yet.

HIS LORDSHIP: All right, Mr. Robertson.

Mr. ROBERTSON: Your Lordship will have noted from time to time, that both of the last two witnesses referred to things that Mr. Wells has said. I have endeavoured, as much as I can, to catch the references that they have made and to incorporate them in what I am going to read.

HIS LORDSHIP: What was the purpose of an Examination for Discovery and also an examination under Commission?

Mr. ROBERTSON: I was not in the case at that time. Apparently there was an Examination for Discovery at about the same time. Then when they came to cross-examine, the Counsel for the plaintiff who examined for Discovery did not repeat, so that there was really no duplication.

In the Supreme Court.

Plaintiff's Evidence.

No. 13.
Lawrence J. Burpee. Examination-in-Chief—*continued.*

I hope I have caught all the passages which have been referred to as I want to put them all in.

Mr. ELLIOTT: I want the Examination under the Commission. I thought possibly your Lordship would like the copy which came over to follow. It is here.

HIS LORDSHIP: All right.

(Mr. Robertson here reads in from Mr. Wells' Examination for Discovery, questions inclusive 1-9, 28-44, 77, 139-153, 316-318).

(Mr. Wells' Examination for Discovery is printed at page 193.)

Mr. ROBERTSON: May I say as to the examination, that that is all I intend to put in as part of the Case. I want to say this, though, that as this Examination for Discovery really constituted the cross-examination when Mr. Wells came to be examined under Commission, it may be that in reply I may need to read some parts of it as if it were his cross-examination. For instance, when asked in his Examination in Chief about his authorities, the plaintiff's Counsel asked him about his authorities. Counsel upon the examination said he had already asked him the questions and did not intend to go over it all again.

HIS LORDSHIP: I suppose the examination under the Commission is pretty extensive. Why not in the meantime, if we have time, exhaust that to-night? That will not interfere with your closing your case.

Mr. ROBERTSON: My learned friend will not be putting it in as part of my case.

HIS LORDSHIP: No. Do you see any objection to calling your other witness to-night?

Mr. ROBERTSON: He has to furnish me with some information on which I am to examine him, and I have not yet received it.

Mr. ELLIOTT: These are the depositions——

HIS LORDSHIP: I would not read them to-night, unless the Wells' depositions. I would like to be able to conclude this week.

Mr. ELLIOTT: Yes, we can conclude this week. If your Lordship would like to hear the Examination of Wells now.

HIS LORDSHIP: Is there any objection to having the Examination in Chief of Wells now and then you can afterwards put in the cross-examination in Reply?

Mr. ROBERTSON: Yes, it would come in as part of my case later.

HIS LORDSHIP: Note that at this stage, on my suggestion, because of the witness Mr. Burpee being allowed to stand down, after Mr. Robertson had read Mr. Wells' depositions on Discovery, I said that Mr. Elliott may put in that part of his Defence which consists of Mr. Wells' Examination on Commission, leaving Mr. Robertson in Reply to read the cross-examination.

All right, Mr. Elliott.

(Mr. Elliott here reads in H. G. Wells' Examination in chief, which is printed at page 229. Note; as Mr. Wells' evidence was broken up and

placed in different parts of the evidence book, it was agreed to gather together his complete evidence and place it directly after the plaintiff's evidence. Therefore the cross-examination of Lawrence J. Burpee now follows.)

Thursday, June 5th, 1930. Morning Session.

Mr. ROBERTSON: Here is a matter in which my learned friend, Mr. Elliott, may be interested. In examining Mr. Irwin, my friend asked him about what documents were furnished to him by Miss Deeks. There was one which he did not have in hand, but he has brought it down,—I do not know whether my friend is further interested in it,—the list of authorities of The Web. I merely tell my friend, in good faith, that it is here now.

Mr. ELLIOTT: Oh, that is all right.

No. 13.

LAWRENCE J. BURPEE, cross-examined by Mr. MUIRHEAD.

Q. Mr. Burpee, yesterday, when you were being examined and filed this report or statement, which is Exhibit No. 18, you stated on the first page of it that, " One finds the same general plan, a distinctly original treatment of an unusually broad and intricate subject; striking similarities in the framework; similarities in treatment; and also dissimilarities, perhaps equally significant, as the stressing of women's place in the history of the world in The Web and its avoidance in The Outline."

What do you mean by " the same general plan " ? What is the plan ?—*A.* Both Miss Deeks and Mr. Wells start with a sketch of the beginnings of the world and of the beginnings of man, the dawn of human life; they carry it through the pre-historic period up to the beginnings of modern man; and they follow substantially the same plan in describing the history of mankind from the dawn of history down to the present day.

Q. Well, is there anything unusual in that plan by a writer of world history ?—*A.* Yes, as far as my experience goes, it is unusual.

Q. In what respect ?—*A.* I do not think that previous outlines of history followed the same,—neither The Outline nor The Web bear anything like the same relation to the previous outlines of history that they do to each other.

Q. Point out what other outline of history that you have in your mind they do not follow ?—*A.* Oh, the outlines which were mentioned yesterday.

Q. What about Breasted's ?—*A.* Breasted, I think, is a later work, is it not ?

Q. No, it is an ordinary text book in High Schools.—*A.* I do not pretend to have anything like an expert knowledge of the early period. I explained yesterday that my work in history has been confined to a very narrow field. I made the examination more as one who has done a certain amount of work in history, not in universal history. I am not in any sense an expert in Universal History; but I know in a general way the manner in which history is written, and the sources from which it must be obtained,

In the Supreme Court.

Plaintiff's Evidence.

No. 13. Lawrence J. Burpee. Cross-examination—*continued.*

and, broadly speaking, the amount of time it takes to prepare it; but I am not in any sense an authority on the early periods of history.

Q. Do you know any other world history that the general plan of both the Wells' Outline of History and the Deeks' Web does not follow?—*A.* Yes, I have said generally speaking I do not think any of the other outlines of history bear the same resemblance to either The Web or The Outline that they bear to each other. That is, that The Web and The Outline are more similar in outline specially than any of the other outlines.

Q. What similarity is there between the two except such similarities as there must necessarily be between two works on the same subject?— *A.* Well, I have said as well as I could how in my opinion these two agreed, and they differed from others. I cannot add anything more to that.

Q. I am sorry you have not made it very clear to me yet how the plan differs from any other known plan. They treat events in the order that any other history treats them, do they not?—*A.* I beg your pardon?

Q. The Web and The Outline commence at the beginning, going back even to what is theory, do they not?—*A.* Yes.

Q. And from that they follow on in sequence of historical events, is that not so?—*A.* Yes.

Q. Is that not a normal, natural plan for any such history to follow?— *A.* I have said I have not sufficient familiarity with universal histories to discuss that point except in a general way.

Q. Are you an Oriental scholar?—*A.* No, not in any sense.

Q. You are not prepared to speak as an expert, then, on Oriental History?—*A.* No, I spoke yesterday of my writing.

Q. That was on North-western Canada?—*A.* Yes, North-western America.

Q. When you stated yesterday that you associate yourself with Mr. Irwin, you did not mean in Oriental History?—*A.* No, I would say that in many points Mr. Irwin was discussing fields of history in which I had no special knowledge. I was prepared to accept Mr. Irwin's opinion as——

Q. Is that what you meant by associating yourself with him?— *A.* Yes, I said as far as my knowledge went my judgment was in agreement with his. Where he went outside of my field of knowledge, I was accepting his judgment.

Q. Then you are not using any expert knowledge of your own in that respect?—*A.* No.

Q. And you followed by saying that one finds one general plan, a distinctly original treatment—could you indicate to the Court what original treatment there is in either The Outline or The Web? Mr. Wells says in his latest edition, in the introduction, that he has not made any history, or he hopes he has not. Now what do you mean by " distinctly original treatment " of either The Web or The Outline?—*A.* I can only say as to that what I said as to The Outline, that in reading The Outline and reading The Web they seem to me to be very similar in their treatment, and as far as I had any knowledge of other outlines of history, differ from

other outlines. I am sorry I cannot put this in anything more than general terms.

Q. I beg your pardon?—*A.* I got the same impression from reading Miss Deeks' manuscript and Mr. Wells' Outline of History, that they were similar in treatment and differ from other outlines of which I had any knowledge.

Q. In the 1926 edition of The Outline, in the introductory chapter, Mr. Wells says this: He has added nothing to history, at least he hopes he has added nothing to history. He has merely made a digest of a great mass of material and some from new material, and he has done so in the character of a popular writer, etc.—*A.* I should say Miss Deeks did very much the same thing. Miss Deeks was not a historian, any more than was Mr. Wells, until she wrote this,—not known to the world as an historian.

Q. That is as far as you can go about this original treatment?—*A.* I am afraid so.

Q. Now you say, "An unusually broad and intricate subject." I suppose that the history of the world is both broad and intricate in all phases of it?—*A.* Yes, it could hardly be otherwise.

Q. And it would be almost impossible to leave out a great mass of material in works specifying any particular phase?—*A.* Yes.

Q. For example, he could not very well be expected to follow Breasted in detail, or Bryce's Holy Roman Empire, or Plutarch and write it all in one popular book, could he?—*A.* No, Mr. Wells obviously would have to make selections and omit certain things, and presumably Miss Deeks did the same; but I think it would be found that in many cases the omissions in The Outline of History were paralleled in The Web.

Q. I suppose it is safe to assume that both writers would expect to put down what they regarded as cardinal points in history?—*A.* Yes, but where there are a great many cardinal points a selection must be made, and to my mind there is a good deal of significance in the selection. That is, if you find two writers of universal history making very much the same selections, you are rather forced to the conclusion that one must to some extent be dependent upon the other.

Q. Did you examine these two works to see whether there were certain similarities on that respect?—*A.* Yes, but I am not in a position to outline them from memory. I noted them at the time. I did not cover that point in my prepared statement.

Q. Is there any difference in the scope of the two works in particular, that you noticed,—The Outline is somewhat larger, is it not?—*A.* Yes. I cannot say from memory. I think if I had the opportunity of dealing with that particular point I could show that there were.

Q. You have said also that there were striking similarities in the framework. Could you tell us in a few words what you mean by that?—*A.* I think that is pretty well covered by the first point.

Q. That is the plan?—*A.* Yes, the plan and the framework are pretty much the same thing, the skeleton work.

In the Supreme Court.

Plaintiff's Evidence.

No. 13. Lawrence J. Burpee. Cross-examination—*continued.*

Q. What is there striking in either work in respect to the framework?—*A.* I am afraid I can only answer you as I answered the other similar questions, that I found the framework of The Web and of The Outline very similar, so similar as to arouse suspicion that the one was dependent upon the other.

Q. You say there are also striking dissimilarities?—*A.* Some of those I have mentioned in the statement that I put in yesterday. They were not read; they were handed to you.

Q. Would this be a fair assumption, from what you have stated, because of the striking similarities and the striking dissimilarities, therefore you have come to the conclusion that The Outline must have been copied from The Web?—*A.* More so from the dissimilarities. I think the chances of two writers making the same error are much more remote than of their making the same statement as to a particular period of history; very much more.

Q. What error did the two of them make?—*A.* As I said, I have mentioned some of them in the statement that I filed yesterday, which I think you have before you.

Q. The statement at the end of your report?—*A.* There were five sheets of comparisons which were not read yesterday, but were filed.

Q. Of course if we are going to assume that by reason of similarities and by reason also of the dissimilarities one is copied from the other, you have not left much territory for Mr. Wells, have you?—*A.* I do not follow you at all. What I understand by dissimilarities is this: Mr. Wells and Miss Deeks are dealing with a particular incident in history and they through ignorance or through carelessness present that incident in a way that is not in accordance with the facts of history as they are established by the original documents and by other evidence——

His Lordship: Then by dissimilarities you mean——*A.* I mean errors, errors in the interpretation of history.

Q. That is dissimilarities between these two works and known authoritative history?—*A.* Yes, sir.

His Lordship: This, of course, Mr. Muirhead, opens up a field of cross-examination that might easily occupy as much time as Professor Irwin consumed in his labour.

Mr. Muirhead: I will try to be short, my Lord; but so general were these statements about similarities of framework and similarities in plan that we could not understand it.

Mr. Robertson: My friend has the parallel columns which I have put in, showing the similarity of the plans.

Mr. Muirhead: *Q.* That is similarity of language. I understand?—*A.* Oh, it is more than that.

His Lordship: It speaks for itself.

Mr. Muirhead: *Q.* You made some point yesterday about The Web using the metaphor of Miss Deeks and Mr. Wells. Is there anything, in

your opinion, original about that by either of them?—*A.* Yes, as far as my knowledge goes it is an original idea. I do not remember any other writer of universal history who has treated universal history in that way. I do not mean to say that Mr. Wells does it to anything like the same degree as Miss Deeks does. She called her manuscript The Web, and that idea runs all through it. But I have shown by a number of quotations from The Outline that Mr. Wells seemed to have the same idea in the back of his mind of history as a web,—that is of the story of mankind, through which it is being woven. He uses that " web " and synonyms to an extent.

Q. Does it look, by reason of Mr. Wells using that metaphor, that he might have taken it from The Web?—*A.* I say it is one of the things which suggested to my mind that he had had access to The Web and that he was influenced by the idea that runs all through Miss Deeks' manuscript of history as a web.

Q. Have you read Mr. Wells' Joan and Peter, published in September of 1918?—*A.* No.

Q. Then you do not know that he uses that same expression in that book, several times?—*A.* No, I have no knowledge of it.

Q. I quote you one instance of it——

Mr. ROBERTSON: I do not know that my friend can do that. That is not evidence at all. It is not in.

Mr. MUIRHEAD: *Q.* Joan and Peter, Chapter 14: " We want universities all around and about the world, associated, working to a common end, drawing together all the best minds and the finest wills, a myriad of multi-colored threads, into one common web of a world civilization." And there are many other instances. So that it looks as though Wells rather copied Wells in that case?—*A.* As I say, I have no knowledge of the book, so I cannot say to what extent he uses it. I have mentioned a great many uses of it.

Q. Then Wells' " The Peace of the World " in 1915, Atlantic Edition, Volume XXI, page 264 and page 265, where you will find it used twice in those pages.

Mr. ROBERTSON: I object to this.

Mr. MUIRHEAD: And Myres in The Living Past, who was a good friend of Mr. Wells, also uses it in his book. And in Mr. Wells' " Mr. Britling Sees it Through " there is one chapter entitled " The Web Ineffective "?—*A.* I should imagine you could multiply instances almost indefinitely of the use of these very common words in literature. It is the number of times that Mr. Wells uses it that gives it its significance.

HIS LORDSHIP: It may be significant or it may not. Will you assist the Court very much, do you think, Mr. Muirhead, by pursuing that?

Mr. MUIRHEAD: Very well, my Lord.

Q. I come to one more phrase. You spoke of the similarity yesterday to Hewers of wood and drawers of water?—*A.* I did not use that expression, I think. Is it in the parallel passages that were not read? It may be in one of the parallel passages.

In the Supreme Court.

Plaintiff's Evidence.

No. 13. Lawrence J. Burpee. Cross-examination—*continued.*

Q. It is in one of the parallel passages.

Mr. ROBERTSON: Where?

WITNESS: I think as far as those resemblances are concerned that I have made it amply clear that in my opinion their significance did not lie in any particular parallel passage, but in the sum of them, the multiplication of them.

HIS LORDSHIP: The accumulation?—*A.* Yes, the accumulation. I think most of them are absolutely insignificant and taken individually mean absolutely nothing; but if you pile them up almost indefinitely, you get a very different impression.

Mr. MUIRHEAD: *Q.* Leaving that part of it and coming now to some of the parallel phrases that you spoke of yesterday, in your report on page 7: "Pericles became so popular that the aristocratic party dared not attack him except through his friends . . . they accused Phidias of introducing likenesses of himself and Pericles on the shield of the goddess and flung him into prison. There he died." That is the wording of The Web. And then, from The Outline: "Pericles was attacked by his enemies without effect, and so they then began to lop away his friends . . . on the shield of the goddess, Phidias had dared to put portraits of Pericles and himself . . . Phidias died in prison." Now, do you think that is original in either one of them?—*A.* No. They are facts of history, but the way in which it is presented offers resemblances that——

Q. What is there about the way in which it is presented?—*A.* I am afraid I cannot make that any clearer than the parallel passages make it. I cannot quote them from memory.

Mr. ROBERTSON: Do you mind if I put this before the witness?

HIS LORDSHIP: Do we need it?

WITNESS: I think I must repeat what I said before that I do not put any great significance on individual passages. It is the accumulative effect of many of them. I cannot attempt to make an analysis of all these passages.

Mr. MUIRHEAD: *Q.* Of course you know that that quotation was taken from Plutarch, do you not?

HIS LORDSHIP: Of course they were taken from somewhere and probably from Plutarch?—*A.* Both are a paraphrase of Plutarch, and a paraphrase that runs very much along the same lines. I cannot throw any further light on that.

Mr. MUIRHEAD: *Q.* One more illustration and I am through. You spoke of a peculiar error about Charlemagne and the Holy Roman Empire—you remember that?—*A.* Yes.

Q. The question was whether the Empire began in 800 or 964?—*A.* Yes.

Q. You think there is a common error in both attributing the empire as beginning in 800?—*A.* Yes. I stated before that I am not an authority

on that period. I rely on such recognized works of reference as Haydn's Dictionary of Dates.

Q. I suppose by common acceptance Bryce's Holy Roman Empire is a recognized authority on that period?—*A.* It is an authority.

Q. I suppose it is recognized?—*A.* I do not know that Bryce's Holy Roman Empire would always be accepted as against other authorities.

Q. Bryce says it commenced in 800 with the coronation of Charles as Charlemagne.

Mr. ROBERTSON: Of course my friend should not put it in that way, in a statement by counsel.

Mr. MUIRHEAD: Bryce, in Chapter IV——

HIS LORDSHIP: This witness does not pose as an expert on ancient or medieval history.

WITNESS: No, in no sense.

Mr. MUIRHEAD: With that, I will not pursue it further. I have many more.

Mr. ROBERTSON: That is all, thank you, Mr. Burpee.

No. 14.

Evidence of George Sidney Brett.

GEORGE SIDNEY BRETT, sworn.

Examined by Mr. ROBERTSON.

(Examination-in-Chief.)

Q. Professor Brett, will you tell His Lordship, first, who you are academically and what your qualifications are?—*A.* I am Professor of Classics in the University of Toronto. I was Professor of Classics for six years previous to that time in Trinity College.

Q. Where did you graduate from?—*A.* Oxford University.

Q. And your professional subject at Oxford was what?—*A.* What is called Drake's Classics, History and Philosophy.

Q. And you are the author, I believe, of certain works?—*A.* I have written different works, including a work published in 1908 entitled, The Government of Man, which deals with political and ethical theories and history from Homer down to John Stuart Mill; a book which is reprinted at the present time. I wrote a History of Psychology, which involves most of the natural sciences from the earliest times down to approximately 1911, in three volumes. I was the contributor to the Encyclopedia Britannica on The History of Psychology; the year before last, I think, is the date; I forget exactly when they did print it. I have written other works on different subjects.

In the Supreme Court.

Plaintiff's Evidence.

No. 14. G. S. Brett. Examination-in-Chief—*continued.*

Q. Then, have you any acquaintance with the manuscript of Miss Deeks called The Web?—*A.* I was asked to examine it in I think it was 1926. I have no notes of it. I went through it at that time and read the majority of it, parallel, in the way in which one would compare two documents if you were trying to decide whether one was related to the other.

Q. You were comparing it with what?—*A.* The Outline of History. And I reached the conclusion that, contrary to my previous opinion, which naturally was somewhat biased, that it was very difficult to avoid the conclusion that there was a relationship. I formulated that relationship at the time, with no intention of being in a legal proceeding in the matter, or supposing I should be, that in writing such a vast work as this and having covered somewhat the same period in my own lifetime, I think I know something about it. The three volumes in The History of Psychology, which is only one direct line, took me roughly twelve years. I think anybody undertaking a task like that, at the request of a publisher, would organize a gang of workers; that would be the proper thing for him to do; and I formed my own theory, which has no further value, that this manuscript had probably been, I would say accidentally included in material from which the final draft of the publication was made. That hypothesis would explain the whole thing; but I understand it has been categorically denied in the English examination.

Q. What do you say then is your opinion now as to the relation between the two documents?—*A.* If that process was not gone through, then the single and sole author of The Outline must have been able at times to look at the other manuscript.

Mr. ELLIOTT: If what had not been gone through?

Mr. ROBERTSON: What he has just been describing, collecting the gang of workers.

HIS LORDSHIP: How does the witness put the statement, again?—*A.* That if there was no such process——

Q. That is the employment of hack writers?—*A.* Yes.

Mr. ROBERTSON: *Q.* And access by one of the hack writers to The Web?—*A.* Yes.

HIS LORDSHIP: That if there was not the employment of hack writers and access by one of the hack writers to the manuscript, and if the work was done by Wells, then what do you say?—*A.* It seems impossible to avoid the conclusion that the manuscript of The Web was available.

Q. Was before Wells?—*A.* Was before Wells. I say the writer of The Outline, because I think that is a little bit safer phrase.

Mr. ROBERTSON: You have spoken of an examination you made, you think in 1926. Have you revived your memory of the work—have you looked into it since?—*A.* I was asked again, about I think four weeks ago, it might be five, whether I would go over this matter again, and whether I would consent to appear as a witness. On that request I agreed to go over it again; and I have spent considerable time going over more particularly selected passages.

Q. And do you still remain of the opinion that you formed in 1926?—*A.* Yes.

Q. Then, without going into too much detail, what are the matters upon which you have been making your comparison and based your conclusion?—*A.* I think I might explain my general attitude in a very few words, and in this connection I think experience is significant. When a man undertakes a work which is going to cover, say, 2000 years, he requires a plan. You cannot start out to write at random with a hope of getting to the end some day. If pressed for time he would require a more accurate plan.

Personally I would draw out a plan for a piece of work, assigning a number of words to each section, so that I know the number of words which will come out, and the related proportions. Obviously you would not know where you were going if you did not do that. So that roughly the plan is the substructure. It determines what you are going to put in and what you are going to leave out, and the proportions which you are going to give to the parts, which is very important usually. So that the question of the plan comes first.

On such a wide and varied subject, as referred to before, the majority of the headlines would necessarily be about the same thing, obviously the division in the Greek, Roman, medieval and modern would form the first draft. You obviously would subdivide into the parts of the Greek and the parts of the Roman, and so on until you had satisfied yourself as to the whole plan that you were going to work on.

On a superficial examination, therefore, I think unless there was some special reason, drafts of plans would look extremely alike,—they should do. Nobody has to analyse the ideas of Homer and put them down in order, but the order is settled chronologically. So that if I drew up a plan or somebody else drew up a plan, so far as the skeleton went, there is no reason why they should not be practically identical.

If a plan like this is not used, either you yourself in writing or other people who advise you in writing will come in on that plan and variously distort it.

Usually a writer rejects advice when he has got his plan, because he knows he would spoil it if he adopted advice. Hence the notes in Mr. Wells' work which would not go into the adopted scheme. And the question of any relationship between two documents would then turn on the question of peculiarities in his plan and of the treatment of those peculiarities.

I wish particularly to point out that it is useless to argue a question between A and B, for we all start with Columbus in dealing with the discovery of the new world. The argument does not begin there but about ten places further on. The argument is what the author did with the ideas. While I have not plagiarized works, I have used them very largely in my own writing, and, I believe, with acknowledgements. An authority is a person you refer to, as I might refer to Mommsen, or a French or German writer which I did not in any way copy, meaning that it had been referred to.

In the Supreme Court.

Plaintiff's Evidence.

No. 14. G. S. Brett. Examination-in-Chief—*continued.*

When it comes to copying out passages, it should not be called an authority but a source.

Mr. Wells uses the Encyclopedia for ten, twenty or thirty lines without change. As to any other thing, it will stand exactly on the same basis.

Q. Then when you get into a more intimate examination of the plans for these two works, what do you find?—*A.* I limited myself, for reasons probably which the Court fully appreciates, to certain passages which I felt could be quickly examined. I put forward no argument on this sort of question, about having dealt with Charlemagne or with Cæsar or with anybody else at all. No two people could have avoided them. One or two of those passages have been already referred to, and I will be as brief as possible about them.

One witness has referred to a passage about Aspasia. Those two passages are significantly alike. Various historians whom I know and have consulted all mention Aspasia, but they do not make anything like the story in The Outline.

The particular phrase quoted by a previous witness seemed significant, because the writer of The Outline seemed to be uncertain as to whether he ought to say she was or was not the wife of Pericles, and so let it go at that. More space is given to her than is given to any other woman except to Olympias, the mother of Alexander the Great, who was not of any importance. Beyond being a fiery tempered woman, I do not think she was important.

Joan of Arc gets five words. I think Joan was a person whom I should have put, in such a work, on a very large scale; but Mr. Wells thought differently.

In the passage referring to Aspasia, we have verbal similarities; but it is more significant that the next passage has verbal similarities and, as far as I can make out, reduces itself to nonsense.

Mr. Wells, of course, is not very interested in philosophy, not in the sense, in which we use it with a strict meaning. And, coming to people like Socrates and Plato, he is a little hurried to get on to something else. He quotes the statement that Socrates said "Virtue was knowledge," which every schoolboy knows. He then goes on to say this meant virtue, or something else; the parallel being in The Web. The word "meant" occurs three times, and the first sentence means nothing at all as far as I can make out. Does Mr. Wells mean that virtue meant virtue or that knowledge meant knowledge, or that the whole sentence meant virtue, or what? I entirely fail to discover. It seems to have been transposed from the passage further down which was used as a description of Plato's Philosophy in The Web. You can verify that.

In the progress of the work I came to the conclusion that what we had to deal with were what I might call "outcrops" in the geological sense. The original plan has obviously been overlaid and overlaid by a variety of things, and the original plan, I gather, had slightly been submerged.

In the section on Rome I noticed the reference to Marius and an aristocratic general Sulla. There is no authority,—I do not say there is no book, but there is no authority that seems to support that. In the first

place it would be natural to say that Sulla was a patrician, which is what Chamberlain's Encyclopedia and the Encyclopedia Britannica and all the other books which I consulted say. It may be said that he did not want to use the word "patrician"; but on the contrary he describes Cæsar as a patrician in a few pages further on.

Mommsen, who is an authority,—may I refer to my notes here?—goes out of his way to point out that Sulla despised the aristocrats. I copied this passage. In Mommsen, the standard translation we have, it is said that Sulla is one of the most marvellous characters of history. His ancestors have remained in second-rate positions. These are different sentences from different parts. Sulla had nothing of the blunt hauteur which the grandees of Rome were fond of displaying. On page 98 of this volume of Mommsen: How thoroughly useless was the poor aristocratic blood, and how little doubt Sulla had as to its worthlessness is shown by the fact that he selected all of his instruments out of what was previously the middle party.

The point then is this, Sulla was of course a patrician and nobody disputes that. Why not call him a patrician?

That presents itself to my mind as a problem, why exactly at this juncture do you get Sulla's characteristics as an aristocrat? No mention of Marius as a democrat.

His Lordship: I am not sure I am getting your point so far as the discussion of Sulla is concerned. How does the discussion of Sulla by Wells throw light on the subject we are discussing, as to the origin of what The Outline says about Sulla. Do you find that origin in The Web?—*A.* Yes. The word "aristocratic" as so used has no natural explanation other than that it occurs three times in that passage in The Web dealing with Sulla.

When a person is using a number of books of course the question of being impressed by a word largely depends upon two things. If it is at the beginning of a sentence it has considerable effect,—we know all this from ordinary psychological study,—and if it is repeated it has an effect.

If it occurred once in The Web or in any manuscript available, I think it would have had no effect; but I think the argument is that this word naturally imprinted itself upon the mind of a writer.

If is very possible to write a word down quite unconsciously, because of having seen it. A writer will use a word just because it is on a signboard across the street, which matches his eye. I am arguing that there are these things which are difficult to explain.

His Lordship: This is the psychology of it?—*A.* To that extent, sir. In the progress of the work I find that the further we go the less is the resemblance in content between the two works. I think that is very natural, as the writer of The Outline probably had far more interest in the modern period and far more willingness to express independent views and far more knowledge of the subject.

There are similarities during the medieval period which I do not wish to go into in detail, chiefly verbal. I took up the passage on Columbus, which I naturally chose because it was a very good test passage. It is

In the Supreme Court.

Plaintiff's Evidence.

No. 14. G. S. Brett. Examination-in-Chief—*continued.*

claimed in the depositions regarding The Web that this passage is compounded from the Encyclopedia Britannica and the material given by The Web. That I discovered was not the case. I would say, roughly speaking, that eighty per cent of the words are copied from the Encyclopedia Britannica.

Mr. ELLIOTT: Eighty per cent?—*A.* About. There are several sentences which are claimed in The Web as being taken from that work. I finally discovered that in most cases—this is only a matter of four or five sentences—they were taken from Robinson's History of Western Europe. There again they are taken absolutely verbatim.

HIS LORDSHIP: You are speaking now of The Outline?—*A.* Of The Outline. So that I succeeded in reducing the Columbus passage, as it might be considered into its sources, with one exception. There is the peculiar, I mean the uncommon phrase, one I have not met with in the books or encyclopedias, " the little expedition." Of course the expedition was little, small ships and a small number of words, but the actual words could hardly have occurred there, unless we admit a miracle, without some suggestion. It is a rather nice phrase that commences the paragraph, and is a striking phrase; while using all this other material Wells nevertheless has two statements, at the beginning of the expedition and about the fact that it was beautiful weather when they set out.

The Encyclopedia Britannica does say that they were conveyed by gentle and soothing breezes across the Atlantic, and so on; but the exact words about the little expedition, looked to me as if there was something else—with the Encyclopedia Britannica on one side and Robinson on the other, as if there was something else you would catch when somewhat in a hurry.

HIS LORDSHIP: In other words, your opinion is that the writer of that particular chapter on the Discovery of America had before him the Encyclopedia Britannica and Robinson and the Deeks' manuscript?—*A.* Yes, they supply, I think, one hundred per cent of the material which can be, as I say, verbally satisfied in the other two cases. It is not a matter of authority again but is a matter of copying.

HIS LORDSHIP: Of course Wells' book is largely a matter of compilation?—*A.* Yes.

Q. There are two ways of writing such a book, one is that of re-writing old material?—*A.* Yes, secondhand material which has been going down through all the ages. The other passage to which I would refer as a specimen, without taking any more time, is a passage concerned with the intellectual movement of the 18th Century, which I find significant for several reasons. Mr. Wells, I think, is not particularly interested in intellectual movements in that sense of the term, but he knows, as any ordinary person knows, that there were important men in the 18th Century, and he chooses to mention three, Locke, about whom he says he was important, and then goes on. Montesquieu, the title of whose work he mentions, and misdescribes. And then Rousseau, to whom he gives a paragraph that I think cannot be

described in any known words. He does not appear to know anything about Rousseau at all except the kind of thing such as that he left his children to a foundling hospital.

I direct attention to the fact that Mr. Ernest Barker, in a note which he includes in the work says that he protests against this statement. He felt so strongly that Mr. Wells was making an unnecessary exhibition of history that he protests.

There are other means at other points. Mr. Wells goes on with economy. It seems impossible that if he had followed his own Outline he should have omitted entirely Adam Smith in his work. The whole subject is just passed over, and all you can say is that it appears to be too like the similar treatment in The Web to be supposed to be anything but an original fragment of an elaborated plan which Wells never troubled to revise, even at the protests of Mr. Barker. I have brought up these specimens. I realize that you cannot go through this thing in interminable detail.

I examined very carefully the Holy Roman Empire. Bryce says consistently that Charlemagne was responsible for the revival of the Roman Empire. He says consistently that there existed before 962 a Holy Roman Empire and describes the growth of the Catholic Church, and that in 962 it was the products of the events which he describes, but it is only Bryce's argument that the Holy Roman Empire had anything to do with Charlemagne. I have examined every page of Bryce in the last three weeks.

His Lordship: What is the significance of that, as far as The Web is concerned?—*A.* It is argued that this mistake is common to both, and that Wells in writing that has not followed his own authority. I do not think you could read Bryce with any care and not discover that Bryce is saying that the Holy Roman Empire was not as such founded by Charlemagne, but it was the work of Otto in 962.

Mr. Robertson: Both works say that the Holy Roman Empire began in 800?—*A.* It is a very easy mistake to make. The words "Holy Roman Empire" are on the top of every page of Bryce; but it is not in Bryce's text. Bryce's point is that they were fused in 962, which is historically correct.

Q. Now, as to the work or labor of a man single-handed preparing a work of this kind in a period of, say, ten to twelve months, what do you say—writing it out?—*A.* It is entirely incredible to me. I do not wish to judge other people's powers. I think I could rank as a fast writer. Under the circumstances under which I had to write the article in the Encyclopedia, I wrote 27,000 words in a little over a month. I was really making an epitome of my own work and was my own authority. That is of course working under the most favorable conditions that a man could work under.

Q. How many words do you estimate there are in Wells' Outline?—*A.* I did not estimate them at all, but I heard that there were 250,000 words. I am told now that there are more like 500,000 words. My estimate was based upon 250,000 words.

Mr. Elliott: Each volume has about 250,000 words.

In the Supreme Court.

Plaintiff's Evidence.

No. 14. G. S. Brett. Examination-in-Chief—*continued.*

HIS LORDSHIP: How many words are there in Miss Deeks' manuscript do you say, about?

Mr. ROBERTSON: About 260,000.

WITNESS: Of course, the expansion is done in the latter part.

Mr. ROBERTSON: *Q.* Now, take a man whose work had not been History before, and who sets about to write a History of Mankind, with references to hundreds of authorities, the work being an original work, the plan being his own, and what would you say as, in your opinion, to the possibility of a man doing all of that as his own work?—*A.* Starting out from the blank to collect his material I would simply say I would regard it as absolutely impossible. If I had to do it, I should do it by the simple method of getting an existing work and working it over; and I think I could defy anybody to discover that I had done it.

Cross-examination.

Cross-examined by Mr. ELLIOTT.

Q. Do you know, Professor Brett, that Mr. Wells was not writing a history of the world to be used in colleges or to be used by professors?—*A.* No.

Q. But to be used by the general public—you knew that?—*A.* Yes.

Q. Something like his books, so as to make them readable by the public?—*A.* Something between a history and a novel.

Q. In view of that statement, you should not criticize him so much as if he were writing a book like Mr. Bryce's, or probably a book written by yourself dealing technically with that subject?—*A.* No.

Q. You would look upon his book from a little different point of view?—*A.* Absolutely. My argument on that is based upon the fact that when he wants to make a statement he has dropped into language which could have been provided by The Web, whether right or wrong. I do not object to it being called a narrative.

HIS LORDSHIP: If this book had been written by somebody who had not a reputation, would it ever have gone across?—*A.* I do not think so. I think the name gave it the market value.

Mr. ELLIOTT: *Q.* You think it was because of the name Mr. Wells had established as a writer of fiction?—*A.* Yes.

HIS LORDSHIP: He is the best popular writer of the day?—*A.* Yes, and the phrase "The story of man" getting away from formal history, was popular.

Mr. ELLIOTT: *Q.* And he was trying to write a history along the line that the public could read and get interested in?—*A.* I agree with you.

Q. The ordinary dry book, like Bryce's History of the Holy Roman Empire, and so on, the ordinary public do not read?—*A.* There are two answers to that. There have been very few more popular books than Bryce's. If you refer to the general public which reads the comic cuts, they do not read anyway.

Q. You have referred to Mr. Wells' Introduction?—*A.* Yes.

Q. And you have read over the list of gentlemen who were associated with him?—*A.* Yes.

Q. Do you find that they are outstanding men in their particular lines of work?—*A.* Absolutely.

Q. Men in whom you would have confidence?—*A.* Very great. I know Ernest Barker well, and I am sure he must have objected very strongly to The Outline.

Q. I think he refers to Mr. Barker?—*A.* Yes.

Q. We have the evidence of Mr. Barker as regards that, which you have not seen?—*A.* No, I have not seen that.

Q. If you had read Mr. Barker's evidence you would have had a different view of it?—*A.* I read his note.

Q. You dwelt upon the fact that Mr. Wells has copied very copiously from the Encyclopedia Britannica?—*A.* Yes.

His Lordship: That would be, of course, from numerous articles?—*A.* Yes.

Mr. Elliott: *Q.* From numerous articles in that well-known book?—*A.* Yes.

Q. And you noticed that he has in his Introduction given credit and states that he did that?—*A.* Yes. May I repeat what I said before, that I emphasized the word "copied"? He could not go by the Encyclopedia Britannica and write from it as an authority in the way he has done; but he has copied from it literally a sentence and six and eight words at a time, and transposed them. It gives me the impression of having been written out from the original, and then either by the introduction of other items breaking the sequence or simply varied by a sentence being put out of place.

Q. For instance, if you take a particular subject to be dealt with, he turns to the Encyclopedia Britannica and he finds the subject discussed there, and he turns to the stenographer or typewriter operator and says "copy me these paragraphs," and he does them with ample space for revision, and then somebody goes through that copy and makes it an original by substituting synonyms or by changing the phraseology somewhat?—*A.* Yes. May I ask, Did not Mr. Wells in his evidence deny that and say that he wrote it all himself in his own handwriting?

Q. A great part of it, but I think there is some of it typewritten as well as in his own handwriting. Then, just as His Lordship was asking you, Mr. Wells would read from, say, the article he was dealing with in the Encyclopedia Britannica——?—*A.* And I think other books on the same subject, mostly small books.

Q. The success of any writer's books is that some have a way of putting the matter that others have not. Wells probably, as you know, has a peculiar manner or way of putting a subject so that it will attract the attention of people reading it?—*A.* Yes, he has, but I doubt whether in the history as actually written that is true. The sentences are very difficult to follow, and language which is very abrupt. You get expressions such as would not be found in any literary work by Mr. Wells.

In the Supreme Court.

Plaintiff's Evidence.

No. 14. G. S. Brett. Cross-examination—*continued.*

Q. But writers saturate themselves with their subject, reading the encyclopedias and other books, and then put the information into their own language?—*A.* Yes. But I submit Mr. Wells was not saturated and did not use his own language.

Q. And then, having saturated himself, he would give it to different men to write?—*A.* Yes.

HIS LORDSHIP: He would make notes, and when he came to actual writing he would have a background or a saturation and it would flow from him in a story?—*A.* Yes.

Q. If he were going to write something about Roman History, he would have to know something about dates?—*A.* Yes, he would have read his Mommsen through.

Q. And if he were dealing with Egyptian history he would have to have the spelling of the names of the characters?—*A.* Yes, very much so. May I make a remark? I have not examined fully, because I did not originally see what are alleged to be Mr. Wells' notes; but as far as I have seen them they were invariably closer to the notes; and a sentence which was close to the notes has often disappeared in the outcome.

Mr. ELLIOTT: *Q.* You mean notes which Mr. Wells had?—*A.* Yes, before he wrote. The notes which preceded the final draft of the work.

Q. Some document submitted to you, prepared by Miss Deeks or her solicitor?—*A.* Yes.

Q. It was not a document prepared by Mr. Wells?—*A.* No, they are the notes which Mr. Wells worked up into his own printed material.

Q. You mean they are the notes supplied to you, which it was stated to you were used by Mr. Wells?—*A.* Yes, and I had three things to consider, The Web, The Outline, and the draft which appeared to be the draft of The Outline.

Q. Then I presume you have not read all these books cited by Mr. Wells?—*A.* Oh no. I was taught by J. L. Myres, for example, and I know my Mommsen, and I know Duruy, and I know Bryce. I have read these from my Oxford days of twenty years ago, and I have had to study them as a teacher of history and classics. I believe I am the only Canadian member of the History of Science Society. I know my history as well as anybody alive today.

Q. But you have not read all these books?—*A.* No.

Q. One, I think, has twenty-six volumes in it?—*A.* Did Mr. Wells read all of that? I did not read it.

Q. Just as you were stating a moment ago, Professor, a man saturates himself with this. Did you know that Mr. Wells as far back as 1893, was dealing with similar subjects to this?—*A.* Yes, I believe he was originally a school-master, and his reliance upon a book such as this, Robinson's History of Western Europe, would be understandable, from which he copied the statement about Columbus. I think he probably had a small library of school books around the house. Still that does not militate against the rather miraculous ability of striking the same phrase.

Q. Still he has been dealing with that same subject in other books of his?—*A.* Do you mean the history?

Q. Did you hear his evidence which was read yesterday?—*A.* I think I did.

Q. Do you remember that he stated that in former books he dealt with these subjects, in some of those books?—*A.* Yes, but not with Sulla or Rousseau.

Q. Oh no, but that generally speaking he had been reading along these lines?—*A.* Very generally, yes. Of course he has been interested, like any intelligent man, in newspaper accounts of cosmogony and astronomy.

Q. You spoke about the words "little fleet," not having appeared, as you think, in any other work?—*A.* Yes.

Q. I would draw your attention to this Encyclopedia, and it does appear there, "the little fleet"?—*A.* Yes, but may I point out——

Q. This is at page 742 of the Encyclopedia, it is referred to there as "the little fleet"?—*A.* Yes, but the phrase used is "the little expedition," and not "the little fleet."

Q. Those expressions, you would say, were somewhat synonymous?—*A.* No, otherwise why did he not take it? That was in the Encyclopedia Britannica and he was following it strictly, and that is against it.

Q. From what you know of Mr. Wells' writings, he is not apt to follow anybody because it happens to be put down?—*A.* "Liable" is not the right word to use; because my experience is that a word attracts your attention if it is before your eyes. If he had it before his eye in the Encyclopedia Britannica, why did he not take it—"fleet"—out of there? I am only dealing with the books and not with persons.

Q. In fact in all these matters you do not know whether the changes have been made by Mr. Wells or by somebody else?—*A.* No. I just had two documents to look at.

Q. You know, of course, The Web is based on an entirely different topic than The Outline—The Web deals with the history of woman in the world?—*A.* Yes.

Q. I think Miss Deeks was unkind enough, in her evidence, to say that Mr. Wells just took the opposite, and looked after the old man?—*A.* I do not know anything about that.

Q. Of course they were dealing with the subject from two different standpoints?—*A.* Yes, but I rather thought some reason would be given for diverging in the two subjects about Aspasia and Olympias.

Q. Mr. Wells seems to deal a good deal with Aspasia, and she was not a very desirable character?—*A.* Yes, but he does emphasize her extraordinary intellectual ability and the fact that she drew great men around her.

Q. Our old friend Cleopatra was of the same character?—*A.* No. Socrates would have preferred Aspasia.

HIS LORDSHIP: Julius Cæsar and Augustus preferred Cleopatra.

Mr. ELLIOTT: *Q.* Do you agree with me in this statement that authors going to the same sources for information are likely to describe the same

In the Supreme Court.

Plaintiff's Evidence.

No. 14. G. S. Brett. Cross-examination—*continued.*

facts, possibly in the same language?—*A.* Up to a certain point; but I think the chances—the way in which I wish to express that is simply this, that in the cases which I have pointed out you have what I would call a miracle of coincidence. There are miracles, and I do not wish to deny it; but it has just this disadvantage, that the odds are against it.

Q. Tell me one of those passages?—*A.* A case in point is that which I have referred to, about "meant" this and "meant" that. Would you like me to take it up in detail?

Q. I do not understand what you are dealing with?—*A.* What I was dealing with is at page 21 of that document, and it refers to page 351 of The Outline.

Q. And what page in The Web?—*A.* Number 11, on the left side. Notice that The Web has this closing sentence, page 347, in the margin: As with Socrates, so with Plato, philosophy meant wisdom, wisdom meant virtue, and virtue meant practical insight or reason.

Q. That is the quotation at page 347 of The Web?—*A.* Yes.

Now on the right hand side, just below 351: He believed that the only possible virtue was true knowledge,—of course that is commonplace and is true. For himself this meant virtue, but for many of his weaker followers it meant the loss of beliefs and moral habits that would have restrained their impulses. These weaklings became self-excusing, self-indulging scoundrels. Among his young associates were Plato.

Q. What was meant by this "meant virtue"?—*A.* I do not know. I think it is just moved up from below.

Q. You do not think there is very much virtue about it?—*A.* No, not at all. In the statement in The Web it is perfectly all right and understandable.

Q. And you object to the other because it does not seem to make sense?—*A.* No, not at all.

His Lordship: He committed a double offence there, he copied from The Web, according to your view, and then he did a worse thing than that, he bungled it and put it in where it did not fit at all?—*A.* I think it is a case of survival.

Mr. Elliott: If he was reading The Web for it he did not show much judgment?—*A.* No; in the second place, he was not interested.

Q. I take that to be your outstanding instance of similarities?—*A.* In that sense, not so much an historical fact but the form of expression and ideation.

Mr. Elliott: My friend wants to ask some questions about the aristocrat Sulla. I am not familiar with it.

Cross-examined by Mr. Muirhead.

Q. You were speaking about Sulla, and as I understood you, the word "aristocratic" referred really to Sulla, who was not an aristocrat?—*A.* The parties in Rome, of course, were different. The word "aristocratic" would

apply by implication, but the correct word is " patrician," which you will find in the Encyclopedia Britannica, or Chambers.

Q. The History of Rome, by Botsford—you have heard of that?—*A.* Yes.

Q. At page 162, Lucius Cornelius Sulla, a young aristocrat, who was prætor under Marius. Then the History of the Ancient World by Gossfield—you are familiar with that?—*A.* Yes.

Q. These are text books?—*A.* Absolutely.

Q. At page 338, paragraph 401: One of these men who obtained his military education under the new . . . was Lucius Cornelius Sulla, a man of noble family, an aristocrat of temper and taste, who took his stand in the senatorial party?—*A.* Do you wish to argue that Mr. Wells followed those books?

Q. No, I do not know what he followed?—*A.* You are not following my statement. My argument is that there is a word " aristocratic " which you have not got there; you have inferences. Sulla was a patrician, and Sulla objected to the aristocrats around him. I have no doubt you could produce a hundred books of varying value which used the word " aristocrat." It would still be relatively inaccurate, and it would not be the exact phrase which Wells used. If Sulla was an aristocrat he was not aristocratic, because he broke from that party.

Mr. ROBERTSON: Are these books to which my friend has referred works which Mr. Wells says he used as authorities?

Mr. MUIRHEAD: No.

WITNESS: They are ordinary school textbooks.

Re-examined by Mr. ROBERTSON.

Q. Referring to Exhibit 6, you have said, speaking of some of the close resemblances between Mr. Wells' first work and the completed work—I would ask if that refers to this work?—*A.* That, I was given to understand, represented notes preceding The Outline.

Mr. ROBERTSON: That is all, thank you.

Mr. ROBERTSON: Two questions from the Examination for Discovery of Wells which I did not reach yesterday. They were right at the end and I had not noted them. They are questions 334 and 335, which I should have read yesterday:—

> " 334. *Q.* I think you have already told me, but I would like to make quite sure: This book of yours, The Outline of History, has in fact had great success?—*A.* Yes, it had considerable success.
>
> 335. *Q.* It sold very largely in this country and in the United States and in Canada?—*A.* Yes."

HIS LORDSHIP: You might almost invoke common knowledge of that. The Court would almost take judicial knowledge of it.

Is that your Case, now, Mr. Robertson?

Mr. ROBERTSON: That is the Case, my Lord.

In the Supreme Court.

Plaintiff's Evidence.

No. 14—*continued.*

Mr. ELLIOTT: I think we might then proceed with the Commission evidence, my Lord.

Mr. MUIRHEAD: I submit, your Lordship, that there has been no evidence whatever given here to show that the American Macmillans committed any tort whatever within the jurisdiction of this Court.

It is denied specifically in the Pleadings, and the only way in which they could be at all implicated would be by selling in Canada and publishing. That has been denied, and there has been no proof of it. As far as the American company is concerned, I think the case should go by the board.

Mr. ELLIOTT: The same might be said about the others. But I think in justice to all parties it should be all gone into.

Mr. ROBERTSON: I think there is evidence of an admission. I think I had already covered that in the first day, by asking my learned friends if certain things were not admitted. I think they are in the evidence somewhere that the Macmillans' publication was sold in Canada.

HIS LORDSHIP: I will reserve that motion until the close of the case. I suppose the evidence will not be altered so far as the defence is put in.

Mr. ELLIOTT: There was conditional appearance by the three publishing houses. They took the position, and moved to set aside the writ; and the Master thought it would be a case in which they should put in a conditional appearance and take that position at the trial. We do take that position; but we think your Lordship should have all the evidence.

The same point came up as regards the English Macmillans, which you see noted, and the Master on the material set it aside on the ground that there was no tort committed here.

If we take the evidence on the Commission in the order in which it appears in your Lordship's book containing the evidence taken in England, it starts with the evidence of Sir Frederick Macmillan.

Mr. ROBERTSON: I have overlooked one matter that I want to put in. There is a memorandum by Mr. Wells, which was sent to Mr. Brett in a letter, and which is produced. I want to put that in as part of my case.

HIS LORDSHIP: Very well.

Exhibit 19. Filed by Mr. ROBERTSON: Memo H. G. Wells to Mr. G. P. Brett.

(Mr. Elliott here read in the evidence of Sir Frederick Macmillan but as it was agreed to bring in all Mr. Wells' evidence at this point, Sir Frederick Macmillan's evidence is printed at page 254.)

DEFENDANTS' EVIDENCE.

In the Supreme Court.

Defendants' Evidence on Commission.

No. 15. H. G. Wells. Examination for Discovery.

No. 15.

Evidence of H. G. Wells.

18th June, 1929.

MR. HERBERT GEORGE WELLS, sworn.

Examined for Discovery by Mr. NORMAN DAYNES.

1. *Q.* Would you tell me when you first conceived the idea of writing a history of mankind?—*A.* The idea has always been in my mind from a very very early stage in my career. I remember making a draft of the history of mankind when I was a student at South Kensington.

2. *Q.* How many hundreds or thousands of words did that run to?—*A.* It was not framed up.

3. *Q.* It was not a serious attempt?—*A.* No, it was a mere idea.

4. *Q.* Apart, if I may put it, from an ambition or an aspiration, when did the writing of a history of mankind become in your mind a definite project?—*A.* After my work at Crewe House, and after various discussions I had with the League of Nations Society and the League of Nations Union. That was in the latter years of the war, 1918 let us say.

5. *Q.* Were you there up to the end of the war?—*A.* Where?

6. *Q.* At Crewe House?—*A.* No.

7. *Q.* When did you leave there?—*A.* I differed from Lord Northcliffe about a question of policy; it was in 1918.

8. *Q.* Late in 1918?—*A.* I forget. It must have been early; about June, 1918, let us say.

9. *Q.* After that, you thought it would be a really definite project on your part to write a history of mankind?—*A.* Yes, a universal history to take the place of a national history.

10. *Q.* You then had the idea of writing a history which would begin with an astronomical and geological view of the world, and to press it right through to the recommendation of a world federation?—*A.* Yes, that was obviously the way to do it, in face of modern ideas.

11. *Q.* When you say "obviously," it struck you as being the proper way but as a matter of fact to your knowledge had it occurred to other people?—*A.* Well, I do not know. That is a difficult question to answer without notice. I think Helmolt's Universal History begins with some such preliminaries. If it does not begin with that, it begins with archæology.

12. *Q.* I know there are several histories which begin as far back as that. I think you have given us among the documents in this case a Memorandum of the case of Web. Was that written by you? It begins: "Either the claim is a genuine but silly claim, or it is a blackmailing claim based on a faked manuscript. In the former case, the resemblances of the manuscript to the Outline will be due to a common obvious idea and to the use of common sources, which should be easy to establish. In the latter, the manuscript has been extensively altered since it was in the hands of Macmillan & Company." Is that a memorandum which you wrote?—*A.* Yes, that is a memorandum I wrote to my Solicitor.

In the Supreme Court.

Defendants' Evidence on Commission.

No. 15. H. G. Wells. Examination for Discovery—*continued.*

13. *Q.* When you say "extensively altered since it was in the hands of Macmillan & Company," does that mean the Canadian Company, or the English Company?—*A.* I do not know. I have not perhaps given this question exhaustive attention for a very long time, but my impression is that the Plaintiff claims that that manuscript was handed to Macmillan & Company.

14. *Q.* You thought at that time that it might have referred to Macmillan & Company, London?—*A.* Yes. I thought the Plaintiff was confused in her mind about the relations of the various Macmillan Companies.

15. *Q.* Then you go on to say: "This should be proveable by the testimony of the reader or readers of Macmillan & Company." That I suppose is the same Macmillan?—*A.* Yes, whichever Macmillan she was accusing.

16. *Q.* —— "to whom it was submitted in 1918." That is in accordance with the Plaintiff's evidence, in March 1918?—*A.* Yes.

17. *Q.* You said there: "Our case will be that The Web has been re-written to substantiate this claim since the appearance of the Outline." That was written before you knew all about it. Do you still say that?—*A.* That is if there are any real resemblances, but apparently there are not.

18. *Q.* You are not now suggesting that the Plaintiff has infringed your book?—*A.* I do not know what she is up to; I do not know.

19. *Q.* Have you had your attention drawn to the Plaintiff's work?—*A.* No.

20. *Q.* You have never read it?—*A.* Never read it at all; I hope I never may.

21. *Q.* I am afraid you may have to have your attention drawn to a few passages. You go on: "In either case Messrs. Macmillan must substantiate that the manuscript never left the hands of their representatives." Is that the same thing as "readers"? Were you thinking of their readers when you say: "never left the hands of their representatives"?—*A.* Whoever the Plaintiff is accusing of handing over the manuscript to me, I suppose has to be interrogated to prove that nothing of the kind happened. I suppose she has to prove something somewhere in this case.

22. *Q.* I was wondering why it was you were saying that Macmillans must substantiate that the manuscript never left the hands of their representatives. Supposing it had left their hands, it would not necessarily have implicated you?—*A.* No, but I suppose they can show—these are fine points——

23. *Q.* I am afraid it is my duty to put them to you?—*A.* All right.

24. *Q.* Then you say you never saw the Plaintiff's manuscript, and you go on to say that you broached the idea of an Outline of History at a lunch of representative visitors before the end of the war. Do you remember that lunch?—*A.* Yes. There was a lunch at the Reform Club when a number of Americans came over.

25. *Q.* Were they representative literary men?—*A.* Journalists, and literary men, yes.

26. *Q.* Was that in the summer, or the autumn?—*A.* I forget. I suppose one could hunt up the date from the Reform Club.

27. *Q.* Was it a formal occasion, when speeches were made?—*A.* No; we were talking. It was a sufficiently small lunch to talk all over the table.

28. *Q.* As a matter of fact, as a literary man you have had a very busy life and turned out a great deal of work?—*A.* Yes.

29. *Q.* I think I am correct in saying you have written 16 novels and 11 fantastic and imaginative romances; in addition to that quite a number of books which I suppose might be described as speculative books on sociology, religion, and politics?—*A.* Yes.

30. *Q.* Is that a fair way of describing it?—*A.* Yes, in effect.

31. *Q.* Not to omit anything, I think you are also the author of two children's books?—*A.* Yes.

32. *Q.* Is it also fair to say that none of that work, which must have taken up a great deal of your time, is historical?—*A.* No.

33. *Q.* But I think you have always been interested in astronomy and geology and the beginning of the world, and subjects of that kind?—*A.* My interests are extensive. I should not say I had a special interest in astronomy or geology.

34. *Q.* I have a letter of the 20th October, 1918, which you wrote to Mr. Brett in New York?—*A.* Yes; I do not recall it.

35. *Q.* You said: "There is an idea I have in hand that I wish I could talk over with you"; and then you go on to say: "Instead of the history of England and the history of the United States of America, and the history of France, and so on, the children all over the world ought to learn the history of mankind"?—*A.* What was the date of that letter?

36. *Q.* The 20th October, 1918?—*A.* Yes.

37. *Q.* You say: "I believe that it is up to me to plan to write the first school history of mankind." Was that shortly after you had this idea of writing a history of mankind which had become, not an aspiration, but a project?—*A.* Yes. I do not remember that letter. Has that been entered by Brett?

38. *Q.* Yes, I think so; it is one of those agreed on discovery?—*A.* Yes.

39. *Q.* In talking about this idea you say: "We think here that the time draws near when . . . the children all over the world ought to learn the history of mankind." Who is "we"? Does that mean the friends you talked to at this lunch?—*A.* Well, no, it means—what shall I say—progressive thought in this country.

40. *Q.* You had not talked it over with any publisher at that time?—*A.* I probably talked it over with dozens of people.

41. *Q.* Including publishers?—*A.* In England I had not discussed it, so far as I know, with publishers. The first person I approached in the matter of the publication was Sir Frank Newnes. We are personal friends, and members of the same Club.

42. *Q.* The Reform Club?—*A.* Yes, and it was natural to talk to him.

43. *Q.* I have a letter about that. Then I think you have more correspondence with Mr. Brett about it, and I think you had not at that time

In the Supreme Court.

Defendants' Evidence on Commission.

No. 15. H. G. Wells. Examination for Discovery—*continued.*

told him very much detail. Before you answer, it is fair to remind you of the terms of the letter: "There is no doubt in my mind that your plan for the book on the history of mankind is a very feasible one, and I should think that the book would interest young and old readers alike, although at first it might be difficult to have the book studied in schools as part of the regular course, yet I should not be afraid to venture that in the long run the book itself, or some modification of it, might find use in this way. At any rate, I make no doubt the book would be recommended for school reading, and this might itself result in a considerable sale. Your letter tells me nothing of the way in which you intend to write the book, and of course it might be prepared from the standpoint of social history of mankind, the material history of mankind, or the purely natural development of mankind from its physical standpoint." So apparently Mr. Brett has three possible schemes in his mind, and he is asking you to say which one is in your mind. Does that accord with your recollection that at first you had given to him a very small inkling of what it was about?—*A.* I do not remember the details of those negotiations with Mr. Brett at all. They occurred, and I dismissed them from my mind when they had achieved their purpose. My impression of our discussion was that he was not at all enthusiastic at first for the "Outline of History." He had recently made a very considerable success with a book of mine called "Mr. Britling." I think he was disappointed that I was not following that up with another book of the same sort. He had no anticipation of the success of the "Outline of History." It surprised him when it came.

44. *Q.* I suppose when you wrote him your first letter, of which he complains as being rather vague, you would not have got a very definite scheme in mind yourself. You say: "I believe it is up to me to plan to write." That letter looks as if you had not planned at the moment?—*A.* At the moment I was trying to induce other people to write it. My idea at first was a group of authors, men of authority. Then I realised that they would be all too nervous about their reputations to attempt anything so general and popular, and I undertook it myself.

45. *Q.* You were telling me just now you first mentioned it to Sir Frank Newnes. He was one of the first people to discuss it. I see that there is a letter here of the 13th November in which he says: "Reference to your letter to me about your proposed History of Mankind and our conversation at the Club, I have since laid the scheme before my colleagues. From what I have been able to tell them of it, they are interested and like the idea very much." That is a few days later. I suppose by that time you were beginning to think about writing it yourself?—*A.* By that time I was fully embarked upon writing it myself, yes. This correspondence followed after earlier activities in the middle of 1918, during which I was saying we must have a general history as a basis for education, and somebody has to do it.

46. *Q.* By that time you had given up any idea of persuading any other people to write it instead of yourself?—*A.* It was obviously going to be too laborious to get it done in that way.

47. *Q.* You appreciate that I do not want to take any unfair advantage that the interval was not a very long one?—*A.* No; minds move rapidly, and they did move rapidly at that time.

48. *Q.* At that time you thought of writing about 200,000 words at first. I think it is mentioned in a letter. There is a letter of the 20th December, 1918, in which Mr. Brett writes to you and refers to "Joan and Peter" which he says is selling well. I may be wrong. By that time it had got to 250,000 words. There is an agreement which says it is to contain approximately 250,000 words?—*A.* My impression upon that question is that I thought of it first of all as a pioneer book, and it is difficult to induce a publisher to handle a book of any greater length than 200,000 words. Then I had a happy idea. Seeing Sir Frank in the Reform Club, it suddenly occurred to me that it could be published in parts. I pounced upon Sir Frank and began to talk to him about it, and with the idea of publishing it in parts it became possible to contemplate it as a considerably longer book than I had regarded as possible before.

49. *Q.* I think, if I may say so, you are quite right, because I have the letter. It was the 20th October. It bears out two things you said. First of all, you say to Mr. Brett every book cannot be a "Britling," which rather suggests he was asking you to go on with a "Britling"; and secondly you say "It will have to be an illustrated book, and I see it as a book of about 200,000 words and about 1,000 maps, illustrations"?—*A.* Yes.

50. *Q.* That is the 20th October, 1918?—*A.* Yes.

51. *Q.* By the time we get to the Agreement which accompanies the letter of the 20th December, 1919, it is 250,000 words; and if one turns to the letter of the 11th February, which is the letter Mr. Grierson wrote to you (that would be Sir Frank Newnes's manager) he says: "I think Sir Frank said that your manuscript would run to about 250,000 words"?—*A.* Yes.

52. *Q.* If I may go back again to this letter which I was reading of the 20th October, was it originally your idea that this book would sell at a good price for a school prize?—*A.* My idea at first was that it would be a book that would be available for school purposes, either as a school prize or as the basis for an abbreviated version which could be used as a text book.

53. *Q.* Had you primarily in mind, at any rate, English schools?—*A.* Yes, and schools generally.

54. *Q.* I see on the 20th December Mr. Brett writes to you: "There is now no assured place for a large sale for this book in this country"—that is the United States—"except to the general reading public, there being no school prize period of custom in this country"—whatever that may mean—"such as obtains in Great Britain, and consequently no demand for the book from this source." I suppose it would not be much good trying to sell it for school purposes in the United States?—*A.* You see, all these points are details in the discussion to determine the form in which the book was to be cast. At first one thought of it as a pioneer book, and then one began to look at the possibilities of exploiting the book in various directions. The part publication to begin things was a great relief, because it enabled

In the Supreme Court.

Defendants' Evidence on Commission.

No. 15. H. G. Wells. Examination for Discovery—*continued.*

one to deal with the subject rather more fully than would otherwise have been possible.

55. *Q.* If you had this in mind about schools, and I suppose primarily the English schools, you can tell me this quite easily, although I do not understand it: Why did you hit upon the United States as the place in which to publish the book?—*A.* Why did I hit upon it?

56. *Q.* Yes?—*A.* The book was published in England, the United States, and elsewhere. Every book is published in the United States that is written in English, if it is of any importance.

57. *Q.* I may have got it wrong, but I rather understood the scheme was to publish the book in the United States more or less contemporaneously—I am talking about the first edition now—and at the same time to have it published in parts for the cheaper-reading public of England?—*A.* The United States copyright law necessitates a publication within a certain time of the publication in England, so it was necessary to have the book appearing within certain prescribed dates. I do not know the details of the law.

58. *Q.* I think I follow now?—*A.* That is why the book appeared.

Mr. MACGILLIVRAY: It is 60 days.

59. Mr. NORMAN DAYNES: As I understand it, the United States Macmillans is a separate Company from the English Macmillan Company, but they are run by the same people; they are the same shareholders, and so on, to a great extent?—*A.* I think the property is largely the property of the Macmillan family, but I believe the two businesses are run quite independently.

60. *Q.* Yes, I follow. I think Sir Richard Gregory is one of the big men as regards the English Macmillans?—*A.* I do not think so at all. He is the editor of "Nature," which is published by Macmillans and which is the property of Macmillans.

61. *Q.* He is not a Director of Macmillans, or anything of that kind?—*A.* I do not know his standing with the firm.

62. *Q.* He was one of the people with whom you discussed this book. There is a letter from him on page 31. He gave you a certain amount of information?—*A.* He is a very old friend of mine. I possibly consulted him on some question of astronomy, physiography, or something of that kind.

63. *Q.* I am going to ask you a little presently about the question of source; but there is one book I want to mention now: that is, Green's History of the English People. Was that one of the books you used?—*A.* I rather think I did. I think there is an extract from Green; I forget how much. It is the sort of book you turn up to make an extract from, or take a fact from, and put down again.

64. *Q.* As a matter of fact the copyright belongs to the English Macmillans, does it not, of Green's History of the English People?—*A.* I do not know.

65. *Q.* I will tell you why I am asking you; because Miss Deeks was told by the Canadian editor that it would be necessary to get the leave of the English Macmillans if she was going to use it to any considerable extent? —*A.* If she is going to take a large piece from it.

66. *Q.* Did you find it necessary to ask leave from the English Macmillans to use it at all?—*A.* I really cannot remember now if I quoted. My rule is in these matters—it is a common practice—that if you are quoting more than 200 or 300 words you consult the owner of the copyright. If you do not, if you are making a quotation of a sentence or so, which is a legitimate part of your argument, you do not apply for permission.

67. *Q.* I think, as a matter of fact, that Green is very good on the Elizabethan and Stuart period?—*A.* I hardly treat it at all in the Outline.

68. *Q.* Not very much?—*A.* I should not think I used Green for that.

69. *Q.* Can you tell me at all when you actually sat down to begin writing this work? I will give this as a sort of indication. I am instructed that there was a reviewer in the Toronto " Saturday Night " who said he had been informed that you began after the Armistice. Perhaps you will tell us whether that is right or wrong. That does not bind you in any way. of course?—*A.* I should think I had it in hand as early as August or September. I might have been drafting. One does not sit down and say " Now I begin a book." You very often make a draft, and sketches, and throw them aside and return to them.

70. *Q.* I am anxious to follow you correctly. Do you mean a draft sketch and plan of various parts of the book?—*A.* You might try the phrasing of some passage that would ultimately be of importance.

71. Now I want to ask you a question or two about this. For a book of this kind, which contains, if you will allow me to say so, a most marvellously compact collection of facts, it is necessary to spend a lot of time in getting your material together?—*A.* Yes.

72. *Q.* I am not experienced in these matters. I suppose if I were set to deal with a book of this kind, I should begin by putting down a lot of references and facts on little bits of paper like a card index system. Then I should have my references and sit down to work from that when I began work on the manuscript. Was that your method?—*A.* I think that would be a good method, but it was not my method. I made sketches of various parts in various ways. For example, the matter dealing with pre-historic man at the time of writing " Outline of History " was in a very undigested state. Many of the statements I make there I had by word of mouth from Sir Harry Johnston, who had got them from Sir Arthur Keith. He told me, for instance, the Homo Neanderthalensis was to be treated as a different species from the Homo Sapiens. When that was published in the " Outline of History " I do not think it had been published elsewhere.

73. *Q.* I think you said that Sir Harry Johnston told you the things by word of mouth?—*A.* Yes.

74. *Q.* Did you make any notes of them at the time?—*A.* I wrote them down.

In the Supreme Court.

Defendants' Evidence on Commission.

No. 15. H. G. Wells. Examination for Discovery—*continued.*

75. *Q.* Were you writing this book at your country house at Dunmow? —*A.* I was writing it in London, my country house, and wherever I happened to be.

76. *Q.* I suppose Sir Harry Johnston would call upon you whilst you were writing it, and you would write it straight down on your manuscript? —*A.* Yes, I used to see a good deal of him then. We both had flats in St. James's Court.

77. *Q.* In this case we have a disclosure both of your manuscript and also of an earlier manuscript which is not in the form of notes, but is merely something which is written out but which you have discarded, because the later manuscript differs from it in many material passages. Did you make any separate notes for the purpose of writing the book?—*A.* I am in the habit when I am writing a book, of taking a sheet of paper and scattering key words, and that sort of thing, over it before I write. Sometimes I make those scattered notes on a sheet, put it aside, and use it afterwards. I am afraid I have very little system in my work; but if you want to know how the "Outline" was written I should say that after these first trials, the production of a manuscript, then most of it was typed at once by my wife, who was very much interested in the scheme. After that we would have it typed; usually I think we had six copies made. Then one copy would go to Sir Harry Johnston whom I feed, Prof. Gilbert Murray, Sir Ray Lankester and Mr. Ernest Barker. All these gentlemen, who had their separate copies, would simply put upon those copies any comments they had to make. Barker was particularly for medieval history; Ray Lankester for the earlier palaeological part. Then copies were also sent in many cases to Philip Guedella, the historian, and to one or two other people. Gregory I think had some of the early copies. Then those copies would be returned to me with these annotations, and I would then take the typed text and work upon it from these annotated copies and make the copy for the press.

78. *Q.* Are these other copies still in existence?—*A.* I do not know; there may be scraps of them. Then it would go to press; then you would have the galley proof, and so on, and gradually work one's way towards the page proof. Not foreseeing this occasion, I thrust them aside. You keep a copy for a time, and then perhaps it gets destroyed, or it does not get destroyed. I suppose if my house was combed up we could produce a great mass of waste paper more or less bearing upon the "Outline."

79. *Q.* Do you mean to say it would not be a typed copy of a book more or less bound together?—*A.* No.

80. *Q.* Loose sheets?—*A.* Loose sheets, some of them fastened together, and that sort of thing. In a work of this sort one does not produce a manuscript beginning with chapter 1, and going to the end.

81. *Q.* I was wanting to know how the actual facts were collected for your first manuscript. Did you, as it were, make extracts from various books?—*A.* I read and re-wrote in most cases. There were very few extracts. I think there is a long passage from Herodotus. As a matter of fact, in that first edition which was published in parts there was a very

full series of acknowledgments. You can trace almost every passage to each book. There are footnotes all the way along. This edition here gives you the fullest list of the sources.

82. *Q.* That is the 1925 edition?—*A.* This is the part edition. (Indicating Exhibit F.H.N.1).

83. *Q.* I have the two volumes, first edition. I am dealing with this because this is the one which my client complains of. I do not know that the list matters for the moment, but you say they " have all to be thanked for help, either by reading parts of the manuscript or by pointing out errors in the published parts, making suggestions, answering questions, or giving advice." I take it that that was all done after you had got the thing more or less into a rough-hewn shape?—*A.* Yes.

84. *Q.* I think you are helping me to some extent. I was anxious to find out how it got to the rough-hewn shape. Will you tell me if I understand it rightly. You used to read those books, then shut the books up, and sit down to write?—*A.* Sometimes the book remained open.

85. *Q.* I was beginning to admire your memory. At any rate I may take it that this is quite clear, that you wrote straight from the book to the rough manuscript, and there were no intermediate notes of facts and dates, or that sort of thing?—*A.* There was no indexing, no; there was no collection of extracts, nothing of that sort.

86. *Q.* Did you get any assistance from any of your publishers? Did they furnish you with material at all? I understand—I do not know very much about it—sometimes they give a certain amount of hack material for the artist to work upon?—*A.* No; I found my publishers most unhelpful. I know of no help I had from them.

87. *Q.* I take it so far as you are concerned you had no notes or written matter of any kind which could possibly have come from any of the Macmillans?—*A.* No. With regard to the Macmillans, as you see, Brett of Macmillan & Company of New York was reluctant about the book, and Macmillans of London were so indisposed with regard to the book that they refused to publish it.

88. *Q.* Was that so? That is rather new to me?—*A.* It will be new to Messrs. Cassell's representative, but I offered it to Macmillans before it went to Cassells, and they refused it.

89. *Q.* I am interested to hear you say that. Could you tell me about the time when you made that offer?—*A.* At the end of 1918.

90. *Q.* Was it made in writing, or verbally?—*A.* I wrote a letter; I suppose Macmillans can produce it if they have the file.

91. *Q.* I may take it that, like most literary men, you do not keep a sort of business file of copies of your letters?—*A.* No.

92. *Q.* With regard to your helpers, do you know at all how they worked, whether they collected the material, or notes, or anything of that kind?—*A.* No, my helpers were merely—the vulgar phrase is that they vetted the book; they read it for errors and for anything that they regarded as want of proportion or omission, and then they advised me in the matter.

In the Supreme Court.

Defendants' Evidence on Commission.

No. 15. H. G. Wells. Examination for Discovery—*continued.*

93. *Q.* I see that you had a certain amount of correspondence with Professor Gilbert Murray, and I think also with Sir Harry Johnston?—*A.* Yes.

94. *Q.* May I take it that most of it was done by word of mouth; certainly I think you have told me with regard to Sir Harry Johnston?—*A.* Yes, there was a lot of it dealt with by conversation. I was meeting all these men.

95. *Q.* I see one of the early letters in this bundle that you had was from a Mr. Canby, who was the editor of the "Yale Review". Do you remember his asking you for an article as to how American history should be taught?—*A.* Was that as early as that?

96. *Q.* I have not the date upon it. I should judge so. It is put in the bundle before October 2nd, 1918. I really cannot tell you; you think it might be later?—*A.* I think Canby was over here. I am not sure whether he was present at that lunch party at the Reform, which has become the cardinal point in the evidence. If so, as editor of the "Yale Review" he probably wanted to secure an article.

97. *Q.* I see that Sir Ray Lankester wrote to you on the 2nd October, 1918: "I like your idea of a history of man. It should include all the present romance of mixed races and nationalities and savages, and a sort of travellers biography"; and then in brackets "picturesque". It was the early part that appealed to him, and he helped you with that part?—*A.* Yes.

Mr. MACGILLIVRAY: I have the original of that letter here, and the date on the original is the 16th July, 1918.

98. Mr. NORMAN DAYNES: It is the 16th July, 1918, and it is written from the Midland Hotel, Manchester?—*A.* Yes. That lunch at the Reform Club occurred about the end of June or the beginning of July. I think he was there. I think we had a conversation.

99. *Q.* Then I see that one of the letters that Sir Ray Lankester wrote was about a man called Kemp who had written some book. He says he is not any known authority upon the jaw and skull question?—*A.* Yes, I had a considerable discussion, I remember, with Sir Ray, about the Piltdown skull and jaw. In that first version, I think there is an extract, or rather there is a memorandum on that which Sir Ray wrote me.

100. *Q.* I think you got your illustrations done by Mr. Horrabin?—*A.* I beat about for some time, and then hit upon Horrabin. I think Horrabin came in at the end of 1918. He used to do war maps for the "Daily Chronicle", and they were very clear, and I got into touch with him.

101. *Q.* Did you have any conversation with Professor Gilbert Murray or was that all you got from him, the correspondence?—*A.* No, I met him.

102. *Q.* I think he lives at Oxford, does he not?—*A.* He came a good deal to London then. There were various committees connected with the re-organisation of the League of Nations movement upon which we met.

103. *Q.* You took the opportunity at some of those meetings to discuss the matter with him?—*A.* Yes.

104. *Q.* I suppose on those occasions you probably would have made notes of what he said, or would you merely tell him your ideas and then he wrote to you about them?—*A.* He may or may not have written to me about it, a few letters.

105. *Q.* I have some letters from him about it, yes; I have not very many. I should think there are half-a-dozen or so altogether, or a little more. Would you think you had many more than that?—*A.* I should not think so, no. As a matter of fact I think such letter files as I keep were searched for those.

106. *Q.* As far as I can see, you have had no correspondence with Professor Barker or Professor Barnes, who were the other two?—*A.* I have had nothing to do with Barnes. I think he is an American professor. I know of him now, but he had nothing whatever to do with it.

107. *Q.* What about Mr. Barker?—*A.* He was the Oxford historian who became the principal of King's College. I paid him a fee, and he read so much of it. I think he usually read it in galleys, if I remember rightly, typescript sometimes, and sometimes galleys; it was all a question of convenience. During most of the time I think he was about at Oxford correcting these things. He went to America to lecture at some colleges, and from him during that time I received my typescript with his corrections upon it.

108. *Q.* But he had nothing whatever to do, as I understand, with the plan of your work?—*A.* Nothing whatever.

109. *Q.* He merely vetted it?—*A.* He was merely vetting it when it was practically written.

110. *Q.* I want to ask you one question more about the letters. In the correspondence we have a number of letters from Sir Frank Newnes to yourself, but we have not the answers. I rather fancy that my learned friend Mr. Macgillivray admitted there were missing letters. Did you answer the letters that you received from Sir Frank?—*A.* Probably I wrote him letters. I do not know why they have disappeared from the file of Sir Frank Newnes, I am sure.

111. *Q.* Perhaps I may take one or two of them. I do not think it is quite fair to put it to you quite generally like that. I will take page 37. The first letter we have is one of the 13th November, 1918, in which Sir Frank Newnes says: " Reference to your letter to me about your proposed History of Mankind and our conversation at the Club, I have since laid the scheme before my colleagues." I think you told me that you thought one of the ways in which you could tackle this proposition would be by getting serials published. Do you remember writing a letter to Sir Frank Newnes before the 13th of November, 1918, on that subject?—*A.* No; of these conversations the details I have quite forgotten.

112. *Q.* You do not doubt that you did write one, because Sir Frank refers to it?—*A.* No doubt I did write to him.

In the Supreme Court.

Defendants' Evidence on Commission.

No. 15. H. G. Wells. Examination for Discovery—*continued.*

113. *Q.* I suppose you answered that letter that Sir Frank wrote to you? I think he proposes to lunch with you, so perhaps there was not any answer?—*A.* Possibly we dealt with it at lunch.

114. *Q.* On the 5th February Sir Frank writes to you: "With regard to serialisation of your Outline of History, there will be no difficulty at all in printing maps, etc., such as appear in daily papers, in fact I think such would improve the book and attractiveness of the pages. As to the necessity of any alteration to adapt it for serialisation, I can hardly form an opinion upon this, as I have not yet seen any of the manuscript." I think that Sir Frank Newnes had forgotten that when he told me that he had seen the first 25,000 words. "I should not, however, think that such adaptation would be required. The length for serial purposes we thought should be about 200,000 words. When I last saw you, you informed me you would soon have about 50,000 words ready for us to see; I shall look forward to reading it with the keenest interest. As to terms, the figures we thought of were £600 for serial rights and £1,000 on account of "—— I do not think I need trouble about the terms. Do you think you wrote an answer to that letter?—*A.* I should almost certainly have answered that letter.

115. *Q.* I do not suppose you can remember now what you said?— *A.* I probably objected strongly to his terms. My impression is that Sir Frank was only intermittently in London. I think he was in uniform at camp somewhere. I think the people I had most to do with in London were Grierson and Lord Riddell.

116. *Q.* We have only one letter from Mr. Grierson, and that is this next one of the 11th February, in which he says: "Sir Frank Newnes has given me your last letter to him with regard to the History of Mankind. I shall draw up an agreement on the usual lines; meantime I understand the arrangement is that we run your work serially, and that later we bring it out as a publication in parts, the terms for the serial rights being ", so much. "I do not think under existing conditions the parts should be issued at less than 1s. 0d. I understand also we can bind up unsold parts for sale in volume form. I think Sir Frank said that your manuscript would run to about 250,000 words". Then there is some mention of the editor of John o'London. From this time you were really dealing considerably with Mr. Grierson, I understand?—*A.* Yes, I was dealing with the firm.

117. *Q.* What was Mr. Grierson's position, exactly?—*A.* I do not know.

118. *Q.* He was put forward as the representative of the firm?—*A.* Yes.

119. *Q.* He signs as general manager, I see. There are some other letters that do not appear to be answered, but I do not think there is anything I need trouble you about with regard to them. Now I would like to approach another topic, and that is the authorities. I see that you mention in your introduction some of the books you refer to?—*A.* This edition, here, which is the original.

120. *Q.* Is that the same edition as this one I have?—*A.* No, this is the first printed edition. This was printed and issued in parts by Newnes. What you have there is this edition, subject to alteration and amendment, and that sort of thing; but the original edition is here, and here you will find it very completely documented with footnotes and references.

121. *Q.* More completely than in *this*?—*A.* I rather think so; I am not sure.

122. *Q.* I have quite a lot of footnotes in here?—*A.* But here you hardly find a passage which is not referred to somebody to whom I am indebted.

123. *Q.* May I see your introduction to that? I want to see whether it is on the same lines or not?—*A.* Yes. (Exhibit F.H.N.1 handed to Counsel.)

124. *Q.* I think, as a matter of fact, this introduction is fuller.?—*A.* What did happen was that as the parts were published there was considerable correspondence; people wrote about it from all parts of the world; and then if there was some alteration to make I usually put the man's name down in a list which appears, I think, in the book introduction.

125. *Q.* I am not going to trouble about the list of names. I am going to ask you about books. Did you at any time make out a list of books that you read for the purpose of this history?—*A.* A list could be made—it would not be complete—by going through these footnotes.

126. *Q.* That is what it comes to, if one wants to make one. There are a large number referred to in the footnotes. I suppose you read some right through. I see you mention specially Winwood Reade's "Martyrdom of Man", Marvin's "Living past", Mr. Oscar Browning's "General History of the World", Mr. Breasted's "Ancient Times", and Mr. Robinson's "Medieval and Modern Times". Were those the main works that you read? I see there is also Helmolt's "World History", and Ratzel's "History of Mankind"?—*A.* All these books were consulted. If you want the real origin of the books you will have to go back to my history text books. I did not sit down and read a number of works through and then begin writing.

127. *Q.* When you talk about history text books, do you mean people like Monson, Prescott, Froude, Macaulay, and so on?—*A.* You are asking for my intellectual autobiography.

128. *Q.* I do not want to be curious?—*A.* I should have to spend a considerable amount of time before I could really write a history of my historical knowledge.

129. *Q.* You did not go to these books as special preparation for this particular work?—*A.* No.

130. *Q.* I do not think I will trouble any more about that. Now I want to ask you something else. Have you since the war been to Canada or the United States?—*A.* Yes, I went to the Washington Conference.

131. *Q.* That is in the United States?—*A.* Yes.

132. *Q.* I suppose you have never come across Mr. Saul, who appears in this case, at all?—*A.* Never heard of him.

In the Supreme Court.

Defendants' Evidence on Commission.

No. 15. H. G. Wells. Examination for Discovery—*continued.*

133. *Q.* Or Mr. Button of Dents, who also appears in this case?—*A.* No; I have had business with Dents. If there is somebody called Button there I may have met him, but I do not remember him.

134. *Q.* You do not know him as a personality?—*A.* No.

135. *Q.* There is a Mr. Moore who also appears in this case as employed in the Methodist bookroom in Toronto. I understand you have never come across him?—*A.* I am afriad that is not in my range; no.

136. *Q.* These are an easy set of questions. Then Mr. Paget is another person. It is my duty to put this to you. Have you ever come across Mr. Paget?—*A.* No.

137. *Q.* Or a Miss Stewart, a stenographer?—*A.* That is a common name, but I do not think I have met Miss Stewart.

138. *Q.* A Canadian stenographer?—*A.* No, not a Canadian stenographer.

139. *Q.* Now may I turn for a moment to your plan of contents. May I take it that this scheme of History of Mankind—you will forgive me putting it in this way—was your own idea, and was not copied from anyone else?—*A.* No, it seemed to me an idea that must have occurred to thousands of people; it was in my mind.

140. *Q.* At any rate so far as your knowledge goes, none of the thousands of people to whom it may possibly have occurred have ever acted upon it before you did?—*A.* Yes, there have been endless outlines of histories, not outlines of histories, but world histories.

141. *Q.* May I take those to whom we referred just now, Winwood Reade's "Martyrdom of Man"; would you think that a similar arrangement?—*A.* Yes, all history follows a certain course. It is very difficult to re-arrange history fundamentally.

142. *Q.* I am not sure—I tremble rather to differ from you—but Mr. Brett at any rate thought that there were several alternative schemes?—*A.* He thought there were different methods of treatment.

143. *Q.* And of arrangement of it; you agree?—*A.* Probably Mr. Brett was afraid that I should write a Marx History of the World. He was rather anxious I should not write it too exclusively from the economic point of view.

144. *Q.* You may have a military history of the world?—*A.* Yes, there are various treatments.

145. *Q.* I suppose one could have a social history, one which would be more interested in the doings of the common man than in the treaties and conflicts of his governors?—*A.* Yes, like the history of Mr. John Richard Green.

146. *Q.* I am not sure that I have made myself quite clear. With regard to Winwood Reade, do I take it the idea is to begin and trace the history of the world from the time when it, if you are right, split off from the sun?—*A.* You have to remember the date at which Winwood Reade wrote.

147. *Q.* Quite?—*A.* He was a contemporary of Darwin. I am not sure he was aware of Darwinism. The world has enlarged its outlook since the days of Winwood Reade.

148. *Q.* About what time did he begin? Did he try and begin from the Flood, shall we say?—*A.* I forget. I have a history of the world in 30 or 40 volumes which was published by a number of publishers including Dodsley in the eighteenth century. That begins with an account of the Creation, with a map of the Garden of Eden, and goes on to Noah's Ark, of which it gives drawings; but the idea of beginning a universal history at the beginning is not a new one. As ideas of the beginning have varied, the range has extended.

149. *Q.* This history to which you are referring is not Browning's "General History of the World", is it?—*A.* Browning's, yes. What did he call it?

150. *Q.* "General History of the World". That is the one to which you are referring?—*A.* Yes.

151. *Q.* Then Breasted's "Ancient Times" is not a book that begins quite at the beginning, is it?—*A.* If I may be frank, I think Breasted was rather afraid of the fundamentalists, and so began rather cautiously with primitive man.

152. *Q.* With regard to this scheme, are you quite doing justice to your originality in suggesting that it was quite obvious and that anyone else could do it in quite the same way. I suppose one could have taken what I should call a panoramic scheme. One could take a certain period down to 1,000 B.C. and try to show something which was going on up to that time, and then take another 500 years and show another panorama. I suppose that would be a possible scheme, taking 500 years at a time, or 100 years at a time if you like. I am rather thinking, for instance, of a book called Lodge's "Modern Europe" which was written in that sort of way. They took a certain period of time, and then went to the various sections showing what was happening in various parts of the world at the time. That would be a scheme?—*A.* Yes, that would be an attempt to get contemporary events, so to speak, put together.

153. *Q.* I think the panoramic point of view has been put as being the most important point of view of the historian. I do not know whether you agree with that—*A.* No. I should say there are a great number of ways, and that is a way that has been adopted.

154. *Q.* Your first book deals with the history of the world as an earth, so to speak, before the making of man. Then I see your second book deals with the making of man; that is the uncivilised man. The third book goes to the first civilisation. With regard to the fourth book, the grouping of Judea, Greece and India, is not that in a sense an original point of view?—*A.* How else could you do it? The contrast of Judea and Greece has always been made.

155. *Q.* Why take India? The Chinese civilisation was a very early one?—*A.* Yes. You see, China comes in here in the rise and spread of Buddhism. Then Book IV is largely history on moral and intellectual

In the Supreme Court.

Defendants' Evidence on Commission.

No. 15. H. G. Wells. Examination for Discovery—*continued.*

development, in which the Judea-Greek intellectual period and the influence of Buddhism are the chief factors. China at that time was contributing nothing of fundamental importance.

156. *Q.* I think I am right in saying that you are dealing with Buddhism as a religion, or as a philosophy, and to a certain extent as it appears in India. I think it is rather in connection with India that the idea of Buddhism is treated by you?—*A.* The objective of Book IV is to bring together the main factors in the development of Christianity, the Jewish, the Hellenic and the Indian contribution.

157. *Q.* You say it is leading up to the growing of Christianity?— *A.* To the advent of Christianity in Book VI.

158. *Q.* Before you deal with Christianity you deal with the Roman Empire?—*A.* Yes.

159. *Q.* You follow up the Roman Empire to a very considerable time, until the time of the Eastern revived empire, before you go back to Christianity?—*A.* Yes.

160. *Q.* I should not presume to say that is a bad arrangement, but I do suggest to you that is not an arrangement which would occur to anybody?—*A.* It is fairly obvious. You have Book IV, the intellectual, the moral and religious development, and Book V which gives the physical body of Romanism upon which Christianity crystallised.

161. *Q.* Then again another thing which rather strikes me as to your arrangement is this, that you go from Greece to Alexandria, before you go to Rome?—*A.* Alexandria was a development of the Greek intellectual process. It was a Greek-speaking city. The intellectual scientific beginnings of Aristotle were developed under the Ptolemies in Alexandria; it was quite a natural development.

162. *Q.* I quite follow your reason, but again I suggest to you that many people might have written without seeing that point or working it out in that way?—*A.* You can miss points in all sorts of ways, but that is the way to do it.

163. *Q.* In your view it is the only way?—*A.* For myself, it was the only way.

164. *Q.* You told me that you have not read Miss Deeks's book, but perhaps you will take it from me that so far as I have indicated the scheme of yours, the sort of discussion or account I have given of it to you is very similar to yours. You would say that is coincidence, that we have ruled out any possibility of your book being influenced by hers?—*A.* Yes.

165. *Q.* I am bound to put that to you to give you a chance of dealing with it in any way you think fit. Now I want to go a little further into detail, because I am not going to be so foolish as to suggest that the mere fact that her book and your book contain a large number of similar facts is any material evidence in this case. When one is writing a history it is obvious that the books must deal with a large number of similar facts; but I want to ask your attention to this: the question of selection. In dealing with this thing it is not so much a question as to what one puts in as what one leaves out. I want to mention to you one or two important

matters and see what you say about them on the question of selection. I think you will agree in your book you did not deal in any detail with the civilisation of early Egypt. That is an important part in the world history, and no doubt you have a reason for passing it over lightly?—*A.* Did not I? Not with very much detail, no; it has to be placed in its proper position. In chapter 16 there is a very brief outline of Egyptian history, and then scattered about in chapters 18, 19 and 20, there is a good deal of Egyptian matter.

166. *Q.* First of all with regard to chapter 16, the early history of Egypt?—*A.* As I have it here it is chapter 16, section 3, and it is very swiftly summarised.

167. *Q.* I agree it is a short summary. The story of the Tigris and the Euphrates civilisation is summarised almost more swiftly?—*A.* That is a series of little sections, 2a, 2b, and 2c. I think it has rather more space, has it not?

168. *Q.* I can only see a page?—*A.* Is it not sections 2a, 2b and 2c?—*A.* There are a number of sub-sections.

169. *Q.* 2e says: "The story of the Tigris and Euphrates civilisation of which we have given as yet only a bare outline"——*A.* That comes from section 2a.

170. *Q.* I think that is sufficient for my purpose, that you have thought fit—and no doubt for a good reason—to summarise these two particular parts of history rather severely. I shall be glad if you will tell me what was in your mind when you made that decision?—*A.* These civilisations were uneventful. They accumulated a great mass of archæological material because they lasted so long, but modern history begins with the intellectual activities of the Greek and Semitic and Asiatic peoples.

171. *Q.* As a matter of fact, in one of your main books, Breasted, a very great deal of space is given to it?—*A.* Yes. I got a map from Breasted. I owe a lot to Breasted. I am glad he is not bringing this action.

172. *Q.* I think there is another part of Breasted which is not very much represented in your book, and that is the architectural side of Rome, the beautification of Rome. You deal considerably with Athens, but not very much, if I am right, with Rome?—*A.* No.

173. *Q.* I do not know whether you have a definite view about that, that Roman architecture was not so considerable?—*A.* Roman art, including its architecture, was, I thought, rather derivative and secondary.

174. *Q.* Have you expressed that view?—*A.* I think I do here. I am supposed in this book to attack the glory of the Roman Empire with certain bias.

175. *Q.* I think in one place you suggest that really all we have from it is the idea of imperialism?—*A.* I would not got so far as to endorse that, but there is something of that in it.

Mr. Macgillivray: Could you refer me to your Particulars? You have given certain Particulars of similarities.

In the Supreme Court.

Defendants' Evidence on Commission.

No. 15. H. G. Wells. Examination for Discovery—*continued.*

Mr. NORMAN DAYNES: For the moment I am not on the particulars of similarities, but on omissions stated at the end of the mimeograph. It was then said that the mimeograph as it left Canada had not these particulars of omissions appended.

Mr. MACGILLIVRAY: I have two documents; one is of a more general character.

176. Mr. NORMAN DAYNES: I am coming to that later. I am dealing with omissions, of which one does not give particulars?—*A.* May I know what these questions are about? Has Miss Deeks the same suppression of Roman architecture?

177. *Q.* Yes, they are directed to that, to show that the selection in the way of omission is similar?—*A.* Oh, yes.

Mr. MACGILLIVRAY: These are similarities; omissions are similarities as much as commissions.

178. Mr. NORMAN DAYNES: You have the mimeograph Exhibit 3 to Miss Deeks's deposition?—*A.* Are you suggesting that I have never had any opinion about the importance of the Roman Empire until in some mysterious way I derived from Miss Deeks an idea, and I said that is it; because if so, that is not so.

179. *Q.* As a matter of fact I do not want to treat you in any way unfairly. At present it is my duty to ask these questions, and not to argue the case. It is also my duty to give you an opportunity of explaining anything that may be commented upon in the Court in Canada?—*A.* My explanation has to be relevant to the charges that are being brought against me.

Mr. MACGILLIVRAY: I object to these questions on the ground that they are outside the particulars of similarities which have been given.

The COMMISSIONER: The objection is reserved.

180. Mr. NORMAN DAYNES: I think you have said everything you want to say about Rome?—*A.* Yes.

181. *Q.* I think you have not given me your reason for an omission which I rather regret personally, and that is an omission to deal with the Roman law. I should have liked very much to hear what you had to say about that, but I think there is a footnote?—*A.* I think we deal a little with Justinian and his codification. The Roman law was very largely from Constantinople.

182. *Q.* May I remind you of a note which you put. It is Chapter 31, section 1. You say this: "Justinian built the great and beautiful church of Saint Sophia in Constantinople and founded a university and codified the law." Then there is a note: "Great importance is attached to this task by historians, including one of the editors of this history. We are told that the essential contribution of Rome to the inheritance of mankind is the idea of society founded on law, and that this exploit of Justinian was the crown of the gift. The writer is ill-equipped to estimate the peculiar value of Roman legalism to mankind. Existing law seems to him to be based upon a

confused foundation of conventions, arbitrary assumptions, and working fictions about human relationship, and to be a very impracticable and antiquated system indeed; he is persuaded that a time will come when the whole theory and practice of law will be recast in the light of a well-developed science of social psychology in accordance with a scientific conception of human society as one developing organisation and in definite relationship to a system of moral and intellectual education. He contemplates the law and lawyers of today with a temperamental lack of appreciation "?—*A.* Does Miss Deeks, if I might ask, say that too?

183. *Q.* No, that is your reason, but Miss Deeks——?—*A.* May I appeal to the protection of the Court, because that extract is calculated to prejudice me in the eyes of the Law Court.

184. *Q.* I think you may be quite sure we bear you no illwill. Now passing over the law, there is the Roman system of government and organisation. That again is a matter dealt with very fully by Mr. Breasted, but I think you deal with it very briefly?—*A.* Possibly so; yes.

185. *Q.* Again with regard to the church and the part played by the church in handing on the influence of Christianity?—*A.* I should think a large part of that material comes from the Encyclopædia Britannica.

186. *Q.* You would say it is dealt with very concisely?—*A.* Probably in the same spirit.

187. *Q.* Another matter which I think is rather interesting in this case is feudalism. You will forgive me saying so, but one might have thought at first sight the picturesque side of feudalism would have led to its receiving perhaps rather fuller treatment than was directly proportionate than perhaps the slighter treatment, but no doubt you had a reason for dealing shortly with feudalism?—*A.* I think there is an account of the reorganising of society upon feudal lines, is there not?—*A.* A thing may be given importance without being given length.

188. *Q.* It is Chapter 33, section 2?—*A.* There is a section on the feudal system, and there is an acknowledgment to Adams' article in the Encyclopædia Britannica.

189. *Q.* Yes, a footnote at the end: "Encyclopædia Britannica article 'Feudalism' by Professor G. B. Adams." That is a matter which I think Mr. Robinson deals with very fully, but I think, as you told us, you took it from the Encyclopædia Britannica and dealt with it very shortly in two or three pages?—*A.* I think it is given a separate section; it is given its proper importance.

190. *Q.* The book I am using is Macmillan's, and the one you have is Newnes'?—*A.* I have F.N.1. It is the first thing printed. That is the first part, I presume, of the American which was printed very shortly after this. It is in substance the same.

191. *Q.* There is no difference; there is the same footnote. What I rather had in mind was this, that in connection with feudalism one gets a great deal about lords of the manor and agricultural organisation, and so on, and then that leads one to rather cognate subjects, sort of middle age towns with their guilds and fairs and markets, and so forth. Towns are

In the Supreme Court.

Defendants' Evidence on Commission.

No. 15. H. G. Wells. Examination for Discovery—*continued.*

dealt with later. The agricultural system, the land system, is not dealt with?—*A.* If I was going to deal with the land system I should have to deal with an enormous mass of systems and it would have been quite out of proportion; the Chinese, Indian and French land systems alone have differences of the most extraordinary sort.

192. *Q.* I do not think you deal to any very considerable extent with what I may call the growth of monasticism, the Monastery of St. Bernard, and that part of history?—*A.* I think I give a great deal of importance to Benedict and the change over from the hermits to the monastic organisations.

193. *Q.* You mention Benedict; there is about half a page nearly at the end of the first volume. It is Chapter 30, section 10: "He had a considerable official career under the Gothic kings; and when, between 545 and 553, the overthrow of those kings and the great pestilence paved the way for the new barbaric rule of the Lombards, he took refuge in a monastic career. He founded a monastery upon his private estates and set the monks he gathered to work in quite the Benedictine fashion, though whether his monks actually followed the Benedictine rule that was being formulated about the same time from Monte Cassino we do not know. But there can be no question of his influence upon the development of this great working, teaching, and studying order." Up to that point you had not dealt with the order before. I cannot find any indication that you had. It rather looks from that as if you had dealt with it before, or the index is at fault. It rather looks as if you had intended at some time or another to deal with it a little more fully, and thought you had done so, because you rather deal with it, if I may say so, inferentially?—*A.* That may have occurred. Cassiodorus gets a good deal of attention. I think you will find an early treatment of monasticism in relation to him.

194. *Q.* He is just mentioned; it is in the same paragraph: "Closely associated with these two names in the development of a civilising monasticism out of the merely egotistic mortifications of the early recluses is that of Cassiodorus. He was evidently much senior to Pope Gregory." I think that is all you have to say about him there?—*A.* But he crops up again in various places.

195. *Q.* In Volume 2, at pages 36 and 40: "The training of such men as Cassiodorus to keep the light aflame of human learning amidst these windy confusions." That is a sort of introductory to Christendom and the Crusades. I quite concede those references, but I think you will agree that they do not prevent one from coming to the conclusion that the treatment of monasticism is slight?—*A.* The treatment of most things is slight, in an outline.

196. *Q.* Not, of course, Napoleon?—*A.* I do not think you will find he gets so much space. The space devoted to him is a little pungent.

197. *Q.* Olympias gets quite a good deal of treatment?—*A.* I followed Goldsmith.

198. *Q.* I am not carping at all; I am only trying to point out certain features of the work. I should not presume to say you were not right?—

A. I may point out that Napoleon is historically rather more important than Cassiodorus, if you are objecting to the relative space.

199. *Q*. Monasticism, I should have thought, might have equalled Napoleon in importance when comparing an institution with man?—*A*. It is a question of perspective.

200. *Q*. I entirely agree with you. That is what I am trying to get on record, what your perspective is?—*A*. My perspective is that the existing state of the world is nearer to us and looms larger than the development in the middle ages of Europe.

201. *Q*. Therefore you think——?—*A*. I think the proportions are right, or I should have given other proportions.

202. *Q*. Expanding that just a little, in coming to a conclusion as to the right proportions your view is that you should allow a comparatively greater space to the nearer things, and a comparatively smaller space to the more distant things, unless they are so far distant as to be questions of astronomy?—*A*. This is a question of criticism into which I had better not enter.

203. *Q*. Now may I ask one or two questions about the Inquisition. I think that again is a matter which you have relegated to a rather subordinate position. I agree it is referred to in one or two passages. "The thirteenth century saw the development of a new institution in the church, the papal Inquisition. Before this time it has been customary for the Pope to make occasional inquests or inquiries into heresy in this region or that, but now Innocent III saw in the new order of the Dominicans a powerful instrument of suppression. The Inquisition was organised as a standing inquiry under their direction, and with fire and torment the church set itself, through this instrument, to assail and weaken the human conscience in which its sole hope of world dominion resided. Before the thirteenth century the penalty of death had been inflicted but rarely upon heretics and unbelievers. Now in a hundred market-places in Europe the dignitaries of the church watched the blackened bodies of its antagonists, for the most part poor and insignificant people, burn," and so on. That is the whole of that passage. I do not know whether there was any other part. I think the others were mere references. Perhaps you would tell me: Do you agree that your treatment of the Inquisition is slight; and, if so, what is your reason for dealing with it in that way?—*A*. I am sorry, I do not agree that it is slight. I think it is adequate. If I had more to say about the Inquisition I should have said it. I do not see what you are asking. The Inquisition does not loom so large, let us say, as the palæological record. That is my idea of the proportion of parts.

204. *Q*. I am obliged. May I take it that your view was that in a work of this kind it would not be proper to go into what I may call broad history very much, and that there are things adequately dealt with with comparatively short references?—*A*. I dealt with it to the amount that I thought it was advisable to deal with it in order to make my general picture.

In the Supreme Court.

Defendants' Evidence on Commission.

No. 15. H. G. Wells. Examination for Discovery—*continued.*

205. *Q.* I do not think you say very much about medieval Venice, you say a good deal about Florence, but not very much about Venice?—*A.* I suppose if you consult the index you will find my reference to Venice.

206. *Q.* Did you have rather a difference with Professor Barker?—*A.* In the original edition of the Outline of History, I regret to say there was a disposition on the part of the writer and his four helpers to dispute questions in footnotes, and those little disputes were supposed to enliven the work. What is the point of your question? There is, I believe, a difference in that particular matter between myself and Professor Barker.

207. *Q.* Your view was that Venice was not of any very great importance?—*A.* Did Miss Deeks have a difference with Mr. Barker?

208. *Q.* No. In her work there is rather a similar view of proportion; that is all?—*A.* I see. It makes me respect Miss Deeks's judgment.

209. *Q.* You deal I think quite shortly with the Reformation, Calvinism and Presbyterianism, things which exerted a great deal of influence in their time. Things dealt with by Lodge, and so on, were dealt with by you as being matters of comparatively subordinate importance, having regard to their space in the scheme?—*A.* Having regard to their place in the scheme, which involve the religious and social development of India, China, America, and so on, I think I gave them the space that they deserved.

210. *Q.* You deal, if I may say so, quite fully with the French Revolution, but in contrast with that you say very little about the ancien regime?—*A.* Yes. The French Revolution was rather more universal; it had consequences which radiated much more widely than the particular events which were happening in particular countries of Europe before that time.

211 and 212. *Q.* Now coming down to rather more recent times, I do not think you say very much about the early history of the United States. The period I am thinking of in particular is from the beginning of the Independence down to, say, the date of the Monroe doctrine in 1823.—*A.* No, I think in the early edition that was out of proportion, neglected, and I remedied that in the later version.

213. *Q.* I have not had an opportunity of comparing that. You have corrected that in the later edition?—*A.* Yes.

214. *Q.* If I may say so, I am rather pleased to think that I have put my finger upon one criticism?—*A.* There is another which you have missed, but I will not help you.

215. *Q.* Perhaps I may come to it yet. Again there is not very much from the Monroe doctrine down to the opening of Japan and the war of 1863?—*A.* No, I do not think there is; I do not think there was.

216. *Q.* Perhaps you may regard it as a comparatively small matter. The Revolution of the Spanish Colonies and their conversion into independent Republics in America is very briefly mentioned?—*A.* Very briefly, yes. The type case is dealt with under the English speaking colonies. The South American business is treated, so to speak, as a similar process happening elsewhere.

217. *Q.* Now with regard to South America, as you know, there was a very interesting early civilisation there which is dealt with in Prescott's

books, the History of the Conquest of Mexico and the History of the Conquest of Peru, the Aztecs?—*A.* That was in Mexico.

218. *Q.* Taking Mexico and Peru, I do not think we find that was dealt with to any considerable extent?—*A.* No, it is not given great prominence.

219. *Q.* There is one other subject which it may be perhaps you do not regard as of great interest, but in fact you say practically nothing about the History of Music?—*A.* That again is an omission that is being remedied in a later version.

220. *Q.* Is that the other one?—*A.* No.

221. *Q.* That concludes all I have to ask you about the omissions. Now there are a number of similarities and things of that kind that I want to ask you about?—*A.* Yes.

(Adjourned for a short time.)

222. Mr. NORMAN DAYNES: Now I want to ask you a question about quite an early part of your book. I see that you refer to the nebular hypothesis, which, as I understand it, is that, that at some time or other, the sun was much hotter than it is now and it was whirling round and the earth was something which has broken off from the sun in the course of that process. Is that so?—*A.* I believe that is so, yes.

223. *Q.* As a matter of fact, in 1919 had not a man called Professor Jeans brought out a book which had somewhat modified and corrected that theory?—*A.* Yes, that theory has been modified.

224. *Q.* By what they call spiral nebula. As I understand it, the theory of spiral nebulæ is that there is more than one universe; you have a sort of island universe and I think there is one they call the Andromeda Nebula which is comparable to our system in size; in other words, that our own galaxy of stars, for instance, and so forth, including the sun and moon, is not, as it were, the most important thing in space, but that there may be other nebulæ of a similar and comparable kind. Is that correct?—*A.* I do not propose to discuss that point. I admit that I gave an account of the possible origin of the world which was in accordance with the views at the time when I wrote it and that those ideas have been modified.

225. *Q.* I think I am right in this, Professor Jeans' book had actually been published before you published your book?—*A.* No; surely it is a post-war work, that work of Jeans.

226. *Q.* Yes, 1919?—*A.* Yes, that was after the writing of these early chapters.

227. *Q.* As a matter of fact I belive Jeans had been anticipated to a certain extent in the year 1905 by Professor Chamberlain?—*A.* I do not know.

228. *Q.* Now I want to look at page 513 of your book where you say, dealing with the Roman Episode, I think particularly the murder of Cæsar: "Brutus, the ringleader of the murderers." It is Chapter 28, Section 5. Could you tell me where you got that from because I think the more ordinarily accepted view was that Cassius was the ringleader?—*A.* I do

In the Supreme Court.

Defendants' Evidence on Commission.

No. 15. H. G. Wells. Examination for Discovery—*continued.*

not know; I think I got that account from possibly Joseph Wells or the Encyclopædia Britannica. At the present moment I really do not remember the passage.

229. *Q.* So far as you remember, it was one of those authorities?—*A.* Yes. Has not Mr. William Shakespeare some share in this?

230. *Q.* I think he mentions both Brutus and Cassius?—*A.* I think he does. Has Miss Deeks some special information?

231. *Q.* I rather fancy Miss Deeks happens by some means or other to take the same view as you did.

Mr. MacGillivray: Now we come to a matter which is in your Particulars. It would be very convenient to me if you could refer to your Particulars.

Mr. Norman Daynes: I can give you the page, it is page 31 of the mimeograph.

Mr. MacGillivray: It would be more convenient if the witness had this. (Handing same to the witness.)

Mr. Norman Daynes: I do not mind at all.

The Witness: In these Particulars here I do not see that Miss Deeks is credited with making Brutus the ringleader of the murderers.

232. *Q.* I think she addresses him as such?—*A.* Where? The quotation is not given.

233. *Q.* We see what she says. She does not actually say he was the ringleader, but she deals with him as representing the murderers. In other words, she does not refer to Cassius and you do not refer to Cassius?—*A.* Does not she mention Cassius?

234. *Q.* I do not think so. I think, as a matter of fact, we had better not let this degenerate into a conversation about resemblances. My duty is to get your explanation. I will leave other people to argue about the resemblances later on?—*A.* I would like the point.

Mr. MacGillivray: You introduced resemblances into this case. You made a statement which is not accurate with regard to Miss Deeks' work.

Mr. Norman Daynes: I do not think it is accurate.

Mr. MacGillivray: That is why I wanted the witness to have the text.

235. Mr. Norman Daynes: I want to get the explanations and views of Mr. Wells. On page 38 of the mimeograph I see that you express the view: "On Christmas Day in the year 800, as Charles was rising from prayer. . . . The Pope . . . clapped a crown upon his head and hailed him Cæsar and Augustus . . . so the Empire of Rome rose again as the Holy Roman Empire." As a matter of fact, is not the generally accepted view that the Holy Roman Empire was not founded until about 160 years later by Otto I?—*A.* No. I think the tradition of the Empire was alive throughout all the Ninth Century.

236. *Q.* I think Mr. Bryce takes that view. On page 45 I see you have: "The Portuguese . . . were asking whether it was not possible to go round

to India by the coast of Africa. Their ships followed to Cape Verde. They put out to sea to the West and found the Canary Islands, Madiera and the Azores. That was a fairly long stride across the Atlantic. In 1486 a Portuguese Diaz reported that he had rounded the South of Africa." As a matter of fact, we know the Canary Islands were supposed to have been under the Phœnicians, the Romans and the Arabs, and in 1534 were not they rediscovered by a French vessel. Was not there a Portugese expedition about the same time which in fact failed to find them?—*A.* You are asking me more than I know.

237. *Q.* Perhaps you may take it that that is the information that I have from the Encyclopædia Britannica?—*A.* We do not seem to have followed the Encyclopædia Britannica.

238. *Q.* Can you tell me where you got your view from?—*A.* I do not know; I will see if I can trace it.

239. *Q.* It is Chapter 35, Section 8. I see there are some more people supposed to have discovered them according to Sir Harry Johnston?—*A.* He has a footnote.

240. *Q.* The Normans, the Catalonians, and the Genoese apparently?—*A.* Your point is I say "discovered" when I ought to have said "re-discovered."

241. *Q.* According to the Encyclopædia Britannica the Portuguese did not re-discover them, they failed to find them and it was a French vessel. I cannot find any authority which takes exactly your point of view there and I was wondering whether you could tell me?—*A.* I should say it was quite an obvious slip. One is speaking of Portuguese and one incorporates with their discoveries discoveries that may have been made by associated exploring ships.

242. *Q.* I do not want to rub it in at all; I am quite content to take it as an obvious slip for which you are not able at the time to give any explanation?—*A.* Yes.

243. *Q.* You did not agree with me that 800 A.D. was wrong as the start of the Roman Empire?—*A.* The Holy Roman Empire.

244. *Q.* But I do not think you told me where you got that view from. Is that your own conclusion or have you got it from an authority?—*A.* I do not know. You are referring there to page 31 of the mimeograph?

245. *Q.* Yes, for the moment?—*A.* I doubt if it is wrong. It is a question of nomenclature. At present I have not the remotest idea when the Western Empire began to be called the Holy Roman Empire.

246. *Q.* It is page 38?—*A.* As a matter of fact I will call attention to this. I do not say the Holy Roman Empire definitely began in the year 800. All I say is that the coronation of Charles the Great occurred in a certain fashion and so the Empire of Rome rose again as the Holy Roman Empire; that is to say, from that time forth the Pope claimed a pre-eminence over the Emperor and the word "Holy" or the idea of clerical predomination entered into history. You note there that I do not say the Holy Roman Empire was, so to speak, inaugurated in the year 800.

In the Supreme Court.

Defendants' Evidence on Commission.

No. 15. H. G. Wells. Examination for Discovery—*continued.*

247. *Q.* As a matter of fact, did not you mean that the Holy Roman Empire began in 800?—*A.* No, I evidently had in mind here the struggle of the Church to impose itself in a position of authority over the Emperor. That issue was raised at the coronation of Charles the Great by the Pope putting the crown on his head instead of placing the crown upon his own head as Napoleon did on a parallel occasion later.

248. *Q.* I follow what you say?—*A.* You see Miss Deeks says something altogether different.

249. *Q.* May we forget what Miss Deeks said?—*A.* We were discussing the question of parallelism.

250. *Q.* No, we are not. May I just see whether I understand it. You say that the two statements are quite reconcilable: that is to say, your statement that in the year 800 the Pope clapped a crown upon the head of Charles and then you say, so again in the course of time the Empire of Rome rose again as the Holy Roman Empire. You say that is quite consistent with the statement in Bryce that the Roman Empire was founded 160 years later?—*A.* I do not say that at all. What does Bryce say? The Roman Empire was founded before the time of Otto the Great.

251. *Q.* Otto I. was in A.D. 962?—*A.* The Roman Empire was founded long before then as the Holy Roman Empire. It may then have taken the title of the Holy Roman Empire.

252. *Q.* If that was your view when you wrote your first part, you probably revised it a bit when you wrote this Cassels Edition. In Cassel's Edition in 1920 it appears in this way on page 346: "So the Empire of Rome which had died at the hands of Odoacer in 476 rose again in 800 as the Holy Roman Empire"?—*A.* Yes, the Empire of Rome certainly rose again in 800 because there was an Emperor who rose again. That is absolutely correct. The question here, I take it, arises about the use of the word "Holy."

253. *Q.* Yes, you use the word "Holy" in this edition saying in 800 it rose again as the Holy Roman Empire?—*A.* Yes, there I seem to have thought better of it in the next edition.

254. *Q.* At any rate, you cannot throw any light upon the authority for your view. It was the view you formed and you thought better of it in the next edition?—*A.* It is not necessary to throw any further light upon it.

255. *Q.* Then I think you may remember one correction on page 51. This is one correction made by Professor Barker. I think you referred to Emperor Charles V and Professor Barker said it was Charles V as Emperor and Charles I of Spain. This is the passage: "Just then Maximilian, the Emperor." Apparently in your actual edition as printed you have it right, that is to say, that it was the Emperor Charles V, but I suppose in an early draft that we have not got, you had put him as Charles V of Spain because I see Professor Barker's note apparently is: "Charles V was Charles V as Emperor and not of Spain. He was Charles I of Spain." Do you remember that correction being made by Professor Barker?—

A. I do not remember the necessity for any such correction. Do you allege that I wrote him down as Charles V of Spain?

256. *Q*. It looks as if you had. I am asking you really to tell me because of the correction?—*A*. I remember nothing of the sort.

257. *Q*. This I think comes from the bundle of proofs. It is a note which was Professor Barker's note: "Charles V was Charles V as Emperor, and not of Spain. He was Charles I of Spain"?—*A*. Yes, Professor Barker was a history tutor, and, like all tutors, he was in the habit of constantly finding certain obvious mistakes being made over and over again and his tutorial habits may have made him add that footnote without my having made the error in question. It is the commonest thing to have people using the common title of a person, when a person changes his title to use the common title back. We do not speak of Sir John Lubbock: we speak of Lord Avebury doing this that and the other thing when we mean Sir John Lubbock.

258. *Q*. I dare say. Do you think Professor Barker would put that in if it had not been with reference to something you had written?—*A*. I have suggested a reason why he should have put it in. I do not deny the possibility of my having written him down as Charles V before I ought to have done so. I submit you have no evidence that I did.

259. *Q*. We find it on page 199. The note is not printed in the book; it was a note on the manuscript. It is not printed in the book.

Mr. MacGillivray: We had better have the manuscript. I do not think the witness is understanding the point and I do not.

260. Mr. Norman Daynes: I understand you have the manuscript. It is Chapter 35, Section 11A. Perhaps the most satisfactory way of dealing with it would be to see whether Miss Deeks could pick it out. Whilst that is being looked for I will proceed with the next one, which as I have it, is on page 29. There are two pages which were originally numbered 48 and 49 which come immediately after 29½. It is on the second of the two small pages. This is something which is not in this actual book itself, but in the earlier manuscript. I see that you wrote with regard to Cæsar and Marius he "cherished the memory of Marius who was his uncle by marriage." The only thing I want to say about that is that I believe, as a matter of fact, he was his great uncle. Do you agree that was a slip made in your first manuscript?—*A*. If there is a slip there is a slip, yes.

261. *Q*. There is one other passage on page 35 at the bottom of the page: "But while the smashing of the Roman social and political structure was thus complete . . . there was one thing that did not perish but grew, and that was the tradition of the world empire of Rome and of the supremacy of the Cæsars. When the reality was destroyed the legend had freedom to expand . . . The idea of a serene and splendid Roman world supremacy grew up in the imagination of mankind and still holds to this day." That is what I was referring to just now when I said that you had referred to imperialism as being the one legacy of Rome to future ages. Was that your own generalisation or are you there expressing a view which

In the Supreme Court.

Defendants' Evidence on Commission.

No. 15. H. G. Wells. Examination for Discovery—*continued.*

you find in one of your authorities?—*A.* I do not see that here I say imperialism was the sole legacy of the Roman world to posterity. I do not think it bears that interpretation.

262. *Q.* You do not say it in terms, but you say there was one thing which did not perish. Is not one entitled to infer from that that that is the only thing which did not perish?—*A.* That is perhaps rather careless phrasing, but my intention is fairly obvious.

263. *Q.* You mean that perhaps you rather over-stated it?—*A.* Rather over-stated it.

264. *Q.* Then I accept that explanation. Now there is another passage on page 55. This passage is: "In 1552 came another unstable equilibrium. Charles was now utterly weary of the cares and splendours of empire . . . He abdicated. He made over all his sovereign rights in Germany to his brother Ferdinand, and Spain and the Netherlands he resigned to his son Philip. He then retired to a monastery." Then later on we find on page 229, Chapter 36, Section 3: "It was under Charles that the Protestant doctrine that now prevailed in Germany spread into the Netherlands. Charles persecuted with some vigour, but in 1556 as we have told he handed over the task to his son Philip." The point is that on the previous occasion you had said it was in 1552. Of course, in itself it is a small slip. I thought I ought to call attention to it, because, curiously enough, Miss Deeks makes the same slip?—*A.* I must have been working with some book of reference at hand and there must be this incompatibility in my authorities but I cannot now at the present moment state what those authorities were. May I call attention to something again. I think you have mis-read me. I want to trace the 1552 reference.

265. *Q.* That is Section 11A of Chapter 35. It is rather curious. It may be you meant to write "1556" in the second place. "In 1552 all Germany was at war again, only a precipitate flight from Innsbruck saved Charles from capture and in 1552 with the Treaty of Passau came another unstable equilibrium. Charles was now utterly weary"?—*A.* "In 1552" may be a misprint or something for "1556." That is quite possible.

266. *Q.* We could see whether it is a misprint from the manuscript?—*A.* Yes. It might be a slip in the manuscript. It is a small thing. Possibly he retired in 1552, but did not make his formal abdication until 1556. It is quite possible.

267. *Q.* That is only a possibility that suggests itself to you. There is nothing you remember from your authorities?—*A.* It is a matter of fact which can be looked up and verified. Here we have a phrase "Prescott's Appendix to Robertson's History of Charles V." That is the source of the quotation, but it looks to me as though it was the source for all this passage.

268. *Q.* You think you probably got it from Prescott?—*A.* No, Robertson's History of Charles V. Prescott only wrote the Appendix.

269. *Q.* Then page 57. This is again, I think, a foot-note. You will see it at the bottom of page 219: "This is not the same Simon de Montfort as the leader of the Crusades against the Albigenses, but his son." That is

Chapter 36, Section 2. You will see your foot-note?—*A.* That seems to be my foot-note. What is the question?

270. *Q.* The point is this, that this note refers to the leader of the Crusades against the Albigenses, but you have never referred previously to Simon de Montfort as the leader of such Crusades. It is referred to, as a matter of fact, in Miss Deeks' book?—*A.* There was a Simon de Montfort. He led the Crusade against the Albigenses. I am not aware I do not refer to it, but I suppose in the interests of people who might confuse them, I have made this note. He was a very considerable figure in French history.

271. *Q.* You do not, in fact, refer to him apart from this note?—*A.* I do not in fact refer to him before.

272. *Q.* I thought I ought to call attention to that. Now I think we must go back to page 51. This is about Ferdinand and Isabella of Columbus. It is rather the same sort of point. There had been a good deal of reference in Miss Deeks' book to Ferdinand and Isabella of Columbus. As a matter of fact, you had not previously mentioned who Ferdinand and Isabella were. You refer to them almost as if you had dealt with them before; that is the point?—*A.* Is not that mentioned? I should have thought it would have been. Ferdinand and Isabella were extraordinarily well known figures.

273. *Q.* It is Chapter 35, Section 11A?—*A.* Have I to hunt through and show I have mentioned them before?

274. *Q.* Not unless you want to tell me you have. I have looked and I cannot find that you have?—*A.* I think perhaps if you will allow me I might be able to find a reference before that. I cannot read whole sections of the book through.

275. *Q.* I think I must be fair. As a matter of fact, I have now discovered a reference?—*A.* Thank you.

276. *Q.* It is page 186 of my edition. "United by the marriage of Ferdinand of Arragon and Isabella of Castille." I think that is the same one. I do not think I will pester you any more about that?—*A.* That is in the treatment of Columbus.

277. *Q.* Now one other thing, the same sort of thing. On page 58 there is a reference to "the Puritans were done with." It strikes one at first sight that perhaps that would have been an unexpected way of making the first mention of the Puritans. I have no doubt you had your reason?—*A.* Is that the first mention of the Puritans?

278. *Q.* According to your index, it is?—*A.* Perhaps you are trusting too much to this index.

279. *Q.* I am also trusting to my client who has apparently read through your book. I think that is the first mention that I can see?—*A.* Here in a foot-note to the first section of Chapter 36 there is a long account of the Puritan Revolution and a rather lively controversy between myself and Professor Barker.

280. *Q.* This is apparently a foot-note which was added by Professor Barker. That I suppose would have been written after you had written

In the Supreme Court.

Defendants' Evidence on Commission.

No. 15. H. G. Wells. Examination for Discovery—*continued.*

your manuscript?—*A.* Yes, but I do not seem to have defined the Puritans; I do not know whether Miss Deeks does.

281. *Q.* Yes, she does?—*A.* She does not in this quotation.

282. *Q.* Possibly not?—*A.* It is the most natural thing in the world for an English person writing about English history to mention the Puritans without realising the necessity for giving a definition and an account of the Puritans before they are mentioned. It is almost like insisting upon a reference to the human being before you begin to write a definition of Homo, and that sort of thing. Some things you take for granted.

283. *Q.* It is your view that it was not necessary to explain to an Englishman whom the Puritans were or even, I suppose, a citizen of the United States?—*A.* No, I think they would know.

284. *Q.* Was it intended that the book should be translated and circulated in other countries, France, Germany, and so on?—*A.* The question of translation arose subsequently. I am afraid I had not all the destinies of the book in my mind when I wrote it.

285. *Q.* There are a few rather striking passages that I want to refer to. There is a passage in Chapter 22, page 14 of the mimeograph. That is a passage in which you are dealing with the Greek civilisation. You say: "There was always a certain tradition of unity between the Greeks based upon a common language and script, on the common possession of heroic epics and on the continuous intercourse that the maritime position of the states made possible"?—*A.* Is it Murray? It sounds like Murray.

286. *Q.* I was going to ask you whether it is Murray as there is a similar passage in Miss Deeks' book?—*A.* Gilbert Murray seems to have been taking up Greek history from Miss Deeks.

287. *Q.* I shall not take that as a serious answer?—*A.* What is the point?

288. *Q.* I was asking you whether you could tell me on what authority that was based. I understand you to say that that was Professor Murray?—*A.* I do not know whether it was written in by Professor Murray or whether he read my text and passed it. It is mostly what you would call common knowledge.

289. *Q.* It was rather the grouping of the points and so on, but, as I say, I do not want to waste time over analysing resemblances at the present moment. The next thing to which I want to refer is bound on to my sheet of this mimeograph on page 15. It is Chapter 19, page 251. I do not think I can put that to you because here we are dealing with resemblances and, if we have not given particulars, I do not think I can put that. I have just looked at what was said in the Ontario Court about the question of particulars and I think we did agree that if there were to be any further particulars we should give them so that Mr. Elliott had an opportunity of cross-examining. I understand that this was not given so I cannot use this one. Then there is a passage on page 18 of this mimeograph at the bottom of the page: "In 431 B.C. came the war with Sparta." Then there is something left out. "But the war was a slow and dangerous one." Then some more is left out. "A certain Cleon arose ambitious to oust Pericles from

his leadership. His (Pericles') oldest son was carried off by plague. Then the sister of Pericles died and then his last surviving son. When after the fashion of the time he put the funeral garments on the boy he wept aloud. Presently he himself took the contagion and died." Apparently it had been originally written: "The expedition had been broken up by the pestilence" and then later on: "The young man was carried off by the plague." Then: "There the sister of Pericles died and his last surviving son. He himself took the contagion and died." I wonder if you could tell me what authority you relied upon in dealing with that. That is Section 1 of Chapter 23?—*A.* I see Plutarch is quoted here. What is the question?

290. *Q.* I was asking you whether you could tell me from what authority you derived that part of your book?—*A.* Probably from these authorities quoted and for all this part of history the Encyclopædia was very useful.

291. *Q.* Now a word or two about Olympias. This is Chapter 24, section 2. The point of that is this. You devote about four pages to Olympias, and I also think that on the whole you would agree with me your book does not err on the side of bringing females into prominence?—*A.* No.

292. *Q.* Can you tell me whether it was that Olympias offered an attractive target for invective, or whether it was for some other reason?—*A.* I think I was carried away by the charm of Goldsmith's history. He displayed so much animus about Olympias, and perhaps I was in a fluent condition that day and wrote a little at length. Also there is something else in it, and that is, as I have disbelief in the theory of great men, and as Alexander the Great is one of the gods of this world, so to speak, I wanted to bring before the mind of the reader the real atmosphere of his beginnings. I think it would be my justification for enlarging not simply on Olympias but upon the condition of affairs in the Court of King Philip.

293. *Q.* I have had now put into my hands, if you will excuse the digression, a note of Mr. Barker's on this question of Charles V not being Charles V of Spain. Perhaps I might ask you to look at that and say whether that would cause you in any way to revise your suggestion that it was rather gratuitous on the part of Mr. Barker?—*A.* This is one of his letters.

294. *Q.* The question is whether you still think it is curious he added that note?—*A.* Possibly I have made a slip, a very natural slip, of calling Charles V Charles V before he was actually Charles V, or of making him Charles V of Spain instead of the Emperor Charles V.

295. *Q.* Now perhaps I ought to apologise for this next one (it is on page 26) because it is a small one; but this case to a certain extent is made up of small things. It is on page 476 of my edition, dealing with Italy. you have: "A large part of Southern Italy came over to Hannibal, including Capua." That I see is contrasted on the opposite side: "A large part of Southern Italy seceded from Rome. Capua was the first to give offence." Do you remember that that was a quotation which came out of any book, or in regard to which you say the similarity was due to the fact that you were describing the same thing?—*A.* The same facts are stated in different words in these two passages. I have no comment to offer upon it at all.

296. *Q.* Then there is a passage on page 27 of the mimeograph with regard to Sicily. There were a number of points made which were rather similar to those made by Miss Deeks, only the language is different. "At home men were acquiring farms by loans and foreclosure, often the farms of men impoverished by war service. They were driving the free citizens off this land and running their farms with the pitilessly driven slave labour that was made cheap and abundant. Such men regarded alien populations abroad merely as unimported slaves. Sicily was handed over to the greedy enterprise of tax-farmers. Corn could be grown there by rich men using slaves imported very profitably into Rome, and so the home land could be turned over to cattle and sheep feeding." Then it goes on to say: "The senatorial gang who were steadily changing Italy from a land of free cultivators to a land of slave-worked cattle ranchers." ?—*A.* This copy has a slight error. It is called "the sensational gang". Shall I correct it here?

297. *Q.* Yes, I think it desirable that it should be. Can you tell me anything about the origin of that passage?—*A.* I suppose I was following my authority. It sounds a little like Ferrero. I cannot give the reference. It possibly comes in the book.

298. *Q.* I do not think I have anything. It is Chapter 22, section 7. The only note on that page is a reference to Monson?—*A.* It is a reference to Ferrero. I cannot say at the present moment which of these sources I had on hand at the time, but I should think from the "senatorial gang", and so on, and "cattle ranchers", it is Ferrero who is the source there.

299. *Q.* Then there is one passage at the bottom of page 28 of the mimeograph about Sulla. Again it is rather a small point, but you give to him a somewhat familiar description; you say "Marius and an aristocratic General Sulla". Had you any particular reason for choosing that word, as opposed to "Noble patrician", or anything of that kind?—*A.* Oh, no; it was used probably for avoiding the use of the word "patrician" too often, or something of that sort.

300. *Q.* There were two or three small points on page 29; the expression "festering with discomfort" ?—*A.* A common expression.

301. *Q.* You say that just occurred to your mind as a common expression. Then again, the epithet "august" applied to the senate; that was one which just occurred to your mind. You did not derive it from anywhere?—*A.* No, I should think not.

302. *Q.* At the top of page 35 there is a passage: "The persecution of Diocletion was the crowning struggle of the old idea of the God-Emperor against the great and powerful organisation that denied his divinity. Diocletion had reorganised the monarchy upon lines of extreme absolutism; he had abolished the last vestiges of republican institutions; he was the first Emperor to surround himself completely with the awe-inspiring etiquette of an Eastern monarch". I see in your original manuscript you had the expression "to wear a royal diadem"?—*A.* I think one of my helpers said the diadem was doubtful, or something.

303. *Q.* That is why you changed it?—*A.* I think so. I think you will find "diadem" in the Encyclopædia; I do not know.

304. *Q.* Now would you look at page 42; "Western Europe broke out into a galaxy of names that outshone the utmost scientific reputations of the best age of Greece . . . One of the earliest and most splendid of this constellation is the Florentine Leonardo da Vinci" etc. Can you tell me at all what was your authority there?—*A.* You mean why I used the word "galaxy"?

305. *Q.* Yes?—*A.* Now I cannot account for it. I used it; and also the words "Europe" and "Leonardo da Vinci" were words I had to use to express my meaning.

306. *Q.* Now we have already dealt with the Canary Islands, but we have not done with Columbus. It is on page 45: "A certain Genoese Christopher Columbus began to think more and more of a voyage due west across the Atlantic. At that time nobody knew of the existence of America as a separate continent. Columbus knew that the world was a sphere . . . and he supposed that Japan lay across the Atlantic . . . This project of sailing into the sunset became the ruling purpose of his life". Can you tell me on what authority you base that passage?—*A.* Common knowledge. I should think there are 100 authorities you could call in support of that fact, big books, reference books of history, and so on. Is it an error that he crossed?

307. *Q.* No, I am not suggesting any error; the only thing is the narrative follows rather closely in order. For instance, if you look at the next page 46: "Despairing of Spanish help, Columbus sent . . . to Henry VII of England, but . . . finally in 1492 Granada fell, and then helped by some merchants of the town of Polos got his ships, three ships, of which only one, the Santa Maria, was decked". Then a little lower down: "The little expedition"—I suppose there is authority somewhere for the fact that it was a little expedition?—*A.* Yes, the fact is given in the tonnage of the ships, and so it is common knowledge.

308. *Q.* ——"went south to the Canaries, and then stood out across the unknown seas in beautiful weather". Is there an historical record as to the weather, or is that a native touch?—*A.* I say "beautiful weather" is on record. I do not think he would have got to America if he had not had beautiful weather.

309. *Q.* Can you tell me who uses that particular expression; where the fact is on record?—*A.* No, I do not know, but I should think it would have been stressed.

310. *Q.* Do you know whether it is on record what day of the week it was?—*A.* Yes, I think there was some point about that, but I forget what it was. He arrived on a Saints day, did he not?

311. *Q.* I think it was a Friday?—*A.* That is a thing that people would have noticed again and again.

312. *Q.* I suppose so, because of the superstition attached to it?—*A.* Yes. Do I say he started on a Friday?

313. *Q.* No, I do not think you do?—*A.* Why am I being questioned about this point about Friday?

314. *Q.* I was not quite sure how far the facts went?—*A.* I do not know. You are not accusing Miss Deeks of inventing the fact that he started on a Friday?

315. *Q.* No, I expect she got it from somewhere. I was rather wondering whether there was a common source; that is why I was asking?—*A.* I should think it is a common term. The books about Columbus are incredibly numerous. Almost every detail of that adventure must be worked over again and again.

316. *Q.* Did you ever refer to a book of Duruy's "History of the World"?—*A.* I do not know; I do not remember.

317. *Q.* It is one she relied upon; that is why I ask?—*A.* I do not know that. Is it mentioned in here?

318. *Q.* I do not think it is mentioned in your authorities?—*A.* I do not remember it at all. Is it an American publication?

319. *Q.* It is an American publication. Apparently you get at the bottom here the description of Columbus landing: "Young Columbus landed on the shores of the new world richly apparelled and bearing the Royal Standard of Spain." That again, may I take it, you got from ordinary books?—*A.* Yes.

320. *Q.* Do you think you got it from the Encyclopædia?—*A.* I do not know. If one had the industry one could trace every fact in this to some general accessible source.

321. *Q.* The main facts; but with regard to some of these sort of picturesque details I was not sure whether you got them from some book, or whether it was a little discourse?—*A.* No.

322. *Q.* You think that could be found in one of your authorities?—*A.* As I say, we found them in a great many authorities, these historical romances, or possibly in poetry.

323. *Q.* Then page 47: "Columbus died ignorant of the fact that he had discovered a new continent". I have no doubt that was the fact, but it might not occur to everybody to state it, unless it appeared in some book. Do you remember whether it does?—*A.* Yes. There again, it is mentioned endless times. It is always regarded as a remarkable fact, and usually people go on to explain why it is that America is not called Columbia, but America, because an ignorant explorer got to the mainland and unwittingly named a continent".

324. *Q.* I quite agree there may be some common authorities, but I wondered if you could tell me with regard to the general incident of Columbus, what authorities you relied upon?—*A.* I have not any idea at all, no; I am not a bibliographer, and in a case of that kind it is just like asking me what is my authority if I tell the story of Sir Walter Raleigh and the cloak and Queen Elizabeth. It would be incredibly difficult to make a man say who is his authority.

325. *Q.* It would, unless he definitely remembered going to a definite source for it?—*A.* Yes.

326. *Q.* I take it you do not remember going to any particular source for Columbus, or any of this description of the discovery of America?—*A.* No.

Wednesday, 19th June, 1929.

Mr. HERBERT GEORGE WELLS, recalled.

Examination for Discovery continued by Mr. NORMAN DAYNES.

Mr. NORMAN DAYNES: With regard to further letters which have been produced, we treat them the same as the others; they are agreed?

Mr. MACGILLIVRAY: They are agreed.

Mr. NORMAN DAYNES: Copies to be agreed between the Solicitors and sent to Canada. That will save a lot of trouble.

THE COMMISSIONER: I think these letters ought to be marked and sent with the Commission. It will be an agreed bundle marked as an exhibit.

(Bundle of documents put in and marked H.G.W.1.)

327. Mr. NORMAN DAYNES: Would you take a copy of this mimeograph, because there are three other passages I want to refer to. (Same handed to the Witness.) Will you look at page 58. In the middle of the page you will see an antithesis. You write: "The Puritans were done with", and then in inverted commas, "'Merrie England' was herself again"?—*A.* Yes.

328. *Q.* Merrie England was the description in the time of Henry VIII, was it not?—*A.* I really do not know.

329. *Q.* Can you tell me whether that was in any way based upon anything, or whether it was simply your own idea, to make that antithesis?—*A.* An obvious antithesis. Everybody was talking about the going of the Puritans and the return of Charles II. "Merrie England" is a stereotyped phrase. It is spelt "M-e-r-r-i-e" England usually, when it is used. I hope a comparison will be made in that matter between myself and Miss Deeks.

330. *Q.* Possibly there is a difference between the English and Canadian spelling in that matter. Now we will turn to page 68. There is a passage about Spain and the Spanish colonies: "The obstinate disposition of monarchy to march back towards past conditions was first and most particularly manifest in Spain. Here even the Inquisition was restored. Across the Atlantic the Spanish colonies had followed the example of the United States and revolted against the European great power system. Spain was unable to repress the revolt . . . At last the suggestion was made by Austria in accordance with the spirit of the Holy Alliance that the European monarchy should assist Spain in this struggle. This was opposed by Britain in Europe, but it was the prompt action of"—then apparently there is something left out—"President Monroe of the United States in 1823 which conclusively warned off this projected monarchist restoration. He announced that the United States would regard any extension of the European system in the Western hemisphere as a hostile act." Then I think that is the end of the passage. Would you

In the Supreme Court.

Defendants' Evidence on Commission.

No. 15. H. G. Wells. Examination for Discovery—*continued.*

tell me from what source, if any, you got that?—*A.* Probably the Encyclopædia Britannica; ordinary history. This is common stuff in any historical text book.

331. *Q.* Now page 77. Now we come to anticipations of the future, Chapter 41: "Our true state must now be this nascent Federal world state to which human necessities point . . . Nationalism . . . must follow the tribal gods to limbo . . . there has to be a great process of education by precept, by information, and by experience. For a world law under a world government . . . the essential task . . . is an educational task." That, I take it, is simply your own view?—*A.* That I had written repeatedly during the course of the war; you can find articles, pamphlets and books of mine in 1915 and 1916 onwards. If Miss Deeks claims that any of that I derived from her, she has to show that she had seen nothing of mine before her manuscript began to be written.

332. *Q.* Then again on page 78: "The weaving of mankind into one community. The community to which we may be moving will be more mixed." ?—*A.* See anticipations 1900 and onwards.

333. *Q.* That again, you have done before?—*A.* Yes, my books.

334. *Q.* I think you have already told me, but I would like to make quite sure; This book of yours, the Outline of History, has in fact had great success?—*A.* Yes, it had considerable success.

335. *Q.* It sold very largely in this country and in the United States and in Canada?—*A.* Yes. Are you asking me when I first heard of Miss Deeks.

336. *Q.* I have already asked you that?—*A.* No, I think you omitted that.

337. *Q.* If I have omitted it, I am quite prepared to ask it, but I certainly had a note to ask, and I thought I did. Perhaps you would tell us when you first heard of Miss Deeks or her works?—*A.* Well, I first heard of her in press cuttings a few years ago, when she began to make these extraordinary charges against myself and other people with whom I was associated.

338. *Q.* That was before the Writ in this action?—*A.* Yes; it was press cuttings.

339. *Q.* I rather fancy that we did mention it?—*A.* You have not asked me if I saw the Web. I would state on oath, with all the honourable people who have stated on oath, this story of the Web coming over here and my seeing it is absolute imagination.

340. *Q.* As far as you know (you can only speak of your own knowledge) you never have seen the manuscript of The Web?—*A.* Never.

341. *Q.* What the other honourable people have seen, you cannot tell of your own knowledge?—*A.* But you have had their evidence.

Mr. ELLIOTT: This is the Examination of Mr. Herbert George Wells by Mr. McGillivray:

Evidence of Herbert George Wells—On Commission.

Mr. HERBERT GEORGE WELLS, Sworn.

19th June, 1929.

Examined by Mr. McGILLIVRAY.

Q. I first want you to identify this. (Handing document to the Witness.) Is that the original manuscript of your book the "Outline of History"?—*A.* This seems to be the manuscript, yes; this seems to be the first writing of the Outline. What you have here is either the original manuscript or a first typescript made simply for revision and correction.

Q. Is that the form in which it is first completed? Is that the form in which it first took shape as a complete work?—*A.* Yes, this is the first finished manuscript.

Q. Was it in that form that it went to the printers?—*A.* I do not remember. No, it was not in this form. What happened was that this was typewritten in multiple copies. Those copies were sent to the collaborators, Mr. Barker, Professor Gilbert Murray, Sir Ray Lankester, and those whose names I have cited.

Q. Have you one of those typed copies here?—*A.* Yes.

Q. I just want you to identify the form in which it first went to the printers?—*A.* It probably did not even go to the original printers in this form; it probably went as a typed copy of this.

Q. What actually went to the printers would come back to you with the proof?—*A.* All this material, after vetting by my advisers, and that was practically all that happened to it.

Q. Then it was typed, and then went to the printers?—*A.* Yes.

Q. Then it would come back to you with the first proof?—*A.* It would come back as galleys.

Q. Has that been preserved?—*A.* No, I should think most of it has been burned.

Q. Have you any fragments of it?—*A.* I do not know. I suppose a search of my cupboards and lockers might exhume some more of this sort of thing.

Q. What you have now before you is the matter as you finished it before it was typewritten?—*A.* What is here, so far as it is complete, is the original manuscript.

Q. As you finished it, and before it was typed to be sent to your collaborators and to the printers?—*A.* Before it was typewritten.

The COMMISSIONER: This manuscript is already in evidence, but I understood it was sent over by the Court.

Mr. McGILLIVRAY: Yes, that is already in evidence.

The COMMISSIONER: In returning all this material and some quite substantial books, I hope it is agreed I should not have to send them by post. I will have to send them by express or parcel delivery.

Mr. NORMAN DAYNES: I agree to that.

Mr. MCGILLIVRAY: Is there any exhibit mark upon that manuscript?

In the Supreme Court.

Defendants' Evidence on Commission.

No. 15. H. G. Wells. Examination-in-Chief—*continued.*

The COMMISSIONER: I have not seen one. It is the original manuscript. It was sent over to me, I understood, by the Court.

Mr. MACGILLIVRAY: At anyrate, what is before Mr. Wells now is the manuscript that has been sent over here with the Commission from Canada.

Mr. NORMAN DAYNES: I am told it never was made an exhibit. I do not know whether it is convenient for it to be made an exhibit.

Mr. MACGILLIVRAY: If it is not, I think it had better be.

(Whole bundle of manuscripts and typescripts put in and marked Exhibit H.G.W.2.)

Q. That book was published, I think, by Messrs. Newnes under an agreement which you made with them and which I think we have in the correspondence. They published it first in fortnightly parts, the first of which was published on the 22nd of November, 1919. Is that correct?—*A.* Yes.

Q. We have some of the fortnightly parts here. We have not a complete set of these. Are these a number of fortnightly parts as the book was first published by George Newnes, Limited?—*A.* Yes, that is so.

(Six parts put in and marked exhibit H.G.W.3.)

Q. Having published them in that form, did Messrs. George Newnes bind these parts up in two volumes?—*A.* Yes.

Q. Are these the two volumes containing the bound parts? (Handing exhibit F.H.N.1 to the Witness).—*A.* Yes.

Q. On the 31st of August, 1919, you made an agreement with the Macmillan Company of New York for the publication of this book?—*A.* I believe so.

Q. They published it in America about the same time, or shortly after the serial publication here began?—*A.* Yes, I think there was some preliminary printing to secure copyright.

Q. I think we had better identify a copy of the American edition. Is that a copy of the American edition?—*A.* Yes, that is the first American edition.

Q. Is that substantially a reprint of the Newnes edition?—*A.* Yes. The alterations are what are called literals, and small matters of dates and facts.

Q. Small author's corrections?—*A.* Yes, mostly the result of letters that were written during the serial publication.

(Book put in and marked exhibit H.G.W.4.)

Q. On the 14th January, 1920, I think you made an agreement with Cassell & Company, Limited, for publishing the book in this country in volume form?—*A.* Yes.

Q. And they published it in the form now produced?—*A.* In a single volume.

The COMMISSIONER: We have already exhibit F.N.1. Do you want them both?

Mr. MACGILLIVRAY: Not if they are the same.—*A.* This is the first edition, 1920 (Indicating F.N.1); "First published September, 1920. Reprinted February 1921". This is a reprint. It is from the same plates; it is exactly the same.

Q. Then I do not want the second one put in. That is the original Cassell edition and was published in September, 1920?—*A.* Yes.

The COMMISSIONER: It says: "Reprinted February 1921"?—*A.* That is the second impression.

Mr. MACGILLIVRAY: I think you made another agreement later on, with Cassell & Company, Limited?—*A.* Yes, we revised our terms in some way.

Q. That was the 20th April, 1925?—*A.* Yes.

Q. That was an agreement for the publication of a revised edition?—*A.* Yes.

Mr. MACGILLIVRAY: I thought somebody referred to it.

Mr. NORMAN DAYNES: I did refer to it in one respect, in regard to the title?—*A.* The 1925 edition is in two volumes, and is illustrated.

Mr. NORMAN DAYNES: I do not think the 1925 edition is really material.

Mr. MACGILLIVRAY: A revised edition was published in 1925 under that agreement, and it was first published in fortnightly parts, published serially, and then the parts were afterwards bound up in volume?—*A.* Yes.

Q. Would you define in a few words the general idea or scheme of this book, the "Outline of History"?—*A.* The idea was to present history as a universal process and to detach it as far as possible from nationalist obsession.

Q. Was the germ of this idea in your mind at quite an early time in your career?—*A.* Yes, I had thought of some such sketch of history, but the form of the "Outline of History" only became clear in my mind in 1918 as a work that I had to undertake.

Q. Is there a similar idea expressed in any of your previous publications?—*A.* Yes, I think the idea is constantly cropping up, the idea of a continuity of historical process.

Q. Can you mention something?—*A.* I think in "The Undying Fire" you may find a reference.

Q. When was that?—*A.* I forget the date of "The Undying Fire"; I think it was during the war.

Q. "The Time Machine"?—*A.* "The Time Machine" shows I was obsessed with the past and future. That was done in 1893.

Q. Then there was a book which you published, "The Sleeper Awakes"?—*A.* That was a forecast of the future. That must have been done rather later, about 1897 or 1898.

Q. Then there is a book called "Anticipation"?—*A.* That was done at the beginning of the new century.

Q. You get the same kind of idea in that?—*A.* Yes.

In the Supreme Court.

Defendants' Evidence on Commission.

No. 15. H. G. Wells. Examination-in-Chief—*continued.*

Q. I think you were concerned in certain actitities during the war which rather impressed this idea upon your mind?—*A.* Yes.

Q. Would you say what these were?—*A.* I was very keenly interested in the possible outcome of the war. At the invitation of Lord Northcliffe I worked for a time with him at Crewe House in the Enemy Propaganda Department. That increased an interest I already felt in the activities of the League of Nations Society. I became active in the League of Nations Society, and was on its committees. We developed the propaganda and the idea of a League of Nations generally on the double basis of Crewe House and the League of Nations Movement. Then I realised the necessity that there was, before this idea could become effective, for a common historical basis in the place of the nationalist ideas which I found shaping the mass of almost all the people I had to discuss these things with. Then I suggested that we formed in relation to the League of Nations Society a research department in which we studied various aspects of the League of Nations idea. I suggested to various colleagues of mine in that movement the necessity of having a revision of school books in order to alter the mentality of the European people towards war and peace. Among the people, I consulted Gilbert Murray, William Archer, and various people of that sort. I was talking abundantly about the idea. Finally I realised that if the thing had to be done, and done in reasonable time, the best thing was not to ask other people to do it, but to do it myself. I thought of a school book, I thought of a popular publication; my mind fluctuated a good deal about the form that it had to take. I found there would be great difficulties in beginning the thing through the school books.

Q. Perhaps you could fix the date to some extent by the time when you left Crewe House. Can you tell us when that was?—*A.* I think I had my little difference with Lord Northcliffe in May or June of 1918.

Q. Before that, had you formulated in your own mind a definite scheme for writing this book?—*A.* Before then I wanted this change of front, so to speak, towards the international question determined by books, or a book, but I had not yet thought it necessary to undertake this very considerable labour myself.

Q. Again just to fix the date as far as possible, I refer you to a letter written to you by Professor Canby, dated the 16th July, 1918. Do you remember that letter?—*A.* It was quoted, yes. I do not remember it very clearly.

Q. This is what he says:

> "I cannot but feel as the result of our discussion at the Reform Club last night, that an admirable and highly useful result would be an article by you on (for example) 'How American History should be taught' in a time of crisis, which would serve, in eighteenth century fashion, as a prospectus of the book of which we talked."

Can you tell what is the book of which you talked?—*A.* That was the idea of a sort of—what shall I say—standard history from the new point of view which could be used as a sort of school book, and a source of ideas.

Q. " The book of which we talked "; was that a universal history of mankind?—*A.* Yes, a history of mankind is one great adventure from its first beginning.

Q. Was it to embody the idea, or scheme which you tell us is the central idea of the scheme of the work as it is now published?—*A.* Yes.

Q. Can you tell us when you first began to write the book?—*A.* I was probably making rough drafts, and that sort of thing, about that time. As soon as I began to think of it as a work that I had either to do myself or to do mainly, I should have made schemes.

Q. What form did the first writing take?—*A.* The form of the first writing is probably that manuscript. I think you have the manuscript of the earlier chapters.

Q. Which you identified?—*A.* Yes.

Q. Did you write on consecutively?—*A.* Yes, it went straight on, when once we began.

Q. You had begun writing that soon after the date of this letter?—*A.* Yes, I was probably beginning to draft it in various forms, and finally to begin writing. I possibly wrote an introduction first—it is quite conceivable—somewhere between July and, I suppose, September–October.

Q. I want you to look at Miss Deeks's manuscript. (Exhibit 1 of the Plaintiff's handed to the Witness)?—*A.* This is a typescript.

Q. You have before you now Miss Deeks's manuscript?—*A.* Yes. This is the first manuscript.

Q. You have now what is produced as Miss Deeks's manuscript?—*A.* Yes.

Q. Did you see that manuscript during the time you were writing your book?—*A.* I see it for the first time now.

Q. Did you see anything that might be a copy of that manuscript, or any part of it?—*A.* No.

Q. What were the sources to which you went for the historical facts and information which you put into your book?—*A.* A great many books are noted in the footnotes, and so forth, of " The Outline of History ", and the general terms of the whole available historical literature.

Q. Are these among some of them: the Encyclopædia Britannica?—*A.* That was very useful in the early part.

Q. Breasted's " Ancient Times "?—*A.* That was very suggestive.

Q. Robinson's " Medieval and Modern Times "?—*A.* Yes.

Q. Winwood Reade's " Martyrdom of Man "?—*A.* That I had read long ago. I do not remember re-reading it for the " Outline of History," but it was a thing which I knew.

Q. You had the contents of it in your mind?—*A.* I had the contents of it in my mind.

Q. F. S. Marvin's " Living Past "?—*A.* Marvin is one of my colleagues on the League of Nations committees, and we discussed this idea of a history, but I was very familiar with his work.

In the Supreme Court.

Defendants' Evidence on Commission.

No. 15. H. G. Wells. Examination-in-Chief—*continued.*

Q. Oscar Browning's "General History of the World"?—*A.* That I do not think I knew until afterwards; Mr. Oscar Browning sent me the book when he saw my history appear.

Q. That was not one?—*A.* No, I do not remember using that at all.

Q. Helmolt's "World History"?—*A.* Yes, that I had in my library.

Q. "The Historians History of the World"?—*A.* No. I knew of that, but I did not possess it.

Q. Did you refer to it?—*A.* I may have referred to it for a date or so, but I made no extensive use.

Q. You may have made some use?—*A.* Yes.

Q. Ratzel's "History of Mankind"?—*A.* Yes, a very good book.

Q. Ellen Churchill Semple's "Influence on Geographical Environment"?—*A.* Yes.

Q. H. S. Osborn's "Origin and Evolution of Life"?—*A.* Fairfield Osborn, do you mean? I used Fairfield Osborn's works on Primitive Man. I do not know the title of the book.

Q. Church's "Botanical Memoirs"?—*A.* Yes, and so on. All the names noted in the Newnes edition; all the titles noted in Newnes edition of the "Outline of History" were used by me for reference.

Q. All these were sources which you used?—*A.* Yes, they are all sources.

Q. In addition to these did you have any other source of a written or printed character?—*A.* No, none at all. For example, I had a little memorandum by Ray Lankester, and that sort of thing.

Q. Did anyone supply you with any extensive collection of information in the form of manuscript?—*A.* No, I collected my information myself. I had no summaries made; there was no accumulation of material.

Q. You employed no hack writers?—*A.* No hack writers at all; no.

Q. From whom did you get your information in the form of notes?—*A.* At that time the literature on early man, pre-historic man, was in a very vague state, and it was necessary to have it cleared up by consulting one or two people. I had no notes from Lankester, I had communications; but I think they were verbal communications from Sir Arthur Keith, and I had a good deal of talk with Sir Harry Johnston, who was a very active-minded man and keenly interested in archeology.

Q. Were these notes of information which they gave you after you had discussed the matter with them?—*A.* Yes.

Q. As the result of your discussion?—*A.* As the result of the discussions.

Q. And inquiries which you made?—*A.* Yes.

Q. You spoke of Sir Ray Lankester. Do you know where he is at present?—*A.* He is an old gentleman of over 80, and he is ill, and he lives in Chelsea.

Q. As far as you know, it would not be very convenient for him to come here?—*A.* He must not be pestered in this business, no.

Q. You mentioned Sir Harry Johnston?—*A.* Sir Harry Johnston is dead.

Q. Then some correspondence you had with Professor Gilbert Murray?—*A.* Yes, a considerable amount.

Q. What assistance did he give you?—*A.* He discussed the thing; he was very helpful, and he read the typed copies before press; he made comments on those, and, as the Newnes edition witnesses, we sometimes differed about various questions of value and importance, and it took the form of controversial footnotes.

Q. Again, whatever you got from him, was it either in the form of verbal information or notes which were the result of discussions and inquiries?—*A.* Yes.

Q. And these revisions of the proofs?—*A.* Yes.

Q. Do you know where Professor Gilbert Murray is?—*A.* No, I do not; Oxford, perhaps, or Geneva. He is a very active man; he goes to and fro.

Q. Professor Ernest Barker; I think he is one of your collaborators?—*A.* Yes.

Q. Does the same apply to him with regard to the information and assistance which he gave you?—*A.* I was with Barker at Oxford quite early in 1918. I had discussed the thing with Barker in 1918, and at my invitation he also accepted the job of reading over the typed copy before press.

Q. Does the same apply to him: that any information or notes which you got from him were the result of discussions?—*A.* Were the result of discussions. The original thing, so to speak, was the typescript, and on that he made his comments. You will find we differed about Napoleon and one or two other matters.

Q. Then Sir Richard Gregory we have heard this morning?—*A.* Yes.

Q. You heard his evidence?—*A.* Yes, I heard his evidence.

Q. Was that correct?—*A.* Yes.

Q. You corroborate him?—*A.* Yes.

Q. I think you told us you had never heard of Miss Deeks, or of her manuscript, until the letter written by the Solicitors in Canada to your publishers was sent on to you? That was a letter Messrs. Newnes received?—*A.* There is no palæology here at all. May I look through this (indicating Plaintiff's Exhibit 1)?

Q. Will you please answer the question? Was it the first time you had heard of Miss Deeks and her manuscript?—*A.* When?

Q. When you received that letter?—*A.* I had a press cutting about somebody who was claiming, I think it was, 500,000 dollars from me on account of an infringement of copyright. That was an American press cutting, and after the manner of American press cuttings it recurred. I did not expect to hear any more of the lady.

Q. That is some time in 1925?—*A.* Yes, somewhere about 1925. I made no note of it.

Q. About the same time, was it, that you got a letter which was written by Miss Deeks's Canadian Solicitors to Messrs. Newnes?—*A.* Yes. When

In the Supreme Court.

Defendants' Evidence on Commission.

No. 15. H. G. Wells. Examination-in-Chief—*continued.*

did that come along. There again, I made no note because the claim seemed to me to be absurd, and I thought it would die out.

Q. I just want to refer to one or two of your letters and the letters to you on the point when you first began to write this book. Will you take the correspondence? (Handing same to the witness.) On the first page of that bundle there is a letter from Sir Frank Newnes to you dated the 13th November, 1918. When he refers to " our conversation at the Club," with regard to the History of Mankind, " I have since laid the scheme before my colleagues," can you remember . . . ?—*A.* What is the date of that letter?

Q. The 13th November, 1918. Can you remember how far your book had progressed at that date?—*A.* It was probably going on then; it was probably in a state of not typescript but manuscript. There may have been the earlier parts, an important feature like the fossil history of life before man; that may have been written at that time.

Q. Although you had written a great deal of it at this time, as you say, it probably was not in a condition to be shown to your publishers?—*A.* It was probably untidy manuscript. You have my manuscript in evidence and it is obviously manuscript extremely difficult to read. The examining Counsel has experienced that.

Q. I see Sir Frank goes on to say: " I should like to see you again and go into more detail and endeavour to put the whole thing in a more concrete form." If you refer to the next letter of the 5th February, 1919, there he says in the third paragraph: " When I last saw you, you informed me you would soon have about 50,000 words ready for us to see?"—*A.* I think that must have been most of the early part, before man appears, and possibly the early man; I forget. What happened was that I promised it to Sir Frank. As he was away from London attending to his military duties, that manuscript was sent to Grierson and to Lord Riddell. I had a conversation with Grierson and Lord Riddell after seeing this, a very early conversation, and I rather think that——

Q. We cannot have that, Mr. Wells, but does this letter enable you to remember to what stage your work had progressed at this time?—*A.* I should think 50,000 or 60,000 words probably existed in manuscript, and probably my wife was making the first typescript of that manuscript as I produced it and handed it over to her.

Q. On the 13th February Mr. Grierson wrote to you?—*A.* Yes.

Q. He says: " I was under a misapprehension. Somehow I had gathered from Sir Frank Newnes that a large part of the book was ready, and it was because of that I thought it would be good if we could have it to start off in the proposed new paper "?—*A.* There is a preceding letter.

Q. Yes, your letter on the previous page: " I am generally willing in the matter of the History of Mankind, but I cannot have a publication this autumn. If spring will not do, then next autumn must "?—*A.* Yes. I wanted it vetted.

Q. Sir Frank seems to be rather dissatisfied with that and thinks you have not got as much ready as he expected. Do these letters give you any indication or help you to remember how far you had progressed then?

—*A.* How far, no; the writing went on continuously through 1919, and was probably finished early in 1920. I do not know; the part publication had appeared before the writing of the latter part had begun.

Q. As you have told us, the writing had commenced as far back as the end of July?—*A.* The drafting was beginning in July or August, 1918, yes.

Q. On the 7th May you wrote to Sir Frank Newnes: "You will get in four or five days' time duly registered and consigned to you a special copy of the Outline of History of which I want you to take the utmost care"?—*A.* Yes, that is it; now it is taking shape.

Q. Does that help you to remember when it was completed?—*A.* No, it was not completed then. That was the opening portion, probably going up to the fallen empires, possibly not much beyond that. By that time the thing is taking form, so that the vetting is coming in and the illustration is coming in, and so on.

Q. You were still continuing to write it at this time, and you were sending your typescript copy to your collaborators?—*A.* Yes, that is it.

Q. Then I will refer you to a letter of the 16th August, 1919. That is a letter from your wife to Mr. Grierson?—*A.* Yes.

Q. There she says: "I am sending with this the first five chapters of the 'Outline of History'"?—*A.* Yes.

Q. Does that help you to remember when you finished the writing?—*A.* By that time a large part of the work must have been in various stages of completion. The early part had been vetted and gone through and was ready for the printer. The later parts were probably in various stages of completion, either the first type or the multiple type, or under correction after the comments of the authorities.

Q. Then you had a good deal of correspondence with Mr. Brett of the American Macmillans. There is a letter from you to Mr. Brett dated the 25th August, 1919. You will see a sentence in that where you say: "I am nearly through with the 'Outline of History'"?—*A.* Yes, probably before the end of 1919 the whole of the manuscript, the first draft, the written part, was done.

Q. As we know, the first part was published on the 22nd November, 1919?—*A.* Yes.

Q. Before you had notice of the Writ in this action was any demand made upon you for delivery up of copies of your book, or anything of that kind, or any complaint?—*A.* From the Plaintiff?

Q. Yes, from the Plaintiff?—*A.* No, nothing of the sort.

Q. The first you heard from the Plaintiff was notice of the Writ?—*A.* Yes. She made no inquiry whatever to find out what it was, or anything about it; she began with the Writ.

Q. You told us that you sent your manuscript to the publishers and then it came back. Did the publishers make any alterations, or add anything to your book?—*A.* If I may use an idiom, I would have liked to have caught them at it. It is not done; no.

Q. And it was not done?—*A.* No.

(At 4.50 p.m. Wednesday, June 4th, 1930, Court adjourned to Thursday, June 5th, 1930, at 10.30 a.m.)

H. G. WELLS.

In the Supreme Court.

Defendants' Evidence on Commission.

No. 15. H. G. Wells. Cross-examination.

Cross-examined by Mr. NORMAN DAYNES.

Q. I do not want to go over all the ground we have been over already, but there are a few further questions I would like to ask. First of all with regard to the press cuttings. I think you told me at the end of the examination for discovery that several press cuttings had been brought to your notice two or three years ago. Is that right?—*A.* No, I suppose it was before we had the Writ. I suppose that was 1924. I have press cuttings from America as an ordinary business way of keeping myself informed.

Q. Can you produce any of those press cuttings?—*A.* No, not one.

Q. It is not your habit to keep them?—*A.* I do not keep them, no.

Q. Can you remember any one except the 500,000 dollar one that you mentioned to Mr. Macgillivray?—*A.* I should think, like paragraphs of that sort, it got copied and repeated, and so on, with variations.

Q. Had you any means by which you could identify them with Miss Deeks?—*A.* Yes, her name was mentioned.

Q. Then you had heard of Miss Deeks's name before the commencement of this action?—*A.* Before the Writ, yes, and before I heard from Newnes, I think it was. It was Newnes who first received the document, I think.

Q. There was a letter to Macmillan & Company?—*A.* I do not think Brett bothered me with that.

Q. That was not brought to your notice?—*A.* No, he did not want to trouble me; he did not think it was important.

Q. This is a letter written by, I think, the Solicitors: "On the instructions of Miss Florence A. Deeks of this city we issued a writ against your Company and Mr. H. G. Wells for an injunction restraining the publication of 'The Outline of History' containing a reproduction in whole or in part of our client's unpublished literary composition known as 'The Web' and for damages for infringement of her proprietary rights therein. Our client advises us that her manuscript was submitted to your Toronto representatives," and so on. "In the ordinary course we would have written you before actually issuing the writ, but as there was a possibility of our client's claim being barred by the Statute of Limitations if the action was not commenced at once, this explains why the usual course was not adopted in this case." Do you say that Messrs. Macmillan never bothered you with that at all?—*A.* I do not know. He probably thought it was not a very serious claim, and did not mention it. I do not know; I really do not know. I cannot answer this question with any exactitude; I forget. But I heard about this claim from either Newnes or Macmillans.

Q. I think you got the Writ on the 25th October, as a matter of fact, and I think you wrote to the Solicitors on the next day?—*A.* I got a Writ, yes.

Q. The letter to Macmillans was a fortnight before that?—*A.* What letter to Macmillans?

Q. The letter I have just read to you, the one saying they had issued a Writ against your Company and Mr. Wells for the injunction; and now I am asking you whether you can be quite sure they did not bring it to your notice?—*A.* I do not know if they did. During that time I had certain things which very much occupied my mind.

Q. May I put it in this way : You are not prepared now to say definitely that they did not?—*A.* No, I cannot say whether they did or did not. Miss Deeks's writ arrived on a day that was rather a tragic one for me.

Q. I do not want to pursue anything that brings painful recollections. I will go off to another subject, which is this manuscript that has been produced?—*A.* Yes.

Q. I see it consists partly of penmanship which, if I may say so, is very neat, but which, as you see, is not very easy for one who does not know it to read quickly, and partly of type. Is this the type that was done by your wife?—*A.* That was generally done by my wife.

Q. Can you tell me whether it was done from your dictation?—*A.* No, from my manuscript.

Q. It was not in one sense the first manuscript?—*A.* No, it was very often written in pencil, but I never dictated.

Q. You do not think any of it in any way represented passages that you had asked her to copy out for you to work upon, or anything of that kind?—*A.* No, I think I seem to remember copying the passages of Herodotus, but as far as I know he knew nothing of Miss Deeks.

Q. I was wondering whether there were one or two things that were done like that, and I will tell you why. Part of this which is in type does not seem to me (I have been looking at one or two pages of it) to be quite so crisp and pointed as some of it in your own writing, and there is a long sentence here, the Athenians. It does not seem quite like you. (Handing manuscript to the Witness)?—*A.* I hardly like to name him, after your comment; but it looks to me uncommonly as though I had J. Wells under contribution, a very useful book; no connection of mine. This looks like mine. I think it must have been written from my manuscript. I think it was a duller moment, if you think the style is different.

Q. I take it some of the typewriting may have been taken out from the work of Joseph Wells, something of that kind; but you think most of it is from your manuscript?—*A.* I should say that any such extract would have been extraordinarily brief, if at all, and I think almost always would be acknowledged. They might in some cases have been corrected and then struck out of quotation.

Q. I think you told me in the examination for discovery, but I will just make quite sure, you have not a manuscript from which this was typed. This is the earliest thing you have?—*A.* That is all I could find.

Q. Now I want to ask you one or two questions about the dates and times my learned friend Mr. Macgillivray was putting to you. I think he called your attention to a letter which is on page 52 of my bundle of the correspondence, a letter of the 5th February, 1919, which is written to you by Sir Frank Newnes. It is one in which Sir Frank says : " When I last saw you, you informed me you would soon have about 50,000 words ready for us to see. I shall look forward to reading it with the keenest interest." It looks rather as if he was under the impression that you had not then got 50,000 words ready; but I think you told my learned friend Mr. Macgillivray that impression was probably wrong, and that according to your recollection

In the Supreme Court.

Defendants' Evidence on Commission.

No. 15. H. G. Wells. Cross-examination—*continued.*

50,000 or possibly 60,000 words had been done by that time?—*A.* Yes, but there was no fair copy in typewriting; that is probably what I meant.

Q. Do you think it is possible that you could have written 50,000 words or 60,000 words in three weeks?—*A.* No, I should not think so. I should think it existed before that time.

Q. At page 57 I see you are writing to Mr. Brett on the 25th of February, 1919. Would you look first at the 11th of February? That is a letter from Mr. Grierson, who says: "I think Sir Frank said that your manuscript would run to about 250,000 words"?—*A.* Yes.

Q. Now if you would turn to the 25th of February, 1919, you will find that you are writing to Mr. Brett, and the second paragraph says: "Do not be afraid of the 'Outline of History.' It will be a fine thing. I have got, I suppose, nearly half way through it, but the later parts may become less compressible." That would be 125,000 words, would it not?—*A.* Yes; well, I have got, I suppose, nearly half way through. One was thinking of it then as about 200,000 words.

Q. On the 11th February you had it up to 250,000?—*A.* I think if you cast the words up you will find it goes very much longer. I do not think you are dealing with anything less than 350,000 here. That is how the term 'half way through' goes.

Q. That would be about 125,000?—*A.* Yes, so I take it from that letter I must have had 125,000 in manuscript.

Q. That is a little difficult to follow or understand?—*A.* No, not at all.

Q. Three weeks before you said you had 50,000 or 60,000. It looks as if you had done 75,000 in three weeks?—*A.* No, I had 50,000 to show; that is, I had it in fair typescript. There is no inconsistency there. You had it typed, and you looked it over, and simultaneously you were going on with the manuscript.

Q. You say that when you wrote your letter of the 25th February you had a good deal more done, but it was not ready for anyone to see?—*A.* This correspondence seems to show that, yes; I do not keep a diary.

Q. I think I asked you that on a previous occasion, and you told me you did not. You told my learned friend Mr. Macgillivray that on the 25th August you had got nearly through?—*A.* Yes. I must have been getting nearly through then.

Q. Nearly through would mean it would not take you very much longer to complete?—*A.* Yes, and the type was toiling behind, and behind the type was the duplicating that went out to the authorities to be vetted, and behind that came the copy for press, one following the other."

Mr. ROBERTSON: I think that is all. Sir Frank Hillyard Newnes seems to be the next witness.

(As agreed the evidence of Prof. Murray and of Prof. Barker now follow and the evidence of Sir Frank Hillyard Newnes is therefore printed at page 323.)

Mr. ELLIOTT: The next witness was Prof. Gilbert Murray, one of Mr. Wells's associates. (Reading.)

No. 16.

Evidence of Professor Gilbert Murray.

In the Supreme Court.

Defendants' Evidence on Commission.

No. 16. Professor G. Murray. Examination-in-Chief.

9th July 1929.

"PROFESSOR GILBERT MURRAY, sworn.

Examined by Mr. MACGILLIVRAY.

Q. You live at Yatscombe, Boars Hill, Oxford?—*A.* Yes, that is so.

Q. Did you advise Mr. Wells in connection with his book, the 'Outline of History'?—*A.* Yes.

Q. Did he submit certain manuscript or typescript to you from time to time?—*A.* Yes.

Q. Can you tell me about what date?—*A.* When he did it? No, I cannot remember. At the beginning; when he was first writing. I forget the date of the book.

Q. I suggest the date was towards the end of 1918 and early in 1919?—*A.* I am afraid I cannot remember the year, but I am sure I had the thing right at the beginning.

Q. Why was it that Mr. Wells consulted you in the matter?—*A.* Because he thought I had certain special knowledge of ancient history, and especially of things connected with Greece.

Q. When you assisted Mr. Wells in this way, had you ever heard of the Plaintiff, Miss Deeks?—*A.* No.

Q. Had you ever heard of any manuscript of hers of a book known as 'The Web'?—*A.* No, never.

Q. Or of any other writing of hers?—*A.* No.

Q. Did you derive any of the information which you gave to Mr. Wells from anything in the nature of a manuscript?—*A.* Nothing except my own manuscript writing sometimes.

Q. Did you supply him with any information which, as far as you know, could have come directly or indirectly from Miss Deeks's manuscript?—*A.* No, I am sure not."

Mr. SMILEY (reading):

"Cross-examined by Mr. NORMAN DAYNES:

Cross-examination.

Q. I should like to ask you one or two questions on behalf of the Plaintiff. Were your communications with Mr. Wells in this matter mostly by letter?—*A.* Almost entirely by letter; I think one might say entirely by letter.

Q. I do not suppose I have all the letters which passed between you, but I have one or two of them which have been disclosed in this action. The earliest one I have is one which is written by you to Mr. Wells, and it is written from Yatscombe, Boars Hill, and the date is the 30th July, 1919. I am not going to ask you a question until I have just told you what the letter is:—

> 'The great bale only met me the day before yesterday, and I am going through it with immense interest. I think it is an extraordinary feat to have written it, and indeed to have got hold of the

In the Supreme Court.

Defendants' Evidence on Commission.

No. 16. Professor G. Murray. Cross-examination—*continued.*

whole of human history as a unity in the way you have. I have just finished the first volume, and find it fascinating. I have got a few notes here and there, which I will send in due course, but of course most of it is out of my range. I mean, I am not in a condition to criticise.'

Can you tell me, having heard that, whether that was one of the early letters that you wrote to Mr. Wells?—*A.* I cannot be sure. The great bale seems to me the book as a whole.

Q. I think so. I wondered whether you would agree that?—*A.* I think it must be meaning the book as a whole.

Q. Especially as you refer to the first volume apparently by contrast with the other volumes?—*A.* Yes. I think there must have been a good many letters before that.

Q. Do you remember in how many instalments you received the book?—*A.* Not in the least; I do not.

Q. I think it was intended to be a book of some 250,000 words, and I think Mr. Wells told us it ran to more than that in the end. Do you remember receiving the first instalment?—*A.* I have not any notion of it.

Q. Do you keep a diary?—*A.* No.

Q. When you wrote this letter of the 30th July and you said: 'I think it is an extraordinary feat to have written it,' had you any idea how long Mr. Wells had taken over the matter?—*A.* I think he had told me beforehand, when he was going to undertake it, so that I must have had some sort of knowledge.

Q. I do not know how long you had known Mr. Wells. Had you known him a good long time before that?—*A.* Yes, I should think 20 years or so.

Q. You knew that he was doing some work under Lord Northcliffe during the war?—*A.* Yes.

Q. I think he told us he continued that down to about July, 1918?—*A.* That I could not be sure of.

Q. Perhaps you will take the date from me, because I am trying to help you?—*A.* Yes.

Q. Can you remember whether it was before, or after he gave up the work under Lord Northcliffe, that he spoke to you about the 'Outline of History'?—*A.* I could not be sure at all.

Q. I think he told us that it was after; himself, and you would not be disposed to dispute that?—*A.* No, I simply do not remember at all.

Q. That would not differ from your recollection. In your knowledge of Mr. Wells, did you make any acquaintance with his methods of work?—*A.* No, I cannot say I did. I think I occasionally recommended books for him to read, and that sort of thing.

Q. I do not want to pry too far into personal matters. Did you visit his house so that you would see him working?—*A.* No, I only met him at the Club once or twice.

Q. How long would you consider would be a reasonable time to allow a man, even of Mr. Wells's gifts, to write such a book as "The Outline of

History," as you saw it?—*A.* Well, it entirely depends upon the method. If a professional scholar were to be writing it he would take a lifetime. Mr. Wells is a rapid writer with a journalist's training, and of course does not go in for minute knowledge; does not profess minute knowledge of the details.

Q. We will take it on your conditions: Dealing with it as a journalist who has to assimilate and arrange these facts over 1,200 pages, a universal history, what do you think would be the smallest time you could reasonably expect him to do it in?—*A.* I could not possibly say.

Q. Do you think he could do it in a year?

Mr. MACGILLIVRAY: I object.

A. I do not think I could say. I know for myself I may take months and months over a very small piece of work, and I may dash off a thing in a couple of days which is much longer.

Mr. NORMAN DAYNES: Your assistance, as I understand it, was rather of the nature of revision?—*A.* Criticism, I should say, chiefly; that he wanted to pass the part about ancient Greece under the eye of someone who was supposed to be a specialist on the subject.

Q. I will accept that. It was in the nature of criticism?—*A.* Yes.

Q. It was no part of your work to supply him with any material in the rough?—*A.* No.

Q. I have a letter here dated the 17th August, 1919, I will just remind you of it. Again it is written from Yatscombe. You write to Mr. Wells and say:—

> 'Here are some more pages of cavil at your Roman part. You will understand that I pick holes because I conceive that to be my business, but that really I am full of admiration at the way in which you have grappled with such an enormous and impossible task. About my Greeks, I think part of our difference is like the difference between—in the case of a great artist or thinker—the man who knows his work intimately and the man who knows the facts of his life. I say: 'Look at those heavenly pictures or magnificent discoveries.' You say: 'Heavenly? Pooh, the man couldn't even keep his temper or pay his debts, and as for discoveries, why did the old ass not also discover the telephone when it was lying obviously in front of him?' But the real fun of history is getting into the point of view of one set of people after another: trying to understand both Zeno and Epicurus, both Cato and Censor and Vercingetorix. There is also this curious problem. Each age selects some things as important and leaves records about them and not about others. A later age thinks something else important and keeps asking questions about that, often in vain, and neglecting the information that is there. We, poor devils that we are, are obsessed by economics and class-war, and tend to go mooning through the history of, say, Italian Art or the building of the Acropolis, asking only where Leonardo

In the Supreme Court.

Defendants' Evidence on Commission.

got his paints and what wages he paid his servants, or why the workmen of the Erechthemum had a rise of wage at a particular date, and missing all that other ages have valued. Of course such a new valuation from time to time is right; that, again, is where the fun comes in. But the delusion of one's own time is the really dangerous delusion.'

No. 16. Professor G. Murray. Cross-examination—*continued.*

May I take it that you would agree with me the individual work which the particular historian contributes is very largely a matter of selection and point of view?—*A.* Yes, I should think so.

Mr. MACGILLIVRAY: Professor Murray has not been called as an expert.

Mr. NORMAN DAYNES: No, I am not going to pursue a long question, but I think that is a fair question upon the letter.

Mr. MACGILLIVRAY: I must object to him being treated as an expert.

Mr. NORMAN DAYNES: Quite; I appreciate he is not being called as an expert. I do not intend to pursue the matter at length.

(*To the Witness*): May I take it this letter is a good specimen of the sort of criticism and assistance that you gave Mr. Wells?—*A.* Yes. I am rather pleased with it.

Q. Please do not think that I am in the least bit reflecting upon it; I regard it with admiration?—*A.* That was the kind of letter I wrote to him.

Q. I see there is another letter very much about the same time, the 28th of August, in which you refer him to Marvin's 'The Living Past.' It is a book referred to in the notes considerably?—*A.* Yes.

Q. I do not think I need trouble you with the details of that criticism. It is a letter very much on similar lines to the letter which I read just now. There is another one on the 27th November, 1919, when you correct him with regard to Stoics.

> 'You evidently mistook something that I said about the Stoics and slavery. What you have written looks as if the Stoics were Greeks, and did not mind about other people being slaves. The truth was that a good many of the philsophers were slaves themselves, and the doctrine was that to the wise men there was no distinction between slave and free. They did not recognize any class difference.'

That again is in the nature of criticism. Again if I may refer you to this letter written on the 25th December, 1919, you say:—

> 'In this latter part one's criticism, such as it is, has to be on different lines. The material is so vast and most of the large facts so well ascertained that criticisms are mostly on matters of proportion and selection. And of course my equipment is nothing much,' and so on.

At this time you are dealing with a later period of history?—*A.* Yes.

Q. Louis XI and Edward IV, I see. Throughout these letters you seem to have been very much impressed with the immensity of Mr. Wells's task?—*A.* Certainly.

Q. I see there are two other letters in 1920. There is one of the 19th April, 1920, and there you come down to very modern times, because you are dealing with Grey's diplomacy. There is another one on May 28th which also deals with Lord Grey. I think I am right in saying these letters were not the only letters you wrote to Mr. Wells. I think that may be fairly clear from the nature of the notes to the book?—*A.* I think obviously.

Q. But they are a fair sample of the criticism which you gave?—*A.* Yes, a fair sample.

Q. To the best of your recollection, all the criticism was given by correspondence?—*A.* Yes, I think so. I may have met him once or twice and said something, but the serious criticism was given by correspondence.

Q. I do not know whether you have looked at this book recently, "The Outline of History"?—*A.* Not very recently, no.

Q. It has a scheme of contents. Perhaps I might hand it to you for a moment, to refresh your memory with the arrangement. (Handing H.G.W.4 to the Witness.) Having seen that, would you say whether you consider that to be an original scheme of arrangement?

Mr. MACGILLIVRAY: I object. That is distinctly treating this witness as an expert, and he is not called as such. He is called to give evidence as to certain facts within his knowledge. I object to his being asked to give evidence as an expert.

Mr. NORMAN DAYNES: I think that this has to be recollected: that this gentleman was to a certain extent in the counsels of Mr. Wells, and therefore he has a special knowledge, not merely an expert's knowledge of the way in which this book was called into being; and in those circumstances I should have thought it was a fair question in cross-examination.

Mr. MACGILLIVRAY: So far as the questions are directed to his own knowledge of how this work was compiled, I can take no objection, but I do object to the Witness being asked to give his opinion.

Mr. NORMAN DAYNES: I will ask the question in a slightly different form. You may or may not remember that Mr. Wells in his introduction refers to a number of books which have influenced him, Winwood Reade's 'Martyrdom of Man'; Marvin's 'Living Past'; 'General History of the World' by Mr. Browning; Breasted's 'Ancient Times'; Robinson's 'Medieval and Modern Times'; Helmolt's 'World History', and Ratzel's 'History of Mankind', and so forth. Do you know of any historian who has anticipated Mr. Wells in his scheme of arrangement, and from whom Mr. Wells may have derived the scheme of arrangement which you have seen in this book?—*A.* I do not think I ever noticed the scheme of arrangement much. It seemed to me to be mostly fairly obvious.

Q. You were not consulted about it?—*A.* No.

Q. As a matter of fact, it is a book which begins with astronomy?—*A.* Yes.

Q. And finishes up with politics and the federation of the world?—*A.* Yes.

In the Supreme Court.

Defendants' Evidence on Commission.

No. 16. Professor G. Murray. Cross-examination—*continued.*

Q. It traces, I think Mr. Wells said, ideas rather than nationality. I think he used some expression about free from the barriers of nationality?—*A.* I suppose that is so; I did not notice it.

Q. May I put the question again as to your own personal knowledge; Do you know a historian who has anticipated Mr. Wells in a book of that kind?

Mr. MACGILLIVRAY: I object. That is directed to his personal knowledge as an expert?—*A.* I should not have thought there was anything remarkable about it.

Mr. NORMAN DAYNES: I should submit that the question is admissible.

The COMMISSIONER: The objection is reserved for the Court.—*A.* The question is whether I know of a previous historian——

Mr. NORMAN DAYNES: ——who had anticipated Mr. Wells in this particular scheme?—*A.* I cannot think of one straight off; but the scheme did not strike me as anything unusual.

Q. I appreciate that?—*A.* If I had had to make a scheme, I should have made a scheme more or less like that.

Q. Do you know of other people assisting Mr. Wells on similar lines to yourself?—*A.* Yes.

Q. Mr. Barker?—*A.* Mr. Barker, for instance, and I rather think Julian Huxley.

Q. Mr. Harry Johnstone?—*A.* Yes, certainly.

Q. And, I think, Sir Ray Lankester?—*A.* Yes.

Q. Do you know whether they were critics, as you were?—*A.* I cannot say that I know; no.

Q. Then I will not ask you about that?—*A.* I think Professor Barker sometimes told me what he was saying. I think he wrote in much the same sort of way that I did.

Q. I want to make a few references to one or two contributions that you have made to the book. This is Macmillan's New York edition, Volume 1. (Exhibit H.G.W.4 again handed to the Witness.) I see on page 175, which is Book 3, section 2, 'G.M.', which I take it refers to you?—*A.* That means me.

Q. That is identified with a quotation: 'The Iliad as a complete poem is older than the Odyssey, though the material of the Odyssey, being largely undatable folk-lore, is older than any of the historical material in the Iliad'. Is that quotation from one of your books, or something that you have contributed?—*A.* That is a quotation from a letter, yes. Every now and again Mr. Wells took the line of simply putting a sentence in one of my letters into the book. I think you will very likely find a letter. To my knowledge I rather remonstrated with him for doing that; I would like to have revised it before it went into the book.

Q. That is probably one of the missing letters. On page 177, which is section 3 of the same chapter, I see this note about the heroic age?—*A.* Yes. That is just the same. These were sometimes quotations from

letters, and sometimes they were comments that I wrote in in the margin. They are all rather in the nature of jottings.

Q. This perhaps looks like a note you must have made on the manuscript?—*A.* Yes, I think very likely a note I must have made on the manuscript.

Q. Then page 182. That is the end of the chapter. I see there there is an interesting note: 'No Greek heroes, in Homer or the heroic tradition, ever get drunk. In the comic tradition they do, and of course centaurs and barbarians do'. That is probably a note you made on the manuscript?—*A.* I think so; I could not be sure.

Q. I see on page 215, which is section 2, chapter 17, you have a note about Helen. Talking about the stealing of the women you say: 'This is, I think, too dogmatic about Helen. True, raids on women were a real cause of war, but they were also a very favourite ficelle of fiction. A war with Troy might easily arise by the carrying off of a woman. But why was Troy destroyed six several times?' That probably again was a note which you made in the margin of the manuscript?—*A.* I think so.

Q. I think there is no further note of yours until page 284, which simply goes to the exaggeration of certain figures of the people of Ebenezer. I think 30,000 men is given. Then on page 298 there is a reference to one of your books 'The rise of the Greek Epic'. That probably was put in independently of anything your wrote?—*A.* Yes.

Q. Then on page 306, which is chapter 22, section 2, you contribute a note on the question of slaves?—*A.* Yes.

Q. On page 344 is your next contribution. That is simply a quotation from your book on ancient Greek literature?—*A.* Yes.

Q. Then page 358. There there is rather an interesting note about Aristotle: 'There is not a single sentence in praise of Alexander, no dedication, no compliments, in all Aristotle. On the other hand, he never mentions Demosthenes nor quotes him in the Rhetoric'?—*A.* Yes.

Q. Page 360 is again a quotation. Then we go on quite a long distance. At page 404 Mr. Wells quotes you. It does not purport to be your note, but he says: 'It is to be noted, says Professor Murray, that Herophilus and Erasistratus were not living in a Greek city state, but under an oriental despot'. That is at the end of a note on vivisection. Again I do not think there is any further reference to you until page 460 and page 462. Page 460, chapter 27, section 2, that is a note on the attitude of Athens, to foreigners. Apparently Mr. Wells had taken the view that Athens adopted the principle of 'tax the foreigner', and you take exception to that?—*A.* Yes.

Q. On page 462 you have a note?—*A.* Yes, it is a quotation from Haverfield.

Q. It really comes to this, that Rome was a city, and not a nation?—*A.* Yes.

Q. I think your next note, on page 484, chapter 27, section 7, was as to the intervening Scipio, who was a man of learning and high character, and died young. On page 492 you have a note on slavery and Christianity.

In the Supreme Court.

Defendants' Evidence on Commission.

No. 16. Professor G. Murray. Cross-examination—*continued.*

That is at the end of chapter 27. I think there are very few others. There is one on page 588, chapter 30, section 4?—*A.* About Paul's Greek.

Q. And his mastery of sublime language. Then the next one—and this is, I think, the last in this volume—is on page 598, where there is a long note about Rome and the Christians?—*A.* Yes.

Q. I think there are only three or four references in the other volume. I just want to remind you of them. The first reference I think is page 227, chapter 36, section 2. That is about the 17th or 18th century, being a comparison of the two?—*A.* Yes.

Q. Then I think we go to page 429. Here we get a controversy, apparently. There is a note of yours about classical education?—*A.* Yes.

Q. Page 432 is about Mr. Gladstone?—*A.* Yes.

Q. Then I think on page 510 we have a final note about the causes of the war. That is chapter 40, section 7. I think I have called attention to all the references to your criticisms in these books?—*A.* Very likely.

Q. It is not fair to ask you whether there is anything else, because you would not have had an opportunity of going through it?—*A.* Yes.

Q. As far as you recollect, is there much more?—*A.* Well, there is more in this sense. A good deal of my criticisms were in the form of suggestions that he should alter the form of a sentence, and that he should correct his own writing. I would criticise a paragraph, and he would re-write the paragraph in consequence. I cannot say how much of that there was, but naturally there was some of it.

Q. Apart from these notes which were incorporated and certain criticisms as to the language which he used, or something of that kind, in this we have the whole of your work?—*A.* Yes. I cannot tell how much is the re-writing. When you criticise a writer, he can do either of two things; he can either re-write what you have criticised, or he can put in your sentence bodily. Sometimes they do one, and sometimes the other.

Q. I appreciate that; he did one or the other?—*A.* Yes.

Q. I think my learned friend Mr. Macgillivray has already asked you as to whether you had heard of Miss Deeks at this time, and you said you had not?—*A.* No, I had not.

Q. Perhaps I ought to ask you about one or two other people who appear in this case. Since the war, have you been either to Canada or the United States?—*A.* I have been to the United States, not to Canada.

Q. Did you come across Macmillans in the United States at all?—*A.* I do not think so.

Q. Perhaps I ought to put this formally to you. There is Mr. Saul, who is the manager of the Canadian Macmillans. Have you ever come across him, or Mr. Button of Dents?—*A.* Not that I know of.

Q. And a Mr. Moore, of the Methodist Book Room, Toronto?—*A.* No.

Q. And a Mr. Patchet; I think he is also of Toronto?—*A.* These names are all strange to me. I cannot be certain I did not meet one of the people at some time.

Q. I am asking you whether you remember them as having come across them. Then there was a Miss Stewart, who was a Canadian stenographer who appears in this case. Have you come across her?—*A.* No.

Mr. MACGILLIVRAY: The position with regard to Professor Barker is this. I should like to call him on behalf of Mr. Wells, but I have been trying to get in touch with him. I had a letter from him of the 3rd July to the effect that he had just landed at Liverpool from Canada, and he has been extremely busy ever since. Now he is engaged as a Commissioner on the Civil Service Commission and is unable to attend before you on any day between the hours of 10-30 and 1-30, and 3 to 6. I ask now for an adjournment so that I should have an opportunity of fixing a day and hour which would be convenient for him to attend.

Mr. ELLIOTT: Then the last witness on this commission is Prof. Ernest Barker who was referred to by Professor Brett as his friend.

No. 17.

Evidence of Professor Ernest Barker.

11th July, 1929. Mr. ELLIOTT (Reading).

PROFESSOR ERNEST BARKER, SWORN.

Examined by Mr. MACGILLIVRAY.

Q. I think you live at 17, Cranmer Road, Cambridge?—*A.* Yes.

Q. Did you give Mr. Wells, the Defendant in this action, some assistance in the preparation of his work 'The Outline of History'?—*A.* Yes. Shall I tell you exactly?

Q. Please?—*A.* I think I met Mr. Wells for the first time at a Committee on a body which eventually developed into the League of Nations Union. At that Committee I remember the members discussing the value for the future development of world peace of some statement of the history of the world as a unity. I do not remember Mr. Wells saying anything at the Committee that he wished to undertake such a history, but I remember some little time afterwards—it might be a year, being then a Tutor of New College, Oxford, I had occasion on behalf of the undergraduates to invite him to come down to Oxford to speak. He came to speak. He stayed the night in College as my guest, and he then asked me if I would look through the typewritten version of an outline of history. So far as I remember, that would be in the summer of 1919. I said that I would. He sent me in successive stages the typewritten sheets of what was afterwards published as 'The Outline of History'. Stage by stage I wrote him criticisms, not on the structure of the work, but on points of detail and points of view in matters of history. I think the work I did for him must have lasted, if my memory is correct, from midsummer 1919 to the beginning of 1920, because I think I remember writing criticisms on the last sheets he sent me while I was crossing the Atlantic early in 1920.

Q. Other than those criticisms of which you have told us, did you supply Mr. Wells with any material?—*A.* None whatever. I suggested

In the Supreme Court.

Defendants' Evidence on Commission.

No. 17. Professor E. Barker. Examination in-Chief—*continued.*

books to him from which he might verify my point of view and see the error of his point of view on some matters of detail in my criticisms, but that is all.

Q. You have told us the whole assistance you gave him in the matter?—*A.* I have nothing more to add.

Q. Had you ever at that time, 1919 and 1920, heard of the Plaintiff in this action, Miss Deeks?—*A.* No.

Q. Have you ever heard of her manuscript of a book called 'The Web'?—*A.* From her I heard of it.

Q. At that time?—*A.* Not at that time.

Q. When did you first hear of Miss Deeks?—*A.* I misheard you before. I heard of Miss Deeks first when I was President of Section L, at the meeting of the British Association in Toronto, in August of 1924, when she wrote to me, and if my memory is correct, asked me if she might see me with regard to this matter. If my memory is correct—it is five years ago—I said 'Certainly,' and we did meet, and she did explain to me her point of view and told me about her manuscript. So far as I remember—it is five years ago, and nothing further happened in any way—she told me that her manuscript had been submitted to an English publisher, and that she had some idea that Mr. Wells was reader to the English publisher, or had seen it during the time when it was in the hands of the English publisher."

Mr. SMILEY (Reading):

Cross-examination.

Cross-examined by Mr. NORMAN DAYNES:

Q. I want to ask you one or two questions on behalf of Miss Deeks. I think I was told at the last sitting that you had received a letter from Mr. Wells stating his point of view?—*A.* I never received anything from Mr. Wells except one thing. I think I remember when I came back from Toronto, in 1924, writing to tell Mr. Wells that I had seen Miss Deeks, and to tell him as simply and as accurately as I could what the upshot of the conversation had been. I think I remember receiving a brief letter from him in his own hand, which I did not keep, and destroyed at once. That is the best of my memory.

Q. Do you recollect the purport of that letter?—*A.* I do not. I should be taxing my memory, and it might be my imagination if I told you anything. I can try to tax my memory if you ask me to do so, but I do not really remember the purport of his letter.

Q. If you say you do not recollect I will take your answer?—*A.* I think he did not take it seriously; that is the best of my memory.

Q. I see that Mr. Wells in giving evidence said that he had six copies of his manuscript typed, and then one copy would go to Sir Harry Johnstone, another to Professor Murray, and another to Sir Ray Lankester, and another to yourself. That I take it was the manuscript which you received, as far as you recollect, somewhere in the summer of 1919?—*A.* Yes, in the summer of 1919. I will tell you how I did it, because I remember going round, I think in August, to discuss matters with Professor Myers,

the Professor of Ancient History. I have a memory of walking in the sunshine of midsummer to his house. That is the way in which I did it.

Q. As a matter of fact there are notes by Professor Myers in this book?—*A.* Which he gave to me, and which came into the book in that way.

Q. Perhaps I can help you to this extent. I have a letter here dated May the 7th which was written by Mr. Wells, in which he says, 'You will get in four or five days time, duly registered and consigned to you, a special copy of the Outline of History of which I want you to take the utmost care.' That was dated 7th of May, 1919?—*A.* Yes.

Q. Two days later we get a reply thanking Mr. Wells 'for your letter informing me that a special copy of your Outline will be sent to me', and so on?—*A.* Yes.

Q. Is your recollection consistent with that, that the manuscript with which you were asked to deal, was probably finished somewhere about that time?—*A.* My memory is that he came to stay with me in College in the summer term which begins at the very end of April, and I think it was during the month of May he came to stay. It was then he asked me, and it was after that time that he sent me in successive stages, as I say, the typewritten version. I should think the first came to me probably in the month of July, but that is merely my memory of nine years ago.

Q. That is near enough. When you were talking to him about this 'Outline of History' did you understand that it was a finished work, or nearly a finished work? When I say 'finished' I mean the manuscript finished. I know there was a great deal of work to be done by critics upon it?—*A.* I could not exactly answer that question. All I remember is his asking me to look through the typewritten version of an Outline of History. I cannot answer whether it was finished, or he said it was finished. I remember it coming to me in successive relays. I do not think that was due to any delay on my part. I was not particularly occupied, and as far as I remember I did it at once and sent each back in a few days.

Q. In a way, it was a fairly large task?—*A.* It was.

Q. I appreciate you are an expert. It was a fairly large task?—*A.* Yes. It took me a fairly long time. As far as I remember, my memory would be that I submitted to him about 100 pages in my own handwriting. I should say as I write rather closely, probably at least 600 words on each page. I think I wrote about 60,000 words of criticism and suggestion and correction as far as I was in a position to correct.

Q. We have notes in the first edition, and there are a large number of your notes in it. Did you have much discussion with Mr. Wells about the nature of the book that he was asking you to criticise?—*A.* At the time of the meeting?

Q. Yes.—*A.* No. He merely asked me, I think in the evening of the day he spent at New College, and I just jumped, admiring him as a writer, and said 'Gladly I will read it and do my best.' There was not any discussion either on what I should do, or on any remuneration. I should like you to know everything. When the work was finished, nothing ever having

In the Supreme Court.

Defendants' Evidence on Commission.

No. 17. Professor E. Barker. Cross-examination—*continued.*

been said about remuneration, he did send me a cheque and asked me to accept it, to the best of my memory, for £100, or 100 guineas.

Q. We have had that; I think it was 100 guineas; I am obliged. Although you had known Mr. Wells as a distinguished novelist, up to that time had you ranked him as a historian?—*A.* No. My only personal knowledge of him in any way which would suggest he would venture into history was when he was on the Committee which I mentioned, which began to sit, as far as I remember, just before the end of the war; therefore some time in the summer of 1918. We did discuss, I do remember, on that Committee, this matter of producing some synthetic view of a history of the world which would be in sympathy with the idea of a League of Nations.

Q. That corresponds very much with what Mr. Wells told us. He said he had been working under Lord Northcliffe up to about June, 1918, and after that he began to think about this?—*A.* Yes.

Q. Then I think he told us in October he was thinking of getting someone else to do it, but by November he had made up his mind to do it himself?—*A.* I did not know that.

Q. Were you at all surprised at the idea of an outline of world history being written by Mr. Wells?—*A.* No, not after that service on the Committee. I do remember there was a discussion on the Committee. I was rather bitten with the idea myself, but I never started, and I could understand his being bitten. I think it was rather an interesting discussion. So far as I remember, on that Committee there was Gilbert Murray, Sir Frederick Pollock, and Sir Paul Vinogradoff. It was a good interesting Committee, and the discussion impressed me, and I can imagine it impressed Mr. Wells. When Mr. Wells did mention to me he was attempting this world history, I do not remember ever discussing it with him.

Q. It was Mr. Wells who suggested it, or the Committee?—*A.* That I could not tell you; I really have no memory.

Q. Did he tell you at all, when you were discussing it at Oxford, how long it had taken him to do?—*A.* No. It is very rapid.

Q. That is what impressed all of us?—*A.* Yes. I do not think he had read very much, if you ask me.

Q. Or as to his method of work; that is to say, sometimes when people are setting out on a work of that kind they have collected a card index, or a number of files, so that reference can be made to check it when they are writing up, and so on. Did he give you an idea of his method of work?—*A.* No. In the first proofs, the typewritten proofs, he occasionally referred to the authorities he had used, and it made me smile, because really they were authorities, from my point of view, which were rather elementary. I used to write and try to refer him to authorities that I regarded as more up to date and more thorough. I thought he had written the first draft on very imperfect reading.

Q. I think you told us—so I need not ask you again—that you had nothing whatever to do with the scheme of arrangement, or anything of that kind?—*A.* No, I do not remember even, if I may add that, criticising

the scheme in any way. My one idea was to correct him on points of detail, or points of view, where I thought he had gone wrong in his interpretation of the history.

Q. I see in his evidence he admitted, in answer to a question of mine, 'I should say there are a great number of ways,' that means a great number of ways in which a history of the world can be written—and then he said the panoramic point of view, about which I was questioning him, was one way which might have been adopted. He did not ask your advice at all as to the way in which he should frame the work?—*A.* No, not as regards the layout of the book. It just came like Minerva from the head of Jupiter, and, like a Mother Bear, I tried to lick it into shape.

Q. From the time of the meeting at Oxford, did you have any other discussion with Mr. Wells, or was it all done by notes and correspondence?—*A.* It was all done by notes and correspondence, and to the best of my memory and belief I have really only seen Mr. Wells, say, three times since then; twice staying on week-end visits when I do not remember any discussion of the History, and once at a dinner party when I happened to sit opposite to him.

Q. May I take it that very largely in these notes, but perhaps to a certain extent, as you have told us, any criticism which did not appear in the notes, we find the result of your criticism and your work?—*A.* Yes. I wish he had taken more heed of my notes; but that is neither here nor there. There is a certain amount repeated in the book, but there is a lot he just put on one side.

Q. There are a large number of notes. I do not think it is necessary to go all through them.—*A.* May I ask which edition you are using there?

Q. I will show you the edition; it is Macmillan's edition, the first of all, with the notes in. We have the Cassell's edition since. Then there was the Newnes edition.—*A.* I was only wondering when this was published. It is dated, I see, 1921. It is copyrighted 1920. The reason I ask is, as far as I observed—but I never bothered much about it—this had all gone through such changes——

Q. It has. We have the other editions here. The latest edition is the Cassell's edition, which is very heavily illustrated. Naturally I am most interested in the first edition.—*A.* The first edition, if I might mention it, which I received, was one in 24 parts which came out.

Q. That would have been Newnes, the serialisation?—*A.* Yes, that was the first I ever saw, and then he sent me as a gift, I should think it would be, Cassell's, one big volume; that one. (Indicating Exhibit F.N. 1.) That is the last I have ever seen myself, and that is the one I have myself. I mention this because I was rather grieved, if I might mention it, at the way the thing underwent changes suddenly, and there was never any consultation with the original advisers again, as far as I was concerned.

Q. I see here—I am looking at the second volume—a note of yours on page 163 which is chapter 35, section 5. You do indulge in one criticism which perhaps rather goes to what I might call structural matters. You say: 'If I were writing a history of democracy, I should deal first with

In the Supreme Court.

Defendants' Evidence on Commission.

No. 17. Professor E. Barker. Cross-examination—*continued.*

democracy in religion, which is Calvinism, founded by a great Frenchman at Geneva, and then with democracy in politics, which is the French Revolution, inaugurated by another great Frenchman at Geneva, Rousseau.' As a mater of fact I think it is true in this book there was very little about Calvinism. I do not know whether that was one of your criticisms that was rejected.—*A.* It may have been.

Q. It was one of the striking omissions?—*A.* Yes.

Q. I called Mr. Wells's attention to it at the time. Another of the striking omissions was the events leading up to the French Revolution. I do not know whether that was a matter which you criticised and which was rejected?—*A.* Again, I read these things nine years ago. I have never seen them since. I do not know where they are.

Q. I am obliged. Did you know anything at all about the publishing arrangements of the book?—*A.* Nothing whatever. I know nothing about the finance of it. I have got curiosity, but I am absolutely ignorant.

Q. I think you said that you were over in Toronto. Did you ever come across a man called Saul, who I think was the manager for Macmillans in Canada?—*A.* No, I have never had any association of any kind with Macmillans in any country, or with any representative.

Q. There are one or two other people over there, and perhaps I ought to put this formally to you. Mr. Button of Dents, Toronto?—*A.* No, I never saw any publisher, or representative of a publisher in Toronto. I have been associated with Dents over here as Editor of a library of Greek thought, but when that began I do not know.

Q. Then there was a Mr. Patchet who was connected with the matter over in Toronto, and a Miss Stewart who was a stenographer. Did you come across either of them?—*A.* No. The only person in 1924 who spoke to me about the matter was Miss Deeks. I do not remember at this minute where we met.

MR. NORMAN DAYNES: I do not think I need ask you about that.

MR. ELLIOTT: The evidence of Sir Frederick Macmillan examined by Mr. St. John Field.

No. 18. Sir Frederick Macmillan. Examination-in-Chief.

No. 18.

Evidence of Sir Frederick Macmillan.

19th June, 1929.

SIR FREDERICK MACMILLAN sworn.

(Examined by Mr. ST. JOHN FIELD.)

Q. You live at 22, Devonshire Place, London?—*A.* Yes.

HIS LORDSHIP: Was this examination prior to the dropping of the English Macmillans from the case?

Mr. ELLIOTT: No, this was subsequent. The Macmillans of England were dropped out of the case at an early stage; and then this is the Macmillans of England, the allegation being that the Macmillans of Toronto sent this manuscript to England to see if it could be used.

HIS LORDSHIP: If the English Macmillans were dropped from the case, how can you read from the Examination for Discovery?

Mr. ELLIOTT: This is not the Examination for Discovery, my lord, but this is the evidence under the Commission, taken in England on behalf of the Macmillan Company of Canada.

HIS LORDSHIP: The suggestion from the plaintiff being that her manuscript had been forwarded to the English Macmillans?

Mr. ELLIOTT: Yes, my lord.

Mr. ROBERTSON: We are not pretending at all to say how it got there, whether from Toronto or from Macmillans of New York.

Mr. ELLIOTT: I resume reading from the Commission evidence:—

"*Q.* And you are the Chairman of Macmillan & Company, Limited, of London?—*A.* Yes.

Q. For how long have you been Chairman?—*A.* Over twenty years.

Q. Do you attend regularly at the offices of Macmillan & Company, Limited?—*A.* Yes, I am there every day.

Q. Is the business under your direct control?—*A.* Yes, certainly.

Q. Was it a manuscript, or a copy of a manuscript of a work called 'The Web' by Miss Deeks, ever in the possession of Macmillan & Company, Limited?—*A.* No, certainly not.

Q. If it had been received by your company, would it in the ordinary course of business have been submitted to you?—*A.* Yes.

Q. To you personally?—*A.* Yes, it would come before me, certainly.

Q. When did you first hear of Miss Deeks' work, 'The Web'?—*A.* I never heard of it until I got a letter from Macmillan & Company of Canada to say Miss Deeks had begun an action against them.

Q. Have you ever seen the manuscript?—*A.* Never.

Q. Or a copy of it?—*A.* No.

Q. Did Messrs. Macmillan & Company, Limited, of London, have anything to do with preparing Mr. Wells's book?—*A.* No.

Q. Or printing it?—*A.* No.

Q. Or of publishing it?—*A.* No.

Q. Or of selling it?—*A.* No.

Q. I understand Mr. Wells mentioned yesterday that he did write a letter to you offering you the book?—*A.* Offering me a book, but it was not the book.

Q. Is this the letter? I think we had better produce it and put it in.—*A.* Yes, that is the letter. (Letter put in and marked Exhibit F.M.1.)"

Mr. ELLIOTT: Now, let me have that letter, Exhibit F.M.1.

Mr. ROBERTSON: It is objected to, of course.

HIS LORDSHIP: A letter from whom?

In the Supreme Court.

Defendants' Evidence on Commission.

No. 18. Sir Frederick Macmillan. Examination-in-Chief—*continued.*

Mr. ROBERTSON: From Wells to Macmillan.

Mr. ELLIOTT: The letter is dated November 1918.

" Dear Sir Frederick:

I'd like you to know of a project I have in hand. I believe it is possible to make a Universal History on lines that would be practicable for upper form teaching & I am going to write (with proper assistance) a trial School History of Mankind. I see it as a book of 200,000 to 300,000 words, with pretty copious illustrations. It will be published first as a prize book & for reading, in a fairly attractive form, but with a view (of presenting the idea of broadening the teaching of history through altering examination syllabus and the like) to adapt it to class use.

As you are perhaps the biggest school book publishers, I would like to have you thinking of the project.

Yours truly,

H. G. WELLS."

HIS LORDSHIP: What is the date of that letter?

Mr. MUIRHEAD: It is dated the 19th of November, 1918.

Mr. ELLIOTT: It is attached to the Commission.

Exhibit No. 20. Filed by Mr. ELLIOTT. Letter, dated November 19, 1918, from H. G. Wells to Sir Frederick Macmillan.

Mr. ELLIOTT (reading): " *Q.* It is offering you a School History of Mankind, I think?—*A.* Yes.

Q. And is this a copy of your reply, expressing your regret on this occasion that you could not be of assistance?—*A.* Yes, November 22nd, 1918. (Copy letter put in and marked exhibit F.M.2.) "

This is the reply, dated November 22nd, 1918:

" Nov. 22 1918

" Dear Mr. Wells,

I am much obliged to you for letting me know of your project for ' A School History of Mankind ' and for the implication contained in your letter that you would consider an offer from us to act as your publishers. I fear however that this is not an occasion on which we can be of any assistance to you.

I am,

Yours very truly,

(Signed) FREDERICK MACMILLAN."

H. G. Wells, Esq."

Exhibit No. 21. Filed by Mr. ELLIOTT. Letter dated November 22nd, 1918, from F. Macmillan to H. G. Wells.

(Reading continued):

Q. Just a word or two about the personnel of your staff. Was the present Secretary of your Company appointed in 1922?—*A.* The present Secretary, no.

Q. There is one quite recently appointed, is there not?—*A.* Yes, the other day.

Q. Was the one before him appointed in 1922?—*A.* I believe so, on the death of Mr. Foster. Mr. Foster was the Secretary before that, and I think he died in 1922.

Q. Would he be Secretary in 1918 and 1919?—*A.* Yes.

Q. He is dead?—*A.* Yes, he is dead.

Q. Had you formerly in charge of your manuscript book a gentleman called Ludbrook?—*A.* Yes.

Q. Is he alive?—*A.* He is dead, too.

Q. The manuscript book is a book in which you keep records of manuscripts received by your Company?—*A.* Yes; every manuscript is entered in there and what happens to it.

Q. The gentleman who kept it in 1918 and 1919 is unfortunately dead?—*A.* Yes. The book exists.

Q. Mr. Geikie was Mr. Ludbrook's successor?—*A.* Yes.

Q. Do you get many manuscripts submitted to you from Canada by the Macmillans of Canada?—*A.* Very few indeed.

Mr. ROBERTSON: Now, I shall read the Cross-examination of Sir Frederick Macmillan by Mr. Norman Daynes:

" Cross-examined by Mr. NORMAN DAYNES:—

Q. I would like to ask you one or two questions, and perhaps I might deal with these letters first of all. Had you, when you received this letter on November 18th, had previous business dealings with Mr. H. G. Wells?—*A.* Yes.

Q. You had published a number of his books?—*A.* Yes.

Q. And you had found those business dealings satisfactory?—*A.* What do you mean by satisfactory?

Q. On the whole, you had found it satisfactory to publish for Mr. H. G. Wells in a financial sense?—*A.* No, I do not say so at all.

Q. I must take your answer?—*A.* I do not say that Mr. Wells's books do not sell.

Q. That is what I meant?—*A.* But that is quite another matter.

Q. From a business point of view he had been satisfactory, do not you think, for you to have dealings with?—*A.* That is another point of view again. Supposing you paid more for the thing than you produced, it is not satisfactory, though it may produce a great deal.

Q. I am glad to have your answer; I wanted to know what the position was. I think you will see in a moment why I am asking you. Had you

In the Supreme Court.

Defendants' Evidence on Commission.

No. 18. Sir Frederick Macmillan. Cross-examination—*continued.*

discussed this matter with Mr. Wells personally before you wrote an answer to his letter? There were two days between. You received it on the 20th, and you wrote on the 22nd. Had you discussed it personally with Mr. Wells?—*A.* Before that?

Q. Before writing your reply?—*A.* Not between receiving his letter and writing my reply, certainly not.

Q. Had he mentioned the matter verbally to you before he wrote the letter of November 19th, 1918?—*A.* I do not think so. He may have. I often saw him, and I think he may have. In fact I think it is very likely he did say he had in his mind to write a history book for schools.

Q. Without telling you he proposed to offer it to you?—*A.* Yes.

Q. I have no doubt you had your own reasons, and I would like to have your comment upon this. It struck me for the moment as being rather a curt dismissal, if you had had previous business relations with him, of an offer by a famous author. One would have thought you would have made a few inquiries?—*A.* I do not agree. I did not want to go on with the thing. Having discussed it with my partners, I did not want to go into it for various reasons. I hope it was not a rude dismissal. I did not argue the question, if you mean that.

Q. I rather gather you are not sure whether you had any previous conversation with Mr. Wells or not?—*A.* Not about that book, but I have an idea that he did say certainly he had an idea of writing a book for schools.

Q. About this time, November 19th?—*A.* A good deal before that; some time before that.

Q. Several years before that?—*A.* I should think a year or two before that. It was very vague. He always had it in his mind to write a book. The ordinary books were not any good; he could do something very much better.

Q. I understand now?—*A.* Not about that book.

Q. Some two or three years before he had told you he would rather like to write something in the nature of a History of Mankind?—*A.* Undoubtedly he had it in his mind.

Q. He puts it up to you as a book for adaptation to class use?—*A.* Yes.

Q. Your firm have a great reputation as publishers of school books?—*A.* Yes.

Q. I am afraid I am still a little puzzled that you did not make any further inquiries into the matter?—*A.* A man offers you a book, and you say you do not want to publish it. You are not bound to publish a book because a man is a distinguished author. A publisher is a perfectly free agent. The mere fact of a man being a distinguished author does not oblige you to publish his book.

Q. I was contrasting it for a moment with Mr. Brett. I dare say you have seen the correspondence between Mr. Brett and Mr. Wells?—*A.* No, but I can imagine there was a good deal. That was a different thing.

Q. Mr. Brett was a little unwilling. He wanted something in the nature of a "Britling," which had been a great success. There follows a discussion,

and in the end Mr. Brett was satisfied it was a good thing to go on with?—*A.* That is long after this, is it not?

Q. Very much about this time?—*A.* Mr. Brett's business is quite separate from ours.

Q. I am coming to that in a moment. I was only contrasting?—*A.* He did want to publish it, and we did not.

Q. Please do not think that I am criticising your conduct in any adverse sense. I am trying to get at what happened. Are you quite sure there had been no previous discussion of this as a definite project?—*A.* Quite so.

Q. It looks to me, in a way, as if it may have been written to put a definite business seal upon a good deal of discussion?—*A.* No, that was not so.

Q. You were saying just now that of course the United States Company is quite separate from the London Company?—*A.* Quite.

Q. I understand that is also true of the Canadian Company?—*A.* Yes.

Q. But when you say 'quite separate,' I suppose you mean in a legal sense?—*A.* Certainly.

Q. But in a business sense do you mean they are separate in the sense that the people who really make the profits are different people in each case?—*A.* No, I did not mean that; some of the people are.

Q. Substantially it is the Macmillan family?—*A.* It is the Macmillan Company of London, and several members of the family have shares in these two businesses.

Q. I do not want to pry into the precise number of shares, or anything of that kind, but could you tell me roughly: Do the Macmillan Company of London control?—*A.* Certainly.

Q. They control the United States Company?—*A.* Yes.

Q. And, I take it, the Canadian Company?—*A.* Certainly.

Q. We have looked at it from the legal point of view and from the beneficial ownership point of view; now as to the direction point of view. What sort of co-ordination is there between the three Companies? Is the direction entirely separate?—*A.* As we control the three Companies, we naturally appoint our own officers of the subordinate Companies, but in practice—Mr. Brett, for instance, had a great deal to do with making that American Company. It is due to his intelligence and enterprise, and so on, that it has been a great success, to a very large extent. If you knew anything about publishing you would realise that it would be very unwise to attempt to run a publishing Company in New York from London.

Q. I quite appreciate that. I was not suggesting that?—*A.* You must get the people you can trust and let them have their own way.

Q. I appreciate that. Mr. Brett originally was probably an officer in London whom you sent out to the United States?—*A.* As a matter of fact his father was, in the first place; that is many years ago.

Q. I think that the manuscript of Green's 'Short History of the English People' belongs either to the Canadian Company or to your Company—I do not quite know—the copyright?—*A.* Unfortunately the copyright

In the Supreme Court.

Defendants' Evidence on Commission.

No. 18. Sir Frederick Macmillan. Cross-examination—*continued.*

does not belong to anybody now, because it is out of copyright, but it was published originally by our firm here.

Q. I do not know whether you have seen that there was some correspondence between the Plaintiff in this action and Mr. Saul, who at the time was the editor of your Canadian Company, with regard to approaching you for your sanction for the use by her of certain parts of Green's 'Short History'?—*A.* Yes. I have not heard of that before.

Q. That was not reported to you?—*A.* No.

Q. Mr. Saul writes in this way: "Of course you are quite aware that if your book was very much like Green's 'Short History of the English people,' our English firm would probably not sanction its publication." Then he says: "I think perhaps it would be best if you would drop down to the office some time with your manuscript and let me have a look at it." The Plaintiff handed him the manuscript. Do not you think he ought to have sent it to your English Company for approval, as it contained extracts?—*A.* I did not know it did contain extracts from Green; I knew nothing about the manuscript.

Q. May we put it in this way. I do not think we need go into the fact whether it did or did not. Assuming it turns out that it did, do not you think he ought to have submitted it to you for your approval?—*A.* If he had agreed to publish it, or wanted to publish it.

Q. Or anyhow, if somebody was going to publish something with extracts from Green?—*A.* Yes; but I mean to say it never got to that point.

Q. I am not saying you are responsible?—*A.* No; but I never heard of the manuscript. The mere fact that Mr. Saul said that and that he did not send the manuscript over, does not prove anything.

Q. I do not want to argue the case?—*A.* Certainly if they were going to publish a book which contained considerable extracts from a book of which we owned the copyright here, we should expect to be consulted first.

Q. Do you personally see any manuscript that is sent over? That would be too small a matter to bring to you; somebody at the office would see it?—*A.* Practically I see every manuscript that comes. We have at our Board meetings, which take place once a week, all the manuscripts that have come and been reported upon and to be dealt with, put before us.

Q. That is your practice?—*A.* That is our practice.

Q. They are received by some particular official whose duty it is to deal with them before they are put before you?—*A.* No, not in the least. They are only received at present by Mr. Geikie and entered into a book.

Q. Are they looked at, at the Board meetings?—*A.* Certainly; or may have been looked at previously by one of the members of the firm, one of the partners, or myself.

Q. A Director might put it in his bag and take it home and read it overnight, and give his co-Directors his views upon it?—*A.* Yes; or he might send it to somebody else to read.

Q. Some outside reader?—*A.* Yes, certainly.

Q. With regard to Sir Richard Gregory, what connection has he with Macmillans?—*A.* He is editor of "Nature."

Q. That is one of your publications?—*A.* Yes, a newspaper.

Q. Is he interested in the Company as a Director or shareholder?—*A.* No.

Q. I suppose when he writes——?—*A.* I know nothing about the correspondence.

Q. Very well, I will put this to him. I think I ought to put this formally to you. I understand that you knew nothing of Mr. Saul, the editor?—*A.* I knew such a person existed.

Q. You had never written to him, or seen him, or anything of that kind?—*A.* No.

Q. Then there is a Mr. Button of Dents, who is mentioned in the course of this case?—*A.* I never heard of him.

Q. I think there is a Mr. Moore of the Methodist Book Room in Toronto. Have you heard of him?—*A.* No.

Q. Or of Mr. Patchet of Toronto?—*A.* No.

Q. Or of Miss Stewart, a Canadian stenographer?—*A.* No.

Q. I am sorry to have to ask you, but I think I must. You knew of Mr. Wise, at any rate, who was the President of the Canadian Company?—*A.* Certainly.

Q. I think he was President of the Canadian Company in 1918 and 1919?—*A.* Yes.

Q. And it would not be possible to say that he was a man of spotless honesty or integrity?—*A.* I do not know that.

Q. I am sorry I have to put it, but I think I must: It would not be possible to say he was a man of spotless honesty or integrity?—*A.* We dismissed him, as a matter of fact.

Q. I think at the present moment he is serving a sentence for a crime?—*A.* That I do not know.

Q. Had you had complaints of his having acted dishonestly with authors?—*A.* No, I do not think we had that.

Q. Perhaps I might remind you of one or two cases to see whether by any chance you have forgotten them. For instance there was a Miss Durant who published a book called "Skyland Stars and Stories." I am instructed that she made a complaint by letter to you?—*A.* It is quite possible; I do not remember the case. About what?

Q. About his having first of all accepted her book and then having told her that he could not publish it because there was another book on the market, and then her having found out that large portions of her book were in the other book?—*A.* I do not remember the case.

Q. Then I think the result of your complaint was that the other book was withdrawn. Those are my instructions?—*A.* I cannot tell you off-hand. I do not remember the book at all, or anything about it.

Q. If you could find the letter, would you let us have it?—*A.* A letter to whom?

In the Supreme Court.

Defendants' Evidence on Commission.

No. 18. Sir Frederick Macmillan. Cross-examination—*continued.*

Q. A letter to you by Miss Durant?—*A.* Yes. A letter from Miss Durant. What was the date of it?

Q. In the year 1917 or 1918, or possibly the end of 1916?—*A.* Complaining of what?

Q. Complaining of the piracy of part of her 'Skyland Stars and Stories'?—*A.* That who had pirated it?

Q. Some other person to whom Mr. Wise referred. I am not in a position to give the name?—*A.* Complaining what then?

Q. Complaining that parts of her book had been pirated really by another author whose book Mr. Wise published?—*A.* Her book which had been published or her manuscript?

Q. I am instructed that her manuscript had been submitted to and accepted by the Canadian Company, but then the Canadian Company returned it.

Mr. ST. JOHN FIELD: I object. We are getting miles away from anything that has to do with this case. If you want to get something out of the Canadian Company you must go to the Canadian Company for it.

Mr. NORMAN DAYNES: This was a letter written to Sir Frederick?—*A.* If you want to know what I should have done, I should have referred it back to Mr. Wise. I never attempt to mix myself up in these affairs.

Q. I think I have given you enough to trace the letter?—*A.* I tell you off-hand I should not have entered into any correspondence with Miss Durant about it.

Q. There have been other cases as well of complaint, but I do not know whether they have reached your ears. Have you ever heard of the Canadian Company being accused of taking part of Mr. Raymond's 'Life of Mr. Lloyd George'?—*A.* No.

Q. Or a case of a medical manuscript? I cannot give the name of the author there?—*A.* I cannot help you there.

Q. Then I will leave it at that. I see I have one other, the case of Dr. Putnam?—*A.* No. Is he a medical man?

Q. I am told he is a geographer?—*A.* I never heard of him.

Q. Have you any correspondence at all between yourself or your London Company and the Canadian Company with regard to the 'Outline of History' or with regard to the Plaintiff's manuscript?—*A.* Certainly not; never heard of it.

Re-examination.

Mr. ELLIOTT: The Re-examination by Mr. St. John Field:—

Re-examined by Mr. ST. JOHN FIELD.

Q. I think it is only fair, as you were cross-examined about it, that you should hear the letter that the Plaintiff wrote to Mr. Saul, from the answer to which an extract was read to you. Apparently the Plaintiff on the 22nd February, 1918, wrote to Mr. Saul:—

'Dear Sir,

After a work of over three years I have just completed a short history of the world along lines upon which, so far as I know,

it has never before been written, and in so doing I have drawn rather largely for information upon your Greene's 'Short History of the English People,' and in certain places I have even quoted the direct words.'

So it was Miss Deeks saying she had taken stuff from the 'Short History of the English People'?—*A.* Yes.

Q. She says: 'Would you have any objections to this? I should be glad to let you read the manuscript and see exactly how I have written it, or if there should be anything else that you might care to have me do, and of which I may be entirely ignorant, I should be only too pleased to conform to your wishes in every respect. I now have it practically ready to submit to a publisher for reading, and I should be deeply obliged to you for a reply or for any suggestion which you might be good enough to give.' It was in answer to that letter that Mr. Saul appears to have written on the 19th March, 1918:—

'Dear Miss Deeks,

I have been absent from Toronto for the better part of two months and have only just returned. This will explain the reason why your letter of February 22nd remained unanswered. I am just now picking up the threads and among other letters lying on my desk awaiting my return I find yours. I regret very much the delay but, of course, you will quite understand. I think perhaps it would be best if you would drop down to the office some time with your manuscript and let me have a look at it.'

It appears that he had not seen the manuscript and had nothing but her own statement. Then he goes on:—

'Of course you are quite aware that if your book was very much like Green's "Short History of the English People" our English house would probably not sanction its publication. I would gather from your letter that you have not made very much use of the book, but I cannot tell properly until I have seen your manuscript. If you will telephone me I shall be very glad to make an appointment.'

In those circumstances was there anything in the world that put upon Mr. Saul any sort of duty to communicate with you?—*A.* I should have thought not; it had not reached that point.

In the Supreme Court.

No. 19.

Evidence of Harold Stewart Geikie.

Defendants' Evidence on Commission.

MR. ELLIOTT (reading).

Mr. HAROLD STEWART GEIKIE, sworn.

Examined by Mr. ST. JOHN FIELD.

No. 19. H. S. Geikie. Examination-in-Chief.

Q. You live at 24, Fairholt Road, Stoke Newington?—*A.* I do.

Q. Are you now in charge of the manuscript book of Macmillan & Company, Limited, London?—*A.* Yes.

Q. I think you have been in charge of that book since the 9th November, 1925?—*A.* That is so, yes.

Q. Your predecessor was a Mr. Samuel J. Ludbrook?—*A.* Yes.

Q. You I think were in the service of Messrs. Macmillan & Company, Limited, before Mr. Ludbrook died?—*A.* I was.

Q. And you were familiar with the Company's practice?—*A.* Perfectly.

Q. What is the practice with regard to recording the receipt of a manuscript?—*A.* It is and always has been the invariable practice to make in the record of manuscripts an entry for each manuscript received.

Q. Have you got here the manuscript book for the period from July 1918 to April 1919?—*A.* Yes, I have.

(Producing same.)

Q. Have you searched carefully through that record?—*A.* I have searched the record carefully during the period 1st July, 1918, to 30th April, 1919. I find there no record whatever of the Plaintiff's manuscript 'The Web.'

Q. Is that the book in which it would appear if it had been received?—*A.* Yes, it is impossible for it not to be entered there.

Q. There is no mention of it at all?—*A.* Not one.

Q. Or of the Plaintiff's name?—*A.* No.

Q. To the best of your belief is there any record anywhere in any sort of document in the possession of Macmillan & Company, Limited, mentioning either Miss Deeks or her book 'The Web'?—*A.* No. I have made careful search through the firm's correspondence, and there is no mention either of Miss Deeks, her work, or the manuscript of it.

Mr. SMILEY (reading).

Cross-examination.

Cross-examined by Mr. NORMAN DAYNES.

Q. Have you been in the room this morning?—*A.* Since this Inquiry started I have been here.

Q. You heard us referring to a letter (your Counsel Mr. Field read it) from the Plaintiff, asking Mr. Saul about her book and Greene's 'Short History.' That is dated the 22nd February, 1919. Probably you have seen the whole correspondence?—*A.* No, I have not, as a matter of fact. I heard the letter read just now.

Q. In his reply of March 19th, 1918, he asked to have a look at the book. Why did you begin your researches on the 1st of July, 1918?—*A.* That was the date given to me as the probable period during which that manuscript might have been submitted to Macmillan & Company in London.

Q. As far as I can see it might have been submitted to you before the end of March 1918?—*A.* I was not in a position to say whether that date was right or wrong.

Q. Have you looked at all at any period prior to the 1st of July 1918?—*A.* No. I extended it by a month myself. I think June 1st was the date given to me, but I thought I would make sure, and I went back including the previous month.

Q. Do you mean to say August 1st?—*A.* August 1st was given.

Q. And you went back to the previous month?—*A.* At both ends I did that."

His Lordship: The manuscript did not go to them until later, March 1919.

Mr. Smiley (continuing reading):—

"*Q.* May I take it with regard to the correspondence also you did not look back beyond the 1st of July, 1918?—*A.* No, the same period for both researches.

Q. That would be the 1st of July; it would be the same period?—*A.* Yes.

Q. Can you make a search for the earlier period?—*A.* Quite easily. Would you give me the exact date?

A. I should like you to make a search from, say, March 20th, 1918.

Mr. St. John Field: Why not go back to the 22nd February?

Mr. Norman Daynes: I think she retained the manuscript until March 19th. Perhaps you will allow me to glance at the book to see its general character?—*A.* Certainly.

(Handing same.)

Q. This book does go back. Would you tell me in what name you searched? Did you search in the name of Miss Deeks or Miss Weaver?—*A.* The author is always placed in the first column.

Q. Under what name? Apparently Miss Deeks wrote under the name of Weaver?—*A.* I put both names. I go by the legal name of the writer and give the pseudonym or nom-de-plume above. It is indexed under the author's real name. There is a name index. I have not it with me.

Q. You have an index?—*A.* I have at the office.

Mr. St. John Field: Mr. Daynes, may I call your attention to the fact that Miss Deeks herself has given evidence and said it was only in July,

In the Supreme Court.

Defendants' Evidence on Commission.

No. 19. H. S. Geikie. Cross-examination—*continued.*

at the end of July or the early part of August she handed the manuscript to the editor, Mr. Saul?

Mr. NORMAN DAYNES: I had forgotten that fact.

Mr. ST. JOHN FIELD: I have a copy of her deposition here. I think a search any earlier is rather love's labour lost; and that is why we went to the 1st of July.

Mr. NORMAN DAYNES: If the witness had told me that I should not have asked him.

Mr. ST. JOHN FIELD: He could not know what Miss Deeks's evidence is. It is Question 237: 'I did not know I had got to that yet. Did you send it to Macmillan?—(*A.*) I handed it to the editor here. (*Q.* 238): When did you do that?—(*A.*) That was at the end of July or in the early part of August 1918.' So apparently we did not go back before that. I do not want there to be any misapprehension about it.

The WITNESS: Then I will not search any further.

Mr. NORMAN DAYNES: No. Is that the book in which you enter the manuscripts to be considered for publication by Macmillan & Company, London?—*A.* Yes.

Q. Did you enter any other manuscript in that?—*A.* Everything that is submitted to us for publication.

Q. Supposing anything was submitted to you to say whether you objected to something contained in it as infringing your copyright, would you enter it in that book?—*A.* No, certainly not.

Mr. MACGILLIVRAY: May I mention this? There was a question with regard to the correspondence between Mr. Wells and Newnes, as to whether it was complete. We have made further search, and we have discovered further letters, and they are contained in this bundle. This is now a complete bundle down to the date when this was handed to me, of all the correspondence between Mr. Wells and Messrs. Newnes."

Mr. ELLIOTT: The next is Sir Richard Arman Gregory.

No. 20. Sir R. A. Gregory. Examination-in-Chief.

No. 20.

Evidence of Sir Richard A. Gregory.

"SIR RICHARD ARMAN GREGORY, sworn.

Examined by Mr. ST. JOHN FIELD.

Q. You live at 3, Whitehall Court?—*A.* Yes.

Q. You are a Doctor of Science of Leeds and Bristol, Doctor of Laws of St. Andrews, President of the Royal Meteorological Society, and Editor of "Nature"?—*A.* Yes.

Q. "Nature" is a scientific weekly which is published by Macmillan & Company Limited?—*A.* Yes.

Q. I think you are also Educational Adviser to Macmillan & Company Limited?—*A.* Yes.

Q. You wrote to Mr. Wells three letters which have been produced in these proceedings?—*A.* Yes.

Q. I will leave my learned friend to read them if he desires to, or to ask you about them. Did you write them as a friend of Mr. Wells?—*A.* Yes, a very old friend of Mr. Wells.

Q. When you did so, did you know whether or not Macmillan & Company had any interest in the publication of his book?—*A.* Of the 'Outline of History'?

Q. Yes?—*A.* I knew they had not.

Q. They had nothing to do with the publishing of the 'Outline of History' by Mr. Wells?—*A.* Nothing whatever.

Q. One of the letters you actually wrote in your capacity as Editor of 'Nature'?—*A.* I may have done so; I do not recollect that.

Q. I am told it actually emanates from a department called "Nature" Office?—*A.* Yes, Mr. Wells probably asked me a question. I get dozens of questions in the course of every week, and I answered him, as it was a scientific matter, from the "Nature" Office.

Q. So far as Miss Deeks is concerned, did you ever hear of her until this action was started?—*A.* Never.

Q. Did you ever see any manuscript of Miss Deeks's work?—*A.* Never.

Q. Or any copy of that?—*A.* Never.

Q. I do not know whether you have seen it now?—*A.* No, I have not seen it now."

Mr. SMILEY: Mr. Gregory was cross-examined by Mr. Norman Daynes.

"Cross-examined by Mr. NORMAN DAYNES.

Q. Do you remember when you first knew of 'The Outline of History' as a definite project which ultimately ripened into reality?—*A.* Do you mean as a date?

Q. Yes, about what time?—*A.* I think the time would be represented by the date upon my letter, because although this idea had been in Mr. Wells's head I know for many years, my letter was in reply to a request from Mr. Wells for certain information.

Q. You mean the letter of the 31st October, 1918, in which you gave information with regard to the earth and the sun?—*A.* Yes; I knew of course generally that the work had been arranged by then, but that was my first definite information about it.

Q. May I take it that when you wrote your letter of the 1st of December, 1919,—that is more than a year later—'Newnes sent Part I

In the Supreme Court.

Defendants' Evidence on Commission.

No. 20. Sir R. A. Gregory. Cross-examination—*continued.*

of your 'Outline of History' last week, and we shall be very glad to publish a short notice of it', that that is referring to "Nature"?—*A.* Yes; we had Part I, and I was going to notice it in 'Nature'.

Q. I understand that 'Nature' is one of Macmillan & Company's publications, and that you are its Editor?—*A.* Yes, that is so.

Q. But that is your only connection with Macmillan & Company?—*A.* By no means.

Q. Would you tell me in what respect I am wrong?—*A.* I was asked if I was Educational Adviser.

Q. You are Educational Adviser as well; that is interesting. We have had a letter put in to-day from Mr. Wells to Sir Frederick Macmillan dated November 19th, 1918. That was about three weeks after your first letter to Mr. Wells. It says: 'Dear Sir Frederick, I would like you to know of a project I have in hand' etc. (Counsel read exhibit F.M.1). Was that letter brought to your notice as the Educational Adviser of Macmillan & Company?—*A.* I believe so.

Q. Did you come to the conclusion that it was not suitable?—*A.* As a school book.

Q. I understand that you did not render, apart from this letter that we have read, Mr. Wells any assistance in the matter, at any rate before the book was in manuscript?—*A.* I saw the first eight chapters in manuscript of Mr. Wells' 'Outline of History'.

Q. About when was that?—*A.* That must have been shortly before my letter to him making some suggestion, I think, in regard to some of the points in the early chapters. I believe there is a letter from me to Mr. Wells about that time. We returned the manuscript and made marginal notes in some letter.

Q. Is that the letter in which you give particulars about the earth and the sun?—*A.* No, I think it is a later letter.

Q. I do not know whether we have that one?—*A.* There are three letters, are there not?

Mr. St. John Field: The first is dated 31st October, 1918. That is the one that gives some comparison of size between the earth and the sun, and so on. The next is dated the 8th August, 1919, and it says you have written a number of notes on the left-hand page of the typescript. That is the one that begins: "I have read with much interest the chapters of your 'Outline of History' returned herewith." The third is the one of the 1st December, suggesting that "Nature" will publish a short notice of Part I of the "Outline of History".

Mr. Norman Daynes: You had received the first eight chapters a little while before the 8th of August, 1919?—*A.* Yes. The Outline of History seems to be a different project from the school book of history, the History of Mankind. I am still of opinion, and in fact one knows there is no market for a book for school, because general history is not prescribed in examinations, and therefore there is no market in the schools. I do not

know whether Mr. Wells out of that first idea of a school book developed the Outline.

Q. That is what you think happened. I think Mr. Field did put this to you, but I had better get it quite definite. When did you first hear of the Plaintiff in this action, or her work " The Web " ?—*A.* I think it must have been a year or so ago; it was either in conversation with Mr. Brett, or someone, that first I heard of it. It came from the outside quite casually.

Q. I suppose you had nothing to do with Mr. Saul, the Editor of the Canadian Company ?—*A.* No, I do not think I have ever met him. I have certainly had no correspondence with him.

No. 20. Sir R. A. Gregory. Cross-examination—*continued.*

Q. Nor with Mr. Wise, the President ?—*A.* No.

Q. You probably know that Mr. Wise was not regarded as a very honest or satisfactory man, and had to be got rid of ?—*A.* Even that I did not know.

Mr. ELLIOTT : The evidence of Mr. Wells has been read, and my friend was going to read the cross-examination.

Mr. SMILEY : That is at page 34.

Mr. ROBERTSON : Mr. Wells was cross-examined by Mr. Norman Daynes.

(At this point H. G. Wells cross-examination was read in, but it has been transferred to page 238.)

(Following H. G. Wells' cross-examination here the evidence of Sir Frank Newnes was read in, but it has been transferred to page 323.)

(These transfers have been made, as agreed, in order to bring the evidence of these Witnesses into consecutive order.)

No. 21.

Evidence of Hugh S. Eayrs.

No. 21. H. S. Eayrs. Examination-in-Chief.

HUGH S. EAYRS, sworn.

Examined by Mr. MUIRHEAD.

Q. What is your position with the Macmillan Company of Canada ?—*A.* President of the Company.

Q. What position did you occupy in the years 1918 and 1919 ?—*A.* Secretary and Sales Manager.

Q. Did you have any knowledge of the Company's records at that time ?—*A.* No, not directly.

Q. Do you remember a Miss Tate who was with your firm at that time ?—*A.* Yes.

Q. She left you, I believe, in the fall of 1918 and has since married ?—*A.* Yes.

Q. Her name now is Mrs. Hopkins ?—*A.* Yes.

In the Supreme Court.

Defendants' Evidence.

No. 21. H. S. Eayrs. Examination-in-Chief —*continued.*

Q. Do you remember Miss Mercer?—*A.* Yes.

Q. What was her position at that time?—*A.* She was then Secretary to the then President.

Q. Who was the then President?—*A.* Mr. Frank Wise.

Q. Do you know the custom of the business at that time, how it was carried on?—*A.* Yes.

Q. If manuscripts came in to the firm, where would they go?

Mr. ROBERTSON: If the witness knows anything about this manuscript, of course he could give evidence.

HIS LORDSHIP: I think he could tell what the custom of the office was, it may not be worth much, but let us see what it means to?—*A.* What was your question, sir?

Mr. MUIRHEAD: *Q.* What was the custom of the office at that time with regard to manuscripts which were sent in?—*A.* They were sent directly by the Secretary of the President——

Q. What did she do with them?—*A.* According to the nature of the manuscript, she would pass it to this or that department.

Q. Take a manuscript like The Web that we have been talking about, where would that go?—*A.* That would go to the Editor of the Educational Department.

Q. Are you familiar with the record book of your firm?—*A.* Yes.

Q. Is that it? (Producing to witness.)

Mr. ROBERTSON: I object that the book, of course, is not evidence?—*A.* That is it.

Mr. MUIRHEAD: *Q.* Now, what do you personally know about the manuscript of The Web?—*A.* Nothing whatever.

HIS LORDSHIP: You spoke something about a book. What did you do with the book?

Mr. MUIRHEAD: He said that was the record book.

HIS LORDSHIP: You are not asking to put it in, at the moment?

Mr. MUIRHEAD: Perhaps I may as well put it in.

HIS LORDSHIP: Mr. Robertson objects. It is not evidence by itself. We can keep it, I suppose?

Mr. MUIRHEAD: *Q.* Do you remember being notified about the writ being issued against your firm?—*A.* Yes.

Q. Did you make personally a search for the correspondence?—*A.* I did.

Q. Is this correspondence which has been produced as exhibit 4 all the correspondence you have been able to find?

HIS LORDSHIP: That is the Saul-Deeks correspondence with addenda by somebody else—by the new editor?—*A.* Yes.

Mr. MUIRHEAD: Exhibit 4, that is in reference to the manuscript of The Web?—*A.* Yes.

Q. Have you personally made a careful search of your office for correspondence?—*A.* Personally, yes.

HIS LORDSHIP: Were you there in Mr. Saul's time?—*A.* Yes.

Q. How long before Mr. Saul left?—*A.* Two years and a half.

Q. As Secretary?—*A.* As Secretary for the latter part of that time.

Q. And Saul was the editor?—*A.* He was the Editor in Chief.

Q. Did he have any official position with the company?—*A.* No, he was Editor.

Q. He was just an employee, as you were?—*A.* Yes.

Q. You are now President of the Company?—*A.* Right.

Q. And you never heard of this manuscript?—*A.* No, my Lord.

Cross-examined by Mr. ROBERTSON.

Cross-examination.

Q. When you say you are President of the Company, it is still, I assume, consistent with your being in the service of the company as well?—*A.* Yes.

Q. Being President does not mean that you have acquired the ownership of the stock?—*A.* No, it does not.

Q. Mr. Wise was President before you for some time?—*A.* Yes.

Q. And until when?—*A.* Until February of 1921.

Q. And where is he now?—*A.* I do not know.

Q. Where was he when you last knew where he was?—*A.* He was, I think, in Kingston.

Q. Or a place called Portsmouth, near Kingston?—*A.* I believe so.

Q. Was he sent to Portsmouth because of some irregularities at Macmillans?—*A.* No.

Q. Something else?—*A.* Yes.

Q. He was discharged from Macmillans?—*A.* Yes.

Q. At about what time?—*A.* February of 1921.

Q. And there had been irregularities there on his part?—*A.* I understand so.

Q. You were there?—*A.* Yes, I was there. I understand so.

Q. Perhaps you know more about that?—*A.* No, I do not.

Q. Then, of course, your duties as Secretary at that time would not at all imply that you had the correspondence specially in your care?—*A.* No, not specially.

Q. "Secretary" meant rather Secretary of the Company in its corporate character?—*A.* Yes.

Q. How large a staff was there, approximately?—*A.* I should think then about thirty, but I am not clear.

Q. About thirty?—*A.* I think about thirty.

In the Supreme Court.

Defendants' Evidence.

No. 21.
H. S. Eayrs.
Cross-examination—*continued.*

Q. And manuscripts were received, I presume, in various ways, that is they might be handed in?—*A.* Yes, sir.

Q. And they might be sent by mail?—*A.* Yes.

Q. And, if they were big enough, perhaps by express?—*A.* Perhaps so.

Q. When the manuscript came in, you suggest that that is the sort of manuscript which would probably go to Mr. Saul?—*A.* Yes.

Q. Apparently there is not much difficulty about that here, because Miss Deeks says she took it to Mr. Saul, and he apparently got it. Then, if the common practice was followed with this manuscript, what would be done with it when it came in? Where would it be put at night?—*A.* It would be kept in the Company's vault.

Q. And the Company's vault would be the common place and the proper place for it, unless someone was working upon it?—*A.* Yes.

Q. That is where you would look for it?—*A.* Yes.

Q. And did Mr. Wise have access to the vault?—*A.* Yes.

Q. And Mr. Saul had too, of course, I presume?—*A.* Yes.

Q. And their Secretaries?—*A.* Yes.

Q. I suppose in the daytime the vault was open?—*A.* Yes.

Q. Was it open right off the main office?—*A.* It opens off a small sort of half corridor leading into the main office.

Q. And there was no one person about there on guard?—*A.* No, it was generally in the care of the Secretary of the President.

Q. That did not mean that either the Secretary or the President kept his eye on it to see who went in?—*A.* No.

Q. You have spoken of correspondence, and I presume you mean correspondence at about the year 1918 or 1919?—*A.* Correspondence in relation to this writ which had been issued.

Q. In relation to the writ which had been issued?—*A.* To the action which had been started.

His Lordship: Correspondence in the matter to which the action relates?—*A.* Yes.

Mr. Robertson: For instance, does it come down to as late as 1925, when the action started?—*A.* No.

Q. That is why I suggested the years 1918 and 1919 would be the time you searched?—*A.* I searched in 1925.

Q. The date of the correspondence that you were searching was what?—*A.* 1918 and 1919.

Q. That is what I suggested, 1918 and 1919. And how was your correspondence filed away, according to date, or according to the name or initial letter of the person to whom it was sent?—*A.* Yes, alphabetically.

Q. How extensive was your search,—every name?—*A.* No, under the names pertaining to the matter to which this action related.

Q. You looked under Miss Deeks' name, I presume?—*A.* Yes.

Q. And Mr. Saul's?—*A.* Yes.

Q. And Macmillan of New York?—*A.* Yes.

Q. And Macmillan's of London, England?—*A.* Yes.

Q. Any more?—*A.* I do not recall.

Q. That is all you meant to imply when you said you had thoroughly searched your correspondence?—*A.* Yes.

Q. For example, if Mr. Wise had undertaken to send the manuscript to Mr. Brett, addressing Mr. Brett in New York, you did not search for that?—*A.* Yes, that would be in the New York file.

Q. Supposing it was filed under "B" instead of "Macmillan"?—*A.* It would not have been.

Q. Have you anybody of that kind down in your office, who never makes mistakes?—*A.* It would have been in that New York file.

Q. That is, if it had got into the right place?—*A.* Yes.

Q. If it had been addressed to Mr. Brett, care of Macmillans?—*A.* Yes.

Q. If it had Mr. Brett's name on it with some other address?—*A.* It would have been in the New York file.

Q. That is where you searched?—*A.* Yes.

Q. You, of course, do not supervise the New York file?—*A.* No.

Q. Mr. Eayrs, you remember being examined for Discovery in this action?—*A.* Yes.

Q. I see in questions 154 and 155 you were asked this: Have you any intervening correspondence between January 13th and November 31st, or is that the next letter? And your answer was: This is the next letter. And it was marked exhibit 6.

"*Q.* I see a letter, March 27th, 1919, from your firm signed 'Montrose W. Liston', to Miss Deeks?—*A.* Yes.

Q. Does that letter refer to this manuscript, Mr. Eayrs?—*A.* I would think so.

Q. The contents seem to indicate that, don't they?—*A.* They seem to, yes."

A. Yes.

His Lordship: That is just his opinion.

I have looked at the letter again and I think it may be debatable. I say that because I think I made a remark, when that letter went in, or shortly afterwards, that it appeared it referred to the Web correspondence. I want just to leave myself open on that.

Mr. Robertson: I want to get this witness's evidence, because he does not leave it open.

In the Supreme Court.

Defendants' Evidence.

No. 21. H. S. Eayrs. Cross-examination—*continued.*

HIS LORDSHIP: That is his opinion. He was not in touch with the matter.

Mr. ROBERTSON: Of course, if there was not a third book, it could not be anything else.

Mr. MUIRHEAD: *Q.* Mr. Liston who followed Mr. Saul, is dead?—*A.* Yes.

Q. He died some years ago?—*A.* Yes.

Mr. MUIRHEAD: I would call Mr. Saul.

Mr. ROBERTSON: I think the other witnesses who had to do with this would be as well out of Court while Mr. Saul is giving his evidence.

HIS LORDSHIP: Have you other witnesses?

Mr. MUIRHEAD: Yes, two young ladies.

No. 22. John C. Saul. Examination-in-Chief.

No. 22.

Evidence of John Cameron Saul.

JOHN CAMERON SAUL, sworn.

Examined by Mr. MUIRHEAD.

Q. Mr. Saul, you were with the Macmillan Company of Canada in 1918-19?—*A.* Until the first of February, 1919.

Q. How long had you been with them before that?—*A.* Since 1912, I think.

Q. What was your position there during 1918 and 1919?—*A.* Editor in chief for the Macmillan Company.

Q. I show you a file of correspondence, marked Exhibit No. 4——

HIS LORDSHIP: Surely you have proved that sufficiently.

Mr. MUIRHEAD: *Q.* Do you recognise that?—*A.* That is my signature, yes.

Q. That is a letter of March 19th, 1918?—*A.* Yes.

Q. Do you remember Miss Deeks coming in in regard to the manuscript of the Web?—*A.* Well, I have a very indistinct recollection of something that took place twelve years ago; but I remember it.

Q. I see a letter written from her to you, sir, dated February 22nd, 1918, which tells you that she had just completed a short history of the world, and that she has copied somewhat from Greens, and asking you if you thought the Macmillan company would have any objections. Do you remember that circumstance?—*A.* Yes.

Q. And you replied to that letter,—just to identify it,—on March 19th, 1918, which is the letter which you have just identified a moment ago?—*A.* Yes.

Q. You say in that letter :—

"I have been absent from Toronto for the better part of two months and have only just returned. This will explain the reason why your letter of February 22nd remained unanswered. I am just now picking up the threads and among other letters lying on my desk awaiting my return I find yours. I regret very much the delay, but, of course, you will quite understand."

"I think perhaps it would be best if you would drop down to the office sometime with your manuscript and let me have a look at it. Of course, you are quite aware that if your book was very much like Greenes 'Short History of the English People' our English house would probably not sanction its publication. I would gather from your letter that you have not made very much use of the book but I cannot tell properly until I have seen your manuscript. If you will telephone me I shall be very glad to make an appointment."

His Lordship : Well, she came down ?—*A.* Yes.

Mr. Muirhead : *Q.* Tell us about that ?—*A.* Well, I have really no remembrance of anything that took place at all at that interview, if it did take place. The next thing that I can charge my memory with was the delivery of the manuscript to us.

Q. Just go on from there then ?—*A.* Do you wish me to tell the whole story of everything that occurred until the time I left the Macmillan Company ?

Q. Yes, briefly ?—*A.* The manuscript was delivered to me and I read it.

His Lordship : As I understand it, you do not recall the interview definitely, but you do recall the manuscript being left with you by Miss Deeks ?—*A.* Yes, your lordship.

Mr. Muirhead : *Q.* Go on from there ?—*A.* I read the manuscript over and I saw at once that so far as a general publication was concerned it would not be one in which the Macmillan Company would be interested.

It was more or less of a general history which had an appeal to the public, but at the same time I did not think Miss Deeks had covered the ground in such a way as to make it, well shall I say authoritative enough to warrant publication, that is to say as a general publication of the company.

But just about that time there was an opening presented itself in which I thought that book could be placed, provided, of course, that it were revised to suit the particular purpose which I had in mind, and also simplified. In other words, one of the Provinces in Canada was looking for a general history that would rather suit about the sixth or seventh year of the Public School; and I thought that Miss Deeks' book modified might suit that. Consequently the manuscript was held for some time with that in view, waiting until the opportunity presented itself.

Shortly after receiving the manuscript I went to the Maritime Provinces for, I think, two weeks, and returned to Toronto and then went west; that is to say, I went as far as the Pacific Coast. You see my duties as

In the Supreme Court.

Defendants' Evidence.

No. 22. John C. Saul. Examination-in-Chief—*continued.*

editor carried me all over Canada, and I never knew where I would be a week ahead, mainly interviewing educational departments or interviewing people who were interested in the preparation of text books.

I went west, as I said, and one of the objects taking me west was to discuss still further whether or not there was an opportunity for this particular book of Miss Deeks, to be used as a school book publication in this particular Province. The Province was the Province of Manitoba.

Now, I do not know whether to say this any further or not, because you may object to what I am going to say.

Q. Let us hear what you have to say and we will see if it is evidence.— *A.* I am not quite certain and I am not prepared to swear that I carried that manuscript with me when I went to Winnipeg, but I think I did. As nearly as I can charge my memory I had that manuscript with me when I went to Winnipeg. I know that I there discussed the whole question with Dr. McIntyre, the Principal of the Normal School, who had it in charge, that is to say, who had the idea of bringing out a book to suit Grade 6 or Grade 7 of the public schools.

Whether or not I showed him the manuscript, I do not know, but I think I did.

After that I came back to Toronto I should say somewhere about the 1st of November, and then some time in December I made up my mind that I should leave the Macmillan Company. I notified Mr. Wise some time during Christmas week, and it was agreed, however, or rather at Mr. Wise's suggestion I stayed on until the 31st day of January. Now that time was spent entirely in winding up the work of the last six or seven years, closing up everything. And the last thing I came to was the manuscripts that were in our possession at that time in the office; and one of the last things I did was to write Miss Deeks in reference to her manuscript and to tell her that I was leaving the Macmillan Company, and suggesting to her, if I remember rightly, that she should see my successor or at least see the company in regard to the matter.

Q. Will you look at this letter and see whether that is a letter you wrote her in regard to the matter?—*A.* Yes, sir.

HIS LORDSHIP: Where was the manuscript at the time you left?— *A.* To my knowledge the manuscript was in the vault of the Macmillan Company, as far as I know, sir.

Q. Do you recall having seen it after you came from the west?— *A.* I do not, sir.

Q. You do not recall definitely having had it with you in the West, and so you cannot recall definitely whether after you returned from the West you had it put back in the vault?—*A.* Yes, your Lordship.

Mr. MUIRHEAD: *Q.* When you say in this letter "I am very sorry that I have no time to go more fully into the consideration of the manuscript, but after you have condensed it I would be very glad, at any time, to discuss it with you. You will always find my address in the telephone book.

"I am leaving the manuscript here at your disposal,—" How did you come to write that?—*A.* Because at the time I wrote that letter I

was certain although I had not my eyes on it, that the manuscript was in the vault. It would be naturally where I would expect it to be.

Q. Had this particular manuscript come up for discussion between you and other members of the company after you had come back and you were cleaning up, as you say?—*A.* I do not recollect.

Q. Do you recognize this book?—*A.* Yes.

Q. What is this book?—*A.* That is the book which was used, when I was Editor of the Macmillan Company, as a record of the manuscripts received and the manuscripts returned.

HIS LORDSHIP: Who made the entries in it?—*A.* My Secretary invariably.

Q. Who was she?—*A.* Mrs. Hopkins, now; Miss Mabel Tate at that time.

HIS LORDSHIP: You had better wait until she is called.

Q. Did you know of this manuscript being in anybody's control, shall I say, except your own from the time you received it until you left Macmillans on the 31st January?—*A.* No, your Lordship.

Q. You were yourself responsible or conceived yourself responsible?—*A.* Yes.

Q. And, under you, your secretary, of course?—*A.* Yes, sir.

Cross-examined by Mr. ROBERTSON.

Cross-examination.

Q. Mr. Saul, when you received the manuscript in the first place from Miss Deeks, do you know what you did with it that day?—*A.* I do not. Pardon me, I did not quite understand your question,—what I did with it? I handed it to my Secretary, if it came to me first. If it came to her, she entered it. I would hand it to her to enter in the book its receipt. That was the invariable custom.

Q. Have you sufficient recollection of the occasion of receiving it to be able to speak from memory of that particular occasion?—*A.* No, not of that particular occasion.

Q. When you say you did this, that or the other thing with it, you mean you did that, you think?—*A.* Excepting this, that I read it. Whether I read it that day or the next day, I do not know.

HIS LORDSHIP: You could not have read all that manuscript in the one day?—*A.* It was not a long manuscript.

Mr. ROBERTSON: You did not read all the manuscript?—*A.* No, not every word. You have to get a general idea of the manuscript to know what it was all about.

HIS LORDSHIP: Did you ever read it a second time?—*A.* Yes, I have a very distinct recollection of having done that.

Q. Taking it home with you, I suppose?—*A.* Yes, I always did that.

Mr. ROBERTSON: *Q.* You would say that according to the office practice, on the day it came in, it should have gone into the hands of your Secretary?—*A.* Yes.

In the Supreme Court.

Defendants' Evidence.

No. 22. John C. Saul. Cross-examination—*continued.*

Q. And be by her entered in the book as something received, and then unless you were actually going to use it, to be put in the vault?—*A.* Yes.

Q. Such things would ordinarily be put in the vault every night unless you had it out of the office?—*A.* Yes.

Q. Of course no entry is made of the daily putting in and taking out of the vault, and the practice would be that a manuscript, having once come into your possession and being entered in your records, you make no other entry of it until it is handed back to the author?—*A.* Unless it was sent out or mailed to somebody else.

Q. And then something should be entered,—that is the way you understood the office practice?—*A.* Yes.

Q. But if you took the manuscript, as you say you may have done when you went west, you would not expect to find an entry of that?—*A.* That was not the practice. I frequently carried six or eight manuscripts with me when I went away from the office.

Q. When you went away for weeks?—*A.* Yes.

Q. I suppose others in your office may have done the same?—*A.* No.

Q. Mr. Wise, for example?—*A.* I never knew Mr. Wise to do manuscripts in my life, except two.

Q. Mr. Wise could go into the vault as freely as you could and get manuscripts, could he not?—*A.* Surely.

Q. He, of course, was not editor?—*A.* No.

Q. And his ordinary work did not require him to handle manuscripts, as yours did you?—*A.* No.

Q. But if he went into the vault and knew that a manuscript was there, he could get it?—*A.* As President of the Company, no doubt.

Q. He could do it without consulting anybody?—*A.* Yes.

Q. And possibly there were others who could go into the vault,—other things were kept there beside manuscripts, such as books of the company?—*A.* Yes.

Q. Many of the office staff, I suppose, had to go into the vault on occasions?—*A.* Yes.

Q. Then am I putting it fairly when I put it in this way, that you have no such definite recollection that you can swear to, of having seen the manuscript again at any time, except such recollection as you have in connection with having read it again at some time?—*A.* That is correct, sir.

Q. And when it was that you read it again you do not know?—*A.* No.

Q. That is you gave it a second more careful reading at some time?—*A.* Yes.

Q. When it was you cannot say at all?—*A.* I would be morally certain it would be within two or three weeks of the first reading.

Q. And from that time on you have no recollection of having seen the manuscript?—*A.* I have not.

Q. It did occur to you, did it not, when you read the manuscript and saw the sort of thing it was, that a book of that kind would likely be

more profitable if the author were someone well known?—*A.* If published as a general book, yes. If published as a school book, no.

Q. And it was your idea that if Miss Deeks was to have her book published it practically would have to be confined to the circulation of a school book?—*A.* I suggested that, yes.

Q. And that was your idea?—*A.* Yes.

Q. See if this is right and if I am putting it fairly: If a book of that kind was to be published and to have a large general circulation, somebody else would have to be the author?—*A.* Yes, that is fair.

Q. There was at times some correspondence between the New York office and the Toronto office?—*A.* Constant correspondence.

Q. Between the New York Macmillans and the Toronto Macmillans?—*A.* Yes.

Q. And some visiting back and forth?—*A.* Yes.

Q. Officers of the one would visit the other office on occasion?—*A.* Yes.

Q. If a book that was expected to make some general appeal was presented, the New York office was the better place for publication, was it not?—*A.* Yes.

Q. That is, you did not print a great many books here in Toronto, if you had something that looked as if it would be something that the public would likely buy largely, you would try to get New York to publish it?—*A.* Or to share in the expense of publication; preferably to pay all the expense of publication themselves.

Q. And you would want to get into the American market?—*A.* Yes.

Q. That is one of the things that led to conferences between New York and Toronto?—*A.* Yes.

Q. Were there also communications between the Toronto office and the London, England, office?—*A.* Very seldom about the actual publication of books.

Q. That would be more about financial matters and company business matters?—*A.* Yes. I say that because I did all the correspondence and I can answer that.

Q. I am only speaking of that sort of thing. Then the letter which you wrote in January, just a few days before you left, was written merely to suggest to Miss Deeks, as you felt that you had received her manuscript, to indicate to her that you were through and that you wanted to wash your hands of the responsibility, at any rate?—*A.* I was simply doing Miss Deeks the courtesy of saying that the next time she came there she could not see me, but to see my successor.

Q. And if she wanted her manuscript to come and get it?—*A.* Yes.

Q. You were not writing it because of having seen it at that time?—*A.* Oh no, no.

Q. Do you recall making a statement to Mr. Watson, I think of one of the publishing houses here,—do you know the gentleman?—*A.* Yes.

Q. Do you recall making a statement to him at one time that you had an impression that you might have sent the manuscript to England?—

In the Supreme Court.

Defendants' Evidence.

No. 22. John C. Saul. Cross-examination—*continued.*

A. I will answer that question directly, if you will allow me to explain it afterwards. Yes. I made the statement to Mr. Watson in the course of a conversation, but whether I put it directly in that way I do not know. As a matter of fact, we were going around the Mississauga Golf Links, and the matter was in the air, and at that time I had not any distinct recollection of what had happened to that manuscript. What I have given you now I have pieced together since then by seeing the correspondence, and it has come, my movements and everything that I have said. We were canvassing the possibility of that manuscript having reached England. It was in the air, and everybody was talking about it, and the newspapers. I did not make any positive statement to Mr. Watson that I had sent that manuscript. I could not have said it because I did not know.

Q. But you also did not make any positive statement of that kind?—*A.* No, because I was not positive.

HIS LORDSHIP: Who is Mr. Watson?—*A.* He is Canadian Manager of Thomas Nelson & Sons of Edinburgh.

Mr. ROBERTSON: *Q.* But you did go so far as to say that you had an impression of that kind?—*A.* Yes, I was thinking that I might have sent it,—I would say that.

HIS LORDSHIP: When was it that you told Mr. Watson this?—*A.* It was shortly after, I should say within a month after the announcement in the paper that a writ either had been or was to be issued in this action.

Q. Well, what do you say about that now?—*A.* I have no recollection, sir, of ever having sent that book out of the Macmillan Company's office.

Mr. ROBERTSON: *Q.* Then there are two or three more matters that I want to call your memory to. Did Mr. Liston succeed you?—*A.* Yes.

Q. Was he there before at all?—*A.* No, I never saw him.

Q. Do you remember having a visit from Miss Deeks and her sister in the spring of 1922 about that letter?—*A.* No, not particularly.

Q. Do you recall having a visit from them two or three years after you left Macmillans?—*A.* Oh yes, many of them.

Q. About this manuscript?—*A.* Yes, many.

Q. Did they suggest to you the possibility of the manuscript having been used by someone?—*A.* Yes.

Q. And did you say to them that that was a possibility?—*A.* I do not think so. Do not forget that before that manuscript came to the Macmillan Company it had been in the hands of another publisher, I think, and possibly more. I cannot swear to that, but I was told so.

Q. Had you known of another case in Macmillans of a manuscript having been used? I am not suggesting any impropriety on your part?—*A.* No, never, that came within my direct knowledge.

Q. Did you tell these ladies, on the occasion which I have referred to, that shortly before that a man had come to your house and accused the Macmillans of using a manuscript which he had submitted? The man, you said, showed some paragraphs and you said they were a good deal alike?—*A.* I have a dim recollection of something of that kind; but that was subsequent to my leaving the Macmillan Company.

Q. That is that the man complained to you?—*A.* Yes.

Q. And you may have told Miss Deeks that?—*A.* Yes.

Q. And did you suggest that a comparison of the Outline with the manuscript would be a good way to tell whether the manuscript had been used?—*A.* I may have suggested that. You see we were just having a general conversation over the whole matter, the same as I would with you. I do not know whether I did or not but I may have.

Q. Let me suggest a little difference between what might be between yourself and myself. You understood, did you not, that Miss Deeks was complaining that a manuscript of hers left with your company had not been properly treated?—*A.* With me, as a matter of fact,—left with me.

Q. Left with you personally but remaining in the custody of your company?—*A.* Yes, sir.

Q. And you understood that was the nature of her complaint at that time?—*A.* Surely.

Q. And at that time you did make that suggestion?—*A.* I may possibly.

Q. That a comparison would be one way of finding out. Then did you suggest to Miss Deeks, then or a short time afterwards, that instead of seeing you about this matter it would be better if they would take up with Mrs. Saul, your wife?—*A.* Oh, I did not.

Q. You do not recollect anything of that kind?—*A.* I certainly do not.

Q. Were you aware that they did see Mrs. Saul?—*A.* Yes, in fact my wife mentioned that fact to me at breakfast this morning.

Q. And were you aware that Mrs. Saul had told them, on your authority, that of course the manuscript had been sent to England? Were you aware of that?—*A.* I was not.

Q. Did you assure these ladies of your sympathy with their complaint?—*A.* Well, most assuredly I was in sympathy with them, if their complaint was well founded. I did not know.

Q. You did not take the position, Why, you are talking nonsense?—*A.* No, I did not. Miss Deeks assured me that that manuscript had been handled and thumb marked. If it was I did not know who had got it.

Q. If it was thumb-marked when she got it back and indicated distinct signs——*A.* I did not see the manuscript, so that I could not say that; but I will say that the manuscript was clean when I last saw it.

Q. If it was marked up, it was not marked up by your use?—*A.* No.

Q. Did you make this remark to Miss Deeks and her sister, in answer to the question put to you, Would they use the manuscript in England if they had it? And the reply suggested is, Yes, of course they would. Did you say that?—*A.* I do not know what that means. On the face of it it has no meaning at all. Who would use it?

His Lordship: How would he know whether they would use it or not?

Mr. Robertson: I am putting to this witness a conversation about this manuscript and about the possibility of it being sent to England?—*A.* Does that mean, Would the Macmillan Company make an illegitimate use of the manuscript if they had it?

In the Supreme Court.

Defendants' Evidence.

No. 22. John C. Saul. Cross-examination—*continued.*

Q. I do not know that anybody has said it was sent to Macmillans of England, and I am not instructed to include that in any question?—*A.* Would they use it if they had it?

Q. The matter having been discussed somewhat as my previous questions have indicated to you, that is as to the possibility of the manuscript having been sent to England and its having been used there by Mr. Wells, then I would put it to you, Was that question asked you and did you answer it in that way: "Would they use the manuscript in England if they had it? Yes, of course they would."

HIS LORDSHIP: And "they" would only refer to the English Macmillans? 10

Mr. ROBERTSON: I do not say that at all. I can quite conceive quite a different course having been followed. We are not confining ourselves to the suggestion that it went to the English Macmillans. I would suggest, Mr. Saul, that you should remember it?—*A.* I cannot remember it at all.

Q. And did you say also that the case was as clear as a bell, there was no question about it at all?—*A.* I did not.

Q. You did not go that far?—*A.* No.

No. 23. Mabel E. Hopkins. Examination-in-Chief.

No. 23.

Evidence of Mabel E. Hopkins. 20

MABEL E. HOPKINS, sworn.

Examined by Mr. MUIRHEAD.

Q. Mrs. Hopkins, your name was Miss Tate before you were married?—*A.* Yes.

HIS LORDSHIP: Secretary to Mr. Saul?—*A.* Yes, my lord.

Mr. MUIRHEAD: In the Macmillan Company in 1918 and 1919?—*A.* I left in 1918.

Q. What time of the year?—*A.* About the first week in October.

Q. Do you recognise this book?—*A.* Yes.

Q. What is this book?—*A.* That was a record of the manuscripts 30 received by the Macmillan Company.

Exhibit No. 22. Filed by Mr. Muirhead. Record book.

Q. Look at that writing under "D"?—*A.* It is alphabetical.

Q. Whose writing is that?—*A.* It is mine.

HIS LORDSHIP: What is the entry?

Mr. MUIRHEAD: Deeks, Florence, 140 Farnham Avenue, City, The Web, August 8th, 1918. Vault. Returned February 5th, 1919.

Mr. ROBERTSON: Of course the witness cannot swear to that later date.

His Lordship: The final entry is not in your handwriting?—*A.* No.

Q. But down to the word "vault" the other entries in that line are in your handwriting?—*A.* Yes.

Q. And that is on the first page under the letter "D"?—*A.* Yes, there it is.

Mr. Muirhead: This is a photostat copy of the same page. They would like to have their book.

His Lordship: All right.

Mr. Muirhead: *Q.* What does "Vault" mean?—*A.* It means that the manuscript was in the vault at the time I left the Macmillan Company, which was the first week in October, 1918.

Q. How do you happen to know that?—*A.* Simply because I was leaving them for good and all, and I checked, cleaned house so to speak; checked and double-checked.

Q. What you say is that you wrote "vault" there because at that time you saw the manuscript there?—*A.* Yes, sir, and it was information for whoever might come after me.

His Lordship: Then you say that word "Vault" was not written there when it was put in the vault?—*A.* No, I would not be sure that that was when it was put there, but I am sure that is what it meant when I left.

Q. That is, you checked it up?—*A.* Yes.

Q. Did you put the word "Vault" there when you received the manuscript or when you left?—*A.* I could not swear to that, but I know it was authentic when I left.

Q. If that word had been written when it came in, and then when you came to check over the manuscript in the vault, what would you have done if you had not found the Deeks' manuscript there?—*A.* I would have had to take the matter up and have it looked into, and erase my record.

Mr. Robertson: I do not know how you would erase it.

His Lordship: Mark the photostat copy as the exhibit.

Mr. Robertson: I have no objection.

Mr. Muirhead: This is a photostat copy of the page of the manuscript record book.

Cross-examined by Mr. Robertson.

Cross-examination.

Q. Was there any other record kept than what we have in this book?—*A.* Not that I know of.

Q. You would know, wouldn't you?—*A.* Yes, I would.

Q. What were your duties while you were employed as Mr. Saul's Secretary, with the manuscripts that came in and that were handed to him by you?—*A.* Handed to Mr. Saul by me?

Q. Or handed to you by Mr. Saul?—*A.* I entered them in that book and put them in the vault for his further consideration, if he wanted them.

Q. Were all the manuscripts that went into the vault placed there by you?—*A.* Well, Mr. Eayrs' Secretary might have done that occasionally, but as a rule I think I handled nearly all of them.

In the Supreme Court.

Defendants' Evidence.

No. 23. Mabel E. Hopkins. Cross-examination—*continued.*

Q. Are there other entries in writing other than yours at about this period?—*A.* I do not think so. There might be a few.

Q. There are no dates to these entries, are there?—*A.* Yes, they are all dated.

Q. What is the date of this receipt?—*A.* August 8th, 1918.

Mr. ROBERTSON: Under the heading "Date received".

Q. Then the word "Vault", as I understand it, would commonly be written in by you when you placed the manuscript in the vault?—*A.* Yes. I am not altogether sure of that whether I always did that or not.

Q. That was your common practice?—*A.* Yes.

Q. Then if a manuscript were put in the vault and Mr. Saul asked for it, and supposing he wanted to take it away with him, what entry would be made?—*A.* I should make an entry. I do not think that that but very rarely happened, as I remember it.

Q. We are told that happened in this very case?—*A.* I do not see any entry of that.

Q. Do you see anything on that page to indicate, except where it was sent to New York in one case I see something in lead pencil of many years ago,—wasn't it a very common thing for Mr. Saul, when a manuscript came in and he had not time to attend to it at the moment, he would give it to you to put it in the record and put it away?—*A.* Yes.

Q. And when he wanted to take it up he would get it?—*A.* Yes.

Q. What did you do on such occasions,—make an entry at all?—*A.* No.

Q. Would it be correct to put it in this way that the common practice was that having once recorded it you made no other entry until the manuscript was returned to the owner, that is in case it was not published?—*A.* Or unless it went out of our office.

Q. How would you know what Mr. Saul was going to do with it?—*A.* Mr. Saul, if I remember correctly, usually told me what he was going to do with a manuscript.

Q. Let me put the case as it is, that Mr. Saul, intending to be absent for some weeks and travelling a very long distance away, may have taken this manuscript with him, and when he got it away how does anybody know what he would do with it? You have no entry of that sort of thing at all, have you?—*A.* There is none showing there.

HIS LORDSHIP: I suppose the vault had pigeon holes under letters, for instance the Deeks's manuscript would be under a letter "D"?—*A.* No, they were all kept on one shelf.

Q. For instance, would there be a good many at one time?—*A.* We never had a very great many at any time.

Mr. ROBERTSON: *Q.* You might twenty or thirty?—*A.* I do not remember that many.

HIS LORDSHIP: If Mr. Saul wanted to get out a manuscript, would he come to you for it?—*A.* Yes, and I would certainly get it out of the vault for him.

Q. Then would you make any notation?—*A.* I should make a notation for it.

HIS LORDSHIP: I do not see any notation of that kind here.

Mr. ROBERTSON: That is why I wanted to see that book. I have been glancing hurriedly through the book, and, for example, when it was handed to somebody out of the office, to Professor McLean, say, to go over it, there was an entry of that, and that curiously enough appears to have been the end of it, because there is no entry as to what happened to it.

HIS LORDSHIP: I suppose it was a rule more honoured in the breach than in the observance that this lady should keep track of the manuscript, but that in practice if Mr. Saul wanted to take a manuscript with him he would go into the vault and get it,—is that what happened?—*A.* I do not think so. I do not think Mr. Saul hardly knew where they were kept in the vault.

Q. That is you would go into the vault and get it for him?—*A.* If he were working in the office, I would not make a notation of it.

Q. That would be treated as if it were still in the vault?—*A.* Yes.

Mr. ROBERTSON: *Q.* And of course Mr. Wise and his Secretary were as free to go into the vault as were you or Mr. Saul?—*A.* I suppose so. That was not under my jurisdiction.

Q. And other people did go in there for various purposes?—*A.* Yes.

Q. And you were away, I suppose, sometimes too,—you had a holiday sometimes?—*A.* Yes, I did occasionally.

Q. Who substituted for you, anyone?—*A.* No.

Q. Then the manuscript which would be taken by Mr. Saul, when he took it away, would you make any record of when he brought it back?—*A.* No. If I had a record there, when he brought it back to me I would have struck out my first record.

Q. Then you had no practice in the office beyond checking over the manuscripts periodically and seeing what was there?—*A.* I had a pretty good check all the time.

Q. But you did not take the book and go through it from letter to letter and check up to see that all your manuscripts were accounted for, that they were either receipted for or accounted for in the book, or that you had them? You did not do that?—*A.* I certainly did not check them up every day or every week.

Q. And you had no practice of checking it?—*A.* No.

Q. A number of manuscripts went out, as indicated, and you cannot tell what happened to them,—perhaps that was more after than during your time.

HIS LORDSHIP: Of course the final column is filled in.

Mr. ROBERTSON: On that page, but there are other pages where they are vacant.

WITNESS: Maybe they are still in the vault.

In the Supreme Court.

Defendants' Evidence.

No. 23. Mabel E. Hopkins. Cross-examination—*continued.*

Q. I would call your attention, for example, to this manuscript,—is that in your handwriting? (Referring to record book.)?—*A.* No, that is after my time.

Q. Then you are not sure that you made any mark or entry at all, when you went through the vault before you left? You are sure that you made any mark or entry of any kind in your book, are you?—*A.* Well, I do know that that word "Vault" was correct, though.

Q. The word "Vault" if the record was properly kept up to that time, would have gone in there on the 8th August, 1918?—*A.* Yes.

Q. And in connection with that manuscript you have not anything at all in the way of an indication of a check at that time, have you?—*A.* No, but I think my practice was, when I put it in the vault when I received the manuscript, to put it in pencil.

Q. Where did you see any in pencil?—*A.* There is one right there. And that when I checked up before I left I made those entries in ink. I won't swear positively to that, but I feel absolutely sure of that.

Q. There is a good deal of guessing to that, isn't there?—*A.* No, I do not think there is. You cannot expect me to remember everything.

Q. Here is a manuscript which came in on the 22nd March, 1918, and which was not returned until May 5th, 1918. Where would it be?—*A.* In the vault.

Q. Why didn't you mark that it was in the vault?—*A.* It may have been made in pencil.

Q. Do you suggest anybody ever wrote anything on that line? (Referring to record book entry.)?—*A.* It does not look like it.

Q. Take the line before that, February 13th, 1918, Returned, registered mail, February 20th, 1918,—all your entry isn't it?—*A.* Yes.

Q. And there is nothing to indicate where the manuscript was between February 13th and February 20th, is there?—*A.* No.

Q. And here is an entry, of Miss Dunlop, without even a date as to when it came in,—there is no date to show when it came in?—*A.* No.

Q. And nothing to indicate what happened to it when it did come in?—*A.* It went into the vault. Probably that was taken for granted.

Q. There was a good deal taken for granted about this whole record, was there not,—things that should have been in are not in the record, is that not so?

Mr. ELLIOTT: My friend has no right to lecture this witness.

HIS LORDSHIP: No, he is quite right.

Mr. ROBERTSON: *Q.* I am suggesting to you that this record is not a complete record as it should have been, in the case of many of the documents. Is not that so?

HIS LORDSHIP: I think, if this record ought to have shown what was done with the different manuscripts when they came in, then the record is defective because it does not show that they all went into the vault, or what happened to them. There is a heading "Reader"—I suppose the intention was that the name of the person to whom the document or manuscript was

given to read should be put in there. Apparently that practice was not followed at all; instead, usually the entry was "Vault" or "In vault." I suppose these manuscripts were not treated as though they had been that much currency, they were not treated as being bundles of bank notes; there was not the same strictness observed as with a bank.

Mr. ROBERTSON: This witness has sworn to a good deal.

HIS LORDSHIP: No doubt this record leaves a good deal for the imagination.

Mr. ROBERTSON: If one had an opportunity to examine this record book a little more—it is difficult to get samples to illustrate the question one would like to put.

HIS LORDSHIP: Have you, Mrs. Hopkins, any recollection at all of this manuscript?—*A.* No, I have not, my lord.

Q. You do not recall ever having seen it?—*A.* No, I do not recall it as a manuscript individually at all.

Mr. ROBERTSON: *Q.* I wanted to find another manuscript which was there at this time. What time was it you left?—*A.* In the first week in October, 1918.

Q. Before the 9th?—*A.* I could not remember just that.

Q. I find one here on the 9th. I will not trouble you further about it. I want to have this book available for me.

HIS LORDSHIP: The understanding is that this book will be available, if required again.

No. 24.

Evidence of Molly Mercer.

MOLLY MERCER, sworn.

Examined by Mr. MUIRHEAD.

Q. Miss Mercer, you were Secretary to Mr. Wise in 1918 and 1919 in the Macmillan Company?—*A.* Yes.

Q. What were your duties with respect to manuscripts that came in? If Mr. Wise wanted to see a manuscript, who had charge of the manuscripts, as far as disposing of them?—*A.* It depended upon the nature of the manuscript.

Q. If a manuscript were sent out, who would know about it? I mean out from the firm, and supposing it were sent to New York or to England?—*A.* I would know about it.

Q. Who would do the sending?—*A.* Mr. Wise, and I would do the actual work.

Q. You would get your instructions from him?—*A.* Absolutely.

In the Supreme Court.

Defendants' Evidence.

No. 24. Molly Mercer. Examination-in-Chief—*continued.*

HIS LORDSHIP: What was the date of your employment—when did you go to the Macmillans?—*A.* I just do not remember the year. I was there a little over five years.

Q. When did your employment end?—*A.* It was May or June; I do not remember the year, but I could refresh my memory from the manuscript book.

Mr. MUIRHEAD: *Q.* Do you know the manuscript book?—*A.* Yes.

Q. Then can you tell me, from that?—*A.* This is the last entry I made in the manuscript book, March, 1920.

HIS LORDSHIP: You were there in March, 1920 and for five years before that?—*A.* Yes.

Mr. MUIRHEAD: *Q.* Do you see that entry under "D," Florence Deeks, 140 Farnham Avenue,——

HIS LORDSHIP: Is that your handwriting, that date?—A. No, this is Mrs. Hopkins' writing.

Q. The final entry?—*A.* No, this is not mine.

Mr. MUIRHEAD: Whose writing is that?—*A.* I do not know. It looks like Miss Aubin's; she succeeded Mrs. Hopkins.

Q. Where is she now?—*A.* I understand she is in Vancouver.

Q. In the ordinary course of the firm's business, would you handle all the manuscripts that went out from the firm to other places? I do not mean to offices of the firm, but to England or the United States?—*A.* Anything that went to Macmillans, New York, or to Macmillans, London, I handled, because everything went through Mr. Wise.

Q. Do you remember anything about the manuscript of The Web itself?—*A.* Nothing about it.

HIS LORDSHIP: She does not know anything about the case at all then?

Mr. MUIRHEAD: It was merely that she was Secretary and anything that Mr. Wise sent out would go out through her.

HIS LORDSHIP: *Q.* Did you send it out?—*A.* It never went out through me. If that manuscript had gone out, I would have entered it in this place.

Q. Have you made any other entries in this book?—*A.* Yes.

Q. Show me some.—*A.* This is my entry, here.

Q. That is at the bottom of this page?—*A.* Yes.

Q. Mrs. Irwin, Toronto, what is the title of the work?—*A.* Spirit Studies. Too short. Returned to address given.

Q. That was on the 14th July, 1919?—*A.* Yes.

Q. Show me something else.—*A.* (Witness indicates).

Q. The first line on the next page, under "J" is it?—*A.* M. B. Dix. Returned to author.

Q. Sometimes apparently you sent things back to the author too?—*A.* Yes. If it was fiction. The educational work went to the Educational Office. Fiction came to Mr. Wise.

Q. You did not do anything in the way of the educational books?—*A.* No, they were always returned to Mr. Saul.

Q. And Mr. Saul returned those?—*A.* Yes, or his Secretary.

Q. But the manuscripts which went to London or New York?—*A.* Everything sent to London or New York went through me.

Q. And fiction books, if they were returned to the author, were returned by you?—*A.* Yes.

Q. And you would make an entry in this same book, Exhibit No. 22?—*A.* Yes, absolutely.

Cross-examined by Mr. ROBERTSON.

Q. You are speaking now of the general office practice?—*A.* Of the general office practice.

Q. And I presume, like other offices, it was not an invariable rule, there were circumstances which altered it at times?—*A.* In regard to what?

Q. In regard to who looked after educational documents when Mr. Saul was absent for weeks at a time,—did you shut down that branch of your business?—*A.* Miss Tate looked after things, Mr. Saul's secretary.

Q. And Mr. Wyse was away at times?—*A.* I looked after things in Mr. Wyse's absence.

Q. And could nobody but the private secretary of the individual do any business in that department?

If Mr. Wyse were absent, could not Mr. Saul do a little business?—*A.* No, Mr. Saul never sent manuscripts direct to New York. He would write general correspondence.

Q. And the general run of the business, somebody looked after it?—*A.* Oh yes.

Q. And if Mr. Saul was away, there was no reason why Mr. Wyse could not deal with the manuscript?—*A.* No, none whatever.

Q. Even if it were an educational manuscript, there was no reason he should not deal with the manuscript called The Web?—*A.* If Mr. Saul were away.

Q. There was no reason why he should not?—*A.* No there was no reason.

Q. And Mr. Wyse had full access to the vault?—*A.* Yes.

Q. You are not undertaking to say that Mr. Wyse never did anything in connection with the business that you did not know all about, are you?—*A.* I was his secretary and did all the correspondence, you see.

Q. But you are not at all undertaking to say by any means, are you—*A.* Oh no, no.

Q. There were important matters that Mr. Wyse did that were concealed—don't you know that?—*A.* That were concealed?

Q. Yes, that were concealed for some time, and afterwards created trouble,—did you know that?—*A.* No, I did not know that.

Q. You left in 1920?—*A.* Yes.

Q. And Mr. Wyse was still there?—*A.* Yes.

In the Supreme Court.

Defendants' Evidence.

No. 25. Frank H. Underhill. Examination-in-Chief.

No. 25.

Evidence of Frank Hawkins Underhill.

FRANK HAWKINS UNDERHILL sworn.

Examined by Mr. MUIRHEAD.

Q. Professor Underhill, what is your position in the University of Toronto?—*A.* I am a professor in the Department of History.

Q. What are your qualifications, Mr. Underhill, academically?—*A.* I was educated at Toronto; I took the Honour courses of Classics, English and History; and graduated in 1911; and after that year spent three years at Oxford taking the courses of literæ humaniores and modern history. On leaving Oxford in 1914, I was appointed to the History Department in Saskatchewan. Since then I have been teaching history continuously.

Q. Have you read Wells' Outline of History?—*A.* Yes.

Q. Have you read the manuscript called The Web?—*A.* Yes.

Q. Have you read these two books with a view to comparing their scope, the idea and the language of the two works?—*A.* Yes.

Q. Well, what have you to say about the two?—*A.* Well it struck me that in their general spirit and tone there was not very much similarity between them; but there are ideas in The Web, the idea of feminism which of course runs all through it; of course there is nothing of that in The Outline. The idea of anti-militarism is in The Outline, and everyone knows that Wells was very strong on that subject, especially in the four years of the war.

Then there is another general idea that seemed to me to creep up constantly in The Web, maybe two ideas, a constant reference to something called love of liberty, and called also Democracy, and those two abstract ideas always are being brought in. I could not make out just what their actual meaning was. I found The Web constantly using the word Democracy in a sense which to me was quite incomprehensible. As one example, on the period of the Roman Empire, there is a chapter there from A.D. 31 to 68, a reference to Augustus. It is headed "Hope and Democracy." Of course it is obvious that democracy was about the last think you would look for in the Roman Empire at that time.

There were those vague, abstract ideas in The Web, and it seemed to me that when you abstracted all those and the feminism there was not much left in The Web except a succession of narratives of facts, which would be fairly well known to any historian and would be found in most elementary history books.

Q. And how did you find Wells differ from that?—*A.* It seemed to me Wells was much more concrete. He talks about Democracy but he at least uses the word in a sense which I could understand. He tries to give a concrete picture of each generation or century. Of course, specialists would say that his picture in a given case was wrong; but at any rate he was trying to give a little conception of what each age was like.

Considering the question of his having copied that from The Web, I could not see it, for it is not there.

Q. Now what have you to say about the framework? I suppose that is really what you have been discussing?—*A.* I have been discussing more or less general ideas. The question of the plan and the framework is slightly different. I should think any old history would have, generally speaking, the same plan; or, as Professor Brett said this morning, it would be divided into ancient history, medieval history and modern; and those three subdivisions would be divided into chapters and roughly the chapters would follow a chronological order. You would find that in many books, and that is, of course, in the books under consideration.

I could not find any striking originalities in that general plan which those two books have that are not in any other elementary world history, except I did come across two points in The Web which seemed to me to be original, but both to be wrong. For example, in the division of ancient, medieval and modern, the ordinary practice is to say that medieval history ends at, say 1492, the end of the 15th century, somewhere; and modern history begins with the age of discoveries,—some date around there. The Web in its chapter headings, anyway, brings medieval history down to the 17th century. That is distinctly original, and I never heard of any other historian doing it; and there is nothing of that in Wells.

There there is another bit, a matter of arrangement which comes under Plan, in that part of ancient history where the writer deals with the history of Greece and Rome. The ordinary practice is to take a section on Greece, from the Persian invasion on down to Alexander the Great, or a bit later, and cover that; and then go back and take Rome from the founding of the city down to a point about the second century B.C. where Rome expands over the Mediterranean and comes in contact with Greece and conquers Greece; and then follow Rome and Greece together. That is what is ordinarily done. But The Web is different from that. It takes Rome for fifty or a hundred years, and then in the next chapter takes Rome and Greece together. That I would say is a confusing treatment and that is not in Wells at all. Those are the only two originalities that I could find in the plan and framework of The Web that struck me as at all significant. But there is another point in regard to framework and plan which seems to me to be more significant than the way they divide up their periods. Evidently they will follow a more or less chronological order.

The really significant thing in comparing two history books, is the amount of emphasis or space that they give to particular periods or movements. It seems to me it would be natural, anyway, if Wells followed The Web so slavishly as is maintained, that you would find a correspondence in the matter of the emphasis and the relative number of pages that the two books give to different periods and movements. I made some rough comparisons on that which I would like to give you.

If you take the division at 1492 or thereabouts, that is the ordinarily accepted division between modern history and all history that comes before, according to my estimate The Web spends about 308 pages—the pages of

In the Supreme Court.

Defendants' Evidence.

No. 25. Frank H. Underhill. Examination-in-Chief—*continued.*

The Web are not numbered consecutively and therefore I had to add them up and that may not be strictly accurate but it is within a few pages of accurate.

On the period before the beginning of what I would call the modern history, and on the period after that, that is to say from 1500 down to the present, the last four centuries, The Web spends 376 pages. That is more than half The Web is on the modern period. That I should say is bad history. A world history should direct our attention to the fact of the immense space of history that has gone before those periods with which we are reasonably familiar, but more than half of The Web is on that modern period.

Now if you take Wells on that same division, Wells spends the whole of his first volume, that is, 648 pages, and 180 pages of his second volume on the period down to around 1492. That is, Wells spends about two-thirds of his work on the period before modern history.

Now, there is a distinct general difference in the general plan of the work. If you take another book, a book which is referred to by Wells, I think, when you begin to examine details you will see that he used quite a bit in places, that is the books of Breasted and Robinson, anyway, that is a standard textbook in Canadian and American colleges and schools, and has been going since 1900 anyway. Breasted wrote Ancient Times, and Robinson wrote Medieval and Modern Times. Wells refers to them in his introduction. Breasted and Robinson took the whole of the first volume, that is Ancient Times, and 268 pages of the second volume, that is Medieval Times down to 1492; and then follows only the remainder of the second volume on the modern period. That obviously is very like the division of Wells.

If you take,—I have not got the pages of Duruy,— Duruy's History was obviously used extensively by Miss Deeks; I think she agreed to that; Duruy has a division on that matter very much like The Web. I am sorry I cannot give the exact pages; but in the present edition it spends even a more disproportionate time on the modern period. Then if you take particular epochs and make the same comparison, you find that constantly The Web and The Outline differ in the relative amount of space that they devote to these different epochs.

Take the Roman Empire, that is from Augustus to 476 A.D., and Wells devotes only one chapter, 47 pages, I think, to it; but The Web devotes two chapters, that is 46 pages, and that is, of course, proportionately a much bigger part of The Web than the 47 pages are of Wells. There, I should say, Wells is defective because he does not give the Roman Empire enough emphasis; but the emphasis is quite different.

I could take other cases of the same thing. Take the beginning of the two books. The Web has five or six pages on the pre-human part of history. Wells has, I think, 160 odd pages on geology, astronomy, and the forerunners of man before you get down to the real man.

Mr. ROBERTSON: On the part that nobody knows anything about!

THE WITNESS: I am merely taking the relative emphasis that they give to different parts. It seems to me that that relative emphasis is more

important than the events they deal with. The authors of world histories are bound to deal generally with the same main events, and the same people; so that I cannot see the striking similarity in their framework and plan which has been seen by some other of the witnesses.

Mr. MUIRHEAD: *Q.* Now, coming down to the parallel passages which you have heard spoken of, what have you to say about that?—*A.* First of all, I read the two works through. I had already read a good part of Wells's book when it first came out. I read The Web straight through, and again I read large slices of Wells, to see if I would be struck by any striking parallel passages, and I was not struck by any in reading through. And then I took Miss Deek's big comparison, that is this volume, and began to work through it. I worked through it on this principle. I supposed or assumed as a hypothesis, that Mr. Wells is a reasonably honest man and that he had not seen The Web, and then I asked myself, Taking these passages which Miss Deeks says are significant parallels, and taking the particular passages in Wells, is it possible to find a natural and obvious explanation of where he got them, without having recourse to the hypothesis that he got it from The Web? I went through a great number of these parallel passages, I had not nearly time to go through all of them, I think it would be almost a life's work,—I went through a great number of them in the periods of history with which I am reasonably familiar, that is especially Greek and Roman history and modern history, periods in which I thought I could think of books that Wells might have consulted and could look them up,—and I have a long list of these parallels with which I would like to deal, but I am afraid I would bore you intensely before I would finish. My point is that the whole argument for The Web is that it is the cumulative force of these parallel passages that counts. Perhaps one or two of them or half a dozen or twenty of them would not matter, but it is a tremendous piling up of passage after passage which is really significant. And here are all the passages piled up in this volume.

HIS LORDSHIP: Exhibit 6, you mean?—*A.* Yes. It seems to me that the only way is to take those detailed parallels one by one and ask whether this accumulation really exists. And my argument would be that when you examine them, a great many of them just fade away into nothingness; that you can find sources that it seems to me reasonable to suppose that Wells used, which quite satisfactorily explain his phraseology and the facts which he has got; and therefore it is unnecessary to have recourse to the hypothesis that Wells used The Web.

The only way I can illustrate that is by taking specific parallels and running through them.

I would like to begin by saying just a few words about the first paragraphs in each, that is on page 1 of the comparison, which have been dealt with, I am afraid at very great length already. It is about this speck floating in space. The first point which is worth noting about that is that Professor Irwin in his evidence said, that to begin with astronomy and geology was nothing short of absurd, that is, I suppose, saying that the

In the Supreme Court.

Defendants' Evidence.

No. 25. Frank H. Underhill. Examination-in-Chief—*continued.*

beginning of The Web was absurd also. That is a matter of opinion; but the point is that it was a perfectly natural way for Mr. Wells to begin.

I have a quotation from " Joan and Peter " to which I shall have to refer quite frequently—it is a novel by Mr. Wells published in 1918, just about the last matter which he published before he got to work at the Outline of History. It is a narrative about two orphans brought up by a guardian named Oswald, who, of course, is H. G. Wells. It is really a discussion of Mr. Wells's ideas of what education ought to be. That was written in wartime. The main idea in Joan and Peter is that the ultimate cause——

HIS LORDSHIP: It will take some time, if we have to go into the philosophy of fiction.

THE WITNESS: It is merely to show what was in his mind at the time of writing. It was in his mind very recently before, because he had written that novel. In Joan and Peter he says, You must have a single unitary education, you must have an universal history, instead of the national histories. Then on page 444 of Volume 1 of Joan and Peter, the Atlantic edition: Oswald said that all history would be useless which did not begin with the geological record.

HIS LORDSHIP: He makes that a quotation in the beginning of the Introduction of his work:

> " A philosophy of the history of the human race, worthy of its name, must begin with the heavens, and descend to the earth " . . .

—*A.* Yes, whether it was a rational way or not, it was a natural way for Mr. Wells to begin. It seems to me that the ideas expressed in that first page or so, are about facts that would be fairly familiar to any educated man and it would be rather hard for him to express them within the limits of the English language in which you could not find parallels in other books which have dealt with the same idea.

Then there is another point which is on page 2 of the comparison. Mr. Irwin dealt with this also. It is the question of our ape-man ancestor. Wells says " One particular creature . . . was half ape, half monkey " —going over on to page 3—" It clambered about the trees and ran on its hind legs . . . it was small brained by our present standards, but it had clever hands with which it handled fruits and beat nuts upon the rocks "—there is discovered a parallel of something in The Web. There again it seems to me that is satisfactorily explained if you know anything about Wells's personal history. He was educated as a scientist; born in the 1860's sometime and grew up in the '70's and '80's and was educated in London with first class honors in zoology. This has all the details about the anthropoid ape running about on his hind legs and picking up nuts and fruit. That was all out of the Darwinian theory in his education. It seems to me that he had those ideas long before Mr. Irwin and I were born. It was not necessary to wait until 1918 to find a reference to an ape-man with slightly larger braincase and walking on his hind legs and

that sort of thing. You can explain his language by a fairly natural explanation.

Then I skip over a good deal and come to Pericles on page 16 of the comparison. There is a long list of parallel passages from page 16 to page 21. I think I had better not take the time but I could read out of Plutarch parallel passages which cover everything that is in here.

HIS LORDSHIP: Is it not too late to discover anything original in ancient history?—*A.* Well, it might be discovered from excavations, but not from literary sources.

My point is that Wells quotes Plutarch verbatim, for one thing, so that we know he did, or whoever wrote the book must have, used Plutarch.

On page 17 of the comparison:

> "Pericles acquired not only an elevation of sentiment, and a loftiness and purity of style far removed from the low expression of the vulgar, but likewise a gravity of countenance which relaxed not into laughter, a firm and even tone of voice, an easy deportment and a decency of dress which no vehemence of speaking ever put into disorder. These things, and others of a like nature, excited admiration in all that saw him. Such was his conduct when a vile and abandoned fellow loaded him a whole day with reproaches and abuse; he bore it with patience and silence, and continued in public for the despatch of some urgent affairs. In the evening he walked softly home, this impudent wretch following, and insulting him all the way with the most scurrilous language. And as it was dark when he came to his own door, he ordered one of his servants to take a torch and light the man home."

It tells an anecdote about Pericles. That is taken by Wells directly out of Plutarch and he puts it within quotation marks with an asterisk after it and refers it as taken from Plutarch. Yet Miss Deeks puts it as something which must have been taken from her, when you can find in Plutarch, not only a similarity of language but the exact language which is here quoted from him.

And Mr. Wells, in the Atlantic edition, that is the collected edition of his works, tells us that when he was acting as draper's assistant in his teens, that he read Plutarch and Greene.

Of course, Plutarch's Lives have been known for a long time. It is full of good stories and of what is called human interest, with good personal stories about Julius Cæsar, Pericles——

HIS LORDSHIP: When did Plutarch live?—*A.* About the end of the first century A.D. Plutarch has been translated into English dozens of times and is a famous book with which obviously Wells would be familiar.

On comparison I find also that there are parts from Plutarch which are not in The Web. It seems to me you can quite satisfactorily explain all those passages about Pericles, and also about Aspasia, because I might mention that the whole story about Aspasia is in Plutarch. It is a good story told by Plutarch. It is not necessary to invent the hypothesis that

In the Supreme Court.

Defendants' Evidence.

No. 25. Frank H. Underhill. Examination-in-Chief—*continued.*

Wells got that out of The Web. I cannot see anything in the reference by Mr. Irwin, that there is anything in his avoidance of saying that Aspasia was the wife of Pericles. It is said that a good deal of tittle-tattle was going on in Athens. But what Wells is trying to say is that the relations between Aspasia and Pericles were on a somewhat higher level; she kept a salon and was visited more or less by notables of her time. That is also told by Socrates.

If you can find every fact mentioned by Wells also in Plutarch, it is not necessary to look further. Wells says that Pericles was the head and inspirer of a little group of intellectuals who were far in advance of their age, and that the ordinary Athenian was a stupid obscurantist. Whether that is correct or not it is not necessary to say; but you will find that in Marvin's book, The Living Past. Marvin was a personal friend of Wells and they had been working together on the League of Nations and you have a quotation in Marvin which Wells gives, and you have everything of the Pericles story, the facts out of Plutarch and the interpretation out of Marvin. And it is not necessary to invent the hypothesis that he took anything from The Web.

Then going on to another hero, Alexander the Great. The exploits of Alexander in the Orient I know nothing about and shall not deal with. The exploits of Alexander are taken by Miss Deeks, at pages 23 and 24 of the comparison.

In the middle of page 24 she finds a significant parallel in the private home life of Philip, who was Alexander's father, and his wife, Olympias. Miss Deeks, in accordance with her usual practice, seized upon every ground she comes across and makes a heroine of Olympias. Whether it was true or not does not matter.

Wells takes his headings from Plutarch and the story in Plutarch, at least, is that Olympias was the trouble-maker. He tells exactly the same story that Wells tells us. Wells tells the same story as Plutarch, that the relations between Alexander and his father were poisoned by his mother. And there again I could take a great deal of time by reading the passages out of Wells and reading exactly similar passages out of Plutarch.

All the stories which Wells tells about the early life of Alexander are taken out of Plutarch, so that there again it seems unnecessary to invent the hypothesis that Wells was dependent upon The Web.

Then there are some points on Roman history which I will hurry over, if I can.

On page 25, for example, there are quite a few comparisons about the Roman Senate and the Senatorial body and the growth of wealth in Rome, and the fact that this wealth coming in from the Roman Empire corrupted the common people. And here I would refer only to Breasted, and I can find it all in Breasted in very similar language to that which Wells used.

It seems to me these are all little points—the comparisons can be explained so obviously.

HIS LORDSHIP: Could you take Breasted, for instance, and make parallel columns with The Web?—*A.* I think I could, sir, on this particular matter. The facts themselves are not in dispute.

Q. You could, of course, take Plutarch with the Outline and make parallel columns?—*A.* Yes, on these personal stories. There is an interesting little parallel on page 26 of the comparison. In the middle of the page Miss Deeks uses the phrase "aggressive selfishness" and she finds that Wells also uses it, and she contends that that is an original and unusual term and that the fact that Wells uses the term is significant. In the first place I would say it was a quite commonplace term which might be used by anybody, but there is another matter, Miss Deeks uses the term in a little part of her book, I think in the part dealing with the family compact in Upper Canada, which was about 1837. We are asked to apply the comment that Wells reading The Web, came across the phrase "aggressive selfishness" and said "That is a beautiful phrase and I must write it down"; and then when he was writing about the Roman Empire he thought of this phrase and wrote it in about the "aggressive selfishness of the Roman Republic." It seems to me that asking us to believe that those terms, used in such widely separated periods, parallel, is asking a good deal.

A good deal was said about Sulla this morning. I must say I was not impressed by Mr. Brett's argument as to the phrase "The aristocratic Sulla." Of course, it may be wrong with reference to Mommson. Of course Mommson is a good solid book of five volumes, and Wells would not have much time to read Mommson. But you do find Sulla the aristocrat used in the two high school textbooks which are in common use throughout North America. I do not say that Wells got the expression from them, but whether it is right or whether it is wrong it is an ordinary and, I would say, a natural way of expressing an idea about Sulla. Sulla represented the upper classes in Rome, whether you call them Patricians, aristocrats or oligarchs. Aristocrats is of course a wrong expression to use in reference to Rome, because it is a Greek term. If it is a mistake, it seems to me it is a natural mistake.

HIS LORDSHIP: They are not suing Wells for mistakes which he made?—*A.* No, but it was pointed out that the fact that both Wells and Deeks use this phrase was significant. I am trying to point out that there is nothing significant in it.

There is another point about Sulla, that is about Sulla's death, which is on page 30 of the comparison. I think Miss Deeks in her evidence said that that was a common mistake. I have not the exact reference. What they both say is that Sulla was worn out by debauchery and died because of his debauchery. Gilbert Murray adds a note that it is generally believed that Sulla died by the bursting of a blood vessel in a fit of temper. Whatever Sulla died from, Wells says he died of some disgusting disease produced by debauchery. The disgusting disease is described in Plutarch and there is no need to believe that Wells went anywhere but to Plutarch for the description of what Sulla died from. Of course what Sulla died from is not particularly interesting in such a history.

In the Supreme Court.

Defendants' Evidence.

No. 25. Frank H. Underhill. Examination-in-Chief—*continued.*

Then the comparison of Brutus and Julius Cæsar. Miss Deeks quotes extensively from Shakespeare's play. She thinks she made a mistake in saying that Brutus was the leader of the conspiracy and not Cassius, and that Wells makes the same mistake. Again, the story in Wells is just out of Plutarch; and here I am forced to say what I think is painfully obvious, that Shakespeare, when writing Julius Cæsar, also used Plutarch, which is well known, that all Shakespeare's plays are based upon North's Plutarch. If Miss Deeks and Wells are both wrong in giving too much importance to Brutus it all goes back to Plutarch, who puts him in the most prominent place.

Mr. ROBERTSON: That will be challenged, I think.

THE WITNESS: That is my point, anyway.

Mr. ELLIOTT: Miss Deeks does not put him in the position of leader?

Mr. ROBERTSON: That he was the ringleader.

THE WITNESS: As far as I could make out, the point was that they both put Brutus in the prominent place, rather than the "Lean and hungry" Cassius. I do not think it matters whether they were right or wrong. The impression you get from reading Plutarch is precisely the same.

I skip over a good deal, and on page 38 of the comparison, at the bottom of the page, it seems to me here is about the most ridiculous point in all this comparison. Miss Deeks uses in her chapter 14, the phrase "The Dark Ages"; and Wells coming on after the Roman Empire, uses "Dark Ages," too. I believe her reason for putting it in the comparison is that she thinks Wells got that phrase from her. That is silly. That is a commonplace of history and has been used often.

Then there is the matter of Charlemagne, on page 38 of the comparison. That is a point Mr. Brett was dealing with this morning; and Miss Deeks in her evidence, and Mr. Burpee in his evidence, stressed this Charlemagne question as a significant parallel, because they said both The Web and The Outline are wrong there, quite wrong in their facts; they both say that Charlemagne was crowned on Christmas Day 800; but they both say that begins the Holy Roman Empire. Mr. Burpee seemed to say that it is not even disputed, but that is simply wrong—at least he said that was a disputed point, and Wells and Deeks both go off the track, and the fact that they are similar should make you suspicious.

In the first place, it seemed to me peculiar for a man like Mr. Burpee, an historical expert, to quote as his authority for this disputed point a dictionary of dates. A dictionary of dates may be of assistance in looking up a date to quote but we do not need to have recourse to Hayden's Dictionary of Dates.

Wells in his account of Charlemagne and the coronation, refers in the footnote to the obvious work that anybody would refer to, that is Bryce's Holy Roman Empire as his authority.

Here I must differ very strongly with Professor Brett. It seems to me that Bryce's Holy Roman Empire gives precisely the picture that Wells does, and I want to read just a page or so in it.

Mr. Brett this morning stressed the point that where Bryce is dealing with Charles and his coronation, he says the Roman Empire, not the Holy Roman Empire, or was it the Empire and not the Holy Roman Empire. The fact is that the Holy Roman Empire is the popular term. When Charles was crowned and when Otto was crowned in 962 their official title was Emperor and Augustus of the Romans. The adjective "Holy" is a popular addition. The ordinary title which you will find in all works is The Empire. Later, in the Middle Ages, frequently they would call it The German Empire, because geographically it was largely German. So that I do not think there is any significance in the fact that Bryce in a certain sentence says "Empire" or "Roman Empire" instead of "Holy Roman Empire." The title of Bryce's book is "The Holy Roman Empire"; and when you read it through it seems to me it is obvious that it is this Empire he is dealing with.

Chapter 4 is dealing with the Empire in the west, and that tells the story of the crowning of Charlemagne on Christmas Day, 800. Then chapter 5, Empire and policy of Charles, and it begins in this way:

> "The coronation of Charles is not only the central event of the Middle Ages, it is also one of those very few events of which, taking them singly, it may be said that if they had not happened, the history of the world would have been different."

And if you go on through this chapter, it seems to me obvious that Wells puts more emphasis upon the crowning of Charles than he did upon the crowning of Otto.

Then, in Chapter 6, he goes on with some of the successors.

Then in Chapter 7, The Theory of the Medieval Empire—and there is a long discussion of that subject.

Remember, down to this point we have not got to Otto: he does not come in until 962.

This Empire of which Bryce has been talking is that of Charles and his successors.

Then, Chapter 8 is on the office of Emperor:

> "This was the office which Otto the Great assumed in 962."

That seems to me to make it perfectly clear that the Empire of Charles and of Otto was the same Empire, and that this point, whether we should date the Empire from 800 or from 962, is decided by Bryce in favour of 800.

Bryce may be wrong, but Bryce is still one of the leading authorities on the subject.

I was going to deal with Christopher Columbus at great length, but Professor Brett has done that. You can find everything in the Columbus story in two sources, namely, the Encyclopædia and in Robinson's book.

In the Supreme Court.

Defendants' Evidence.

No. 25. Frank H. Underhill. Examination-in-Chief—*continued.*

HIS LORDSHIP: Eighty per cent. in the one, and the balance between The Web and Robinson, he said, I think?—*A.* I thought he said, my Lord, that practically all the facts could be found in the other two books; but he found two significant phrases which he thought Wells had taken from The Web.

HIS LORDSHIP: Yes, 100 per cent. from the three sources.

THE WITNESS: Wells used "The Little Expedition"; the Encyclopædia Britannica says "The Little Fleet." It seems to me Professor Brett is quibbling with words when he says there is a significant difference there. I am not impressed by his argument.

Then there is a good deal on pages 51 and 52 of the comparison which I shall not go into in detail; it is about Charles V. Miss Deeks has drawn up long lists of parallel passages there. Now, all the facts that either she or Wells give about the ancestry of Charles V and his coronation and his grandfather Maximilian are perfectly well known facts and are told in every elementary history and there they are all in Robinson's Medieval and Modern Times. I have the parallel passages that I could read here, my lord.

We know that Wells refers to Robinson in his introduction, as forming, along with Breasted, a good world history.

Coming down to pages 52 and 53, we find they are about Luther; and Miss Deeks draws up a long list of parallel passages there about Luther at Wittenberg again. The facts in history are about the best known facts in all Protestant countries; at any rate as to the story of Luther again I could quote, if I wanted to take time, a parallel passage out of Robinson of all that stuff; and if we must assume Robinson copied it from somebody, it seems to me just as reasonable that Wells took it from Robinson. I do not say that he did, because he may have taken it from any obvious source.

That story about Charles V and the Protestant Reformation has been written on many times and has become quite common.

Then there are parallel passages about English history at the top of page 57, where there is one which is a quotation from the writing of King James I:

> "As it is atheism and blasphemy to dispute what God can do, so is it presumption and high contempt in a subject to dispute what a king can do or to say that a king cannot do this or that."

Wells has exactly that same quotation. That is a quotation from a political writing of James I, which might seem to be a parallel. But that quotation is in Greene's Short History, and I should guess that is where she got it. She said she used Greene, in this letter, quite extensively. Greene's Short History is the best history which has been written in the last century, I fancy; and there is no doubt that is where Wells got it; probably he had Greene on his shelves, and probably he used it in his story.

A little later on, on page 58 of The comparisons, there is an account of the Execufion ot Charles I. There is a parallel passage there, a resolution

of the Commons of England, " That the people are, under God, the original of all just power," and so on; and then there is the conclusion " The King was condemned as a tyrant, traitor, murderer, and enemy of his country."

There was the identical phraseolgy that is in Greene, who says the King was a tyrant, traitor and enemy of his country.

Then below that as to " Merrie England " it seems to be perfectly preposterous to think of Wells having had to take that out of The Web. That is one of the commonplaces of history. Specialists on the 17th Century might qualifiy that, but that is by popular belief, anyway, and I do not think it is necessary to suppose that Wells got it from Miss Deeks at all.

Nearly all these things that I am skipping over, I may say, seem to me to deal with facts that are pretty well known. They are not abstruse facts. If there were in this comparison some particularly abstruse facts about history which could only have been obtained by Mr. Wells as a result of long search, or by cribbing from Miss Deeks, there might be something in these Comparisons; but they all deal with fairly well known facts of World history and therefore I am leaving many of them out.

There is just one other I would like to mention, because it seems to me it is so silly a comparison that Miss Deeks wants to draw. It is about Sir Walter Raleigh founding Virginia and naming it after the Queen. Does not everybody know about that? Surely there is nobody so ignorant that he does not know that Virginia got its name from the " Virgin Queen." Surely it is unnecessary to invent the hypothesis that Wells took that out of The Web.

Then there is the Monroe Doctrine which came up on page 68 of the Comparison. It is just a matter of phraseology again.

She says " President Monroe of the United States in 1823 " issued his Doctrine. President Monroe was President of the United States and did issue his Doctrine in 1823, and how else could Wells have stated it? He might have said that in 1823 President Monroe issued his Doctrine,—I cannot see any significance in the parallel.

There is just one other point,— my point is the same in each of them,— that is the parallel is not significant,—this is one I left out, and which I will go back to. It is about the Old Man,—I do not know whether I can find it or not,—it is on page 3 to page 5 of the Comparison; it is about the beginnings of Human Society. Miss Deeks apparently suggests, as I understand, that she emphasises woman and she puts woman in the position of authority; whereas Wells in dealing with these primitive societies, puts man in the first place. And in the Comparison she has the old woman as against the old man, and she seems to suggest by what I think is an unfair argument, that where Wells was different from her, he must have become different in order to hide the fact that he was copying the phrase. I do not know where Wells got the phrase " Old Man " but I would like to refer to other books in which he has used it before this.

In the Supreme Court.

Defendants' Evidence.

No. 25. Frank H. Underhill. Examination-in-Chief—*continued.*

Again in Joan and Peter, if I might read a phrase or so from that work,—this is again Oswald :

> " A writer whose suggestions had played a large part in shaping his ideas about education and social and political matters was J. J. Atkinson. He thought Atkinson the most neglected to all those fine-minded Englishmen England ignores. He thought Lang and Atkinson's Social Origins one of the most illuminating books he had ever read since Winwood Reade's Martyrdom of Man."

By the way, Wells refers to Lang and Atkinson's Social Origins as one of his authorities.

> " The view he had developed of human nature and human conditions was saturated with the idea of the ancestral ape. In his instincts, he thought, man was still largely the creature of the early Stone Age, when, following Atkinson, he supposed that the human herd, sex-linked, squatted close under the dominion of its Old Man, and hated every stranger."

HIS LORDSHIP : I suppose the present day parallel would be the so-called Old Man of the gorilla tribe who leads his wife or wives and his children and his grandchildren ?—*A*. Yes, that is in Atkinson, as a matter of fact.

And another place in which Wells deals with that is in " The World Set Free " in 1913, where he has the same idea, and especially he has that phrase " The Old Man " so that we must assume, if Wells was copying anybody, it was obvious he was copying H. G. Wells.

Those are parallel passages that I thought it well to direct your attention to. I could go on almost indefinitely discussing this. The point is roughly about the same, that it is possible to find an obvious source or authority from which in some cases you can prove that he got the actual phraseology. It is not necessary to invent the hypothesis that he was writing with The Web either in front of him or somewhere in his study.

Mr. MUIRHEAD : That is all, my lord.

Cross-examination.

Cross-examined by Mr. ROBERTSON.

Q. Mr. Underhill, did you prepare a memorandum, a copy of which I have in my hand ?—*A*. That is prepared in the office. Most of the parallels I think I have discovered.

Q. You were aware of them ?—*A*. Yes.

Q. Prepared under your supervision ?—*A*. I had handed in notes at various times of these parallels.

Q. We were handed a copy of it for some purpose, and I was wondering whether it was something prepared by you which you thought would be useful in this case ?—*A*. I had not prepared it, but the particular facts except the Comparisons with Duruy, which I have looked up——

Q. Have you searched for parallels other than in Duruy ? In the cases where he is cited, as the parallels in this manuscript ?—*A*. I could not say unless I looked at it.

Mr. ROBERTSON: I have here something which was handed to us, I thought, as coming from you.

HIS LORDSHIP: Is it the parallels in these two books, The Outline and The Web?—*A.* The books are The Web and The Outline, the two books in question, and then certain well-known textbooks, Duruy, Breasted, Robinson and Greene.

Q. Something prepared under your direction or supervision?—*A.* The Breasted and Robinson and Greene I have looked up, but not Duruy.

Mr. ROBERTSON: *Q.* Have you any other parallels other than those cited from Duruy?

Mr. MUIRHEAD: I handed that in. The Duruy part was prepared by Mr. McLaughlin. The other parts were handed in by Mr. Underhill to the office. The witness has covered it pretty well, and I did not think it necessary to put in that memorandum.

HIS LORDSHIP: You see the trouble you have got into.

Mr. MUIRHEAD: Mr. Underhill did not prepare that. It was prepared by someone of our office.

HIS LORDSHIP: He is not putting it in.

Mr. ROBERTSON: I may have to put in some parts of it.

Q. Have you had experience in authorship?—*A.* Yes, I wrote a history of the Canadian Military Part in the War, which is part of the Oxford History of the War.

Q. And that took you some little time?—*A.* Yes.

Q. That was covering the events of a few years?—*A.* Yes, the four years of the war.

Q. Of a period with which you were familiar?—*A.* I was familiar with the particular part of the Western front in which I fought, but that was a very small part of it.

Q. Of course, after all, the work is not very comparable to Mr. Wells' job?—*A.* No.

Q. This was a very large job that Mr. Wells undertook?—*A.* Yes.

Q. And would you agree that it would require a good deal of preparation?—*A.* Of course for a professional historian it would be quite impossible, because he is too scrupulous about his authorities and he wants to verify all his references.

Q. Did you hear the description read here about how Mr. Wells wrote it?—*A.* No.

Q. That he wrote it by hand and did not have the authorities before him as he wrote?—*A.* I did not hear that.

Q. And did not quote except something from Herodotus,—did you hear that?—*A.* No I did not hear that.

Q. Would you think that the work was got out in any such way as that?—*A.* As I say, a professional historian could not do it in the time; but Mr. Wells is an extraordinarily rapid worker, and I would express no opinion as to whether he could do it or not.

In the Supreme Court.

Defendants' Evidence.

No. 25. Frank H. Underhill. Cross-examination—*continued.*

Q. In the work, would you say there is a good deal of what amounts to almost quotations?—*A.* Yes, I have shown some quotations.

Q. And there is a lot of it?—*A.* Yes, a good deal.

Q. As Professor Brett said this morning, he is writing a good deal with some book before him, altering the phraseology somewhat?—*A.* Oh yes.

Q. There is a lot of that?—*A.* How else could he write?

Q. Even doing it in that way, starting in independently, it would be a long and difficult task?—*A.* Well, Mr. Wells's collected works were published in 1924 in The Atlantic Edition, to which I have referred; and the Atlantic Edition is in 28 big volumes, such as I have down there. That covers Mr. Wells from his first book in 1904 to the end. His average production was a book a year, not to speak of all his ephemeral journalism; so that he is an extraordinarily rapid worker.

Q. Of course a good deal of the work of which you speak is fiction?—*A.* Oh yes.

Q. And does not require anything like the preparation that is necessary for history?—*A.* No, but I point that out to show you that he is almost unbelievably rapid in the way he writes. As a result, a good deal of his literary work is kind of slipshod.

HIS LORDSHIP: No one would quote the Outline of History as authority?—*A.* Oh no. I am sure Mr. Wells would be the last to say it was. In his 1926 edition he says it was mostly compiled.

Mr. ROBERTSON: In his first edition, I suggest he indicates quite another idea of the work and that it is a work of authority and based upon the best authorities?—*A.* You are using "authority" in a different sense. I misunderstood you. All I think that Wells says,—I suppose he would say this, that he would be bound to do so in self-respect—is that it is a good compilation. That is all. A small historical work of this kind would be just a compilation.

Q. And it is not a good compilation?—*A.* Oh, there are lots of parts in it that I would criticise.

HIS LORDSHIP: It is hard work to make it easy reading?—*A.* Yes.

Mr. ROBERTSON: *Q.* I am only recounting to the witness what Wells says in his Introduction. Then, with reference to the plan for such a work as this, the plan upon which it is to be based is important, is it not?—*A.* Yes. You heard what I said about the plan.

Q. And the plan would take time to prepare?—*A.* The rough plan would not take much time. What would take more time would be to determine the relative amount of space he would give to each period.

Q. And would it not take a good deal of time to determine what he would put in and what he would leave out?—*A.* That is a pretty vague term, "a good deal".

Q. If two people are going to write about the ancient Greeks, for example, one of them might write without saying anything about Aspasia,—is not that so, as an illustration?—*A.* Oh yes, that might be.

Q. When a person goes to outline what he is to put in and what he is to leave out, that is a matter which takes a good deal of time?—*A.* "A good deal" is so indefinite that I cannot say Yes or No. It takes some time.

Q. Have you any idea how much time?—*A.* No.

Q. It is a work of some labour?—*A.* Yes, some labour.

Q. And it would be of assistance to a man if he had something to follow?—*A.* Oh yes.

Q. Do you think it is likely or unlikely that two people writing about the same time on such a broad subject would be likely to parallel one another?—*A.* I think it would be likely.

Q. Would you think they would be likely to parallel each other in details?—*A.* Yes, as I have said, all these details with which I have been dealing appear to be obvious details, as I have pointed out.

Q. I am putting to you a broad question?—*A.* I said Yes.

Q. Have you compared or tried to find whether any other author dealing with the history of mankind or world history is anywhere close to these books in detail?—*A.* I have been repeatedly quoting Breasted and Robinson.

Q. Yes, here and there. Have you compared them throughout, particularly compared them so far as the first book of The Web is concerned, or up to the time of the end of medieval history?—*A.* Oh no, not throughout. I have not had time to do that.

Q. You see what we are suggesting is this, that while of course, if people are going to write a history of the world they are going to talk about the principal events, and the principal people, but you will agree they cannot talk about all the principal events and all the principal people in a short book, can they?—*A.* There again, what do you mean by "principal people"? I should say generally speaking all elementary histories deal pretty well with the same principal people and the same principal events. That is all I can say, generally speaking.

Q. Let us say historical people and historical events. Do you suggest that in a book of this kind there would not have to be many omissions?—*A.* Oh yes, of course there would be.

Q. I am asking you if there would not be, and you say there would be?—*A.* Yes.

Q. Then would it not be significant if two books written at about the same time, had pretty generally the same omissions?—*A.* Name the omissions.

Q. I ask you if that would be significant to you?—*A.* I would have to see the omissions you refer to.

Q. Is that the only answer you can give?—*A.* Yes, that is the answer I give.

His Lordship: Half past ten.

Mr. Elliott: I did not know that we were going to be up against these lengthy professors, so that I will have to revise my promise to be

In the Supreme Court.

Defendants' Evidence.

No. 25. Frank H. Underhill. Cross-examination—*continued.*

through to-morrow. Rules which apply to ordinary witnesses do not apply to professors. It is quite apparent that we will not be able to put in all the evidence by to-morrow and have any argument which will be of assistance to your lordship. If we can get in all the evidence to-morrow, perhaps your lordship, at your convenience, might be able to give us an appointment for the argument.

HIS LORDSHIP: It would be better not to name a date now.

Mr. ROBERTSON: We could name a date later. I do not expect to say very much more now.

(At 4.50 p.m. Thursday 5th June, 1930, the Court adjourned to Friday, 6th June, 1930, at 10.30 a.m.)

Morning Session.

Toronto, Friday, 6th June, 1930.

FRANK HAWKINS UNDERHILL.

Cross-examination continued by Mr. ROBERTSON.

Q. Now, Professor Underhill, have you seen the Exhibits put in during the course of Miss Deeks' evidence, giving in parallel columns a comparison of the plans of the two works?—*A.* I saw a comparison of the plan which Miss Deeks had made, at some time before the court sat this week. The one that was put in was only drawn to my attention this morning, and I find it has a great many additions to the one I saw. I only saw it within about 15 minutes before the court sat this morning.

Q. Did you study the one you saw?—*A.* Yes, I looked it over.

Q. More than that, did you study it?—*A.* Yes, reasonably well.

Q. And did you hear the evidence of Professor Irwin?—*A.* Yes.

Q. Do you disagree with him when he says that the plan, the framework, the system that is followed of taking up events in The Outline and The Web are closely alike—do you disagree with that?—*A.* No, I said that yesterday, that they are alike in their general plan, and they are also like any other outline of history I know of. I do not think there is anything significant in that.

Q. That is the next thing I want to ask you. What other outline or book dealing with this subject, do you refer to as having a similar plan, a plan which is as near The Web as The Outline is?—*A.* Well, Robinson and Breasted, on the whole.

Q. Those works are here, are they?—*A.* Yes.

HIS LORDSHIP: Robinson, is it?—*A.* Yes sir.

Q. That is in two volumes?—*A.* Yes. Breasted is ancient,—it is a joint work.

Q. Are these college texts?—*A.* These are college texts, yes.

Mr. ROBERTSON: *Q.* You have referred to Breasted. Breasted, of course, has nothing at all to say about the part that takes up the first few hundred pages of Wells's book?—*A.* No, I have already dealt with that.

Q. You have nothing to say on that at all. I observe that in his case he puts the Babylonian civilization——*A.* As I said yesterday, I do not know anything about Oriental History. I have not gone into it. I did not look into the Oriental part.

Q. I suggest to you that if you made a comparison of the plan, if it was worth anything, you would look to see whether they dealt with periods in the same order.—*A.* I did not have unlimited time at my disposal, but went over them generally and went into detail in the periods with which I was dealing.

Q. Have you anything to say about the period of which Mr. Irwin spoke. He can speak of it with more authority than you can?—*A.* Yes.

Q. And also he knows the subject better because you have not put any time on it?—*A.* Yes, I guess that is right.

Q. Now, you had something to say also about the space that was devoted by the authors of The Web and The Outline respectively to the various periods. You also mentioned, I think, did you not, that The Web devotes the first 160 pages to times before, what,—before history or before civilized man?—*A.* Before civilized man. I have forgotten the exact number now.

Q. I suggest to you the sort of subjects placed in the world's history where the writer would have a pretty free hand?—*A.* I do not know anything about the geological periods, and I do not know whether that is fixed or not.

Q. Then is not this rather characteristic of Mr. Wells, that at times he lets his fluency or facility with the pen rather run away with him, and he spends sometimes a good deal of language on discussing his theories and that sort of thing which is not really history at all?—*A.* Well, yes, history in the narrow sense,—I suppose that is true enough.

Q. And that goes to make up a lot of the book?—*A.* Yes; history is a simple narrative. The historian is always turning aside to interpret his facts,—Wells does that.

Q. I am suggesting to you, and you can give the answer, is it not the fact that Wells in his book, has an excess of that sort of thing, I mean much more than an ordinary history?—*A.* No, I should not say there was any remarkable connection; it did not strike me so. I found a good deal of Mr. Wells's opinion in his History; but if I read Mommsen's Roman History, I find a great deal of his opinions as to the meaning of the Republic there, I mean in proportion. History without interpretation is so dull that it is unreadable.

Q. Here is a man who does not profess to be writing that class of work that Mommsen was writing, but something of a more elementary sort, but he mixes up with the rather elementary narrative all sorts of digressions of his own to discuss his own theories?—*A.* No, I would not admit that they are digressions at all.

Q. Well, they are inserted.—*A.* Quote some of them. I would not admit that they are inserted.

In the Supreme Court.

Defendants' Evidence.

No. 25. Frank H. Underhill. Cross-examination—*continued.*

Q. I will not take up the Court's time or your time with that. Did you suggest yesterday that Mr. Wells in writing his History, in the more recent period, that is from Medieval times and modern history, would deal with a period and then clean it up and then go on to the next period and clean that up?—*A.* No, all I said was that in general he followed the chronological order. Of course, you can find exceptions.

Q. And in general Miss Deeks does the same?—*A.* Oh yes.

Q. I was thinking perhaps you were adopting what was suggested to him in his examination in England, as to the panoramic method?—*A.* I do not understand what you mean by the panoramic method.

Q. Taking a hundred or five hundred years or a thousand years and dealing with it and cleaning up and going on to the next period?—*A.* He does do that to a certain extent I suppose.

Q. Because I would suggest to you that on his examination for discovery he did not do that?—*A.* In general, he followed the chronological order; but no historian sticks strictly to chronology.

Q. Would it not be rather fair to summarize your evidence on this point by saying that all histories of mankind, so far as you know them pretty much follow the chronological order, and these do too?—*A.* Yes.

Q. Have you made any examination of significant omissions from the narrative in the two works?—*A.* Some of them have been suggested in Miss Deek's analyses, I think.

Q. Have you examined them?—*A.* Yes. I may say that this new analysis which I only saw this morning seemed to me to have some very exaggerated statements, but I have not had time to look into it closely.

Q. That is the analysis of the plan?—*A.* Yes. One thing which I came across is that in Wells, that in the United States from the beginning of Independence to the Monroe Doctrine, there was nothing about the United States. I was surprised at that and I looked it up and found he had five or six pages about the founding of the State Constitution.

Q. I think that is what she says.—*A.* No, she says that from the beginning of Independence, the founding of the State Constitutions, going on from the 1790's into 1800——

Q. Do you observe that they both omit the war of 1812?—*A.* The war of 1812 was an extremely petty event, not worth mentioning. The important event was the Napoleonic War, which was going on at that time.

Q. They mention the Napoleonic War?—*A.* Yes.

Q. But neither of them mentions the fact that the United States was at war with England at that time?—*A.* I do not think that is worth mentioning.

Q. But it is a fact?—*A.* Yes, it is a fact, but I do not think it is important.

Q. Did you notice that neither one of them deal at all with the Roman law, the learning of Rome and the influence of Roman law?—*A.* I mentioned that yesterday and said that I thought Wells was unsatisfactory on the Roman Empire, and did not take up enough space with it. That in my comparison I found Miss Deeks took up more time on that. But Wells

has a note in which he says he is temperamentally incapable of understanding lawyers.

Q. You must have been reading the passage where he asked that it be stricken out of the record for fear it might prejudice the court against him. Now one or two instances before we get too far away from what I think you refer to as part of the plan. May I suggest to you that in the case of Aspasia, you did not get all the point made by Professor Irwin and by others, and that is not only did Miss Deeks mention her and Wells mentioned her, but the first point made is this that it was natural enough for Miss Deeks, who was making a good deal of the place of woman in the world's history, to bring in Aspasia and give her some little part, and perhaps to give us as favourable an account or a little more favourable account than the facts warrant. But that Wells, who is entirely against all that sort of thing, and will not allow woman to have had anything to do with the history of mankind, that it was quite anomalous for him to bring that in. Then the second point is that they both make reference to her having an illegitimate relationship to Pericles. What do you say about that?—*A.* Wells said she was Pericles' de facto wife,—I have forgotten the phrase.

Q. " Was in effect his wife " ?—*A.* Yes. I can only repeat what I said yesterday, that the story of Pericles and Aspasia is one of the famous life stories of the world; it is all in Plutarch; and it is the sort of thing that Wells, as a popular historian, would want to put in, and he puts it in a la Plutarch. He does not hide the fact that Aspasia was Pericles' mistress. He said that Pericles could not marry her because of the Athenian war, but that she was in effect his wife. Surely that means that she was his mistress. Surely he was not hiding anything.

Q. What he says is that she was in effect his wife?—*A.* That is only part of what he says.

Q. And he does not say that she was his mistress?—*A.* You are quibbling about a word. He makes it clear.

Q. It is a matter of words. It is the words that we say are significant. —*A.* He goes on to say that Athens was full of gossip about their relationship.

Q. Miss Deeks had said that Pericles married Aspasia. Wells, after referring, as Miss Deeks does, to her fine qualities, said that he could not marry her but that she was in effect his wife. Now I suggest to you that there is something rather striking, unless you can find somebody else saying the same thing. Miss Deeks said they were married, and we suggest that Wells said he could not marry her, but she was in effect his wife.—*A.* That is what she was.

Q. Can you find anybody except Wells and Miss Deeks to support your statement?—*A.* Plutarch says that Pericles took her to his house and loved her very dearly or something like that.

Q. Plutarch points out not that there was anything illegitimate in their relation or approaching that, for Pericles had a wife?—*A.* Plutarch says Pericles put his wife from him and took Aspasia to his house and lived with her and loved her very dearly—that is not an exact quotation.

Q. That is all you have to say about that?—*A.* Yes.

In the Supreme Court.

Defendants' Evidence.

No. 25. Frank H. Underhill. Cross-examination—*continued.*

Q. Those are two of the things we comment upon in that connection the suggestion of an illegitimate relation? *A.* I repeat that in my opinion that is just a quibble on words.

Q. The quotation from Plutarch is all you refer to for that?—*A.* Well, general knowledge. I did not bother looking up Plutarch for that.

Q. And you set that forth in this memorandum which you have prepared, I suppose, as Plutarch's statement?—*A.* Yes.

Q. Then the other one, that I somewhat connect with that is the instance mentioning the "Old Man." I suggest to you that you did not quite do credit to the argument put forward by the witness on our side. The suggestion, I understand, was not at all that it was anything out of the way to mention the "Old Man" in the early life of man, but it goes on to say, and we suggest, rather absurdly, something against the "Old Woman," that she was nothing but a squaw and too fat at that. We suggest to you this, that it was the seeing of the phrase about the "Old Woman" in Miss Deek's book, The Web, so stirred him up that he was moved to a contradiction?—*A.* No, I should say that suggestion is just absurd. You find in Wells, in the two places I have quoted, that Wells was perfectly familiar with this particular anthropological theory,—I am not familiar with it and I do not know whether it is right or wrong. It is Well's theory which he got from J. J. Atkinson.

Q. That theory does not include any aspersion upon the "Old Woman" as a squaw and too fat at that?—*A.* I do not suppose it does, but the senior old male dominated the group and the women and the young children were at his mercy. That is the theory.

Q. And that is the whole of the theory?—*A.* Well, that particular phrase——

Q. More than the phrase, the idea of disparaging woman, in saying she was subject to the man.—*A.* That is disparaging her anyway from Miss Deeks' point of view.

Q. You might think it was disparaging the man rather than the woman, if he took such liberties with his own superior might. I am taking those two by way of illustration, and will now pass on. Did I understand you yesterday, correctly, to suggest that if one could find in some earlier book a passage from which either or both Miss Deeks and Mr. Wells might have quoted that, the argument on our side was gone as to that particular item? —*A.* I did not say the argument, but I said if I can find a passage from a book like Greene's Short History from which Wells quoted, I do not think it is necessary to think that he must have seen The Web.

Q. But I suggest to you that if you can find in two books at the same place, dealing with the same thing, a lot of quotations from the same authors, that is similarities of quotations in many places, that that is the very suggestion?—*A.* I only found stray quotations. I find similarities of language.

Q. I can only refer you to this document—*A.* Those are the quotations, but are mostly just similarities of language, I mean quotations by Wells from somebody else.

Q. I want to know if you are suggesting this, if you will find similarities in the two works, and you can find a third somewhat parallel similarity in another earlier book, do you suggest that our argument is gone as to that particular matter?—*A.* I say in a particular case, such as the Christopher Columbus case, where I can find that Wells has taken his story out of the Encyclopædia Britannica I do not think it is necessary to assume that he took it out of The Web.

Q. I want to give you one particular instance, which I may use for the purpose of convenience. Turn to one of your passages on page 9 of your manuscript, where you refer to page 11 of Exhibit Number 6, Volume XX, page 273 of Wells?—*A.* You are taking me back into Phoenician History again. I did not make out this particular part. As was explained yesterday, these comparisons were made by Mr. McLaughlin.

Q. This is the comparison between The Outline and The Web, if I may refer you to it for a moment. I want to ask you if you think there is any suggested similarity in those two passages that I have referred to, dealing with Phoenician commerce?—*A.* I have explained again and again that I know nothing about Phoenician history, I do not know whether the parallel is suggestive or not.

Q. I want you to look at it and give me an answer, please.—*A.* That is my answer.

Q. I want you to look at it now and answer it?—*A.* I have looked at it.

Q. I am not asking you about a question of history at all, but a question of similarity of language?—*A.* There is similarity of language. This is on Phoenician history and I do not know whether it is significant or not.

Q. You have tendered yourself as a witness, and I put this as a simple test and ask you whether this is not a similarity, and if you have any explanation of it?—*A.* I say it is obvious that there is similarity. I do not know whether it is significant.

Q. Will you say it is not?—*A.* I say I do not know.

Q. Have you read the passage?—*A.* I have read it.

Q. And you do not know whether there is a significant parallel in the language?—*A.* No.

Q. Who selected the quotation from Duruy which followed it?—*A.* Mr. McLaughlin.

Q. Have you read it as well?—*A.* No I have not.

Q. Will you glance at it now for a moment. Have you looked at it?—*A.* Yes.

Q. I put it to you that those three passages quite obviously are related, the passage from Web, the passage from Wells and the passage from Duruy are obviously related?—*A.* Again you are insisting upon asking me about significance. Obviously related,—maybe their language is, but I do not know whether that is significant. We are just wasting time.

Q. Maybe we are and maybe we are not, for a moment longer. If you want to tell me that you are not here for the purpose of making comparisons of language or expressing any opinion upon them, we can shorten this very

much.—*A.* I am here for the purpose of making comparisons on history about which I know something.

Q. My question is this, are we to take it from you that it will be useless to ask you, because you cannot tell us, whether we are to attach any weight whatever to similarities in language?—*A.* No you are insisting on misinterpreting me. I say it is useless to ask me whether there are significant similarities between these passages.

Q. No, I ask you if it did not indicate inter-relation?—*A.* That is significance, isn't it?

Q. Do they or do they not? If you say you cannot answer that question, I think that means a lot in this case.—*A.* There are verbal similarities, but whether that indicates inter-relation I do not know. That is about the twelfth time I have answered that.

Q. I think, even if I do repeat the question several times, that I am doing it in fairness to you, because I do suggest to you that as an educated English-speaking man you ought to be able to answer the question. Do you say you cannot say anything more about it?—*A.* No, I cannot.

Q. In this memorandum which I hold in my hand, in which is set out a number of selected passages for comparison, may I suggest that wherever there is no other author cited you have not been able to find any?—*A.* No you may not take that for granted at all.

Q. Then why didn't you set out—— *A.* As I have explained, these parallels which have only The Web and Duruy, were not drawn up by me at all.

Q. But you have seen them haven't you?—*A.* I have seen them.

Q. Let me see and take two or three that I have marked. Will you look at page 4?

HIS LORDSHIP: Are you putting in this memorandum, Mr. Robertson?

Mr. ROBERTSON: I am not sure that I can use it for anything more than argument. That is why I was careful to see that Duruy was put in. This is a document with extracts of the various items shown in the analysis, Exhibit 6, and it quotes the passage from The Web, the passage from the Outline, and then the passage from some other author. In this, of course, it is usually Duruy, but the witness disclaims having anything to do with this.

THE WITNESS: The other passages which are not Duruy most of them I dealt with in my evidence yesterday.

Mr. MUIRHEAD: That was prepared by my friend Mr. McLaughlin to show the close similarity between The Web and Duruy, and to show that The Web and Duruy were more closely allied than The Web and The Outline.

HIS LORDSHIP: Mr. Robertson is using the paper in his hands, page 4 and is referring to something which is not before the court.

Mr. ROBERTSON: I think your lordship will find that I give also the page of the other book. I want to refer now to the quotation on page 4 of this document, at page 38 of Exhibit Number 6, which is the Comparison.

That is from The Web, Chapter 13, and fromThe Outline, Volume 2, page 58. That is a passage in which they each refer to Charlemagne as being the Emperor of the Holy Roman Empire. They both use the expression " Holy Roman Empire " in that connection. Do you know any other author who in speaking of that event, refers to the Empire as the Holy Roman Empire at that time?—*A.* I went over all of this in great detail yesterday, and I said that in my opinion there is no significance in that fact that the author says " Holy Roman Empire," " Roman Empire," " Western Empire," " Eastern Empire," " German Empire," or any other expression.

Q. I would like an answer to my question and not your opinion as to whether my question is relevant or not. I am asking you if you know any other author who refers to the Empire at that time as the Holy Roman Empire?—*A.* Any other author except Bryce?

Q. If you say Bryce, I am going to take you to Bryce.—*A.* I say Bryce.

Q. Do you say that Bryce in his work refers to the Empire at the time of Charlemagne as the Holy Roman Empire?—*A.* He says sometimes " Empire " and " Holy Roman Empire ": and the heading of the title of his book is " The Holy Roman Empire."

His Lordship: Your suggestion is that he refers to it as the Holy Roman Empire?—*A.* Yes, my lord.

Mr. Robertson: Is there not a specific date more than a century and a half later given by Bryce and everybody else which is always referred to as the Holy Roman Empire?—*A.* Show it to me in Bryce. I say it is not there.

Q. Do you suggest that Bryce anywhere applies in these earlier years, the name " Holy Roman Empire " to this kingdom of Charlemagne?—*A.* Really I am getting tired repeating it. I say there is no significance in a given page whether Bryce says " Empire " or " Holy Roman Empire " on that page.

Q. And really I am getting tired asking the same question. The witness, of course, my lord, is not getting this. What we are calling attention to is not the fact of history but the phraseology that they use. Here are two people who use a phrase that we say is not used by anybody else. If the witness will confine his remarks to the question he is asked, instead of trying to tell me what is important or what is not, we will get ahead.

The Witness: At the very beginning of Bryce is a chronological table; when he gets down to Charles he says he was crowned Emperor of Rome and Otto was crowned Emperor of Rome. He evidently thinks he is talking about the same Empire.

Q. This chronology begins when?—*A.* Back in Roman times.

Q. Your argument is not surely that anybody who knew anything about the subject called the empire of the Cæsars the Holy Roman Empire?—*A.* I am afraid you do not know much about the Holy Roman Empire. The whole theory of it was that it was a revival of the old Roman Empire which began with Cæsar Augustus and came to an end in——

In the Supreme Court.

Defendants' Evidence.

No. 25. Frank H. Underhill. Cross-examination—*continued.*

HIS LORDSHIP: Did it begin with Constantine?—*A.* By Constantine's time the old Roman Empire was split up into the Western Empire, and the Eastern Empire. The Western Empire came to an end in 476.

Mr. ROBERTSON: I suggest to you that if you are acquainted with Bryce's book you will find this in it, that the word "holy" was attached to the name "Empire" for a specific reason that did not exist for 160 years after the date of Charlemagne, and that that is the beginning of that epithet? —*A.* No.

Q. Do you say that is not right?—*A.* Yes. The Holy Roman Empire dates from 800.

Q. Then why will you refer me to a chronology which began away back in the days of the Cæsars?—*A.* Because there Bryce treats the Empire of the Cæsars and of Charlemagne and Otto as one and the same thing.

Q. And then a new force came in, and then it became the Holy Roman Empire?—*A.* No, anyone who says that knows nothing about Roman History.

Q. Except what you deduce from Bryce, you do not find any person who uses the phrase "Holy Roman Empire" as applied to the Empire of Charlemagne, do you?—*A.* I have not looked. Wells referred to Bryce as his authority, and it seemed natural and I went straight to Bryce.

Q. I suppose one is almost safe in saying that the only place in Bryce where you find the phrase at all is in the title?—*A.* I do not know. I would have to read the whole thing through carefully. It does not matter. Bryce's book would be about twice as big if every place at which he said "Empire" he had to say "Holy Roman Empire."

Q. I am suggesting that there is no significance in what you say for the reason that Bryce's book began away back in the time of the Cæsars and traced the Empire down and he did not apply that phrase to it, nor did anybody else?—*A.* You know very well the saying that the Roman Empire was neither Holy nor an Empire.

Q. Let us turn to another point at page 13 of your memorandum, taking the first one there, which is from page 26 of Exhibit 6, Chapter 9, page 12 of The Web, and Volume I, page 476 of the Outline. You see two quotations from The Web and The Outline?—*A.* Yes.

Q. In The Web, "A large part of Southern Italy seceded from Rome." In The Outline, "A large part of Southern Italy came over to Hannibal including Capua." Then you quote here as an authority Breasted, page 542, where it is said "Within a few years Italy forsook Rome and joined Hannibal." Do you think that explains the verbal similarities between The Web and The Outline?

Mr. MUIRHEAD: My friend has been examining upon this for an hour, and this would simplify matters for your lordship and I am satisfied that it should go in.

Mr. ROBERTSON: All right.

HIS LORDSHIP: What do you call it?

Mr. MUIRHEAD: It is mimeographed passages from The Web, The Outline and other authors.

Exhibit No. 23. Filed by Mr. ROBERTSON. Mimeographed passages from The Web, The Outline and other authors.

Mr. ROBERTSON: *Q.* Again I am calling your attention to the similarity of expression "A large part of Southern Italy seceded from Rome" in The Web and "A large part of Southern Italy came over to Hannibal, including Capua," from The Outline?—*A.* And Breasted says "Within a few years Southern Italy forsook Rome, and joined Hannibal." And Botsford says "The allies of Rome in Southern Italy, revolted."

Q. And "This brought about the interventions and wars that threw Illyria, reduced Greece and Macedonia to Provinces of Rome"—that is The Web; and The Outline says "Complicated interventions led to the reduction of Illyria and Macedonia to tribute-paying Provinces of Rome." Again I call your attention to the number of words which appear in both sentences?—*A.* The quotation from Breasted there I think is not complete. I think Breasted says something of the same thing. If I might refer to Breasted.

Q. It is at page 542?—*A.* My recollection is that in Breasted he goes on further and refers to Illyria and Macedonia.

Q. If you find that, I have no objection to it being inserted later, without stopping for it at the moment. The next thing I want to refer you to is on page 18 of your exhibit, where you set out certain pages dealing with Greek national unity, and you follow with a quotation from Breasted. Now, I do not want to trouble you with questions that you say you are not prepared to answer, but I suggest to you that there is a striking similarity in the exhibit of the two passages from The Web and The Outline, and the things they say about things?—*A.* I would say that the things they enumerate there, the influences which make towards unity, such as the Amphictyonics, Olympic games, shrines of Apollo in Delos and at Delphi—those things are all in Breasted.

Q. Without reading it all the way through, because it speaks for itself, take the concluding part of each passage of The Web and The Outline. "In B.C. 776" the Web says, "the name of Coroebus was inscribed on the public register of the Elians as having won the prize of the stadium, and it became customary to take this date as the starting point of history." You see what it says that that year became the starting point in Greek chronology, and that is set out in both these works, and that does not appear in Breasted at all?—*A.* B.C. 776 is one of the most notorious dates in Greek history, and that is why, because it is the starting point. Breasted does not happen to mention that.

Q. I am calling your attention not to the fact that they both know this, as it is agreed that they can both easily find out this fact, but when they come to tell about it, they do so in very much the same way?—*A.* What else could they say on the Olympic Games in 776 B.C.? We happen to have a record of them and it serves as a starting point.

In the Supreme Court.

Defendants' Evidence.

No. 25. Frank H. Underhill. Cross-examination—*continued.*

Q. If Wells took Breasted and did not have The Web, he would probably have said what Breasted said and not what The Web said?—*A.* I do not think Mr. Wells needed to have anything to lead him to the importance of 776 B.C. I believe he knew enough about history to know all that.

Q. Are you not aware that in writing matters of this kind, a little suggestion is a help?—*A.* Oh, yes, but I do not think he needed any suggestion.

Q. Then on the next page is one more. I do not know whether you are responsible for this so-called parallel passage from Plutarch.

Mr. ELLIOTT: What page are you referring to?

Mr. ROBERTSON: Page 19. "Venality got such a hold upon men that everything was for sale, and as the King of Persia had gold, he bought it all. . . . It was with 13,000 Greek mercenaries that Cyrus, King of Persia, made his way as far as Babylon." That is from The Web. Then The Outline: "One took Persian money. Everybody took Persian money. What did it matter? Or one enlisted for a time in their armies." That is, you have the statement that everybody was being bought up by Persian money, and even that people were enlisting in the German armies. Is this the best you could do as a comparison?—*A.* I did not make up that comparison. I do not know whether I could do better or not.

Q. But you have not done better?—*A.* No, I did not do it.

Q. You will observe that the other has not anything at all to say about anybody but Demosthenes?—*A.* Cyrus Anabasis is so well known that I do not think Mr. Wells would have to go to anybody for it.

Q. Who looked up the quotation from Plutarch?—*A.* I did not make up that document. If I had time to look up Plutarch, I could probably do better.

Q. Then on page 27, the one marked 10 on that page, you see you have there the quotation from The Web referring to ideas that Caligula obtained from Egypt, and the ascription of some of his pernicious ideas to Egypt?—*A.* Yes.

Q. You see what I am referring to?—*A.* Yes.

Q. They both refer to the Egyptian origin of these pernicious ideas?—*A.* And that is not in Breasted. And again I can only say that my recollection is that I found in Breasted something referring to the divine origin of the Cæsars.

Q. If you are able to supplement what you are now able to give, it might be added. But the parallel passage here——?—*A.* No, it is not complete; but my recollection is that in Breasted there is something which completed it.

Q. Then verbal similarity, may I take it, is not something which you have been looking for?—*A.* No, I have been looking for nothing else. Have I not told you I have been going through these verbal similarities which Miss Deeks suggested and seeing if I could find them significant. I have said that time and again it has reduced down to nothing.

Q. Has not this document which you have before you given a fine example of your ideas?—*A.* No, this by no means is complete.

Q. I did not say complete, but does it give a fair indication?—*A.* No, it is not even a fair sample.

Q. You referred to Alexander the Great, or rather to his mother Olympias. Let me again put this to you. I suggest to you, you have not got the point of our criticism, which is, that again in line with what The Web says, Mr. Wells has gone out of his way to say something about a woman?—*A.* As I said yesterday—I am merely repeating here everything said yesterday—if Mr. Wells went out of his way, Plutarch had done it too, and since you can find Mr. Wells used Plutarch, you can find no significance in it.

Q. I suggest to you that you have not considered your answer. The reason I emphasize that is because of what has been said so frequently in this trial, that Mr. Wells would have nothing to do with woman in history, and here he is going out of his way to bring in a woman?—*A.* I never said Mr. Wells would not have anything to do with woman. My general impression of Mr. Wells is that he put women in their proper place. (Laughter.)

Q. You referred to something about Charles V. Our point there was that both The Web and the draft of The Outline called Charles V " Charles V of Spain " when in fact he was not Charles V of Spain?—*A.* He was the Holy Roman Emperor.

Q. That was wrong, and somebody wrote to Mr. Wells, one of his advisers, as I recall it, to tell him, " No, he was not Charles V of Spain. He was Charles, but not Charles V?—*A.* My point was that Miss Deeks in her Comparison—I have not the page—gives quite a long section to Charles V's ancestry, and how that remarkable amplification of territory came about. I said that all that is in Wells you could find in other histories.

Q. It would be quite wrong to refer to him as Charles V of Spain?—*A.* I do not at the moment recall what he did say.

Q. I am asking you as a matter of history?—*A.* He controlled Spain.

Q. It would not be proper, and historians who know their business do not call him Charles V of Spain, do they?—*A.* I have forgotten at the moment just what the details were of his connection with Spain.

Q. Perhaps then we can take the man who corrected that, and Wells corrected it after his draft?—*A.* I have forgotten the facts about Charles for the moment.

Q. I am asking you a fact of history, and you say you do not know.

His Lordship: All right, the next witness, Mr. Elliott.

Mr. Elliott: The witnesses are all exhausted, my lord.

His Lordship: You have no more oral evidence?

Mr. Elliott: No, my lord. Then I will go on with the evidence of Walter Grierson at page 46.

(As agreed, the evidence of Sir Frank Newnes now follows before that of Walter Grierson.)

In the Supreme Court.

Defendants' Evidence on Commission.

No. 26. Sir Frank Newnes. Examination for Discovery.

No. 26.

Evidence of Sir Frank Hillyard Newnes.

Examination for Discovery, 18th June, 1929.

SIR FRANK HILLYARD NEWNES, sworn.

Examined by Mr. NORMAN DAYNES.

1. *Q.* You are the Managing Director of George Newnes & Co., Ltd.?—*A.* A Managing Director.

2. *Q.* You have been concerned with what, I believe, has been called in the Correspondence the serialisation of Mr. Wells's " Outline of History "?—*A.* Yes.

3. *Q.* Could you tell me when you first became aware that Mr. Wells was proposing to write something in the nature of a history of mankind?—*A.* When he spoke to me one day in the Reform Club, and told me he had written it.

4. *Q.* Could you tell me the date, as near as possible?—*A.* It was August, 1918, I believe.

5. *Q.* August, 1918, you believe, was about the date?—*A.* About that, about 10 years ago.

6. *Q.* Could you fix it by your returning from a summer holiday, or anything of that kind?—*A.* No, I cannot fix it like that. I happened to see him one day in the Club. He told me he had this, and would we entertain the question of publishing it.

7. *Q.* Did you have a long conversation with him about it?—*A.* Yes, I asked him what was the nature of the work, how long it was, and so on.

8. *Q.* About the number of words?—*A.* About the number of words, the subject, and so on.

9. *Q.* Would you tell me what he said about the number of words?—*A.* I cannot remember that, no.

10. *Q.* Would you remember whether it was 500,000 or 200,000?—*A.* I do not know that we discussed the number of words the first time we discussed it, but it was obviously a long work, which was sufficiently long to be serialised.

11. *Q.* You said something about his telling you the plan of it. To what extent did he tell you the plan? Did he tell you that it was going to begin with astronomical and geological theories and going to finish with a discussion as to the welding of the world into one whole, the federation of the world?—*A.* It was going to be a history of the world from the very earliest beginnings, and all countries of the world right through the ages. I cannot remember whether he said " We are going to weld the world into one, at the end."

12. *Q.* That you do not remember?—*A.* No.

13. *Q.* I think you said you had more than one conversation with Mr. Wells about this time?—*A.* I may have done, I expect I did. You are asking me about things over ten years ago.

14. *Q.* Do you keep a diary?—*A.* No.

15. *Q.* Not anything in the way of notes of these things?—*A.* No.

16. *Q.* Have you looked up your correspondence with Mr. Wells about this time?—*A.* Yes.

17. *Q.* I think he wrote to you a letter in August, 1918, about the history of mankind. Do you remember receiving a letter? Have you the letter?—*A.* I have them all here, if I may refer to them. I cannot remember the details of the letters now. They have all been got out, and I stand by these letters.

18. *Q.* Are you quite clear from the letter which you received from Mr. Wells, and from your conversation, that he had actually written the book at the time when he spoke to you?—*A.* Yes, because I said: Can we see some of it? I did not want to take up a book which we had not seen, although Mr. Wells is a very distinguished man, and anything from his pen, one knows, is of high calibre, but this was rather a novel thing. He said "Yes, I have done about 25,000 words," and he at once agreed to let me see it.

19. *Q.* Did you see it?—*A.* Yes, and I read it myself.

20. *Q.* About what time was that?—*A.* I should think within a few months after the first conversation in the Reform Club.

21. *Q.* Did you understand from him, although you only saw the first 25,000 words, that the whole of it had been written?—*A.* Practically; I will not say the whole of it—no, he had not finished the whole of it, very nearly; anyway, he had certainly got it out, and he must have done the reading for it, and so on.

22. *Q.* Will you turn to your letter of the 13th November, 1918? It is the first one disclosed. In that letter you do not say "your history of mankind," you say "your proposed history of mankind"?—*A.* Proposed to us, I think, that is all.

23. *Q.* That was a business proposition, that is what you meant by it?—*A.* Yes.

24. *Q.* You say you have since laid the scheme before your colleagues. Does that mean the scheme of the history of mankind?—*A.* Yes, and the form in which it was to be published by us. I should think by this time I had seen the initial chapters.

25. *Q.* You think you had?—*A.* I think so.

26. *Q.* Do you think you laid the initial chapters before them?—*A.* I would tell them of them. I think that was so, because it was not very long after I spoke to him that Mr. Wells did send the chapters on. We read them, and liked the thing, and soon got on to business with a view to making arrangements with him which these letters embodied.

Mr. MACGILLIVRAY: I think I ought to take a formal objection that this is going far beyond an examination on discovery. I have read the rules, but I am not very familiar with the practice of the Courts in Canada. I feel this is really cross-examination of the Witness, as if I had put him in the box.

Mr. NORMAN DAYNES: That is exactly what is done in Canada.

In the Supreme Court.

Defendants' Evidence on Commission.

No. 26. Sir Frank Newnes. Examination for Discovery—*continued.*

Mr. MACGILLIVRAY: I appreciate that may be so, and therefore I take the objection formally.

The COMMISSIONER: The objection is noted for the Court and reserved.

27. Mr. NORMAN DAYNES: Had you, in your early conversation, discussed the question of illustrating the book?—*A.* I expect so. We would not serialise a big thing like this without pictures.

28. *Q.* I think you will see by your letter of the 5th February, 1919, that the length is mentioned as being 200,000 words?—*A.* Yes.

29. *Q.* That, I suppose, was agreed at that time between yourself and Mr. Wells?—*A.* Yes; I think it was more.

30. *Q.* I think it ultimately went to more?—*A.* It went to more in the end, yes. The question of length was not of much importance to us; we did not mind if it was longer.

31. *Q.* I think it ultimately went to 250,000 or 260,000 words?—*A.* It did, or even more.

32. *Q.* Before I pass from the first letter I read to you, may I ask this? I suppose the reason that the letter from Mr. Wells to which you refer there is not disclosed is that it has been mislaid, or something of that kind?—*A.* Which letter is that?

33. *Q.* It is the first letter. Have you searched for that?—*A.* Yes, certainly.

34. *Q.* You do not know personally, but you have given instructions for a search?—*A.* That is right.

35. *Q.* Or you assume that your Solicitors have given instructions?—*A.* That is right.

36. *Q.* This may be of a little importance to us. I wonder whether you would be good enough to give special instructions that this letter is to be searched for, and let us know the result?

Mr. MACGILLIVRAY: Will you take it from me that instructions have been given, and the letter has been searched for, and we have not been able to find it?

Mr. NORMAN DAYNES: If my friend says that, I am satisfied.

37. *Q.* At what date precisely did the serial publishing begin?—*A.* Some time in 1919, was it not?

38. *Q.* In February, 1919, you talked about publishing the parts in the Autumn, because I think you thought that the demand for serials was rather apt to die away in the summer time. Did you publish it in the Autumn of 1919?—*A.* I think so, yes. It is the usual time for these things.

39. *Q.* Would you give me the date of the publication?—*A.* The 22nd November, 1919.

40. *Q.* Then I think you wrote to Mr. Wells on the 2nd June about the terms. I do not think I need trouble with that letter, but did you get letters in reply? All the letters I have here are letters which are written to Mr. Wells. Were there any letters that you got from Mr. Wells?—*A.* I suppose so, but I suppose they have not been found. I have not looked personally for them. I do not keep my files, other people do that for me.

Mr. MACGILLIVRAY: We have searched for all these letters, and have not been able to find any.

41. Mr. NORMAN DAYNES: I suppose, although you do not attend to the details, you are aware of the general system of organisation in your office?—*A.* Yes.

42. *Q.* Is it a rule for a certain length of time to file the letters that you receive from authors?—*A.* As a rule letters received from authors or anybody else are filed.

43. *Q.* Have you any definite rule as to how long you keep them?—*A.* No, I do not know that we have.

44. *Q.* Would you expect, if you had not known the result, to find Mr. Wells' letters on your files?—*A.* Certainly.

45. *Q.* I understand you are not able to offer me any explanation as to why, in fact, a search has not succeeded in finding them?—*A.* It is possible he may not have written any letters in reply.

46. *Q.* There are a number of missing letters?—*A.* It would appear so from this.

47. *Q.* You will have a further search made?—*A.* Certainly.

48. *Q.* Is Mr. Gentry in the service of your Company?—*A.* Not now. He was then.

49. *Q.* He was at the time he wrote the letter of the 13th October, 1919?—*A.* Yes.

50. *Q.* Had he much to do with this particular serialisation of Mr. Wells's history?—*A.* Yes, he did what you might call the detail work.

51. *Q.* Is he giving evidence?—*A.* Yes.

52. *Q.* Now I want to ask you a few general questions. When did you first hear of the Plaintiff in this action, before the Writ or after?—*A.* I cannot quite remember whether before or after the Writ. I think somebody came and told me that Miss Deeks had brought an action against us and Mr. Wells in respect of a breach of copyright.

53. *Q.* In respect of her book?—*A.* Yes.

54. *Q.* Had you ever heard of the "Web" before that time?—*A.* No.

55. *Q.* Or any work dealing with the history of the world in such a way as to begin with astronomy and geology, and to finish up with the federation of the world?—*A.* No.

56. *Q.* You had not heard of anything of that kind?—*A.* No, so far as I know, Mr. Wells's was the only one of that kind.

57. *Q.* Or any notes for a work of that kind?—*A.* No.

58. *Q.* So far as you know, had any responsible member of your staff become acquainted with the Plaintiff's work?—*A.* Not so far as I know.

59. *Q.* I understand that you have no document of any sort or kind which bears upon this matter of which there has not been discovery made?—*A.* No.

60. *Q.* Have you any document at all relating to any sales of the "Outline of History" in Canada?—*A.* The firm has.

61. *Q.* Those would be accounts, and so forth?—*A.* Yes, very small.

In the Supreme Court.

Defendants' Evidence on Commission.

No. 26. Sir Frank Newnes. Examination for Discovery—*continued.*

62. *Q.* Can you tell me what the sales have been, approximately?—*A.* In Canada?

63. *Q.* Yes?—*A.* Very small indeed, direct sales in Canada, very small indeed.

64. *Q.* Can you say about 1,000 copies or so?—*A.* No, I cannot, but evidence can be produced if you want it.

65. *Q.* When you say direct sales, do you contrast that with indirect sales?—*A.* A number of copies we have sold to specific firms in Canada.

66. *Q.* You have sold them wholesale?—*A.* Most of the copies that have been sold in Canada have been sold by us to big wholesale houses in London, who sell them not only to Canada, but Australia and other places as well. We do not know which goes to Australia and which to Canada.

67. *Q.* You have sold them in London, and they have been sold in Canada?—*A.* I suppose so.

68. *Q.* I understand there have been direct sales?—*A.* A few direct sales.

69. *Q.* I do not know whether you could produce your serialisation copy, it might be necessary to identify it in Canada. I should like that marked as an exhibit. (Book handed to the Witness.) Would you tell me whether the book which is now handed to you is the same impression as the serialisation parts which were issued by your firm?—*A.* Yes.

70. *Q.* Do you produce that book?—*A.* Yes, this is the volume of the parts as bound up and published by us.

(Book put in and marked exhibit F.H.N.1.)

The COMMISSIONER: Any exhibits put in of a bulky nature may be returned to the Court eventually separate from the Commission. The Commission provides that they should be sent by post. We cannot send these bulky things, and they probably will have to go by express.

Mr. MACGILLIVRAY: I consent so far as the parties are concerned.

71. Mr. NORMAN DAYNES: There is one other question that I ought to have put to you. Do you know whether your firm received from Mr. Wells any manuscript from which you printed?—*A.* Certainly.

72. *Q.* Have you still got that manuscript?—*A.* I should not think so, now. It goes back. It belongs to him. After we have finished with it it goes back to him.

Examined for Discovery by Mr. MACGILLIVRAY.

73. *Q.* With regard to what you said in connection with the sales in or to Canada, can you tell me upon what information your answer to that question was based? Do you yourself remember any sale to Canada at the time it took place? Do you remember any of these books being sold to Canada, or to purchasers in Canada, or to firms here who were going to send them to Canada?—*A.* Do you mean do I personally remember them, I never take the orders.

Mr. NORMAN DAYNES: Is not this cross-examination of your own witness?

74. Mr. MACGILLIVRAY: I want to get what your answer really meant?—*A.* I said there were some small sales to Canada direct. That is the point. You want to know on what ground I make that statement?

75. *Q.* Yes?—*A.* On information given to me by our staff, because I did not execute the orders personally.

76. *Q.* You asked your staff, and they gave you certain information?—*A.* That is right.

77. *Q.* That information, no doubt, would be based upon an examination of the books?—*A.* Yes.

78. *Q.* You yourself did not examine the books?—*A.* No, certainly not.

79. *Q.* You are only telling us to-day your recollection of what your staff told you?—*A.* That is right.

Mr. NORMAN DAYNES: I take it that this correspondence which has been disclosed, and of which I have a copy, and I understand my learned friend has a copy, is agreed correspondence. Is it necessary for me to have all these letters put in as separate exhibits?

Mr. MACGILLIVRAY: They are in the Affidavit of Documents.

Mr. NORMAN DAYNES: The letters in the Affidavit of Documents are admitted.

Mr. MACGILLIVRAY: Yes, and the letters, copies of which you have in this bundle, are on the same footing as if they had been in our Affidavit of Documents.

Evidence of Sir Frank Newnes on Commission.

Examination-in-Chief.

21st June, 1929.

Mr. ELLIOTT Reading:

"Examined by Mr. MACGILLIVRAY.

Q. I think you are a Managing Director of the Defendants, George Newnes & Company, Limited?—*A.* Yes.

Q. How long have you been in that position?—*A.* Since about 1910, perhaps longer.

Q. I think you negotiated the agreement between Mr. Wells and your Company for the publication of this work we have heard of, 'The Outline of History'?—*A.* I did.

Q. Those negotiations resulted in an agreement being come to. I think that agreement is expressed in the letter dated the 14th August, 1919, was signed by you as Chairman of the Company and was addressed to Mr. Wells?"

It should be the 18th August, 1919, instead of the 14th August.

Continues reading.)

A. Yes.

Q. The manuscript of the work began to come in on the 17th of August, 1919. I will refer you to a letter of the 16th of August from Mrs. Wells, addressed to Mr. Grierson, in which she says: 'I am sending with this the

In the Supreme Court.

Defendants' Evidence on Commission.

No. 26. Sir Frank H. Newnes. Examination-in-Chief—*continued.*

first five chapters of 'The Outline of History' so that the printer may make a start at once in setting it up.' That was the first instalment of the manuscript which you got?—*A.* For the purposes of being set up, you mean; that is right. I had seen one beforehand.

Q. Had you seen the manuscript before?—*A.* I saw about, I should think, 25,000 words, six months before then.

Q. You think you had seen some of it about six months before that?—*A.* Yes.

Q. Have you any knowledge of the sources from which Mr. Wells derived his information when he was writing his 'Outline of History'?— *A.* Only what he says himself, by books he quotes, and the authorities associated with him in the matter.

Q. Your knowledge is confined to what appears in the book itself?—*A.* Yes, or anything that Mr. Wells may have said to me personally.

Q. You published the book first in fortnightly parts, the first of which was published on the 22nd November, 1919?—*A.* Yes.

Q. That publication in parts continued until the 9th of August, 1920, upon which date the last fortnightly part was published?—*A.* Yes.

Q. I think after that date the spare fortnightly parts were bound up and were sold in the form of two volumes?—*A.* That is right.

Q. And they are the volumes we have seen?—*A.* That is so. (Referring to F.H.N.1.).

Q. The sales of the bound volumes continued up to about December, 1926?—*A.* Yes.

Q. The sales substantially stopped at that time, but I think there were a few casual sales up to the month of August 1927?—*A.* Yes.

Q. I see that under clause 8 of your agreement of August 14th, it is expressed that rights are for publication in Great Britain and the Colonies, with an entrance into Canada?—*A.* Yes.

Q. In fact did you send any copies of the book in either form to Canada to be sold there by agents on your behalf?—*A.* No.

Q. I think you did receive orders for the book from certain persons and firms who are residents and carry on business in Canada?—*A.* Yes.

Q. Is Mr. Blake your publisher and sales manager?—*A.* He is.

Q. Has he charge of the sales of your publications?—*A.* He has.

Q. Will he be able to tell us how these orders which came from persons and firms in Canada were executed?—*A.* He will.

Q. Any information which you could give us with regard to that would only come from him?—*A.* Practically, yes.

Q. When did you first hear of the Plaintiff in this action, Miss Florence Deeks?—*A.* I cannot remember the date. Our Manager I think told me one day that Miss Deeks had brought an action against Wells in which we were co-defendants.

Q. There was a letter which was received by your Company which is dated the 23rd October, 1925, and is written by a firm of Solicitors, Messrs. Tilley, Johnston, Thomson & Parmenter, Toronto. Did you see that letter?—*A.* I do not know whether I was shown the letter, but I was

told about it. Until I was told about the letter, I knew nothing whatever about this case. That is the first thing I heard about it.

Q. Did you, prior to the date upon which that letter was received, ever see or hear of a manuscript called "The Web"?—*A.* No.

Q. Have you made any inquiry in your office as to whether any other person had ever heard of it?—*A.* No, I have not."

HIS LORDSHIP: Two o'clock.

(At 12.50 p.m. Court adjourned until 2 p.m., June 5th, 1930.)

Afternoon Session, June 5th, 1930.

Mr. SMILEY: I will read the cross-examination of Sir Frank Hillyard Newnes:

"Cross-examined by Mr. CORSELLIS:

Q. In these sales to Canada, you sold them to more than one purchaser, I suppose?—*A.* Yes.

Q. And you distributed them to the purchasers for the purpose of their re-selling them?—*A.* In some cases.

Mr. MACGILLIVRAY: I have a list of the sales. You will have that from Mr. Blake.

Mr. CORSELLIS: Thank you. So far as you know, have those sales by you to Canada continued after the commencement of this action?—*A.* I should not think so.

Q. Do you know yourself, or shall I ask Mr. Blake?—*A.* I think you had better ask Mr. Blake.

Q. In what form was the manuscript of 'The Outline of History' when you saw it? You told us that you saw it early in 1919, about six months before the agreement. In what form was it?—*A.* Typescript.

Q. Was it free from annotations in writing?—*A.* Yes.

Q. It was all typed; substantially all typed?—*A.* Yes.

Q. Did you ever see any of the manuscript which we have had produced mostly in Mr. Wells's writing?—*A.* You mean the manuscript from which this was set up?

Q. The manuscript which we have had produced, nearly all in Mr. Wells's handwriting (Referring to H.G.W.2)?—*A.* I do not think so. I may have seen portions of it, when it was in our office. Mr. Grierson carried out the detail of all this, and I may have gone to see him and found some of it was lying there and read a little bit of it, and so on.

Q. When you heard Mr. Wells was thinking of producing something in the way of an Outline of History, were you surprised?—*A.* I do not know. I was much interested, and realised it was an important work.

Q. It was a surprising work, was it not, for a novelist to turn his hand to?—*A.* It did not strike me like that. It struck me as rather a surprising thing for one man to do.

In the Supreme Court.

Defendants' Evidence on Commission.

No. 26.
Sir Frank H. Newnes. Examination-in-Chief—*continued.*

Cross-examination.

In the Supreme Court.

Defendants' Evidence on Commission.

No. 26. Sir Frank H. Newnes. Cross-examination—*continued.*

Q. In a thing like that, the amount of knowledge necessary is almost greater than one would imagine one man would have, is it not?—*A.* One might think that, except that it is Mr. Wells, who is rather encyclopedic.

Q. Had you come across Mr. Wells before, as a historian in any way?—*A.* No, I do not think that I had.

Q. He has never written any historical book purporting to be a book of history as opposed to a novel, has he?—*A.* I do not quite understand your question. I know as much about Mr. Wells as a writer as anybody else does.

Q. I am asking you because you have a very expert knowledge, no doubt, of literature published in this country. Do you know if he has ever produced any other work of history?—*A.* No, I do not know that he has.

Q. And in the production of a very large work of this kind, which involves references no doubt to many text books, is it common for one man to do all the work himself?—*A.* Well, I do not know. It is rather said that Mr. Wells is a law unto himself. This is an idea of his own. It was something quite fresh, and it would have to be done by him alone in his own way, and being an outline, of course he would only be able to deal with any country, or any period of a country, not in great detail, and therefore one man could do it.

Mr. MACGILLIVRAY: I must object, I think. Is this directed to the custom of the trade?

Mr. CORSELLIS: No, not to any point of law.

Mr. MACGILLIVRAY: I must object.

The COMMISSIONER: The objection is reserved.

Mr. CORSELLIS: The employment of hack writers in works of reference of this kind is a very common thing, is it not?—*A.* I suppose it is; I really do not know.

Q. You produce a very large number of books, do you not?—*A.* Not many; no.

Q. What is the nature of the ordinary run of your publications?—*A.* Popular journals, magazines, periodicals, a certain number of books, but mostly reprints.

Q. Do you do any educational works?—*A.* A very small number.

Q. How far do you see all the proofs of manuscripts that are submitted to your firm for publication? How far do you see them personally?—*A.* I only see them when any editor may submit them to me.

Q. So it may well be that some subordinate person in your firm would receive a manuscript without submitting it to you?—*A.* Certainly.

Q. And that often happens?—*A.* Yes, because we get thousands sent in, for all our publications.

Q. Is there a complete record kept of any manuscript that goes through your firm's hands?—*A.* Yes. Every paper or periodical has its own editor who keeps a file of all manuscripts sent in, and when returned.

Q. That answer relates to periodicals and papers of that kind?—*A.* Well, the same would apply to what we call our book department.

Q. Does it apply to manuscripts which are sent to you for purposes other than offers for publication?—*A.* But manuscripts are not sent to us except for publication.

Q. Supposing you had a manuscript sent to you to ask you whether you would object to its being published by somebody else, would that be recorded in the same way as the others?—*A.* It would be recorded as having been received, and then when it was dealt with, for whatever purpose it was sent in for, then the record would show that it had been sent back."

Mr. ELLIOTT: It has been suggested we might defer the reading of the rest of the Commission evidence until we have disposed of the oral witnesses.

HIS LORDSHIP: All right.

No. 27.

Evidence of Walter Grierson.

"Mr. WALTER GRIERSON, sworn.

Examined by Mr. MACGILLIVRAY.

Q. I think you are a Director of the Defendants, George Newnes, Limited?—*A.* Yes.

Q. How long have you held that position?—*A.* About 16 years, perhaps.

Q. Did you take part in the negotiations as between your Company and Mr. Wells in connection with the proposed publication of 'The Outline of History'?—*A.* Yes.

Q. I think, as we see from the correspondence produced, you wrote a number of letters to Mr. Wells?—*A.* I did.

Q. Before your Company received an intimation of a claim on behalf of the Plaintiff from a firm of Solicitors in Canada, had you ever heard of Miss Deeks, the Plaintiff in this action?—*A.* Yes.

Q. Had you ever heard of her manuscript which is entitled 'The Web'?—*A.* No.

Q. I think you have made an exhaustive search in the files of the Company to see whether there are still in existence any correspondence relating to the publication of the 'Outline of History'?—*A.* That is right.

In the Supreme Court.

Defendants' Evidence on Commission.

No. 27. Walter Grierson. Cross-examination.

Q. Does that bundle now produced to you contain a copy of all the documents which you have been able to find relating to this matter?—*A.* That is the bundle, yes.

(Bundle of documents put in and marked exhibit W.G.1.)"

Then comes the cross-examination.

Mr. SMILEY: Read on, there are only a couple of questions.

Mr. ELLIOTT: (Reading):

"Cross-examined by Mr. CORSELLIS:

Q. I suppose this search for documents was not made personally; you gave instructions to some subordinate to make a search?—*A.* Yes.

Q. So far as you are concerned, you can only produce these as the result of those instructions?—*A.* Yes."

Mr. ELLIOTT: The next witness is Mr. Joseph Henry Blake: (Reading):

No. 28. J. H. Blake. Examination-in-Chief.

No. 28.

Evidence of Joseph Henry Blake.

"MR. JOSEPH HENRY BLAKE, sworn.

Examined by Mr. MACGILLIVRAY.

Q. Were you in the employment of the Defendant Company, George Newnes & Company Limited, in the capacity of publisher and sales manager?—*A.* Yes.

Q. And are you now also a Director of the Company?—*A.* Yes.

Q. How long have you been publisher and sales manager?—*A.* About 16 years.

Q. In that capacity were you responsible for the publication by your Company of the 'Outline of History' written by Mr. Wells?—*A.* Yes.

Q. Now, we have heard of the form in which that was published. Did the sale of the bound volumes practically come to an end about December 1926?—*A.* Yes.

Q. Were there a few casual sales from time to time after that date, up to the month of August, 1927?—*A.* Yes, about then.

Q. Did you send any copies of the book to any person or firm in Canada to be sold by them in Canada as your agent?—*A.* No.

Q. Did you execute a certain number of orders for the book which were received by your Company in London from persons and firms in Canada?—*A.* Yes, orders received in London.

Q. Have you made a careful examination of the books for all such orders?—*A.* I think you will have the ledgers produced, giving entries of these orders. I have not any orders in existence now.

Q. I think it was Mr. Porter who did that under your instructions, or under the instructions of the Secretary?—*A.* Yes, under the instructions of the Secretary.

Q. He will be able to produce extracts from the books?—*A.* He will produce extracts from the ledgers. The orders that we received have been destroyed as waste paper years ago.

Q. With regard to the actual orders in respect of which you have spoken and which you received from persons and firms in Canada, what has happened to them?—*A.* They are destroyed every three years. As a matter of fact we destroy one year's. We do not keep the orders; the orders are of no further use to us.

Q. It is not the practice of the Company to keep these beyond a period of three years?—*A.* Two to three years, according to the number that there are and the accommodation we have at the time.

Q. From the date the order was executed?—*A.* That is right.

Q. Can you tell me how those orders received from Canada were executed?—*A.* How do you mean? They were packed and handed to carriers.

Q. That is what I want you to tell us. You got an order which came from a firm in Canada for a certain number of copies of the book. How were those orders executed?—*A.* They were executed according to instructions. They were packed and handed to the carriers, or sent by post, according to the instructions received from the booksellers who ordered them.

Q. They were packed and addressed to the person or firm in Canada from whom the orders were received, and then were they delivered by your Company in London to either the Post Office or some other carrier?—*A.* That is so.

Q. Had you any further concern with what happened to those books?—*A.* No, not after they were handed to the carrier or to the Post Office.

Q. How were the orders paid for?—*A.* Either by cheque received in London, or by bills on the firm's order, collected by the bank in London, handed to the bank and collected in London and paid in London.

Q. Bills drawn by the Canadian firm on a London bank?—*A.* No, by bills drawn by George Newnes on the Canadian firms, handed to the bank, and the money paid in London.

Q. Discounted by you in London?—*A.* That is right.

Q. Apart from the orders which were executed in that way, were there any sales of copies of this book to persons or firms in Canada?—*A.* No, not at all.

Q. Were all your sales of this book sales outright, or did you supply any to a wholesale house on sale or return?—*A.* When the parts were issued they were supplied on sale or return. When the parts were bound up in volume form they were sold outright.

Q. When they were sold on sale or return, to what firms were they sold? Were those firms in England?—*A.* Firms in England. We did not send any direct to Canada supplied on sale or return, and we had no returns from Canada.

In the Supreme Court.

Defendants' Evidence on Commission.

No. 28. J. H. Blake. Examination-in-Chief—*continued.*

Q. Any deliveries of parts on sale or return were to houses in England? —*A.* That is so.

Q. Before you had intimation of the Plaintiff's claim in this action, which was about October, 1925, had you ever heard of the Plaintiff?—*A.* No.

Q. Had you ever heard of her manuscript 'The Web'?—*A.* No.

Q. Had your Company received any demand from the plaintiff for delivery up of the copies of the book?—*A.* No.

Q. Before the issue of the Writ, had your Company received any demand from the Plaintiff?—*A.* Not that I am aware of, no.

Q. I think you still have 38 of the bound volumes in your possession, and some 30 odd fortnightly parts?—*A.* Yes, that is so."

Mr. SMILEY (Reading):

Cross-examination.

"Cross-examined by Mr. CORSELLIS:

Q. Have you any list of the sales to Canada?—*A.* That will be produced by another witness.

Mr. CORSELLIS: I would like to see it now, if I may.

Mr. MACGILLIVRAY: It will be produced by a subsequent witness. (Handing list.)

Mr. CORSELLIS: This is a list of the Canadian sales.

Mr. MACGILLIVRAY: A list of all sales to firms or persons in Canada.

Mr. CORSELLIS: Is this first bit a summary of the contents of the rest? —*A.* Yes, it is a summary.

Q. Do you know a firm called Gordon & Gooch, a Canadian firm?—*A.* No, it is a London firm; they have a branch in Canada.

Q. Do Gordon & Gooch deal in your books?—*A.* Yes.

Q. I suppose you sold the 'Outline of History' to them?—*A.* Yes.

Q. On what terms did they deal with you?—*A.* You mean whether we supplied on sale or return, to them?

Q. Yes.—*A.* The parts were on sale or return; that is, returnable.

Q. You sold them the parts on sale or return?—*A.* We supplied them, yes.

Q. Did you supply any of the complete books to them?—*A.* I have no recollection.

Q. You do not know whether you did or did not?—*A.* No.

Q. Their Canadian house is simply a branch of their business?—*A.* Yes. May I say we have probably supplied them with some bound volumes, but they would not tell us in the ordinary way of business where they were ordering for, whether they were for Canada or for their other agencies.

Q. You have no reason to suppose that some of the books or parts which were supplied to them did not go to Canada?—*A.* They may have done.

Q. And some of the unbound volumes may have gone to Canada, for all you know?—*A.* Possibly; they do very little trade in Canada.

Q. Did you eventually receive payment from Gordon & Gooch for all the copies that you had supplied to them on sale or return?—*A.* Yes.

Q. I see according to this list sales seem to have ceased in 1922, or thereabouts. Have you any knowledge of any sales after 1925 to Canada?—*A.* No, all our sales in Canada are produced on that list, with the particulars.

Q. Have you made any sales to Gordon & Gooch since 1925?—*A.* I could not tell you definitely from memory, but I should say no. I cannot tell you definitely without referring to the register.

Q. I will ask the next witness.—*A.* I am afraid the next witness cannot tell you.

Mr. MacGillivray: I have no doubt it could be ascertained.—*A.* It is quite easy to ascertain it.

Mr. Corsellis: I see on this list—I am only taking one example—you sold 3 dozen 'Outline of History,' postage 5*s.* 10*d.*, £1 14*s.* 2*d.*, to the Western News Agency Company?—*A.* Winnipeg.

Q. If you sold 3 dozen of the 'Outline of History,' that looks as if there were 3 dozen of the parts?—*A.* That is 3 dozen parts.

Q. You have sold some of these parts to Canada?—*A.* Yes, they are included in the list that you have in front of you.

Q. And when you sold the parts to Canada did you sell them on sale or return?—*A.* We made no definite statement to that effect. In London, all our publications go out on sale or return, and if a Canadian bookseller had, after purchasing parts, cared to return, or written to us and informed us he had a few copies unsold, we should probably have credited them. It very seldom happens, you see.

Q. It is your general practice in regard to things like periodicals, or parts of an issue of this kind, to send them out on sale or return?—*A.* Yes, but not abroad. We put them out on sale or return, and if there are any returned from abroad we accept them, but it is very seldom we get any returned from abroad.

Q. I do not quite see the difference, if you send parts out abroad, and if they are returned, you take them back, between that and sending out on sale or return.—*A.* You may take it we send on sale or return to anybody.

Q. When do you expect payment: when the parts are sold, or within, say, a month from sending them out?—*A.* Some of our accounts are monthly, some are quarterly; either monthly or quarterly settlements.

Q. Does the month or quarter date from delivery, or from the sale by your customer?—*A.* A monthly account is an account of goods supplied during the month and paid the following month.

Q. I see there are figures in here for payment. In some cases there are figures for postage, and in others there are not. What is your practice about that? Do you pay the postage or carriage when you send goods abroad?—*A.* No.

Q. Does somebody have to pay before they are sent?—*A.* Where you see the item for postage it means they were sent by post and we paid the postage in advance. Where they are sent by carrier we do not pay the carriage this end; the carriage is paid the other end. We hand it to the

In the Supreme Court.

Defendants' Evidence on Commission.

No. 28. J. H. Blake. Cross-examination—*continued.*

agent of the book-seller in Canada, therefore we have nothing to pay out. When we pay out for the post, we charge it up on the invoice.

Q. Do you insure the books sent out, ever?—*A.* If we are instructed to do so by the customer.

Q. Then do you charge them with the insurance?—*A.* We should charge them with the insurance, yes."

HIS LORDSHIP: Mr. Elliott, this witness and I think Mr. Grierson were just called to give evidence as to——

Mr. ELLIOTT: Whether any of these books were sold by Newnes & Company in Canada. The evidence discloses that they had no agents here and did not sell in Canada.

HIS LORDSHIP: Does that go to the question of the jurisdiction?

Mr. ELLIOTT: Yes. Conditional appearance is entered.

HIS LORDSHIP: Is that the sole reason for this evidence, the question of jurisdiction?

Mr. ELLIOTT: Yes, and it deals with Cassell & Co., who are in the same position.

HIS LORDSHIP: What I have in mind is whether we might not postpone the reading of that evidence.

Mr. ELLIOTT: There is not much more of it, and if we read it now it will not be forgotten.

HIS LORDSHIP: Most of these people are collaborators.

Mr. ELLIOTT: Yes, my lord.

(Reading):—

Re-examination.

"Re-examined by Mr. MACGILLIVRAY:

Q. With regard to the sales to Gordon & Gooch, as far as you are concerned were the transactions with them completed in London?—*A.* Yes.

Q. And you are not concerned, when a copy is sold to them, whether they dispose of it in Canada, or England, or elsewhere?—*A.* No; their main business is Australia and South Africa.

Q. Do you know whether any books sent to Canada were returned?—*A.* No.

Q. They were not?—*A.* Not that I am aware of; as far as I know there were none returned.

Q. As you have told us, the Canadian purchaser had the right of return?—*A.* Yes. May I mention that the details of any returns will be found in that list. If there were any returned from Canada it will be in the ledger, because the account will be credited. I do not think you will find any returned.

Mr. CORSELLIS: There are one or two returned here. I do not see any returns of the 'Outline of History' mentioned specifically. There are returns of other publications.—*A.* Other publications, yes.

Mr. MacGillivray: When you referred to the term of sale and return, were you saying that that applied to the sales of the 'Outline of History'? Did the same terms apply to the 'Outline of History' as to the other publications?—*A.* Yes.

Q. Apart from the right of the Canadian purchaser to return the books, so far as you are concerned was the transaction completed by the delivery of the books in London?—*A.* Yes, absolutely. You do understand that the return only applies to parts, and not to the books?

Mr. MacGillivray: Yes, I think you made that clear."

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10 **No. 29.**

Evidence of William Porter.

21st June, 1929.

Mr. Elliott (Reading):

"Mr. WILLIAM PORTER, sworn.

Examined by Mr. MacGillivray.

Q. I think you are the chief ledger clerk in the employment of the Defendant Company, George Newnes Limited?—*A.* I am.

Q. Have you examined their books with a view to ascertain what sales of copies of the book 'Outline of History,' either in the form of
20 fortnightly parts or in the form of bound-up volumes, were sold on order received from persons or firms in Canada?—*A.* I have.

Q. Do you now produce a document which contains a list of all these orders?—*A.* Yes.

(List put in and marked Exhibit W.P.1.)

Q. I think you have the ledgers of the Company here from which these particulars were extracted, if my learned friend desires to refer to them?—*A.* Yes.

The Commissioner: You are not in a position to allow these ledgers to go to Canada, are you?—*A.* No.

30 *Q.* You cannot part with them?—*A.* No.

Q. The books are required for the business?—*A.* Yes.

Mr. MacGillivray: I think you have not ascertained but you could ascertain, what sales, if any, were made to Gordon & Gooch after 1925?

Mr. Corsellis: Before and after.

Mr. MacGillivray: Or at all.

Mr. Corsellis: Yes.

Mr. MacGillivray: What sales, if any, were made to Gordon & Gooch?—*A.* Yes.

Q. Will you have that done?—*A.* Yes.

In the Supreme Court.

Defendants' Evidence on Commission.

No. 29. W. Porter. Examination-in-Chief—*continued.*

Mr. CORSELLIS: I do not know how we will manage about that.—*A.* It would take some time to get out.

Mr. CORSELLIS: I would like if possible to have the figures of Gordon & Gooch's sales in evidence.

THE WITNESS: I could not give you Canada on its own, you would have to get them from Gordon & Gooch.

Mr. MACGILLIVRAY: You sold to Gordon & Gooch in this country, but have you any concern with how Gordon & Gooch disposed of them?—*A.* No.

Q. So you would have no record whether they went to Canada or not? —*A.* No.

Q. It is not a matter with which you are concerned?—*A.* That is so.

Mr. CORSELLIS: Perhaps I may be able to avoid the production of the actual numbers. Shall I ask him now?

Mr. MACGILLIVRAY: Yes."

Mr. SMILEY (Reading):

Cross-examination.

"Cross-examined by Mr. CORSELLIS:

Q. Did you sell many copies of the 'Outline of History' to Gordon & Gooch?—*A.* No.

Q. Not many?—*A.* No.

Q. Some thousands or some hundreds?—*A.* It would be less than one hundred of the bound volumes; the parts would probably be more.

Q. The parts you probably did sell running into thousands?—*A.* Running into hundreds.

Q. Gordon & Gooch have a big Canadian business have they not?—A. Yes.

Q. Where else do they trade?—*A.* Australia, South Africa and New Zealand.

Q. Do they re-sell in this country at all?—*A.* I do not think so, I could not say.

Q. Over what period did you search in compiling this document (W.P. 1)?—*A.* From the date of the publication until this year.

Q. You have searched the last two years thoroughly?—*A.* Yes.

Q. You are absolutely sure that there have been no sales since 1925?—*A.* Quite.

Q. Have there been sales to Gordon & Gooch since 1925?—*A.* That I could not say without referring to the ledger.

Q. I do not know whether you know the practice about these companies mentioned here. Do you in all cases send the books direct to their address mentioned as their address on this list, or do you send the books to other people for them?—*A.* I could not answer that.

Q. Would you just look at the Western News Agency, which is on the third of the sheets. You have given them an allowance for three dozen one copy "Home"?—*A.* That is returned.

Q. Ninety 1*s.* 0*d.* novels, would that be a case of sale or return which had been returned?—*A.* They are returned.

Q. If you had any of the 'Outline of History' returned?—*A.* They would be entered there."

"MR. WILLIAM PORTER, having already been sworn, was recalled.

9th July, 1929.

Further examined by MR. MACGILLIVRAY.

Q. When you were here before you were asked with regard to the sales of Newnes edition of Mr. Wells's book to Gordon & Gooch?—*A.* Yes.

Q. Since then you have examined the books, and you have extracted from the books all the sales to Messrs. Gordon & Gooch in respect of which books might have gone to Canada?—*A.* Yes.

Q. As I understand it, these are under the head of general export?—*A.* Quite right.

Q. And may have gone to Canada?—*A.* Or to any other part of the world.

Q. Or to any other Dominion or Colony, or some foreign country?—*A.* To some foreign country, or may have been used in England.

Q. Do you produce now a list of all your sales to Gordon & Gooch in respect of which copies of the book could have been exported to Canada?—*A.* Quite.

(List put in and marked Exhibit W.P.2.)

Q. At the end I see you have a paragraph in red, "Less returns as attached"?—*A.* Yes.

Q. These are 35 parts. Then there is cash credit of £1–4–4?—*A.* Yes.

Q. In respect of these returns, had the books been already charged for?—*A.* Charged for, yes.

Q. And paid?—*A.* Paid for every time.

Q. So that all these books had been definitely sold?—*A.* Yes.

Q. Then you bought them back?—*A.* No, we had sold them to Gordon and Gooch, but they had not sold them to their customers and we took them back to relieve them.

Q. But they had been definitely sold to Gordon & Gooch, and paid for?—*A.* Yes.

Q. As I understand, in addition to this there are certain other books. You have a record of certain sales to Australia and South Africa?—*A.* Yes.

Q. These you have not included here?—*A.* No.

Q. Because these are marked "Australia" or "South Africa," and would not be exported to Canada?—*A.* No.

Q. If the Plaintiffs' advisers want to see your books with regard to these sales, they are here?—*A.* Yes, they are with me.

Further cross-examined by Mr. NORMAN DAYNES.

Further Cross-examination.

Q. I am not quite sure whether I understand this rightly, but I see that the statement of yours contains the particulars of sales to Messrs. Gordon & Gooch of parts or volumes?—*A.* Yes.

In the Supreme Court.

Defendants' Evidence on Commission.

No. 29. W. Porter (recalled). Further Cross-examination—*continued.*

Q. From 1919 down to 1928?—*A.* Yes.

Q. I think you said that very few of these were in fact returned. One can see it from the return sheet. It is a sheet of returns in respect of the sales which have appeared in these previous five sheets, I think it is?—*A.* Quite.

Q. But as a matter of fact your terms of sale were such that if Messrs. Gordon & Gooch had not sold these goods they could have returned them? —*A.* I could not say that. That is a case for Mr. Black, the publisher, to deal with. They are returns they accepted from Gordon & Gooch.

Q. You know nothing to the contrary of that?—*A.* I can say nothing to the contrary.

Q. In November, 1919, when you sold the parts, would that have been the whole of the book in parts?—*A.* No, the parts, Part 1.

Further re-examination.

Further re-examined by Mr. MACGILLIVRAY.

Q. When you say that they could have returned them, do you mean they could have returned the books; they have the right to return the books which they had already bought and paid for?—*A.* In some cases the custom of the trade is that people buy books from us, and if they remain unsold we accept them as returns.

Mr. NORMAN DAYNES: That is the custom of the trade?—*A.* Not in all books.

Mr. MACGILLIVRAY: That is after the book has been bought and paid for?—*A.* Yes; we credit their account with them."

Mr. ELLIOTT: Then we come to Mr. Alexander Pollock, who is an employee also of the Newnes Company, and I do not think we need to take the time to read that, my Lord. And then he was cross-examined.

(Evidence of H. A. Pollock is printed at 337.)

No. 30.

Evidence of Harry Aubrey Gentry.

No. 30. H. A. Gentry. Examination-in-Chief.

"MR. HARRY AUBREY GENTRY, sworn.

Examined by Mr. MACGILLIVRAY.

Q. Have you been in the employment of the defendants, George Newnes, Limited, since 1903?—*A.* Yes, down to 1923.

Q. You are not now in their employment?—*A.* No.

Q. In what capacity were you employed by them in the years 1919 and 1920?—*A.* As book editor.

Q. As such were you responsible for carrying out the printing of Mr. Wells's work "The Outline of History"?—*A.* That is right.

Q. I think the manuscript of the work as it was received was delivered to you and you saw it through the press?—*A.* Yes.

Q. Can you tell us whether that manuscript was printed as it was received?—*A.* Yes, absolutely.

Q. And no additions of any sort were made?—*A.* Not in the office, no, none at all.

Q. If anybody had made alterations would you have been aware of it?—*A.* Yes, absolutely.

No. 30. H. A. Gentry. Examination-in-Chief—*continued.*

Q. Have you a record in your office of manuscripts received?—*A.* It might exist in the correspondence, probably it does.

Q. You are not there?—*A.* I am not there now, I do not know what records they have got.

Cross-examined by Mr. CORSELLIS.

Cross-examination.

Q. You, I suppose, only saw Mr. Wells's manuscript when it was in the form of a type fair copy?—*A.* That is right.

Q. You had nothing whatever to do with the production of the originals from which the fair copy was made?—*A.* Nothing whatever.

Mr. MACGILLIVRAY: Now I will call my evidence on behalf of Cassell & Company." (Evidence for Cassell and Company is printed at page 340.)

No. 31.

Evidence of Hugh Alexander Pollock.

No. 31. H. A. Pollock. Examination-in-Chief.

"MR. HUGH ALEXANDER POLLOCK, sworn.

Examined by Mr. MACGILLIVRAY.

Q. I think you are the Book Editor of Messrs. George Newnes Limited?—*A.* Yes.

Q. One of the defendants in this action?—*A.* That is so.

Q. Have you held that position with the Company since March 1923?—*A.* Yes.

Q. Does the Company keep a register of books and manuscripts?—*A.* Yes.

Q. When was that register begun?—*A.* On the 27th March, 1919.

Q. Was there any register kept prior to that date?—*A.* Not to my knowledge.

Q. Do you produce the manuscript book?—*A.* Yes.

Q. You do not want to put this in, I understand. Have you looked at your manuscript book?—*A.* Yes.

Q. Is there any record in it of a manuscript 'The Web'?—*A.* No.

Q. Or of any manuscript of Miss Deeks?—*A.* No.

Mr. NORMAN DAYNES: May I look at it?

Mr. MACGILLIVRAY: Certainly. We cannot conveniently part with it. I do not put it in. Before this manuscript book was commenced, did you keep any similar register?—*A.* I cannot say to that; I was not there then.

In the Supreme Court.

Defendants' Evidence on Commission.

No. 31. H. A. Pollock. Examination-in-Chief—*continued.*

Q. Have you searched the Company's correspondence to see whether there is any record there of a manuscript of 'The Web' having been received?—*A.* Yes, as far as I have access to it. I searched all the correspondence in the book department.

Q. If a manuscript had been sent, would you have expected to find it there?—*A.* Yes.

Q. To find a record of it there?—*A.* Yes.

Q. In the correspondence which you have searched?—*A.* Yes.

Q. And you have found no such record?—*A.* No such record.

Cross-examined by Mr. NORMAN DAYNES.

Cross-examination.

Q. You said so far as you have access to the correspondence. Was there some correspondence to which you had not access?—*A.* Well, I have access only to the correspondence in my own department.

Q. I take it that your department is concerned with manuscripts which are offered for publication?—*A.* Yes.

Q. And if a manuscript had been sent for any other purpose except publication, would it come to your department?—*A.* Yes, it might possibly come to my department; it probably would come to my department.

Q. Would it be entered in this book, the book to which you referred in chief?—*A.* No, it would not.

Re-examination.

Re-examined by Mr. MACGILLIVRAY.

Q. You said you would expect to find a record of them in the correspondence?—*A.* Yes."

Mr. ELLIOTT: Then the last witness on this Commission is Professor Ernest Barker, who was referred to by Professor Brett as his friend.

(Professor Ernest Barker's Evidence has been printed at page 249.)

Mr. ELLIOTT: Then the next is Mr. Frederick Newstead on behalf of Cassell and Company.

No. 32.

No. 32. Frederick Newstead. Examination for Discovery.

Evidence of Frederick Newstead.

18th June, 1929.

"MR. FREDERICK NEWSTEAD, sworn.

Examined for Discovery by Mr. CORSELLIS.

1. *Q.* Are you Managing Director of the Defendants, Cassell's, Ltd.?—*A.* No; Acting Secretary.

2. *Q.* The only document we have relating to your part of this matter is one which is an agreement of the 14th January, 1920, between Mr. Wells and your firm?—*A.* Yes.

3. *Q.* Can you tell me how you first came into touch with Mr. Wells about the "Outline of History"?—*A.* Personally?

4. *Q.* You or your firm?—*A.* By a conversation with Mr. Wells.

5. *Q.* You personally were not present at that conversation?—*A.* No, I was not present.

6. *Q.* Have you any information as to the date of that conversation?—*A.* No, I have not.

7. *Q.* When did you first hear of the "Outline of History"?—*A.* When the Agreement went through.

8. In 1919 or 1920?—*A.* Yes.

9. *Q.* The Agreement is in January, 1920?—*A.* Yes; we have another Agreement later, in January 1925.

10. *Q.* In what form did your Company publish the book under the 1920 Agreement?—*A.* As a volume, in volume only.

11. *Q.* In one volume, or in two volumes?—*A.* One volume; and the Waverley published it in two volumes.

12. *Q.* Are the Waverley the people who bought the rights from you?—*A.* They simply bought the sheets; they are simply customers.

13. *Q.* Did you send any of your publications of this book to Canada?—*A.* No.

14. *Q.* Did you have no sales to Canada?—*A.* No, we have no Canadian rights, you see. We made no sales whatever.

15. *Q.* When you first heard of the work, was it a finished work, or a work in the course of preparation?—*A.* It would be a finished work, because we had a copy from the Newnes edition. The Newnes edition was revised, and we published it in volume form.

16. *Q.* That was the edition which came to you?—*A.* Yes.

17. *Q.* Did you have any manuscript or notes from Mr. Wells?—*A.* No, I believe the copy came through pasted up; that is to say, the sheets from the Newnes edition were pasted up and a revision written at the side by Mr. Wells.

18. *Q.* That was somewhere towards the end of 1919?—*A.* It was to be published in 1920, I think.

19. Did you or your Company have at any time any other work of this nature; that is to say, a work which purported to be a history of mankind?—*A.* We had many years ago a book on mankind, but that was probably 40 years ago. I am afraid I should not have a copy of that.

20. *Q.* Did you ever see, or have to do with, any work of Miss Deeks?—*A.* No, I never heard of Miss Deeks until this case came along.

21. *Q.* Did you first hear of her after this case started?—*A.* When the case came along, when we had a Writ in 1925, I think it was.

Mr. MACGILLIVRAY: May I say this in explanation. I see our Affidavit of Documents disclosed only one of two contracts, and it is the first one, the 14th January, 1920. The second contract was on the 20th April, 1925. The original of that I understand is in Canada, but I have a copy of it here.

Mr. NORMAN DAYNES: Is that in the possession of the Canadian Company?

Mr. MACGILLIVRAY: I am told it is in the possession of our legal advisers in Canada.

In the Supreme Court.

Defendants' Evidence on Commission.

No. 32. Frederick Newstead. Examination for Discovery—*continued.*

Mr. NORMAN DAYNES: Would you hand me a copy? I would like to look at it. (Same handed.)

22. Mr. CORSELLIS: Have you here a copy of your edition which was published by your firm, the original edition?—*A.* I gave one to our Solicitors, but I am not sure whether it has gone over to Canada or not. I understand it is here.

23. *Q.* In order that we may identify it, I would like to have one produced. Is that the 1920 edition?—*A.* Yes. (Producing same.)

(Book put in and marked Exhibit F.N.1.)

24. *Q.* Would you take this document. Is that a true copy of the Agreement of 1925, so far as you can say, between Mr. Wells and your Company?—*A.* Yes."

(Copy Agreement put in and marked Exhibit F.N.2.)

Evidence of "MR. FREDERICK NEWSTEAD, on commission.

Examination-in-Chief.

21st June, 1929.

Examined by Mr. MACGILLIVRAY.

Q. I think you are in the employment of the defendants Cassell & Company, Limited?—*A.* Yes.

Q. How long have you been employed by them?—*A.* Just on fifty years.

Q. I think you are fully conversant with their business and the way in which their business is carried out?—*A.* Yes, fully.

Q. I think you were appointed Acting Secretary of the defendant company on the 1st July, 1926?—*A.* Yes.

Q. And towards the end of September, 1927, I think you were asked by your employers to investigate with regard to the subject matter of this action?—*A.* Yes.

Q. On that did you make inquiries throughout the office?—*A.* I did.

Q. Did you examine all the files of documents and the books?—*A.* Yes.

Q. Is the evidence you are now giving the result of that examination?—*A.* Yes.

Q. And inquiry?—*A.* Yes.

Q. I think Mr. Wells's book the "Outline of History" was first published by Messrs. Cassells under an agreement of the 14th January, 1920?—*A.* Yes.

Q. It is in evidence. Under that agreement you have the right of publishing this book in volume form in the United Kingdom of Great Britain, Ireland, its colonies and dependencies, except Canada?—*A.* That is quite right.

Q. So that under that agreement you had no authority to sell in Canada or to sell for Canada?—*A.* That is right.

Q. The second agreement was the 20th April, 1925, S.N.2. Under that agreement you had the right to publish a revised edition of the "Outline of History" in 24 serial parts, and afterwards in volume form?—*A.* Yes.

Q. Under that agreement your right was to publish in Great Britain and Ireland and the Colonies and dependencies, except Canada?—*A.* That is right.

Q. Again under that agreement you had no authority either to sell the book in Canada or to sell it for sale in Canada?—*A.* Quite right.

Q. As the result of your examination and inquiry are you able to say whether any copies of this book were ever sold in Canada?—*A.* No copies were sold in Canada.

Q. By Cassells nor by any agent?—*A.* Quite right, neither by Cassells nor their agents.

Q. Were any copies sold in England for exportation to Canada?—*A.* Not to our knowledge.

Q. That is to say, when you sold in England you did not know whether any copy so sold was disposed of in England or not?—*A.* No, we simply sold to the trade in the ordinary way.

Q. As far as you were concerned the transaction was completed by the sale in England?—*A.* Yes.

Q. You sold no copies with knowledge that they were going to be sold in Canada?—*A.* We should not have sold them if we had known that.

Q. I think you took certain precautions to see that no copies of the book were sold to Canada?—*A.* That is so—in the office you mean?

Q. Yes?—*A.* Yes, that is so.

Q. When you get orders from overseas how are those dealt with in the office?—*A.* From overseas they would be dealt with by the export department, if they came through the trade, and would be supplied from the stock.

Q. From the stock room?—*A.* If we got orders from our Toronto or our Melbourne branches, they are ordered specially from the stock department and entered in our stock ledger with a note against them that they are for Toronto.

Q. If there had been any sales to overseas you would have found a record of that in your stock ledgers?—*A.* If it went through the export department it would be marked "export." If it went through our branches for Melbourne or Toronto, or agencies, it would be marked "Melbourne" or "Toronto," but in this case there is no record for Toronto. I have looked through the ledgers for that.

Q. There is no record?—*A.* No record at all.

Q. Of any sale to Canada?—*A.* No. I have looked through the ledgers for that.

Q. Are the ledger accounts kept in respect of this book stamped "No Canadian rights"?—*A.* Yes, at the head of the page, an indiarubber stamp has been used there.

Q. Does that mean this; if an order for this book had been received from overseas and then the clerk had gone to execute the order, he would have gone to the ledger account in order to make the entry of the order in the ledger account, and he would have seen the stamp "No Canadian rights"?—*A.* That is so. That was only a precautionary measure. It would not have got so far as that, it would have been stopped downstairs.

In the Supreme Court.

Defendants' Evidence on Commission.

No. 32. Frederick Newstead. Examination-in-Chief—*continued.*

Q. That was one of the precautionary measures which you took?—*A.* That is so.

Q. To ensure that no copies of this book should be sold in Canada?—*A.* That is so.

Q. When the clerk had seen that in the ledger you would have refused the order?—*A.* Refused the order and reported to them that it could not be supplied.

Q. With regard to the Canadian sales in Canada, in the case of any book which is published by you, if you were to sell in Canada would you sell through one particular house?—*A.* Through our agents, McClelland & Stewart.

Q. Of 215-219 Victoria Street, Toronto?—*A.* Yes.

Q. From your examination of the books are you satisfied that there was no sale of any copies of this book the "Outline of History" to McClelland & Stewart?—*A.* I am quite satisfied.

Q. Again, in your agreement with Mr. Wells, I think you pay him a lower royalty on colonial sales?—*A.* Yes.

Q. Than you do in respect of sales in this country?—*A.* Yes.

Q. For that purpose you keep a royalty register?—*A.* Yes.

Q. If there had been any sales to Canada would they have appeared in the royalty register?—*A.* They would have appeared in the royalty register.

Q. There is no record in the royalty register of any such sales?—*A.* There is no record whatever.

Q. Again, was a copy of each of these agreements in which it appears that the rights to Canada were excluded sent to your publishing department?—*A.* Yes.

Q. And were the staff there expressly instructed not to send out any copies of the book to Canada, or for sale in Canada?—*A.* That is so, yes.

Q. Have you made any inquiries in the office as to whether anyone had heard of the plaintiff in this action, Miss Deeks, or of her manuscript, before you received an intimation from her solicitors?—*A.* No, never heard anything of it.

Q. You have made inquiries?—*A.* Yes.

Q. The result of that inquiry is that no one in the office had ever heard of Miss Deeks or her manuscript "The Web"?—*A.* That is correct.

Mr. CORSELLIS: I do not know whether this gentleman is saying he has inquired of every single person.

Mr. MACGILLIVRAY: Have you inquired of any person who would be likely to know?—*A.* Every person who would be likely to know, everyone who had charge of the books.

Q. And who would in the ordinary course of business know?—*A.* Yes.

Mr. CORSELLIS: I must take a formal objection to the evidence of the inquiries.

The COMMISSIONER: The objection is noted and reserved."

Mr. SMILEY (Reading):

"Cross-examined by Mr. CORSELLIS.

Q. I want to ask you a question or two about these ledgers and so on, because we are very puzzled. We have been to your branches in Toronto and purchased your edition there. Can you explain how that can have happened?—*A.* I cannot explain it. Our ledgers would not show that. If a copy were obtained in Toronto it would be obtained from one of the booksellers who had got it through a London house, not from us direct.

Q. This one was obtained from your own branch, McClelland & Stewart?—*A.* Mr. McClelland has told me he has not sold a copy.

Q. We cannot have what he told you?—*A.* I cannot say anything else. We have not sent a copy to him, I can tell you that.

Q. I think it will be necessary, in view of this, that I should see these ledgers. How bulky are the ledgers?—*A.* About this size (Indicating). They are constantly in use. I do not want to spare them. If anybody would come down to see them we should be pleased to show them.

Q. Could our solicitors come down there and see them?—*A.* Certainly, they are open to inspection if you would like to send down.

Mr. CORSELLIS: It is a little difficult to cross-examine this gentleman until we have been able to inspect those.

Mr. MACGILLIVRAY: I am not sure that you are entitled to a roving commission and to examine all the entries in the book.

Mr. CORSELLIS: Any entries that have reference to McClelland & Stewart.

Mr. MACGILLIVRAY: Yes, disclosure of any entries we have in this book of McClelland & Stewart; but then the witness says he has examined the book and there is no such entry.

Mr. CORSELLIS: I think we are entitled to look for such entries.

Mr. MACGILLIVRAY: I object to that. The witness has sworn that he has examined the books, and there are no such entries, and therefore the books are not relevant.

Mr. CORSELLIS: Then I call for the books. I must ask for them to be exhibited and sent to Canada.

Mr. MACGILLIVRAY: Can we deal with this on the adjournment?

Mr. CORSELLIS: If our solicitors could have facilities to examine the books, then we could cross-examine Mr. Newstead on the adjournment.

The COMMISSIONER: The books will be inspected at Cassell & Company.

Mr. MACGILLIVRAY: They could be brought here.

WITNESS: Yes.

Mr. MACGILLIVRAY: I would rather have them here, then I can take such objections as are proper.

Mr. CORSELLIS: It may take some time to examine them.

In the Supreme Court.

Defendants' Evidence on Commission.

No. 32. Frederick Newstead. Cross-examination—*continued.*

Mr. MACGILLIVRAY: I shall object to their being examined. I think you must take the witness's oath. If there are no relevant entries the books are not relevant.

Mr. CORSELLIS: We shall have to have the books here.

The COMMISSIONER: Would you object to their examining McClelland & Stewart's account in those books?

Mr. MACGILLIVRAY: I think probably not.

The COMMISSIONER: If that could be done in advance it might save a good deal of time.

Mr. CORSELLIS: I think that would satisfy us if we could see McClelland & Stewart's account, always provided it is a detailed account?—*A.* It is the stock account I am referring to. If you attempt to go through McClelland & Stewart's cash account for every item charged there it would take you a long long time, and I do not suppose we have the earlier record.

Q. You have not McClelland's account?—*A.* Not their invoices.

Q. There has been no examination of the invoices?—*A.* Not invoices.

Q. How does the stock account show what was sent to McClelland's?—*A.* It would show the stock going out to Toronto.

Mr. CORSELLIS: We have two alternatives; a very bulky set of cash accounts of McClelland's, or the stock account, which does not relate solely to McClelland's.

Mr. MACGILLIVRAY: Will the stock account not identify them?—*A.* Yes, it would identify, except you cannot identify anything that is not there.

Q. As I understand, the stock ledger ought to have a record of any sales of this book which have been made to McClelland's?—*A.* It would show them.

Mr. CORSELLIS: If we could examine that before next week it might not be necessary to cross-examine this gentleman any further.

Mr. MACGILLIVRAY: Have you any objection to them being examined in that way?—*A.* No.

Mr. MACGILLIVRAY: Then we are in a position to waive our right to any objection.

Mr. CORSELLIS: Then that can be done. They will be examined, and we will let you know if we want Mr. Newstead at the adjourned hearing.

Mr. MACGILLIVRAY: The solicitors of both parties ought to be present.

Mr. CORSELLIS: Yes.

Mr. MACGILLIVRAY: The appointment will be made by both solicitors to see the stock account over this period.

Mr. CORSELLIS: The stock accounts in all cases show the names of the persons to whom the books are sent?—*A.* No, the stock accounts would show Toronto, because Toronto is treated specially.

Q. It would show the place?—*A.* And show that it has been delivered to the publishing department or the export department, or Toronto or Melbourne.

Q. What happens to the books which are issued to the export department, do any of them go to Canada?—*A.* No, they do not, because they would be ordered direct for Toronto, they would not come out of the ordinary export stock.

Q. The export stock is for export to countries where you have not got agents?—*A.* That is so; yes.

Mr. CORSELLIS: That is all I can ask this witness at the moment.

Mr. MACGILLIVRAY: You will be satisfied with the production of the stock account?

Mr. CORSELLIS: Yes, we will be satisfied with the stock account. Perhaps I might ask him this, to try and save him coming again. Do you know anything about the advertisements of McClelland & Stewart in Canada?—*A.* No, I have not seen those.

Q. Our information is that they announced in Canada they had a wonderful new edition of this book and published announcements in the "Review of Reviews" just before the Writ was issued in this action. Do you know anything about that?—*A.* I have never heard of it; it is the first I have heard of it.

Q. And that later a new book came out which was practically the same as the old one bearing your imprint?—*A.* Bearing Cassell's imprint, or McClelland's?

Q. Cassell's imprint, since the Writ?—*A.* I have never heard anything of it, and I doubt it.

Q. A new revision of the 'Outline of History'?—*A.* I should like to have a note of it.

Q. I am told it was in 1927 when they came out in Canada. My information is that from Christmas 1927 onwards, this book, the 'Outline of History' was on sale, bearing your imprint, in Canada, and that it was practically the same as your ordinary old edition?—*A.* It would be so, but of course the two editions are very similar. With regard to the sales, I do not think it could have been. If any copies were obtained they must have been obtained from one of the London houses, not from us here.

Q. The advertisement I am told was in the Review of Reviews, by McClelland & Stewart. The advertisement just bore your name; Cassell's name?—*A.* Is that the London Review of Reviews?

Q. The London Review of Reviews?—*A.* That is so; it would bear our name in London; we would publish it in London.

Q. Then I will not bother you about that advertisement. It was an advertisement in the Review of Reviews."

Mr. ELLIOTT (Reading):

"Re-examined by Mr. MACGILLIVRAY.

Q. Do McClelland & Stewart carry on business as publishers and booksellers in Canada otherwise than as your agents?—*A.* I believe they do.

In the Supreme Court.

Defendants' Evidence on Commission.

No. 32. Frederick Newstead. Re-examination—*continued.*

Q. Their business is not confined to your agency, is it?—*A.* I do not think it is, but I would not say for certain.

Q. And for all you know it may be that they could buy copies of the 'Outline of History' elsewhere?—*A.* They would not do that. If they wanted anything from Cassell's they would order it direct from us. They get special terms.

Q. You are satisfied you did not send any copies?—*A.* We did not send any; I am quite satisfied of that.

Q. There is one other point which I ought to have taken in chief, if I may be allowed now; that was with regard to the sales under the second agreement, the ninth clause. There is a provision with regard to the sale of the work in sheets to the Waverley Book Company?—*A.* Yes.

Q. In accordance with that provision, did you sell copies of this book in sheets to the Waverley Book Company?—*A.* We did.

Q. Were the sales to the Waverley Book Company completed by transactions in London?—*A.* Yes. We do not control that either.

Q. Do you control that Company in any way?—*A.* We do not control their sales in any way.

Q. Were you concerned with what they did with the books after they bought them?—*A.* No, but they were advised there were no Canadian rights.

Q. You expressly advised them there was no right for sale in Canada?—*A.* No right for sale in Canada."

Mr. ELLIOTT: The next witness was Professor Gilbert Murray, one of Mr. Wells' associates. (Reading)

(Prof. Gilbert Murray's evidence has been printed at page 241)

9th July, 1929.

Mr. MACGILLIVRAY: On behalf of Cassells, Mr. Newstead was called on the previous occasion, and there was some question of the examination and production of entries in Cassell's books. Since then, as I understand it, the Plaintiffs have had an opportunity of examining the books, and are satisfied.

Mr. CORSELLIS: And found no entries.

Mr. MACGILLIVRAY: It is not necessary to call Mr. Newstead to produce any books.

Mr. NORMAN DAYNES: I understand that is so. There has been a search. There have been no entries found, and we do not wish to ask Mr. Newstead any further questions. My client tells me it was understood that the Solicitors would arrange about some correspondence which I thought was admitted.

Mr. MACGILLIVRAY: A bundle of correspondence was to be agreed.

Mr. NORMAN DAYNES: It is not our correspondence. Of course it can be arranged. I have it still in three bundles; I have the big brown bundle and the green bundle, and a bundle of supplementary letters.

Mr. MACGILLIVRAY: You are calling for these?

Mr. NORMAN DAYNES: The correspondence was to be treated as agreed. I think it would be convenient if we could have one agreed bundle for the Court in Canada. May I take it that that will be done?

Mr. MACGILLIVRAY: That will be done. The arrangement was that a bundle of correspondence was to be agreed before the Commissioner reported, so that it could be returned with the Commission."

Mr. ELLIOTT: Then Mr. William Porter was recalled, and that just deals with the Newnes. He was the man who examined Newnes's book; and I think we might just take that as read. (Mr. Porter recalled, *see* page 335.)

11th July, 1929.

Mr. NORMAN DAYNES: It is agreed that a bundle of correspondence shall be signed by the Solicitors and marked by the Commissioner as Exhibit 'X' and returned with the Commission.

Mr. MACGILLIVRAY: Yes. That closes the Commission so far as I am concerned.

The COMMISSIONER: You will wish the Commission closed?

Mr. MACGILLIVRAY: The Commission will be closed.

Mr. NORMAN DAYNES: As far as I am concerned, I am not going to proceed on my Commission for the examination of witnesses over here; I have no witnesses.

The COMMISSIONER: Then I declare both Commissions closed."

HIS LORDSHIP: Is that your Defence, Mr. Elliott?

Mr. ELLIOTT: That is all, my lord. I would close the case for those whom I represent by some extracts from the Examination for Discovery of Miss Deeks.

HIS LORDSHIP: Why did you not use them while she was on the stand?

Mr. ELLIOTT: These are admissions, my lord.

(Mr. Elliott here reads in from Miss Deeks' Examination for Discovery questions 6-12, 18-22, 30-36 inclusive.)

Then about Cassells, I do not think I need bother about that.

HIS LORDSHIP: It is all pretty well covered in your cross-examination.

Mr. ELLIOTT: Yes. I think there are a lot of things which I have marked which have been covered, and I am just glancing through it to see whether I have missed anything.

HIS LORDSHIP: All right. Any reply?

Mr. MUIRHEAD: Yes, my lord, there is Mr. Brett, of the Macmillan Company of New York.

HIS LORDSHIP: This is evidence on behalf of the Macmillans?

Mr. MUIRHEAD: Yes, my lord. This is the evidence of Mr. George Brett taken on Commission in New York.

(Reading):

In the Supreme Court.

Defendants' Evidence on Commission.

No. 33. G. P. Brett. Examination-in-Chief.

No. 33.

Evidence of George P. Brett.

"GEORGE P. BRETT, President of The Macmillan Company, called as a witness on behalf of the defendant, having been first duly sworn by the Commissioner, testified as follows:

Examination in chief by Mr. McLAUGHLIN.

Q. 1. Now, Mr. Brett, you are an officer of The Macmillan Company?—*A.* President of the company.

Q. 2. You held that office in 1918?—*A.* Since 1896.

Q. 3. The Macmillan Company published "The Outline of History" by Mr. H. G. Wells?—*A.* It did.

Q. 4. Through what territory?—*A.* We published it through the United States only.

Q. 5. What connection, if any, have you with The Macmillan Company of Canada, Ltd.?—*A.* The Macmillan Company of Canada, Ltd. sells books of our publication which they buy of us in New York and we make no other shipments to Canada except to them.

Q. 6. Have you any other connection with the Canadian Company?—*A.* We own some of the Canadian Company's stock.

Q. 7. Now, Mr. Brett, in connection with the publication of "The Outline of History", you had certain correspondence with Mr. Wells?—*A.* Yes.

(Letter, not dated, from Mr. H. G. Wells, addressed to the witness, marked in pencil 'About October 20th, 1918,' marked exhibit 1.)

(Carbon copy of a letter dated November 8th, 1918, addressed to Mr. Wells and sent by the witness, marked exhibit 2.)

(Letter from H. G. Wells to the witness, undated, pencilled 'About November 30th, 1918,' marked exhibit 3.)

(Carbon copy of a letter dated December 20th, 1918, by the witness to Mr. H. G. Wells, marked exhibit 4.)

(Letter from H. G. Wells to the witness, undated, pencilled 'December, 1918,' marked exhibit 5.)

(Carbon copy of a letter from the witness to Mr. Wells, dated January 7th, 1919, marked exhibit 6.)

(Letter from Mr. Wells to the witness, undated, pencilled January 10th, 1919, marked exhibit 7.)

(Carbon copy of letter from witness to Mr. Wells, dated February 5th, 1919, marked exhibit 8.)

(Letter from H. G. Wells to the witness, undated, pencilled 'About February 25th, 1919,' marked exhibit 9.)

(Carbon copy of a letter from the witness to Mr. Wells, dated March 13th, 1919, marked exhibit 10.)

(Letter from Mr. Wells to the witness, undated, pencilled 'About August 25th, 1919,' marked exhibit 11.)

(Carbon copy of a letter from the witness to Mr. Wells, dated September 12th, 1919, marked exhibit 12.)

(Letter dated October 9th, 1919, from Catherine Wells to witness, marked exhibit 13.)

(Carbon copy of letter dated October 31st, 1919, from the witness to Mr. Wells, marked exhibit 14.)

(Letter dated December 10th, 1919, from Mr. Wells to the witness, marked exhibit 15.)

(Carbon copy of a letter dated December 31st, 1919, from the witness to Mr. Wells, marked exhibit 16.)

(Letter dated December 13th, 1919, from Mr. Wells to the witness, marked exhibit 17.)

(Copy of what purports to be a cablegram from Macmillan to Mr. Wells, dated December 27th, 1919, marked exhibit 18.)

(Carbon copy of a letter dated December 29th, 1919, from the witness to Mr. Wells, marked exhibit 19.)

(Cablegram addressed to Macmillan, publishers, New York, and signed ' Wells ', dated January 16th, 1920, marked exhibit 20.)

(Carbon copy of what purports to be a cablegram addressed ' Wells ' and signed ' Brett ', dated January 16th, 1920, marked exhibit 21.)

(Carbon copy of a letter dated January 21st, 1920, from the witness to Mr. Wells, marked exhibit 22.)

(Letter from H. G. Wells to the witness, undated, marked exhibit 23.)

(Letter dated January 9th, 1920, from Mr. Wells to the witness, marked exhibit 24.)

(Carbon copy of a letter dated January 27th, 1920, from the witness to Mr. Wells, marked exhibit 25.)

(Letter dated January 15th, 1920, from Mr. H. G. Wells to the witness, marked exhibit 26.)

(Carbon copy of a letter dated January 29th, 1920, from the witness to Mr. Wells, marked exhibit 27.)

Q. 8. Mr. Brett, I am handing to you and showing you the following correspondence; first, there is a letter not dated from Mr. H. G. Wells, addressed to yourself, which has been marked in pencil ' About October 20th, 1918 ' (exhibit 1); and a carbon copy of a letter dated November 8th, 1918, addressed to Mr. Wells and presumably sent by yourself (exhibit 2); a letter from Mr. H. G. Wells to yourself, undated, but on which has been pencilled ' About November 30th, 1918 ' (exhibit 3); a carbon copy of a letter dated December 20th, 1918, by yourself to Mr. H. G. Wells (exhibit 4); a letter from Mr. H. G. Wells to yourself, undated, but on which has been pencilled ' December, 1918 ' (exhibit 5); a carbon copy of a letter from yourself to Mr. Wells dated January 7th, 1919, (exhibit 6); a letter from Mr. Wells to yourself undated but on which has been pencilled ' January 10th, 1919 ', (exhibit 7); a carbon copy of a letter from yourself to Mr. Wells, dated February 5th, 1919 (exhibit 8); a letter from Mr. H. G. Wells to yourself, undated, on which has been pencilled ' about February

In the Supreme Court.

Defendants' Evidence on Commission.

No. 33. G. P. Brett. Examination-in-Chief—*continued.*

25th, 1919,' (exhibit 9); a carbon copy of a letter from yourself to Mr. Wells, dated March 13th, 1919, (exhibit 10).

Mr. McLAUGHLIN: There is attached to this, Mr. Smily, an office memorandum that I do not think needs to be put on the record.

Mr. SMILY: No, that hasn't anything to do with it.

The WITNESS: It does not relate to this book at all.

Q. 8. (Continued): A letter from Mr. Wells to yourself undated, on which has been pencilled 'About August 25th, 1919' (exhibit 11); and a carbon copy of a letter from yourself to Mr. Wells, dated September 12th, 1919, (exhibit 12); a letter dated October 9th, 1919, from Catherine Wells (exhibit 13)——

I presume that is Mrs. Wells?—*A.* Mrs. Wells.

Q. 8. (Continued): To yourself. A carbon copy of a letter dated October 31st, 1919, from yourself to Mr. Wells (exhibit 14); a letter dated December 10th, 1919, from Mr. Wells to yourself (exhibit 15); a carbon copy of a letter dated December 31st, 1919, from yourself to Mr. Wells (exhibit 16); a letter dated December 13th, 1919, from Mr. Wells to yourself (exhibit 17); a copy of what purports to be a cablegram from Macmillan to Mr. Wells dated December 27th, 1919 (exhibit 18); carbon copy of a letter dated December 29th, 1919, from yourself to Mr. Wells (exhibit 19); a cablegram addressed to Macmillan, publishers, New York, and signed 'Wells', dated January 16th, 1920, (exhibit 20); a carbon copy of what purports to be a cablegram addressed 'Wells', and signed 'Brett', dated January 16th, 1920, (exhibit 21); a carbon copy of a letter dated January 21st, 1920, from yourself to Mr. Wells (exhibit 22); a letter from Mr. H. G. Wells to yourself, undated, (exhibit 23); a letter dated January 9th, 1920, from Mr. Wells to yourself, (exhibit 24); a carbon copy of a letter dated January 27th, 1920, from yourself to Mr. Wells (exhibit 25); a letter dated January 15th, 1920, from Mr. H. G. Wells to yourself (exhibit 26); a carbon copy of a letter dated January 29th, 1920, from yourself to Mr. Wells (exhibit 27).

As far as you are aware, Mr. Brett, does that complete all the correspondence that you had with Mr. Wells in reference to The Outline of History prior to the publication of it by you?—*A.* That is all the correspondence between myself and Mr. Wells in relation to the preparation, publication or any other matter connected with Wells' Outline of History.

Q. 9. With the exception, I presume, of any correspondence that has taken place after the time of the writ in this action was issued?—*A.* Whether there is any correspondence since the time of the publication of the book, I do not know, but that is immaterial, surely, isn't it?

Mr. SMILY: Since the issuance of the writ, you mean?

Mr. McLAUGHLIN: Yes.

The WITNESS: Yes.

Q. 10. Outside of this correspondence, Mr. Brett, did you, yourself, for The Macmillan Company have anything to do in making suggestions

to Mr. Wells in reference to his book or giving him information to be incorporated in it?—*A.* In this book you are talking about?

Q. 11. Yes, in this Outline of History?—*A.* No.

Q. 12. In reference to the Toronto office, are many manuscripts submitted to you by The Macmillan Company of Canada for your approval or for your consideration?—*A.* Very seldom. Occasionally, when they get a manuscript which they do not want to publish, they may consult us as to whether we will publish it, and in those cases, where we want to consider publishing it, we ask them to send us the manuscript.

Mr. McLaughlin: You have that manuscript (Addressing Mr. Smily)?

Mr. Smily: Yes. Do you want it?

Mr. McLaughlin: Yes.

(Manuscript produced and handed by Mr. Smily to Mr. McLaughlin.)

Q. 13. Just before we come to that, Mr. Brett, I am handing you what purports to be a memorandum agreement dated the 31st day of October, 1919, between H. G. Wells and Macmillan & Company of New York, which has been signed by The Macmillan Company, per George P. Brett, and by H. G. Wells; is that the agreement under which you published this work?

Mr. Smily: You do not know that it is signed by them.

Mr. McLaughlin: It purports to be.—*A.* It is.

(Memorandum of agreement dated the 31st day of October, 1919, between H. G. Wells and The MacMillan Company of New York, marked exhibit 28.)

Q. 14. Now, Mr. Brett, Mr. Smily, appearing for Miss Deeks, produces a bulky manuscript on which appears 'The Web', by Adul Weaver, and just for the purpose of identification, on the first page it has typewritten 'The Web, by Adul Weaver, of the World's Romance.' It has also endorsed on it a stamp 'SCo, Deeks vs. Wells. This is exhibit 1 referred to in the examination of the plaintiff taken before me on the 15th day of October A.D. 1928, John Bruce, Special Examiner.'

('The Web, by Adul Weaver' marked exhibit 29, but not to be attached to the Commission.)

Q. 15. Mr. Brett, so far as you are aware, have you ever seen that manuscript before?—*A.* Not before yesterday when it was shown to me by the plaintiff's attorney.

Q. 16. Had, by any chance, a manuscript of that nature been forwarded by The Macmillan Company of Canada to The Macmillan Company, through what department would it have gone?—*A.* A record is made of every manuscript received by the general publishing department, at that time headed by a Mr. Marsh, and now headed by Mr. Latham, who was Mr. Marsh's assistant.

In addition to that, records are kept in each different publishing department of the manuscripts referred to those departments for consideration and action.

Q. 17. Is Mr. Marsh now available?—*A.* Mr Marsh is dead.

In the Supreme Court.

Defendants' Evidence on Commission.

No. 33. G. P. Brett. Examination-in-Chief—*continued.*

Q. 18. This manuscript purports to refer to the World's Romance, and is dealing, I presume, more or less with the history of the world. What department in your company would a manuscript of that character be handed to for consideration?—*A.* It could have been considered by two departments. In the first instance, it would go to the General Publishing Department, which I have described to you as being under the charge of a Mr. Marsh at that time. And it would also probably have been referred to the Educational Department, being a book on history or connected with history.

Q. 19. Would it be possible for a manuscript of that character to be forwarded by The Macmillan Company of Canada to this office and not have left permanent record of that fact?—*A.* Absolutely impossible.

Mr. SMILY: The system is inherent?

THE WITNESS: The system is practically perfect, The manuscripts are not only numbered, but they are indexed in addition so that we may refer to them by their subject as well as by their number, and as well as by the author's name, and as well by the person who submits it, not always the author. So that it is a very complete record.

Q. 20. Had you, to your knowledge, heard of Miss Deeks prior to the time she issued her writ?—*A.* No.

Q. 21. Had you any knowledge of a manuscript that The Macmillan Company of Canada might have been considering in or around the years of 1918 or 1919 dealing with world history?—*A.* No.

Q. 22. Going back again to the publication of The Outline of History by Mr. Wells; that is, by you for Mr. Wells, your contract, I see, covers the United States and Canada?—*A.* Yes.

Q. 23. To what extent did you publish the work in Canada?—*A.* Not at all. We held that the sale by us in New York of an edition to a Canadian house fulfilled our contract with Mr. Wells, as far as Canada was concerned.

Q. 24. As far as the Canadian market is concerned, that is the extent to which you had dealings in reference to this book?—*A.* Absolutely.

Mr. MCLAUGHLIN: I think that is all the questions I have to ask Mr. Brett."

Mr. ELLIOTT (Reading):

Cross-examination.

"Cross-examination by Mr. ELLIOTT:

Q. 25. When did you first hear of this plaintiff, Mr. Brett?—*A.* So far as I know, at the time the suit was brought. It was probably—I have no actual recollection—probably communicated to me by the head of the Canadian house.

Q. 26. When did you first hear of this manuscript that has been identified here?—*A.* Only at the time of the suit.

Q. 27. Was that manuscript ever in the possession of your office here?—*A.* Never.

Mr. ELLIOTT: That is all."

" Cross-examination by Mr. SMILY :

Q. 28. I gather, Mr. Brett, from what you told me in the examination of discovery yesterday, that this work, The Outline of History, was something new of its kind ?—*A.* I do not think I said quite that, did I ? I said that histories of the world and of mankind had been published a number of times in the past. Wasn't that what I said ?

Q. 29. Yes, but I think we got it down to the point that it was something new.—*A.* In this way, yes, it had never been treated in this way before.

Q. 30. In the way in which it was treated in the Outline of History, yes. That is what I meant when I said something new of its kind. Now, you say your Company, or you personally own stock in the Macmillan Company of Canada ?—*A.* I own no stock in it. So far as I remember, I have a qualifying share as a director, but it is not my property. It is endorsed over to The Macmillan Company of New York.

Q. 31. The Macmillan Company of New York owns the stock ?—*A.* Yes.

Q. 32. Does it own a majority of the issued stock of the Canadian Company ?—*A.* It does not.

Q. 33. How did you first set about selling the work, ' The Outline of History,' for Canadian distribution ?—*A.* I can't give you any more information on that point than I have already given you. The Canadian manager, head of the Canadian house, or his sales manager, comes down to New York at frequent intervals.

Q. 34. Now, just a moment, can I interrupt you there ? Would you mention the name of the——*A.* Mr. Eayrs is the head of the Toronto office. I do not remember the name of his sales manager.

Q. 35. In 1919 or 1920, whichever it may be that this book was published, who was the manager of The Macmillan Company then ?—*A.* Mr. Eayrs.

Q. 36. And he is the gentleman to whom you refer as coming to New York ?—*A.* Yes.

Mr. MCLAUGHLIN : Excuse me one moment Mr. Smily asked you in 1918 and——

Mr. SMILY : 1919 and 1920.

Mr. MCLAUGHLIN : 1919 and 1920 ?

Mr. SMILY : Yes.

THE WITNESS : Yes, but to continue my reply to your question : Mr. Eayrs or his sales manager comes down to New York; our sales manager here has books which are in preparation, either by description or by dummy, and the order is either placed then at the time for those books, or they send an order afterwards, after they have consulted with some of their local dealers.

Q. 37. You are giving to me your general practice ?—*A.* Yes sir, that is what is done practically in all cases.

Q. 38. I gather from what you say, you have no definite recollection of what was done in the case of this book, ' The Outline of History ' ?—*A.* Not any more than I would in the case of any other book.

In the Supreme Court.

Defendants' Evidence on Commission.

No. 33. G. P. Brett. Cross-examination—*continued.*

Q. 39. Can you tell me how it was brought to the attention of the Canadian Company that you had the contract for the publication of this book, 'The Outline of History,' in Canada?—*A.* Probably by an announcement list which is printed at frequent intervals and sent to our customers throughout the country.

Q. 40. I see. You haven't any definite knowledge as to that either, is that right?—*A.* That is the general practice.

Q. 41. And is it also your general practice that if you have any books, or the rights to the publication of a book in Canada, you send the book to the Macmillan Company of Canada? I think probably you will say that you sell it here to The Macmillan Company of Canada—sell it in New York to The Macmillan Company of Canada to be distributed in Canada by them, is that the practice?—*A.* As I said yesterday, I have no knowledge of what they do, but I presume they distribute it as you say.

Q. 42. What I mean, your practice is, in cases where you have the rights for Canada, to sell the book to The Macmillan Company of Canada?—*A.* As I have told you, we sell no one else in Canada.

Q. 43. No one else. Have you any written contract or document relating to the sale of these books to The Macmillan Company of Canada?—*A.* Whether there is any contract relating to any book, I can't tell you. I think there are, in some cases, contracts which relate to the publication of special books by them under a royalty payment, but there is no such document in relation to this book.

Q. 44. No such document in relation to this book. You say no such document as you have just described?—*A.* Yes.

Q. 45. Well, is there any document—any written document relating to the sale of this book, 'The Outline of History,' to The Macmillan Company of Canada?—*A.* No.

Q. 46. Is there any written document relating to the sale of this book by The Macmillan Company of Canada?—*A.* No.

Q. 47. Is it your practice to sell books to The Macmillan Company of Canada without any written document?—*A.* Yes.

Q. 48. What, if any, record is made in your office here respecting that?—*A.* In regard to the arrangements on any particular book, do you mean?

Q. 49. Well, no. I am concerned about this book, 'The Outline of History.' What record would be made in your office respecting the sale of 'The Outline of History' to The Macmillan Company of Canada?—*A.* There is a general understanding, as I tell you, that no one else is to be sold. The only record we keep of the sale of that particular book, apart from the bill, is a card which shows the price at which the book is sold to Canada and nothing else.

Q. 50. What about the quantity?—*A.* Well, the quantity and price—well, the bills show the quantity in each case. You have already all the quantities before you.

Q. 51. I know, but how would you know, Mr. Brett, how many books The Macmillan Company of Canada would desire?—*A.* Because they order

it. That is what the manager, or the sales manager, comes down here for; to tell us the quantity he wants."

HIS LORDSHIP: We will break off there. The reading of this evidence closes your defence?

Mr. MUIRHEAD: Yes.

HIS LORDSHIP: Have you further evidence, Mr. Robertson?

Mr. ROBERTSON: Just a few questions of Miss Deeks.

HIS LORDSHIP: Can we finish the argument this week?

Mr. ROBERTSON: I am sorry, but I ought to go to the Appellate Division as soon as I can. There has been a good deal to which my learned friend has not called your lordship's attention, in connection with the Exhibits. I think I ought to spend some more time in the preparation of my argument.

HIS LORDSHIP: All right. Until 2 o'clock.

(At 12.45 Court adjourned until 2 p.m. Friday 6th June, 1930.)

Afternoon Session.

Toronto, Friday 6th June, 1930.

Mr. MUIRHEAD: I think your lordship suggested, before luncheon, that the balance of this commission evidence might be taken as read. I am content, if my learned friend, Mr. Robertson, agrees, to put the balance of this in.

Mr. ROBERTSON: I think we can do that, and then when we come to the argument of the case, we can refer to it. It will be a saving of time. The correspondence attached to both of these commissions is very lengthy.

HIS LORDSHIP: I suppose the substance is that this was a letter written by Wells to Brett; and then the other circumstance is that he never heard of nor saw the Deeks manuscript. Those are the two things, I suppose, for the court.

Mr. MUIRHEAD: And that they never published anything in Canada.

Mr. ROBERTSON: Their book was sold here, of course?

HIS LORDSHIP: That is a secondary matter.

(The following is the portion of the evidence of MR. GEORGE P. BRETT, taken under commission in New York, which was taken as read, as shown in lines 24 to 32, page 505):

"*Q.* 52. Then you make a written record of it, do you not?—*A.* On these cards, as I tell you.

Q. 53. Have you got the card for the first order for the book 'The Outline of History'?—*A.* I doubt it. How many years ago is it?

Q. 54. 1920.—*A.* No, we do not keep them, I do not think, over six years.

In the Supreme Court.

Defendants' Evidence on Commission.

No. 33. G. P. Brett. Cross-examination—*continued.*

Q. 55. You say you do not keep those cards for more than six years?—*A.* No. The basement of this house is entirely full of records of our business.

Q. 56. Would you not have correspondence with the Macmillan Company of Canada?—*A.* In relation to this particular book?

Q. 57. Yes.—*A.* I can't tell you that there is none, but I doubt it. There is the order, without any question; but I doubt very much if we have got that now.

Q. 58. When you speak of the order, what do you mean?—*A.* Their order for the book.

Q. 59. A written order?—*A.* A written order.

Q. 60. They make out a written order, do they?—*A.* They make out a written order for the book.

Q. 61. And you have that?—*A.* Well, I don't think we have got it now.

Q. 62. But you get that?—*A.* Yes, that is what we act upon.

Q. 63. So that originally you have a written order, also the card, your card?—*A.* The card shows the price at which we are selling the book to them, which varies.

Q. 64. And the quantity you told me.—*A.* And the quantity.

Q. 65. Have you any written order from The MacMillan Company of Canada respecting these books in your record now?—*A.* Undoubtedly we have orders, if they have ordered any copies recently. Those orders will still be in our files. They order books from us every day in the year, practically, and if any of those books have been included in written orders, we would have them. I said we kept those records about three years.

Mr. SMILY: I would like to have on the record the form of that order, if you have any Macmillan Company of Canada order, just so we can put down the form of that.

Mr. MCLAUGHLIN: What you want is just the copy of the ordinary order form?

Mr. SMILY: The ordinary order form of the Macmillan Company of Canada.

THE WITNESS: There is no objection to producing that. I do not see what it is wanted for.

Mr. MCLAUGHLIN: Not necessarily a Canadian order, just a blank form of order which is used.

THE WITNESS: We do not have a blank form.

Mr. SMILY: This should be the Macmillan Company order.

THE WITNESS: We have nothing but the order itself.

(Discussion off the record.)

Q. 66. Well, do you say, Mr. Brett, that no steps were taken by you toward the sale of this book in Canada, other than simply the ordinary announcement of a new book coming out?—*A.* Absolutely. The same method is used in all our books. There is no difference in relation to this

book than to any other book. We publish, as I told you yesterday, about 500 books a year and they all go through a certain form of offer.

Q. 67. But would there not be a distinction between books in which you had the publication rights for another country, such as Canada, than the ordinary book?—*A.* Nearly all our books we have the Canadian rights for.

Q. 68. Nearly all your books?—*A.* Practically none where we do not have the Canadian rights; very few indeed.

Q. 69. If you had the Canadian rights, the Macmillan Company of Canada would not have, I suppose?—*A.* Except by purchase of the book from us.

Q. 70. Do those announcement lists that you speak of, do they contain a number of books, or do they just contain one?—*A.* At present about 100 books in each announcement list.

Q. 71. One hundred books in each announcement list. When you published 'The Outline of History' your first copy of 'The Outline of History' was November 5th, 1920; that is correct, is it?—*A.* If it has been so stated; the date is not actually in my mind.

Q. 72. According to your records?—*A.* Yes, according to our records. If that is the record, it is correct.

(Discussion off the record.)

THE WITNESS: November 3rd, 1920, that is correct.

Q. 73. November 3rd, 1920, was the first publication. That was a book of two volumes, Mr. Brett?—*A.* Yes. I think the one-volume edition was published afterwards.

Q. 74. And the first shipment to Canada was made the 8th of November, 1920, of 1,000 volumes; that is your record, is it, Mr. Brett; according to your records.—*A.* That is correct. That is of the two-volume edition.

Q. 75. Yes. Then you shipped, throughout the years of 1920 to 1925, approximately 2,000 volumes?—*A.* Of that edition.

Q. 76. Of that edition. And then there was a one-volume edition published on the 9th of October, 1921, is that correct?—*A.* Correct.

Q. 77. And the first shipment to Canada of that was made on the 19th of September, 1921, of 250 volumes?—*A.* That is correct.

Q. 78. Of that edition you shipped to Canada, from 1921 to 1927, 8,364 volumes?—*A.* We did.

Q. 79. In addition to that, I believe you published in 1926 a two-volume illustrated edition?—*A.* Yes.

Q. 80. And in 1927 a one-volume illustrated edition?—*A.* Yes.

Q. 81. And those are the only editions of the book you published?—*A.* Yes. As I told you, the shipments of those later editions to Canada have been practical negligible; 250 each, I believe.

Q. 82. Yes.

Mr. MCLAUGHLIN: Here is that order form. I do not suppose you want it on the record.

Mr. SMILY: No, I do not think so.

In the Supreme Court.

Defendants' Evidence on Commission.

No. 33. G. P. Brett. Cross-examination—*continued.*

THE WITNESS: There it is.

Mr. MCLAUGHLIN: That just illustrates the manner in which—— That is a form that was invariably used by the Macmillan Company?

THE WITNESS: It is.

Mr. MCLAUGHLIN: Because when they are buying from you, they are generally buying a number of them?

THE WITNESS: Yes, a number of items.

Mr. SMILY: Do you want this to go in?

Mr. MCLAUGHLIN: I do not want it to go on.

Mr. SMILY: I do not either.

Mr. MCLAUGHLIN: We will have that in Toronto, all that evidence.

Mr. SMILY: It does not make any difference from my standpoint.

Mr. MCLAUGHLIN: Oh no. We will have all that in Toronto.

Q. 83. I understand you still have some books of 'The Outline of History' on hand in your establishment now, Mr. Brett?—*A.* Oh yes, the book is regularly published.

Q. 84. And it is still selling?—*A.* To some extent.

Q. 85. And it is your intention to continue selling as long as there is a market for it, I suppose, during your copyright period?—*A.* During the copyright term.

Q. 86. That is correct, is it?—*A.* Yes.

Q. 87. Then I notice in the correspondence which has been put in a letter of October 9th, 1919, purporting to be signed 'Catherine Wells,' reading to this effect:

> 'With this I am sending proofs of the first few chapters of my husband's new work, The Outline of History.'

This letter being addressed to you, Mr. Brett. Is that the first you had received any copy of 'The Outline of History'?—*A.* Well, I can't remember the whole correspondence, but if she says it is the first proofs, it was, undoubtedly, the first proofs.

Q. 88. She does not say that. She says 'With this I am sending proofs of the first few chapters '——?—*A.* Yes, those are the first proofs.

Q. 89. Up to that time you had not received any manuscript of 'The Outline of History'?—*A.* No, we never had any manuscript.

Q. 90. Never had any manuscript?—*A.* No.

Q. 91. And you had not received any copy of the text up until that time?—*A.* No.

Q. 92. Then I believe you received a letter from Mr. Wells enclosing a memorandum respecting this case, Mr. Brett. This letter which I show you, was that letter received by you, Mr. Brett?—*A.* It was.

Q. 93. And the letter refers to memorandums. Were those memorandums received?—*A.* It does.

Q. 94. Were the memorandums received, Mr. Brett?—*A.* They were.

Q. 95. And is the document which purports to be a copy of memorandum in the case of 'The Web' attached to the letter of October 29th, 1925, that was one of the documents received, was it; one of the enclosures?—*A.* It is.

(Letter of October 29th, 1925, from Mr. Wells to the witness marked Exhibit 30.)

(Copy of the memorandum attached to the letter of October 29th, 1925, marked Exhibit 31.)

Mr. McLAUGHLIN: That memorandum was prepared for the purpose of preparing our defence to the action.

Mr. SMILY: Is that going upon the record?

Mr. McLAUGHLIN: Yes. It is part of my objection, although I am waiving it. I do not think we should produce it necessarily, but we have no objection to doing it.

Mr. SMILY: Of course, Mr. McLaughlin does not know what it was prepared for excepting what appears on the face.

Q. 96. I do not know whether I asked you, Mr. Brett, whether you at any time send representatives to Canada in connection with the sale of your books?—*A.* I explained yesterday that occasionally our men, who are coming across the country, do stop off in Toronto, but not on any business for the company, as I understand the matter, except to discuss things, discuss new books or something of that kind. This business is run in departments, and the Canadian house is the agent of this company for the sale of its college textbooks, and the manager of the College Textbook Department may go in to explain to the Canadian house just what a college textbook is for, and what course it is for and what professors may need it, and that is what he goes there for. He does not go there to sell the books. He goes there to aid the Canadian house in knowing what the books are.

Q. 97. Then that applies to the other departments as well, does it not? —*A.* Not to the same extent. The Educational Department would be in the same category, and the Medical Book Department, but not the Miscellaneous Publishing Department, because those books are, on the face of them, books which a man familiar with the trade knows about and knows what they are published for.

Q. 98. In connection with the other departments your men might go to Toronto to explain regarding the books, is that not correct?—*A.* I said occasionally they do. They do not make a practice of it however.

Q. 99. But if they happen to be there, they take advantage of the opportunity to discuss the book, and the sale of the book in Canada, too, I suppose?—*A.* Usually for those three departments which I have mentioned to you, the College Department, Educational Department, and Medical Book Department.

Q. 100. This book would come under an Educational Department, would it not: 'The Outline of History'?—*A.* It does not, as a matter of fact. Its sale has been almost entirely to the general public.

Q. 101. But in your business here it has come under your Educational Department, has it not?—*A.* I think you misunderstand what I said about

In the Supreme Court.

Defendants' Evidence on Commission.

No. 33. G. P. Brett. Cross-examination—*continued.*

referring the book to the Educational Department. A book published by the Miscellaneous Publishing Department may sometimes be aided in its sale by the Educational Department without its being an educational book, in any sense of the word; because, at any rate in this country, the libraries of schools are a great factor in the sale of miscellaneous books.

Q. 102. Yes. In short, the Macmillan Company of Canada are your agents in Canada for the sale of all of your books in Canada?—*A.* That is quite right.

Mr. SMILY: I think probably it would be useful to have this (referring to order form) in the record, so much reference has been made to it, Mr. McLaughlin.

Mr. MCLAUGHLIN: I beg your pardon?

Mr. SMILY: I think it would be useful to have this in the record.

Mr. MCLAUGHLIN: We can put them on record in Toronto, or we can put them on now. That is not relevant at the present time, and you are taking a document from their records here.

Mr. SMILY: It is relevant.

Mr. MCLAUGHLIN: You are taking a document from their records here.

Mr. SMILY: This is an order for 50 copies of "The Outline of History." Surely there cannot be anything more relevant than that.

Mr. MCLAUGHLIN: What I mean is, this is part of their general records at the present time.

Mr. SMILY: But it is not in daily use.

Mr. MCLAUGHLIN: If you take that it will be out of the record.

Mr. SMILY: It will go back to them.

Mr. MCLAUGHLIN: Have you any objection to that?

THE WITNESS: None at all. You can have it.

Mr. MCLAUGHLIN: If you want it, put it on.

THE WITNESS: I do not see how it relates to this. It is a recent order.

Mr. SMILY: You can read it into the record, if you like. I am not particular.

Mr. MCLAUGHLIN: Put it on record. That will be Exhibit 32.

(Order blank of Macmillan Company from Macmillan Company of Canada marked Exhibit 32.)

Mr. SMILY: All right. I just want to get the form of it because the Court will want to know when we are discussing things. That is all.

Mr. MCLAUGHLIN: There is just one matter that I wanted to clear up.

Mr. SMILY: Excuse me! Have we got on the record what this is?

Mr. MCLAUGHLIN: No.

Mr. SMILY: Exhibit 32?

Mr. McLAUGHLIN: Exhibit 32 is an Order from The MacMillan Company of Canada, Ltd., addressed to The Macmillan Company of New York, dated November 2nd, 1928.

By Mr. SMILY:

Q. 103. I might ask Mr. Brett; This document, Exhibit 32, is that a fair sample of the order form used by The Macmillan Company of Canada? —*A.* It is.

Re-examination by Mr. McLAUGHLIN:

Re-examination.

Q. 104. Just one question, Mr. Brett. I think you gave an answer to Mr. Smily that you did not intend to be just that way. Mr. Smily asked you if the Macmillan Company of Canada, Ltd., were agents in the sale of all of your books.

Mr. SMILY: I object to my learned friend suggesting to the witness that a certain answer to a question was not as he intended. The witness knows what he intended.

Mr. McLAUGHLIN: No, what I meant, I do not think Mr. Brett understood your question. I will ask my question and then you may object.

Mr. SMILY: That is also objectionable.

Q. 105. Your relation to the Macmillan Company of Canada, when they buy books from you, is it a straight, cash transaction, or is it a case——

Mr. SMILY: Finish it, but do not answer, Mr. Brett. I want to object to it.

Q. 105 (continued): ——is it a straight cash transaction in which they come in and say, as they have done in that order, 'Send us a certain number of books,' or is it a question of them selling books for you and having them delivered by you later?

Mr. SMILY: I object to that. I object to the form of that question. The question should be in the form of what is the way it is done. As a matter of fact, Mr. Brett at some length has already gone on record as to how it is done. I do not see how he can add to it any.

Mr. McLAUGHLIN: I think that last question is quite fair.

Mr. SMILY: I object to it.

Mr. McLAUGHLIN: On what ground?

Mr. SMILY: Because the witness's own counsel should not put the form of the question, or the answer either, in the alternative form or in any form to the witness, but should simply ask him how the matter was done.

Q. 106. Will you repeat again your relation with the Macmillan Company of Canada in reference to the sale of books that you publish?

Mr. SMILY: I object to that, too, because it has all been gone over in chief, or in cross-examination and chief.

Mr. McLAUGHLIN: If we want to put it on the record again, that is all right.

In the Supreme Court.

Defendants' Evidence on Commission.

No. 33. G. P. Brett. Re-examination—*continued.*

Mr. SMILY: All right. I object to it for that ground.

A. In the trade language, the common language of the book trade, "agent" does not mean "agent" in the legal sense. We are, in trade language, the agent of the Cambridge University Press; the agent of Adam and Charles Black; the agent of Onwin; the agent of the Society for the promotion of Christian Knowledge; that does not mean anything excepting that we buy their books from those people in London, and when we get those books which we buy from them in London, we sell them. It does mean also that they do not sell to other publishers in this country.

Now, those are the relations precisely which we have with the Macmillan Company of Canada. They are not our agents in any legal sense, but, according to the ordinary trade acceptance of the term "agents" they sell our books when nobody else sells them.

Mr. MCLAUGHLIN: That is all. Have you got anything more?

Mr. SMILY: No.

Mr. MCLAUGHLIN: That is all, sir."

No. 34. H. S. Latham. Examination-in-Chief.

No. 34.

Evidence of Harold S. Latham.

"HAROLD S. LATHAM, head of the Publication Department of the Macmillan Company of New York, called as a witness on behalf of the defendant, The Macmillan Company, sworn by the Commissioner, testified as follows:—

Examination in chief by Mr. MCLAUGHLIN:

Q. 1. Your full name is Harold S. Latham?—*A.* Yes.

Q. 2. And your occupation?—*A.* I am in charge of the Publication Department devoted to miscellaneous books.

Q. 3. In connection with what company?—*A.* The Macmillan Company of New York.

Q. 4. Were you in that department in 1918?—*A.* Yes.

Q. 5. What was your position at that time?—*A.* I was an assistant in the department.

Q. 6. Who was your chief?—*A.* Mr. E. C. Marsh.

Q. 7. Is he available?—*A.* He is dead.

Q. 8. What records, if any, are kept in your department of manuscripts received by The Macmillan Company?—*A.* We keep a general index of all manuscripts that come into all departments of the house. That record is kept in my department.

Q. 9. All manuscripts received by the house?—*A.* Yes.

Q. 10. Does that refer to manuscripts received from any particular source or from all sources?—*A.* From all sources.

Q. 11. If manuscripts were submitted to you, to The Macmillan Company, by The Macmillan Company of Canada, Ltd., would they go to your department?—*A.* They would.

Q. 12. What record is kept there of the manuscripts received?—*A.* We have a general record on which is entered every manuscript that comes in, and a number given to that manuscript. Its disposition is then determined; it may be referred to another department, if so, it is recorded on the central record, the department to which it goes, or the reader to which it goes, or whatever disposition is made of it.

Q. 13. Are certain manuscripts dealt with by your department?—*A.* Yes.

Q. 14. What manuscripts are those?—*A.* Manuscripts of what is known as trade books; books that are sold through bookstores, including fiction and travel and poetry, belles-lettres, essay, everything except textbooks.

Q. 15. Are your records available for the period prior to 1918?—*A.* Yes.

Q. 16. And from 1918 on?—*A.* Yes.

Q. 17. Have you had any search made among your records to see what manuscripts were submitted, or might have been submitted, by The Macmillan Company of Canada, Ltd., during the years 1918 and 1919?—*A.* I have.

Q. 18. I show you here a bulky document, which has been marked as Exhibit 29 in the examination of Mr. Brett, which is a manuscript entitled "The Web, by Adul Weaver," and in the corner is "From Florence A. Deeks, 140 Farnham Avenue, Toronto."

Had that manuscript been forwarded to you by The Macmillan Company of Canada, Ltd., would it have come to your department?—*A.* Yes.

Q. 19. What record would be made of it?—*A.* The title, the source, that is, who sent it to us, and the author's name.

Q. 20. Have you had a search made among your records to see if a manuscript bearing that title or a similar title, was received by the Macmillan Company in the years 1918-1919?—*A.* I have.

Q. 21. What is the result of that search?—*A.* There is no record of it.

Q. 22. That manuscript apparently deals with world history. Had it been received by you would it probably have been dealt with by any other department than your own?—*A.* It might very possibly have been referred to the Educational Department as well.

Q. 23. Have you, yourself, any personal recollection of receiving that manuscript, or a manuscript dealing with the same subject, from the Macmillan Company of Canada during the years 1918-1920?—*A.* I have no such recollection.

Q. 24. Had a manuscript of that character come down in 1918 or 1919, would it be possible that you would remember it?—*A.* Yes.

Mr. McLaughlin: That is all. Have you any questions?

Mr. Elliott: No.

In the Supreme Court.

Defendants' Evidence on Commission.

No. 34. H. S. Latham Cross-examination.

Cross-examination by Mr. SMILY:

Q. 25. Did "The Outline of History"—you know about "The Outline of History" published by Wells?—*A.* Yes.

Q. 26. Did that come under your Department, Mr. Latham?—*A.* Yes.

Q. 27. Do you have any business contact with The Macmillan Company of Canada?—*A.* Occasionally.

Q. 28. Had you any business contact with that company in respect to "The Outline of History"?—*A.* No.

Mr. SMILY: That is all.

No. 35. J. F. Brown. Examination-in-Chief.

No. 35.

Evidence of John Franklin Brown.

"JOHN FRANKLIN BROWN, editor of the secondary school-books for Macmillan Company, called as a witness on behalf of the defendant, The Macmillan Company, having affirmed to tell the truth, testified as follows:—

Examination in chief by Mr. MCLAUGHLIN:

Q. 1. Your occupation?—*A.* I am editor of secondary school books for the Macmillan Company.

Q. 2. What is your department generally known as?—*A.* The Secondary School Editorial Department.

Q. 3. Is it ever referred to as the Educational Department?—*A.* It is one part of the Educational Department.

Q. 4. How long have you been in that department, Mr. Brown?—*A.* A little more than eighteen years.

Q. 5. In your work in that department do you consider manuscripts that are submitted to The Macmillan Company?—*A.* I consider those that are referred to my department by The Macmillan Company.

Q. 6. What manuscripts are commonly referred to your department?—*A.* The manuscripts that are supposed to be suitable for secondary school texts or pedagogical works dealing with secondary school subjects.

Q. 7. What records are kept in your department of manuscripts submitted to you?—*A.* I keep a record for my own convenience in very simple form, something like this (handing card to counsel).

Mr. MCLAUGHLIN: Just put on the record that Dr. Brown produces a small card, on the first line of which is the name of the author and his occupation, on the second line his address, on the third line the number of the manuscript and the title, on the fourth line the date, on the fifth and sixth lines the memorandum of its disposition.

Q. 8. That is correct, is it not?—*A.* That is right.

Mr. MCLAUGHLIN: There is no necessity of putting that on the record?

Mr. SMILY: No.

Q. 9. Now, Mr. Brown, I am showing you here a manuscript that appears as Exhibit 29 in the evidence of Mr. Brett, entitled "The Web, by Adul Weaver." Have you any recollection of ever having seen that manuscript or a manuscript similar to that?—*A.* None whatever.

Q. 10. Had you received it as long as ten or twelve years ago, do you think that you would remember it?—*A.* I probably should have done so, but I cannot.

Q. 11. That manuscript deals with a general outline of the history of the world. Had a manuscript of that nature come to The Macmillan Company, would there be a possibility of it being referred to your department?—*A.* A possibility but not a probability.

Q. 12. Have you examined your records for the years 1918-1920 to see if that manuscript, or a manuscript of similar nature, had been considered by your department?—*A.* I have.

Q. 13. What is the result of your examination?—*A.* I have found no record of it.

Mr. MCLAUGHLIN: I think that is all.

Mr. ELLIOTT: No questions.

Cross-examination by Mr. SMILY:

Cross-examination.

Q. 14. You know about the work, "The Outline of History," Dr. Brown, by Mr. Wells?—*A.* I do.

Q. 15. Did that come under your department?—*A.* No.

Q. 16. Did you ever have any business contact with the Macmillan Company of Canada personally?—*A.* Very little indeed. Occasionally a letter passes between us.

Q. 17. Do you ever have anything to do with selling books at all?—*A.* No.

Q. 18. Of the Macmillan Company?—*A.* No.

Mr. SMILY: That is all."

HIS LORDSHIP: Then that is your Defence. Any Reply?

REPLY.

Proceedings.

FLORENCE A. DEEKS recalled.

(This evidence is transferred to page 94.)

HIS LORDSHIP: Now are you both quite through?

Mr. ROBERTSON: As far as the evidence goes, yes.

HIS LORDSHIP: And you both want to adjourn the argument?

Mr. ELLIOTT: I suggested to my friend that we might both prepare a little argument and submit it.

Mr. ROBERTSON: I would much prefer not a written argument. We would never get it done. here is nothing to be read in this matter, now.

HIS LORDSHIP: When do you suggest to conclude this case?

In the Supreme Court.

Proceedings.

Mr. ROBERTSON: Your lordship is going to Sault Ste Marie next week, and then I think your lordship has fixed a case at Cobourg.

HIS LORDSHIP: That is off at present. You were not there.

Mr. ROBERTSON: No, I am not going down.

HIS LORDSHIP: You were not there because it was not going on.

Mr. ROBERTSON: No, but because I could not go there.

HIS LORDSHIP: I gave them leave for a commission to California.

This case stands sine die.

No. 36. Formal Judgment of the Honourable Mr. Justice Raney, 27th September 1930.

No. 36.

Formal Judgment of the Honourable Mr. Justice Raney.

IN THE SUPREME COURT OF ONTARIO.

The Honourable Mr. Justice RANEY, Saturday, the 27th day of September, 1930.

Between

FLORENCE A. DEEKS - - - - - *Plaintiff*

and

L.S. $2.20.

H. G. WELLS, THE MACMILLAN COMPANY INCORPORATED, THE MACMILLAN COMPANY OF CANADA, LIMITED, GEORGE NEWNES LIMITED and CASSELL & COMPANY LIMITED - - *Defendants.*

1. This action coming on for trial on June 2nd, June 4th, June 5th, June 6th and September 12th, 1930 at the Sittings holden at Toronto for the trial of actions without a jury in the presence of Counsel for the Plaintiff and the Defendants, H. G. Wells, The MacMillan Company, Incorporated, The MacMillan Company of Canada, Limited, George Newnes Limited and Cassell & Company Limited on hearing read the pleadings and hearing the evidence adduced and what was alleged by Counsel aforesaid this Court was pleased to direct this action to stand over for judgment and the same coming on this day for judgment.

2. THIS COURT DOTH ORDER AND ADJUDGE that this action be and the same is hereby dismissed with costs to be paid by the Plaintiff to the Defendants, H. G. Wells, The MacMillan Company Incorporated, The MacMillan Company of Canada Limited, George Newnes Limited and Cassell & Company Limited forthwith after taxation thereof.

Judgment signed this 2nd day of October, 1930.

E. HARLEY,
Senior Registrar, S.C.O.

Entered J.B. 44, pages 234-5,
Oct. 8, 1930.
"E.B."

In the Supreme Court.

No. 37.
Reasons for Judgment of the Honourable Mr. Justice Raney, 27th September 1930.

No. 37.

Reasons for Judgment of the Honourable Mr. Justice Raney.

S.C.O.

DEEKS

v.

WELLS, THE MACMILLAN COMPANIES, THE NEWNES COMPANY and THE CASSELLS COMPANY.

Copy of reasons for judgment of RANEY, J., delivered 27th September, 1930.

R. S. Robertson, K.C. and P. E. F. Smily for the Plaintiff

W. J. Elliott, K.C. and E. V. McKague for the Defendant Wells, George Newnes, Ltd., and Cassells Company, Ltd.

R. D. Moorehead, K.C. and W. W. McLaughlin, for the MacMillan Company of Canada, Ltd. and the MacMillan Company of New York.

The plaintiff, Miss Florence Deeks of Toronto, charges the defendant H. G. Wells of England with literary piracy, and the MacMillan Company of Canada as an accessory before the fact and as a co-conspirator with Wells. The Newnes Company and the Cassells Company of England and the MacMillan Company of New York are brought in as publishers and for the purposes of an injunction and an accounting. The action as against the MacMillan Company of England was dismissed before the trial.

The plaintiff is the author of the manuscript of an unpublished book The Web, the theme of which is feminism in history. The scope of her work is world wide, and ante-dates the advent of man upon the earth; the manuscript is necessarily voluminous.

The defendant Wells is the author of many well known books, including a work having the title, The Outline of History. This is also a history of the world and is more voluminous than the plaintiff's manuscript.

After about four years' work the plaintiff completed her manuscript in 1918, and early in August of that year she submitted it, looking to its publication, to the defendant the Macmillan Company of Toronto, in whose custody it remained for several months. Miss Deeks says it was returned to her in April 1919; the company's records indicate that it was returned in February, 1919. It is not important for the purposes of this action to determine which is the correct date. At all events the manuscript was with the MacMillan Company of Toronto, or under its control for six months beginning with August, 1918.

Mr. Wells began the writing of his book in the late autumn of 1918, some two or three months after Miss Deeks' manuscript was left with the MacMillan Company in Toronto. Before beginning to write, Mr. Wells had offered the publication rights of his book for Great Britain to the MacMillan Company of England and that company had declined the offer.

In the Supreme Court.

No. 37. Reasons for Judgment of the Honourable Mr. Justice Raney, 27th September 1930 —*continued.*

Then he arranged for publication in England by the Newnes Company, and for publication on this side of the Atlantic by the MacMillan Company of New York. Incidentally, the MacMillan Company of England controls both the MacMillan Company of New York and the MacMillan Company of Canada.

The plaintiff's charges as against the MacMillan Company of Toronto and Mr. Wells are obviously of the most serious character. If they are well-founded, then Mr. Wells was not only guilty of plagiarism, but of receiving stolen goods, and of a peculiarly despicable form of literary piracy, and the MacMillan Company of Toronto was guilty of theft, and both these defendants were guilty of conspiracy within the definition of the criminal law. But if the plaintiff's charges are proved to be groundless then she is guilty of the offence of defamation of these defendants, an offence scarcely less serious than that of which she accuses them, and none the less so in a moral sense though the libel is published in a privileged pleading filed in court.

Between August 1918 and February 1919, there was time enough for the forwarding of Miss Deeks' manuscript to England, its use by Mr. Wells and its return to Toronto. That is the plaintiff's theory of what actually happened; but there is no evidence that the manuscript was sent to England, or that Mr. Wells or anyone else in England knew of its existence, or that the MacMillan Company of Toronto, or anyone else in Toronto, knew that Mr. Wells was writing, or had it in mind to write, a history of the world. In the absence of such evidence the plaintiff seeks to make her case by pointing to similarities in the two works which, she says, are so significant as to leave no manner of doubt that Mr. Wells had access to her manuscript.

The plaintiff is not able to point to any paragraph in The Outline of History that corresponds verbally with any paragraph in her manuscript, or even to any sentence; but she alleges that the general plan of Mr. Wells' book establishes the use of her manuscript, and she points to the use of many ideas and words used by her that were afterwards used by him. The absence of identical paragraphs or sentences, or even of phrases, only goes to establish, she says, the care that was taken by the pirate to conceal the source of his ideas and language.

At the trial the plaintiff called three literary men as expert witnesses. The first was Mr. William A. Irwin, associate professor of oriental languages in the University of Toronto, who had worked on the matter of the comparison of the two works "rather intensively" for six months. In his opinion the evidence was overwhelming that Miss Deeks' manuscript was in the hands of the author of The Outline of History when he wrote the manuscript of his book. Professor Irwin had prepared before the trial a memorandum embodying the result of his labour, covering sixty odd typewritten pages. This he was permitted to read at the trial as part of his testimony. Perhaps I could not better summarize the effect of his evidence than by quoting some sentences from it.

After noting that the two works have the same scope, beginning in each case with the formation of the solar system; that their plans are similar; that they have the same theme or purpose, namely, "man's struggle for social values;" that both are sadly out of balance by giving undue emphasis to Western civilization; that both present the old La Place theory of the origin of the solar system; that both offer very unsatisfactory treatment of Israel and Judea; that "both neglect Tamerlane," and so on—he descends to details (exhibit 15, p. 11).

"Both start with a floating (or spinning) cosmic body which both describe as 'a speck' comparatively (or as it seems to us,) which though vast (or prodigious) is small in the 'greater vastness (or immensity) of space.'

"Now those two sentences are identical. It is quite out of the question that they arose independently. There is certainly some common source or suggestion back of their resemblance. But we go on. Web here is speaking of the sun; Outline of the earth, but at the foot of p. 5 it turns to tell of the sun. And there it gives us palpably and identically this same sentence of Web, reshaped it is true, but retaining an astonishing verbal identity. Note these parallels and resemblances :—

Web.	Outline.
In the beginning;	Vast ages ago;
floated;	spinning;
Concentrated into a focus of heat and light;	Concentrated into a compact centre of heat and light,
masses of cosmic matter.	mass of matter.

"The full effect is secured best by reading the two sentences in close sequence. It is seen both start in the primordial ages when the sun was but a 'flaring mass of matter,' or a 'prodigious nebulæ' which later 'concentrated into a focus (or compact centre) of heat and light.'

"It is to be observed then that both immediately (Web in the next sentence, Outline in this same one) speak of the formation of the planets by the detachment of certain fragments. Both mention the earth as one of these and both refer verbally in this same context to the solar system.

"Now these passages take us a step further. The inter-relation here cannot be explained as dependence upon a common mere suggestion; the dependence in documentary. Either, one is dependent upon the other or both have used a common written source and followed it closely . . ."

But the fact is that the significant phrases which Professor Irwin selects from "The Web" for his parallel columns,—"concentrated into a focus of heat and light," and "masses of cosmic matter,"—were lifted bodily by Miss Deeks from Duruy's General History of the World. True, as Professor Irwin points out, Mr. Wells did not use Duruy as one of his authorities, but Duruy, who was Minister of Public Instruction in France under the Third Napoleon, was an eminent historian of international repute, and his History of the World was, and remains even to-day, a classic. It

In the Supreme Court.

No. 37. Reasons for Judgment of the Honourable Mr. Justice Raney, 27th September 1930 —*continued.*

was translated into English many years ago, and a new edition of it has been issued within the past five years. Duruy has in fact been a mine for later historical writers. In the introduction to his book, Mr. Wells disclaims any pretence of being himself a historian, but he claims to have read sedulously and to have made the utmost use of all the help he could obtain, and he mentions scores of literary men to whom he was indebted in one way or another. If Mr. Wells had been a historian he would have been familiar with Duruy. But some of his associates were historians and were undoubtedly familiar with Duruy, and there appears to be plain evidence of the influence of Duruy in the opening chapter of The Outline of History.

Then Professor Irwin's memorandum proceeds (page 13); " Now it is to be granted that the detailed plans of the entire passages in the two works differ considerably, but yet the difference is such as might well evolve from the scheme of Web. Starting with the earth, as against the sun in Web, Outline runs through just about identically the ideas of Web, expanding the conception of the vastness and emptiness of space, and the smallness of the locale of life, and then returns to Web's scheme and goes through it again this time in full imitation centring upon the sun. So mainly one of reduplication. . . . "

" The conclusion is inescapable. We have here documentary interdependence; no brushing aside as ' common knowledge ' will suffice. Close, detailed, even verbal and phrasal identities such as we have here in such numbers do not arise other than by documentary interrelation. The question then remains of the identification of this documentary authority. Miss Deeks puts forward Duruy's General History of the World as her one source. Certainly she drew from it and drew heavily. But Wells contends in his evidence that he did not use, nor even know Duruy, and indeed at several points his work agrees with Miss Deeks' as against Duruy. The possibility of another writer having drawn on Duruy with the same heavy dependence of Miss Deeks, and yet by coincidence having adopted the same features of original divergence from his, is so remote as to merit no consideration. Still stronger is the improbability of some source back of Duruy which will explain the similarities of Web and Outline. The argument then is simple : the similarities of Outline to Web are due to some documentary source which Mr. Wells used. That source was not Duruy, it was not a source of Duruy, it was not some unidentified dependant of Duruy; there is no possibility left but that it was Web. Briefly, these two parallel passages prove conclusively that Mr. Wells used Miss Deeks work. If that be all the case requires we need go no further unless indeed to swell the total of evidence.

" There is though yet another phase of the question; How did he use it? The answer demands no intricate argument. The detail of verbal similarities, the identity in order of minor ideas, the sentences of similar structure show clearly that Wells' rewriting of Miss Deeks story is not a retelling of a remembered account read yesterday or even an hour ago. Making all allowance for possible unusual feats of memory the situation quite clearly was that the manuscript of Web was at hand as he wrote,

if indeed it did not actually lie open before him. In any case his reading of this particular passage of it was so recent that his writing was to all intents and purposes a copying and expansion thereof."

Professor Irwin then undertakes " to swell the total of the evidence." He finds the first item of such evidence in the treatment given by the two authors to " our ancestor ", Here is the parallel :

Web.	Outline.
" Millions of years :	" millions of simian generations ;
an animal with a relatively enormous brain case ; a skilful hand ;	one particular creature . . . It was small brained by our present standards, but it had clever hands ;
dwelt in caves and trees and roamed the forest ;	it clambered about the trees and ran, and probably ran well on its hind legs on the ground ;
feeding on nuts and fruits ;	It handled fruits and beat nuts upon the rocks ;
much the same as the man-like apres of Boreo to-day ; tendency to throw stones, flourish sticks ,and in general defeat aggression ;	It was half ape, half monkey ; caught up sticks and stones to smite its fellows ;
emerged from the animal into mankind.	It was our ancestor.

A page or two of argument follows, and then Professor Irwin runs up the matter of these two parallel columns thus :

" So we find conclusive evidence here again that Mr. Wells has taken a passage from Miss Deeks, only thinly disguising his plagiarism by a few slight alterations. And as above, this is written so immediately from Miss Deeks' passage that he must have turned practically direct from her manuscript to his own writing."

As Professor of Oriental languages, Professor Irwin is more at home in Egyptology than in astronomy, or anthropology or cosmology.

In an earlier paragraph of his memorandum he had dwelt upon dissimilarities of the two works. He had said :

" On first glance at the two works one is impressed most, not with their similarities but with their differences . . . The thread of the account, the actual phrasing and succession of ideas, are such that it would probably never occur to the casual reader that there might be any significant similarity whatever. It is to be admitted in regard to my own study that at just about this point I was ready to hand the material back to Miss Deeks and report to her that I could see nothing relative to her charges. But just then I hit upon certain peculiarities in the account of a period with which I am familiar. They were so strange as to carry strong presumption of interrelation. They proved the clue in following up of which I have found another side to the comparison of the two works ; a side of remarkable similarities."

In the Supreme Court.

No. 37. Reasons for Judgment of the Honourable Mr. Justice Raney, 27th September 1930 —*continued.*

At page 27 of the memorandum, Professor Irwin proceeds to state what the clue was to which he had made the earlier reference :—

" In regard to these (Egyptian) names, there is though a much more important feature; perhaps the most important single feature of the two accounts of Egypt, and indeed of such a character as in itself almost to prove interdependence. Incidentally, it was this which first arrested my intention to hand back Miss Deeks' manuscript with a negative report. It is the name Hatasu; Web characterizes her as ' regent ', Outline properly as " queen.' "

The point which Professor Irwin makes, and which he here emphasises, is that Miss Deeks and Mr. Wells both spell the name of this Egyptian queen in the same way. He proceeds :

" Though I have worked in this field for twenty years I never saw or heard of that name until I met it here. It appears in none of Wells' authorities, nor in any other authority of recent times. Only by special investigation did I discover it and that in old histories of 1890 and earlier. Since that time the accepted form of the name has been Hatshepsut."

But the matter is not at all recondite. In point of fact Professor Irwin himself suggests the simple explanation. Neither Miss Deeks nor Mr. Wells was an Egyptologist, and may it not be that both followed the spelling of an author, or of authors, who wrote earlier than 1890? As a matter of fact Miss Deeks herself followed the spelling of Duruy who wrote about 1850.

Another lady of ancient history contributes a page or two to Professor Irwin's argument. The lady is Aspasia who was a friend of Pericles. I quote again from Professor Irwin's memorandum (page 44) :

" Outline on p. 345 says of Aspasia's relations with Pericles that for legal reasons he could not marry her, but she was ' in effect his wife '— a most astonishing phrase. The temper of to-day does not hesitate to use a more unpleasant word. Why did not Mr. Wells say frankly that she was his mistress? Why did he not call her a ' courtesan ' ? Both epithets are applied in Encyc. Britt. articles—and Mr. Wells, by his evidence, leaned heavily on the Encyclopaedia. That he should have refrained through delicacy or modesty is ludicrous. Julius Caesar's relations with Cleopatra were much the same and Wells has stigmatized them as ' amorous pleasantries ' (p. 510). Plutarch, too, to whom Wells refers, makes it clear that Aspasia's character for even that age of easy morals was not above reproach, and that she drifted about readily from one man to another. Then why was she ' in effect ' Pericles wife? The qualifying phrase ' in effect ' reveals that Wells felt there was something wrong. He knew the nature of her position, yet he persists in calling her a wife. Why so? He didn't need to bring in the idea of marriage here at all—he didn't for Caesar. Weighing all the possibilities it seems most probable that the astonishing rendering is due to the influence of a source which Wells is following. And it is remarkable that this odd idea appears in Web also, save that there it is presented without apology. We are told that Pericles ' married ' Aspasia.

"Now it is notable in itself that both these works should mention Aspasia at all; she was quite unimportant. She is completely ignored in such survey histories as Breasted, Browning (Wells' sources) and Goodspeed. How much more remarkable that both should have this odd idea of marriage to Pericles. But further: the entire accounts of her run closely parallel. Thus:—

Web.	Outline.
Knowledge of politics;	Her wisdom;
Influence upon her husband;	Accused of instigating a war;
Made her house a resort for learned and distinguished men;	Gathering about him men of unusual gifts;
Anaxagoras . . . etc. rejoiced to be in her society and to learn (of) her.	All the great men knew her and several have praised her."

These extracts from the evidence of Professor Irwin will serve, and on the strength of these and many other like and perhaps less significant coincidences which he enumerates,—having, as he says "sought throughout to weigh the matter judicially,"—he reaches the following final conclusions (p. 65):—

1. Mr. Wells had read Miss Deeks' manuscript before commencing his work on what we now know as the Outline of History.

2. He analysed her manuscript and made written notes of features which attracted him.

3. With but unimportant revision he adopted this analysis as a plan for his own writing. His use of the plan of Web was such as to justify the epithet, slavish.

4. Certain passages of 'The Web' he took over in detail. He rewrote them in such fashion as might be hoped to obscure their dependance but they remain a palpable copying.

5. He kept her manuscript readily available as he wrote, apparently at times it was actually open before him; and he made frequent reference to it.

6. He used 'The Web' as his chief source and authority. He followed it very much more closely and continuously than he did any of the works to which he refers. Indeed some of these I can find no evidence of use whatever. His citation of them is no more than a 'bluff' . . .

So strong was Professor Irwin's self-persuasion that he could visualise Mr. Wells sitting at his desk writing the manuscript of his book with the Encyclopaedia Britannica at his right hand, Robinson's Mediaeval and Modern Times at his left, and Miss Deeks' manuscript in front of him.

After enumerating his conclusions as above, Professor Irwin proceeds to make an argument as follows (p. 66):—

"How and why Mr. Wells came to make this use of 'The Web' is a question that obviously I am unable to answer fully. There is some light

In the Supreme Court.

No. 37. Reasons for Judgment of the Honourable Mr. Justice Raney, 27th September 1930 —*continued.*

shed upon it, however, by this examination which we have been pursuing particularly when supplemented by his evidence given last summer. He claims, as we have already noted, that the writing of a history of the world was an ambition of his of many years, but that prior to 1918 he never formulated definite plans for the book. This ambition may have been developing in his mind during the course of the Great War: or again it may have been still as vague and remote as it had remained for years, when in the summer of 1918 the manuscript of Web came into his hands.

"In any case the reading of Miss Deeks' work would be just the stimulus required to bring these old intentions to a focus of decision and action. It is quite clear that he regarded Miss Deeks' manuscript very highly; no man would make such extensive use of it otherwise. It must have roused him to a realization of the possibilities in publishing such a work at that time, But this is to be considered as well; having undertaken the project he wrote under very high pressure. The published 'Outline' bears indubitable marks of hasty production. Moreover the time which his evidence allows for the actual writing strongly corroborates this. Somewhere about October of 1918 he is fairly started; by the next July the work is complete save for some minor revision. In about nine months he produced a manuscript of about half a million words surveying all the intricate and recondite subjects entailed in a history, not of mankind alone, but of the Earth. It is simply stupendous. And if I understand aright his testimony he denies that he dictated to stenographers; on the contrary he wrote it entire himself in longhand. To do that in a bare nine or ten months is a task that might well stagger one. The mere writing was exacting. There could have been no time whatever for exhaustive reading, for collation of authorities and maturing of views and modes of presentation. These things can be done only through years of quiet work, not in a few hectic months of feverish activity. He made his task one of urgency, snatched hastily at facts and views drawn from where he might, padded it out with old hobbies and half baked opinions of his own and feverishly kept his pen hand busy.

"Why he rushed the work through at such a pace he does not say, but the fact that he did so is established. For some reason he felt that speed was of importance. It may have been that he felt the market was peculiarly ripe for his purpose, and he must hasten before the public mood changed; it may be too that it is his habit to work in this hasty fashion. But there is no evidence against the view, and probabilities favor it strongly, that his reason was an anxiety to forestall the publication of 'Web'.

If I were to accept Professor Irwin's evidence and argument there would only remain for my consideration the legal questions involved in the piracy of a non-copyrighted manuscript. But the extracts I have quoted, and the other scores of pages of Professor Irwin's memorandum, are just solemn nonsense. His comparisons are without significance, and his argument and conclusions are alike puerile. Like Gratiano, Professor Irwin spoke "an infinite deal of nothing"; his reasons are not even "two grains of wheat hidden in two bushels of chaff." They are not reasons at

all. There could not be an original history of the World, unless perhaps the Compendium of Universal History, said to have been written by Macaulay before he was eight years old, might lay claim to that distinction. All universal histories must, necessarily, be based upon the writings of previous authors. That was true both of Miss Deeks' manuscript and of Mr. Wells' book. Every writer of such a work will deal with facts that were dealt with by previous authors; will discuss ideas that were often discussed before; will use words and perhaps phrases that had previously been used many times. The only phrase that I recall that appears both in Mr. Wells' book and in Miss Deeks' manuscript are the words " the little expedition " used by both authors in speaking of the three caravels with which Columbus set sail on his voyage of discovery in 1492. A good deal was made by Professor Irwin of this coincidence. But such coincidence many times repeated, standing by themselves, would be no evidence of plagiarism from Miss Deeks.

Other literary witnesses called by the plaintiff were Mr. Lawrence Burpee, editor and historian, and Mr. George S. Brett, Professor of Philosophy in the University of Toronto, Oxonian, and formerly Professor of Ancient languages in Trinity University, Toronto. These gentlemen, like Professor Irwin, are men of excellent standing in the Canadian literary world, and undoubtedly qualify as experts in their respective fields. In a general way Mr. Burpee and Professor Brett endorsed the evidence of Professor Irwin, but with less positiveness. Mr. Burpee also read in a memorandum as part of his evidence. I quote the concluding paragraph :—

> " In regard to similarities in the actual language employed by the authors of ' The Web ' and ' The Outline,'—that is, the presentation of similar ideas in the same sequence, and clothing them in substantially the same form of words,—the instances are far too numerous to even begin to present them here. In this respect, probably more than in any other, the significance of the comparison lies not so much in the individual example, which in itself may be often insignificant and unconvincing, as in the piling up of many such instances. Once more, it is the cumulative effect of very many similarities, in this as in other directions, that compels one to the conclusion that some of those who were engaged in preparing material, at some stage, for ' The Outline ' must have had access to the manuscript entitled ' The Web.' "

Many famous authors have been accused of plagiarism; even the Evangelists have not escaped, and numerous volumes in many languages have been written to prove that the author of Matthew copied from Mark, or Mark from Luke, or Luke from Mark, and so on; and each commentator has made out a case to his own satisfaction. The classic illustration is the parenthesis in the account of the healing of the man sick of the palsy :— " (then said He to the sick of the palsy) : " *see* Matthew 9–6; Mark 2–10; Luke 5–24. But this illustration obviously proves nothing, except that the parenthesis came from a common source,—whether that source was Matthew or Mark or Luke or some writer anterior to all three.

In the Supreme Court.

No. 37. Reasons for Judgment of the Honourable Mr. Justice Raney, 27th September 1930 —*continued.*

The defendants were not, I think, called upon to offer any evidence to rebut Professor Irwin's fantastic hypotheses, but Mr. Wells and the MacMillan company of Toronto preferred to offer evidence.

Mr. Wells' evidence was a flat denial. He had never seen or heard of Miss Deeks' manuscript. The evidence of the witnesses called by the MacMillan company satisfies me of the good faith of that company and that no improper use was made of Miss Deeks' manuscript.

The action fails and must be dismissed.

That leaves only the question of costs for consideration.

The alleged cause of action arose in 1918, or early in 1919, the writ was issued in October 1925, and the action was brought to trial in June, 1930; there were commissions to New York and London; the examinations for discovery ran into thousands of questions, and the trial lasted four days. The costs will be heavy.

There is no doubt that when the plaintiff brought her action, as at all times since then, she believed in the wickedness of the MacMillan company of Toronto and of Mr. Wells; this belief was a growth, dating from the time when Miss Deeks first saw The Outline of History after its appearance in Toronto in 1920, and as time passed it became an obsession. That she was not in a condition of mind to judge fairly of the very serious charges she was bringing against a reputable publishing house and an eminent and respectable author ought to have been obvious, to her literary and legal advisers. It was a serious matter to spread her charges on the face of court proceedings; it was a serious matter that those charges should have stood without an opportunity to the defendants to publicly answer them for more than five years, that is to say until the trial of the case.

The law gives a plaintiff a wide privilege as to what he may say about a defendant in his pleadings and proceedings. No matter how libellous the charge, the defendant has no recourse by way of action for damages if it turns out at the trial that the defamatory matter was groundless,—as it has turned out in this case. That wide privilege is thought to be in the public interest. Clearly it would not be in the public interest if it were often abused as it has been here.

This action ought not to have been brought; having been brought, it ought to have been discontinued after the examinations for discovery, and certainly it ought not to have been brought to trial. As it is, I have no alternative but to give the defendants their costs.

In the Supreme Court (Appellate Division).

No. 38. Notice of Appeal by Plaintiff (Appellant) to Appellate Division from the Judgment of the Honourable Mr. Justice Raney, 6th October 1930.

No. 38.

Notice of Appeal by Plaintiff (Appellant) to Appellate Division from the Judgment of the Honourable Mr. Justice Raney.

IN THE SUPREME COURT OF ONTARIO.

Between

FLORENCE A. DEEKS - - - - - - - - - *Plaintiff*

and

H. G. WELLS, THE MACMILLAN COMPANY, INCORPORATED, THE MACMILLAN COMPANY OF CANADA, LIMITED, GEORGE NEWNES, LIMITED, and CASSELL & COMPANY, LIMITED - - - - - - - - *Defendants.*

TAKE NOTICE that the above named Plaintiff appeals to a Divisional Court from the Judgment pronounced by The Honourable Mr. Justice Raney on the 27th day of September, A.D. 1930, herein, and asks that the said Judgment may be revised and that Judgment should be entered allowing the Plaintiff's claim, upon the following grounds :—

1. That the said Judgment is contrary to law and evidence and the weight of evidence;

2. That the learned Trial Judge did not give proper weight to the evidence of the literary experts called on behalf of the Plaintiff;

3. That the learned Trial Judge erred in not giving proper weight to the evidence that the writing by the Defendant Wells of the OUTLINE OF HISTORY in the time in which it was done was impossible without the aid of such work as the Plaintiff had done in her manuscript;

4. That the learned Trial Judge erred in not giving proper weight to the evidence of the similarity in the plan and contents of the two works;

5. That the learned Trial Judge erred in assuming that the similarity in the opening chapters of THE WEB and the OUTLINE OF HISTORY could be accounted for by help given to the Defendant Wells by his associates. The evidence showed that the help given by Mr. Wells' associates was in the nature of revising a copy prepared by Mr. Wells and not original composition;

6. That the learned Trial Judge erred in holding in effect that the evidence of the Experts was not of the nature upon which a finding that the Defendant Wells had made use of the manuscript of the Plaintiff could be made;

In the Supreme Court (Appellate Division).

No. 38. Notice of Appeal by Plaintiff (Appellant) to Appellate Division from the Judgment of the Honourable Mr. Justice Raney, 6th October 1930—*continued.*

7. That the learned Trial Judge erred in his conclusion that the Defendants were not called upon to offer any evidence in answer to the evidence of the Experts;

8. That the learned Trial Judge erred in not giving weight to the failure of the Defendant Wells to explain the similarities between the two works although he had ample notice of the Plaintiff's contentions in that regard;

9. That the learned Trial Judge erred in holding that the evidence of the MacMillan Company was sufficient to show they had made no improper use of the Plaintiff's work, whereas the learned Trial Judge should have held that the said Defendant The MacMillan Company of Canada, Limited, had put forward a false record of the said manuscript and had not fully or satisfactorily accounted for the manuscript or the use made of it while in its possession;

10. That the learned Trial Judge should have held that the evidence of the Experts called on behalf of the Plaintiff and the other evidence submitted by her established that the manuscript was in the possession of and used by the writer of the Outline of History, the Defendant H. G. Wells, and that the evidence of the Defendants did not satisfactorily show such was not the case.

Dated at Toronto this Sixth day of October, A.D. 1930.

JOHNSTON, GRANT, DODS & MACDONALD,
1302 Canada Permanent Building, Toronto 2,
Solicitors for Plaintiff.

To:

Messrs. McLaughlin, Johnston, Moorehead and Macauley,
302 Bay Street, Toronto, 2,
Solicitors for the MacMillan Company of Canada.

Messrs. Elliott, Hume, McKague & Anger,
Kent Building, Toronto, 2,
Solicitors for H. G. Wells, George Newnes, Limited, and Cassell & Company, Limited.

No. 39.

Formal Order of Appellate Division dismissing Appeal.

In the Supreme Court (Appellate Division).

No. 39. Formal Order of Appellate Division dismissing Appeal, 26th August 1931.

IN THE SUPREME COURT OF ONTARIO.

The Honourable the CHIEF JUSTICE of the Second Divisional Court,
The Honourable Mr. Justice RIDDELL,
The Honourable Mr. Justice MASTEN,
The Honourable Mr. Justice ORDE,

Wednesday, the 26th day of August, 1931. (L.S. $2.30)

Between:

FLORENCE A. DEEKS - - - - - - - *Plaintiff*

(SEAL) and

H. G. WELLS, THE MACMILLAN COMPANY INCORPORATED, THE MACMILLAN COMPANY OF CANADA LIMITED, GEORGE NEWNES LIMITED and CASSELL & COMPANY LIMITED - - - - - - - *Defendants.*

E.S.
4.9.31.

UPON MOTION made unto this Court on the 13th, 14th and 15th days of May, 1931, by the Plaintiff in person in the presence of Counsel for the Defendants, H. G. Wells, The MacMillan Company Incorporated, The MacMillan Company of Canada Limited, George Newnes Limited and Cassell & Company Limited by way of appeal from the judgment herein of the Honourable Mr. Justice Raney dated on the 27th day of September, A.D. 1930, and upon hearing read the pleadings and proceedings in the action, the evidence adduced at the trial and the judgment aforesaid and upon hearing what was alleged by the said Plaintiff and by Counsel aforesaid, this Court was pleased to direct that said appeal should stand over for judgment and the same coming on this day for judgment;

1. THIS COURT DOTH ORDER that this appeal be and the same is hereby dismissed.

2. AND THIS COURT DOTH FURTHER ORDER that the Plaintiff do pay to the Defendants, H. G. Wells, the MacMillan Company Incorporated, the MacMillan Company of Canada Limited, George Newnes Limited and Cassell and Company Limited, their costs of this appeal forthwith after taxation thereof.

"E. HARLEY,"
Senior Registrar,
S.C.O.

Entered O.B. 120, pages 283–284.
Sept. 4, 1931.
E.B.

In the Supreme Court (Appellate Division).

No. 40. Reasons for Judgment of the Appellate Division of 26th August 1931. (a) Riddell J.A.

No. 40.

Reasons for Judgment of the Appellate Division.

(a) August 26. RIDDELL, J.A.: An appeal by the plaintiff from the judgment of Mr. Justice Raney at the trial. This appeal was argued with great ability and candour by the plaintiff in person—an ability and candour likewise exhibited by counsel for the respondents.

The plaintiff is an author residing in Toronto, who, after some years of writing, produced a work which she entitled "The Web," the object and design of which was, as she says, "to feature feminism in history . . . the woman and her work in history . . . the predominating influence in the world," because "History in general has never had woman's position incorporated in it as a whole, and I endeavoured to do it as a whole." We may, for the purposes of this action, disregard the two revisions of 1920 (or 1921) and 1923 (or 1925), as not coming in question in this action.

Of this work, she obtained an interim copyright under the above name, on the 28th June, 1916, under the provisions of the existing Copyright Act, R.S.C. 1906, ch. 70.

In this action, she claims (1) that she placed the MS. of this work in the hands of certain of the defendants and that they withheld it after demand made (a simple action in trover); (2) that these defendants illegally used the MS. by exposing and exhibiting it to the defendant Wells; and (3) that all the defendants violated her rights of copyright in a book written by the defendant Wells.

The facts are that she, having (at least tentatively) finished her MS. and desiring to publish it, asked the MacMillan Company of Canada at their Toronto headquarters, whether there was any objection to her using certain material from a publication of theirs: to determine that question, the MS. was handed to Saul, their manager at Toronto; after some correspondence, Saul, being about to leave his existing employ, wrote the plaintiff, on the 31st January, 1919:—

> "I am leaving the manuscript here at your disposal, and if you will inform the MacMillan Company what you wish done with it, your wishes shall be carried out."

There had been no previous request for the return of the MS.; and when this letter was received by the plaintiff, she made no reply, did not call, write or telephone, because, as she says:—

> "I was busy at other things, and I was not revising, and I think I had lost interest in it and I think I just let it go for the time being."

Later on, in March, 1919, after some correspondence with the new manager, she was invited to call, and did so—then she received her MS. at the first request.

It would savour of absurdity to base a claim of conversion on these facts, and the first of the three causes of action alleged falls to the ground.

The second cause of action alleged is based upon the proposition that certain defendants, the MacMillan Companies, having received from her the MS. for the specific purpose mentioned, disclosed its contents, either by sending the MS. itself (which is the belief of the plaintiff) or a copy of it to England, and disclosing its contents to the defendant Wells, or to some collaborator or collaborators of his, whereupon use was made of such contents in the composition of the Wells work, "The Outline of History."

Were the facts of such disclosure established by evidence, there can be no possible doubt that the plaintiff would have thereon a good cause of action, whether on the ordinary law of bailment or the common law principle of copyright, using the word in a different connotation from that which is usual—the principle is mentioned in such cases as *Chappell* v. *Purday* (1845), 14 M. & W., 303, 316; *Jefferys* v. *Boosey* (1854), 4 H.L.C. 815, 920; *Walter* v. *Lane*, [1900] A.C. 539, at p. 550, and in Copinger on Copyright, 6th ed. (1927), at pp. 1, 21, etc.; and will be more particularly considered *infra*.

No pretence is made of anything like direct evidence that such a wrong was committed by any defendant, and the defendants repudiate the proposition in its entirety. The plaintiff admittedly must rely upon proof of plagiary in the work complained of, and the practical impossibility of advantage being taken of the plaintiff's MS. in any other way than is charged.

It must be said that, if these two propositions were established by evidence, the argument would be very strong, if not, especially in view of the somewhat unsatisfactory evidence of Saul, irresistible. But the plaintiff herself says that she had two MSS. of her work, of which the one she gave to the MacMillan Company she had previously given to another Toronto house, who had it a week, more or less; and of the other, she says, "Oh, I kept that and gave it to somebody else." No account of this copy is given; and it is plain, I think, that the impossibility of the contents of the MS. becoming known, if they ever were known, through some other channel, is not proved. Any argument, then, based upon such an impossibility falls to the ground.

The plaintiff, to succeed, must, it was contended by the defendants, rely upon the statutory right of copyright—the common law right being of course merged in this statutory right: *Donaldsons* v. *Beckett* (1774), 4 Burr. 2408.

In this view, "There can be no copyright in ideas or information, and it is no infringement of copyright to adopt the ideas of another or to publish information derived from another, provided there is no copying of the language in which those ideas have, or that information has, been previously embodied:" Copinger, *op. cit.*, p. 31; *Hollinrake* v. *Truswell*, (1894) 3 Ch. 420; *Walter* v. *Steinkopff*, (1892) 3 Ch. 489; *Chilton* v. *Progress Printing and Publishing Co.*, (1895) 2 Ch. 29; and other cases. *Corelli* v.

In the Supreme Court (Appellate Division).

No. 40. Reasons for Judgment of the Appellate Division of 26th August 1931. (*a*) Riddell J.A.—*continued.*

Gray (1913), 30 Times L.R. 116, which may seem *contra*, rests upon a specific provision of the English Act not applicable here.

I had been impressed with the strength of this argument, and, indeed, the argument proceeded largely on that basis, but a careful consideration of the law has led me, both on principle and authority, to the conclusion that it may well be that the copyright secured by the Plaintiff has not deprived her of the common law right which is thus expressed, with a reference to *Chappell* v. *Purday*, 14 M. & W. 316, and *Jefferys* v. *Boosey*, 4 H.L.C. 920, in Copinger on Copyright, *op. cit.*, p. 1, note (*a*): "The author of a literary composition, which he commits to paper belonging to himself, has an undoubted right at common law to the piece of paper on which his composition is written, and to the copies which he chooses to make of it for himself, or for others. If he lends a copy to another his right is not gone; if he sends it to another under an implied undertaking that he is not to part with it or publish it, he has a right to enforce that undertaking."

I think that in the present case, the plaintiff is in that position, that the MS. having been placed in the hands of the Company in Toronto for a specific purpose only, any use by them of it for any purpose was a breach of their implied undertaking—and that any one whosoever who made use of it for such other purpose was in law equally liable to an action.

Wells had no right to make any use whatever of the MS. and if he did so and damage accrued to the plaintiff from such use, she has a right of action against him. The same right I shall consider without deciding the point exists also as against the other defendants. The case will be discussed on the basis of the law being as just stated.

In addition to an elaborate collection of what are claimed to be passages violating the plaintiff's statutory right and a very careful and skilful presentation of them by the plaintiff, we have the evidence of some gentlemen who give expert evidence. Without quoting the alleged maxim of a well-known English Judge as to expert witnesses, I am wholly in accord with the view of the trial Judge as to the weight to be given to this evidence in this case.

The first of these experts is a Professor of Oriental Languages in the University of Chicago—he has no high opinion of Wells's book—it is, he thinks, "a very shoddy ill-digested piece of work, devoid of literary excellence", with "erratic features" and "striking deficiencies and inaccuracies", without "adequate excuse," disregarding "all canons of historic sense and propriety," whose author "shews strange obtuseness"; he actually "squanders a whole page on two quite unnecessary biblical quotations," and gives Saul only "five lines after squandering three pages on quotations"; and some of the "contents (of his book) betray an incredible ignorance of the subject," but are "a mere bluff of the topic"—he "made his task one of urgency, snatched hastily at facts and views drawn from where he might, padded it out with old hobbies and half-baked opinions of his own," and "feverishly kept his penhand busy" for "a few hectic months of feverish activity," and "his reason was an anxiety to forestall the publication of the 'Web.'" Of course in the two works "there must

of necessity be hosts of similarities " and sometimes " We must concede a large freedom in Mr. Wells' details . . . freedom from Miss Deeks." Still he must say that the " evidence is overwhelming that it (the ' Web ' MS.) was in the hands of the author of ' Outlines of History ' before he wrote and during the time he was writing "—" We must conclude he used the ' Web ' "—there is " clear proof of documentary inter-relation." Sometimes, indeed, Wells makes statements which are " suspiciously of the character of ' common knowledge ' ", and of course sometimes " it is not necessary here to postulate the open manuscript of ' Web ' at hand as he wrote," but after all " it is proven beyond a doubt that Mr. Wells had access to Miss Deeks' manuscript . . . the manuscript of ' Web ' was at hand as he wrote and . . . his reference to ' Web ' was no chance or sporadic thing, but that the manuscript was . . . constantly available, lying close at hand on his worktable, and referred to repeatedly if not steadily throughout the course of his writing. Sometimes it lay open before him and his writing was palpably a disguised copying of Miss Deeks' passage." There is " the full cogency of Mr. Wells' indisputable use of ' Web ' " . . . " that it was in his possession in October is quite certain " or " it may have been in November." " He must have known that he could retain the manuscript in his possession for but a limited time." The witness rather doubts " that for all his professions Mr. Wells used ' Breasted ' at all," and he is convinced " that his citation of (authorities) is no more than a bluff."

Perhaps the fact of the witness having graduated as recently as 1912 may account for some of this—it certainly does not err in over modesty or want of certainty in its conclusions.

Of course we are not bound by either the opinions, literary or historical, of the witness or his conclusions—moreover, we were invited by all parties to make such independent investigations in a literary and historical sense as we thought proper and to make use of personal knowledge in considering the matters at issue.

Leaving aside the ideas underlying the two works which would admittedly necessitate great similarity in treatment and often in terminology, the evidence of plagiary may fairly be said to consist in: (1) similarity of language; (2) common inclusions; (3) common omissions; (4) common mistakes; (5) physical impossibility of the " Outline " being written independently of the " Web " in the time.

About the most striking illustrations of (1), (2) and (4) is what is said of Aspasia—and I shall take that as an example of this expert's reasoning.

In speaking of Pericles, what is said in the two books is as follows :—

" Web."	" Outline."
(2) Pericles, although an Athenian-born aristocrat—separated from his citizen wife at her own request —a custom which seems to have	(345) For a time they (the people of Athens) were capable of following a generous leader—and Fate gave them a generous

In the Supreme Court (Appellate Division).

No. 40. Reasons for Judgment of the Appellate Division of 26th August 1931. (*a*) Riddell, J.A.—*continued.*

"Web."	"Outline."
been common at the time and was considered quite right—and he married one of those free women, Aspasia, who was a native of Miletus. Aspasia's eloquence and knowledge of politics were remarkable and her influence upon her husband was singularly great. (3) Aspasia made her home a resort not only for the brilliant women associated with her but for all the learned and distinguished men of Athens. Anaxagoras, Sophocles, Euripides, Socrates and Phidias rejoiced to be in her society and to learn of her—Pericles espoused the democratic cause and he acquired a great influence . . . (5) The Democratic party of Athens which was now headed by Pericles, who . . . VII (10) . . . men required sons who were citizens, i.e., whose both parents were citizen-born and therefore . .	leader. In Pericles there was mingled in the strangest fashion political ability with a real living passion for deep and high and beautiful things . . . He was sustained by what was probably a very great and noble friendship. There was a woman of unusual education, Aspasia from Miletus, whom he could not marry because of the law that restricted the citizenship of Athens to the home-born, but who was in effect his wife. She played a large part in gathering about him men of unusual gifts. All the great writers of the time knew her and several have praised her wisdom.

Here is what the expert who gives evidence as to this passage says—I copy it *in extenso* as a fair sample of this expert's views :—

"There is a remarkable idea occurring in this section in both works. It will serve to open the discussion.

"'Outline' on page 345 says of Aspasia's relations with Pericles that for legal reasons he could not marry her, but she was 'in effect his wife'—a most astonishing phrase. The temper of to-day does not hesitate to use a more unpleasant word. Why did not Mr. Wells say frankly that she was his mistress? Why did he not call her a 'courtesan'? Both epithets are applied in Encyclopædia Britannica articles, and Mr. Wells, by his evidence, leaned heavily on the Encyclopædia. That he should have refrained through delicacy or modesty is ludicrous. Julius Cæsar's relations with Cleopatra were much the same, and Wells has stigmatised them as 'amorous pleasantries'—page 510. Plutarch, too, to whom Wells refers, makes it clear that Aspasia's character for even that age of easy morals was not above reproach, and that she drifted about readily from one man to another. Then why was she 'in effect' Pericles wife? The qualifying phrase 'in effect' reveals that Wells felt there was something wrong. He

knew the nature of her position, yet he persists in calling her a wife. Why so? He did not need to bring in the idea of marriage here at all—he did not for Cæsar. Weighing all the possibilities, it seems most probable that the astonishing rendering is due to the influence of a source which Wells is following. And it is remarkable that this odd idea appears in 'Web' also, save that there it is presented without apology. We are told that Pericles 'married' Aspasia.

"Now it is notable in itself that both these works should mention Aspasia at all. She was quite unimportant. She is completely ignored in such survey histories as Breasted, Browning—Wells' sources—and Goodspeed.

"How much more remarkable that both should have this odd idea of marriage to Pericles. But further, the entire accounts of her run closely parallel. Thus:—

"Again I think I can save time, since I have it down here, by not reading it out?

"His Lordship: Yes."

Analysis.

"Web."	"Outline."
Knowledge of politics	Her wisdom.
Influence upon her husband.	Accused of instigating a war.
Made her a house a resort for learned and distinguished men.	Gathering about him men of unusual gifts.
Anaxagoras . . . etc., rejoiced to be in her society and to learn from her.	All the great men knew her and several have praised her."

The witness finds plagiary (1) in the two works mentioning Aspasia, at all, whereas it is probable there never was anything like a sketch of Pericles' career and influence without Aspasia being brought in; and it would be more natural to expect a sketch of Lord Nelson without mention of Lady Hamilton than one of Pericles with Aspasia left out. The influence of Aspasia upon Pericles is believed to have been immense, so much so that she was charged with bringing on the Samian and Peloponesian Wars, while his impassioned defence of her is a commonplace of literature. Then the witness asks (2) why she was not called a "courtesan," his "mistress?"—because that "he should have refrained through delicacy or modesty is ludicrous;" and argues that there must be some plagiary because the "Web" called her his "wife." Can absurdity further go? Had Wells called Aspasia the "wife" of Pericles, making the same mistake as the plaintiff, there might be some foundation for the suggestion of plagiary. It is wholly wrong to say, as this witness does, that Wells "persists in calling her a wife;" what she is called is "in effect, his wife," and any one with a reasonable knowledge of the English language knows that that phrase connotes that she was not his wife, but was to him as a wife in every way but the legal relation; and that she admittedly was. And utterly unfounded is the imputation that "both should have this odd idea of marriage to Pericles"—the "Web" had it, the "Outline" had not—it specifically says "he could not marry her because of the law."

In the Supreme Court (Appellate Division).

No. 40. Reasons for Judgment of the Appellate Division of 26th August 1931. (a) Riddell J.A.—*continued.*

As to not characterising Aspasia as a "courtesan," most of those who know anything of the position, social and legal, of the hetairai in ancient Athens—certainly all of those of my day and College who read the Memorabilia of Xenophon, lib. III, cap. 10, and learned how the wisest man of Athens treated Theodota, one of that class, and discussed, as an equal, matters of high moment with her—will know that "courtesan" and "hetaira" have not the same connotation—and many would prefer not to call the woman a "mistress" who was to a son of George III "in effect his wife," but "whom he could not marry because of the law." To suggest that Wells omitted to call her "courtesan" or "mistress" because Miss Deeks called her a "wife" is nothing short of grotesque. That the witness described it ludicrous to ascribe to delicacy or modesty the omission to call her these names need give us no concern—that is his misfortune.

Then (3) the mention by Wells of her wisdom is considered a plagiary of the "Web's" mention of her "knowledge of politics," why, I cannot imagine; (4) her influence over Pericles, as has been said, is a commonplace of history; and (5) every account of her speaks of the gathering of influential men at her home. I have no hesitation in agreeing with the learned trial Judge in the utter worthlessness of this kind of evidence—it is almost an insult to common sense.

In this connection we may consider what was pressed in argument as a flagrant instance of (1) similarity of language and (4) common error.

The occurrence of mistakes in the same sense made by both authors is rightly regarded as indicating that one has copied from the other; and the plaintiff was well within her rights in pointing out what she considered common errors.

We are given these extracts :—

"Web."	"Outline."
(96) Columbus was quite unconscious of the fact that he had discovered a great new world, and believing that he had touched the shores of India he called the islands the West Indies . . .	Early in 1493 Columbus returned to Europe. He brought gold, cotton, strange beasts and birds and two wild-eyed painted Indians . . .
(97) The return journey was tempestuous . . . In Spain Columbus received his reward . . . The six Indians with all their savage paint led the procession. Then came the trophies . . .	He had not found Japan, it was thought, but India. The islands he had found were therefore called the West Indies . . .
(98) There was no blot on Columbus' dealings with the Indians; but a false report (to that effect) led to his being brought back to Spain in chains . . .	We cannot tell of his experiences as governor of this Spanish colony nor how he was superseded and put in chains . . . But Columbus died ignorant of the fact that he had discovered a new continent . . .

At the hearing it was argued that the second and the last sentence quoted from the "Outline" was a plagiary of the first from "Web," and when it was pointed out that the language of the latest work on the Discovery of America differed but little from that of either the "Web" or the "Outline," it was argued from the evidence at the trial that there was an error common to both in asserting the ignorance of Columbus—the following was said in the plaintiff's cross-examination (p. 82) :—

> "HIS LORDSHIP : He (i.e., Wells) says, 'Columbus died ignorant of the fact that he had discovered a new continent'—*A*. Both are incorrect. Columbus knew that he had discovered a new continent later.
>
> HIS LORDSHIP : I thought he did?—*A*. He did know it.
>
> "Mr. ELLIOTT : *Q*. How do you know?—*A*. According to the best authorities."

This somewhat startling statement was in direct contradiction with the authority just mentioned, and, if true, the error is shared by every authority I am acquainted with, and is not confined to the two books.

On the whole passage, it will be sufficient to quote from The Cyclopaedia of Names, published in 1894.

Under the heading "Columbus," after speaking of his discovery of the Bahamas, Cuba and Haiti, the Article proceeds :—

> "All these lands he supposed were outlying parts of Asia . . . he coasted the south side of Cuba (supposed by him to be a peninsula of Asia) . . . He never knew that the regions discovered by him constituted a new continent, always supposing them to be portions of Asia."

Under the heading "West Indies" we read :—

> "Columbus discovered the Bahamas, Cuba and Haiti in 1492, and nearly all the islands were known before the continent of America was discovered. They were supposed to be outlying islands of India or Asia, and, as they had been found by sailing westward, they were called the West Indies . . ."

Another much pressed common error is to the Cyrus of the Anabasis.

"Web."	"Outline."
"It was with 13,000 Greek mercenaries that Cyrus, King of Persia made his way as far as Babylon where he died and the famous retreat of the 10,000 Greeks followed."	"An Artaxerxes, a second Xerxes, a second Darius pass across the stage . . . a second Artaxerxes and a second Cyrus his brother fight for the throne . . . this second Cyrus collected an army of Greek mercenaries and marched into Babylonia and was there killed at the moment of victory over Artaxerxes II."

In the Supreme Court (Appellate Division).

No. 40. Reasons for Judgment of the Appellate Division of 26th August 1931. (*a*) Riddell J.A.—*continued.*

That " Web " was wrong in calling Cyrus the Younger, King of Persia is admitted—just as it would be wrong to call either " Pretender," King of Great Britain; and, if the common error were alleged to be a march by him into " Babylonia " we could understand it; but the expert says :—

> " Now what are we to deduce from this as to the status of Cyrus? Was he recognized as king of Persia? He is certainly included among the kings and is called ' Second Cyrus ' in direct parallel with ' Second Darius,' etc.: he apparently also is on an equality with Artaxerxes; they ' fight for the throne.' The situation is tantalizingly ambiguous, yet logical probability inclines towards Wells' meaning that Cyrus the younger was Cyrus II king of Persia. Now this conclusion so hard-won from ' Outline ' is granted free in ' Web.' It was with thirteen thousand Greek mercenaries that Cyrus king of Persia made his way as far as Babylon where he died and the famous retreat of the 10,000 Greeks followed . . . "
>
> " But Cyrus never was king; we are driven to conclude that here again the two works agree in defiance of history."

Anything more perverse it is hard to imagine, and it is equally hard to imagine how any one, party or witness, could imagine that any Court could accept or be influenced by it. The " Outline " speaks of two brothers fighting for the throne, one being a second Artaxerxes, the other a second Cyrus—the former was Artaxerxes II., plainly a King, and the other leads an army against him. How any one could be driven to conclude that this invader was a King too passes my comprehension.

A common error upon which much stress is laid is the spelling of the name of an ancient lady whom " Web " characterizes as " Regent," " Outline " properly as " Queen "—the name " Hatasu." Of this, the witness says :—

> " It appears in none of Wells' authorities, nor in any other authority of recent times. Only by special investigation did I discover it, and that in old histories of 1890 and earlier. Since that time the accepted form of the name has been Hatshepaut."

I must confess that as a " general reader " with only " general knowledge " I was startled at the expert's statement. A reference to The Cyclopaedia of Proper Names cited *supra* gives us the following : " Hatasu or Hatepsau, a famous Egyptian Queen, daughter of Thothmes I. of the 18th Dynasty and sister of Thothmes II . . . " It is rather astonishing that such a close student had never heard of the spelling " Hatasu." I am reasonably confident that few Egyptologists and few general readers share in this ignorance.

I have gone over the alleged common errors and can find none peculiar to these two books. Most of them are called errors because contrary to " accepted authorities." Who should be accepted as an authority must be a matter of opinion, and the authority of to-day may be rejected tomorrow. Practically all the alleged errors mentioned at the hearing were found shared

in by one or all of us, some by a Cyclopaedia cited—and, in my opinion, it would be an absurdity to find proof of use of the plaintiff's MS. or a breach of her copyright in any or all of them—not even in what the expert thinks "no more than a garbled inaccurate afterthought." So, too, without elaborating, it seems to me that there is nothing in any way conclusive as proof in any or all of the alleged common inclusions, common omissions, common errors, etc.

Before leaving this branch of the inquiry, it may be well to mention a curious fallacy which ran through much of the plaintiff's argument and of which there is an occasional glimpse in the evidence—it is made a matter of suspicion that Wells does not follow the terminology of the authorities he says he consulted. One would have thought it most natural for a literary man, writing a book for popular perusal, to clothe in his own language the historical facts taught him by his authorities rather than to use the terminology of the expert original. Where we have a subject like law—in which a statement is to be accepted because of the position of the person who makes it, his precise words may be and in many cases are of importance and should be given *verbatim*, but this is not the case where the statement is one of a fact.

As to the physical impossibility of the Outline being written, as Wells says, without stealing from the "Web," it is pointed out that he wrote it himself in longhand and it is said that to "do that in a bare nine or ten months is a task that might well stagger one." True "he made his task one of urgency, snatching hastily at facts and views drawn from where he might, padded it out with old hobbies and half-baked opinions of his own, and feverishly kept his penhand busy:" "it may," indeed, "be that it is his habit to work in this hasty fashion;" and the first expert says: "What adequate time was in days and hours I do not know . . . that must be judged by so many considerations that you cannot be tied down to days and hours." But the plaintiff argues: "The bare fact is that Mr. Wells produced a work of some 300,000 words in about six months. Making allowance for necessary re-writing, it works out that he maintained through that period an average production of about 60,000 or 70,000 words a month. This is amazing. But for full effect it must be understood that, according to his emphatic testimony, he did not dictate this, he wrote it all himself in longhand . . . Moreover, he was equally emphatic that he employed no hack writers . . . no one gathered the material for him: he did all this himself . . . his assistants acted merely as critics of the work when produced. It is a stupendous achievement, still further enhanced by the evidence of his correspondence that during these months he was also busy writing his 'Undying Fire.'"

And the evidence is quoted of Sir Harry Johnston devoting three years to a "Compilation," a republication of his "Pioneers of the British Empire," while a Canadian author, Mr. Burpee, says:—

> "In 1908 I published 'The Search for the Western Sea,' something under 200,000 words. I had been studying the period with

In the Supreme Court (Appellate Division).

No. 40. Reasons for Judgment of the Appellate Division of 26th August 1931. (a) Riddell J.A.—*continued.*

which it attempted to deal for some years and I spent about eighteen months in the actual writing of the book. Now, my field was only a very small corner of the domain of history. While Mr. Wells' field was the whole story of mankind from prehistoric time to the present day . . . "

Another author of note, Prof. Brett, says :—

" I think I could rank as a fast writer. Under the circumstances under which I had to write the articles in the Encyclopaedia Britannica, I wrote 27,000 words in a little over a month. I was really making an epitome of my own work and was my own authority. That is, of course, working under the most favourable conditions that a man could work under. It is entirely incredible to me that a man, single-handed, could prepare a work of this kind in a period of say ten or twelve months."

From which the plaintiff argues that Wells must have had a " collaborator though an unwilling one," namely herself.

Balzac and some other writers of the past could not be called, but instances of distinctly greater speed without collaboration are literary commonplaces. To my mind it is illogical to argue that the investigation and narration of a comparatively obscure and seldom treated search for the Western Seas should take a shorter time than the " whole story of mankind " on which the authorities are abundant if conflicting. I would undertake to write a popular account of the History of the English Law in half the time I should require to write the History of Judical Combat in Plantagenet Times —any historian of Medicine would write the History of Medicine in Mediaeval Times in much less time than he would write of the Revolution in Medical Theory due to Paracelsus—and The Life of Lord Durham properly written would take more time to write than a popular History of Canada.

So, too, it is idle to speculate as to the speed of one writer by observing the speed of another or even as to speed of the same writer at one time by observing his speed at another—Sir Walter Scott is a classical example.

And assuming the estimate of 60,000 or 70,000 words a month to be fair—this means not more than 3,000 or 3,500 words a day, leaving about one-third of the time for collation, etc., of authorities—30 to 35 folios, 10 to 12 foolscap pages, of MS. I am wholly confident that there are few, if any, Judges on our Bench who do not frequently reach and surpass that amount—and this with a careful examination of fact often very puzzling, and of authorities often very conflicting.

I think that the expert was wise when he swore that he did not know what adequate time was in days and hours.

I cannot find that these and all other considerations advance anything like proof that an experienced writer like Wells, who had thought over the matter for months and who had the assistance and written authorities he speaks of, could not write the book he did without the assistance of the plaintiff's work.

I would dismiss the appeal with costs.

In nothing I have written, is there any intention to belittle the merits of the " Web," which is clearly a labour of love, performed with much care and skill—nor, while I am unable to agree in the conclusions of the experts, do I in the least question their ability, experience and honesty: *quot homines, tot sententiae,* and " Doctors differ."

(*b*) LATCHFORD, C.J.: It is greatly to the credit of Miss Deeks that her presentation in person of this appeal has been as full and effective as in the circumstances it could possibly have been argued by the most able counsel. Nothing helpful to her cause has been left unsaid. Yet, after careful consideration of the evidence and of the arguments so ably advanced, I am of opinion that her appeal must fail. To hold the contrary is to accept as true her contention that the MacMillan Company of Canada parted at some time with the possession of the manuscript copy of " The Web," which she had placed in its custody here, or communicated its purport to some one who in turn enabled Mr. Wells so to copy or adapt it as to deprive her of proprietary rights and infringe in Canada the interim copyright she registered.

(*b*) Latchford J.A. (agreed to by Masten J.A.).

The evidence is convincing that the Canadian MacMillan Company did not at any time part with Miss Deeks' manuscript, but that it remained in the company's vault until demanded, when it was promptly returned to the author. The period was so long that the manuscript might have been sent to England, but the evidence is that it was not and that its contents were never divulged. Mr. Wells is positive that he never saw " The Web " or ever heard of its author.

Much might have been said of the comparisons made by learned professors between Mr. Wells' work and Miss Deeks'. As both deal with what may be called universal history, necessarily both refer to the same persons and events—and of equal necessity must employ terms to a large extent similar. With view-points that have much in common, the same concepts are accepted as true regarding the origin of the universe and of man, but no one has to-day any proprietary interest in any of these. What is called " New Thought " is very old—a fact familiar to every student of the history of Philosophy. Parallels of mention or omission must occur in many general histories, recourse having been had to sources open to every writer. The books placed before Mr. Wells by Mr. J. F. Cox of the London Library would, I am sure, enable that versatile author to write his " Outline " without any aid from the unknown " Web."

The appeal must be dismissed with costs.

MASTEN, J.A., agreed with LATCHFORD, C.J.

(*c*) ORDE, J.A.: I agree that this appeal must be dismissed.

(*c*) Orde J.A.

The plaintiff sets up two distinct causes of action, one an infringement of her copyright, the other, breach of trust.

As to the first, the simplest test to apply is that suggested by myself during the argument. If the plaintiff's work " The Web " had already

In the Supreme Court (Appellate Division).

No. 40. Reasons for Judgment of the Appellate Division of 26th August 1931. (c) Orde J.A.—*continued.*

been published and distributed throughout the world as widely, say, as "The Encyclopædia Britannica," could an action for an infringement of the plaintiff's copyright by reason of anything appearing in "The Outline of History" have possibly succeeded even if it were proved that the defendant Wells had made use of a published copy of "The Web" in writing his book? There can be no copyright in the facts of history or in their chronological sequence. Had "The Web" been published, the defendant Wells was as free to consult and use it in the preparation of his work as the plaintiff was to consult and use "The Encyclopædia Britannica" or any other publication as a source of information. Infringement of copyright in such cases must, as a general rule, consist of the copying of the words of another in the order in which he has used them. The use of the same historical facts or of the same ideas is not enough.

As to the second, the plaintiff failed to prove by any direct evidence that the defendant Wells had ever seen or made use of her manuscript either directly or indirectly. She was forced to try to establish her case by the internal evidence afforded by a comparison of the manuscript of the defendant Wells with her own.

Now it is conceivable that her case might have been established in this way. If it were found that certain passages in the two works were couched in the same language, or that there were unexplained errors in both, these facts, coupled with the coincidences in time and other circumstances as to the possession of the plaintiff's manuscript by one of the defendant companies might have constituted evidence so convincing as to justify a finding that the defendant Wells had used the plaintiff's work, notwithstanding his own denial. It was upon evidence of this sort that the plaintiff relied, but when the comparisons which she made in the course of her able and forcible argument are examined, they fall far short of what is necessary, in my judgment, to constitute evidence sufficiently overwhelming and convincing to offset the positive denials of the defendants' witnesses. The plaintiff fails on this ground also, and her appeal should be dismissed.

In the Supreme Court (Appellate Division).

No. 41. Order allowing Appeal to His Majesty in Council, 29th October 1931.

No. 41.

Order allowing Appeal to His Majesty in Council.

IN THE SUPREME COURT OF ONTARIO.

The Honourable The CHIEF JUSTICE IN APPEAL.

In Chambers.

Thursday, the 29th day of October, 1931.

Between

FLORENCE A. DEEKS - - - - - - - - - *Plaintiff.*

and

H. G. WELLS, THE MACMILLAN COMPANY, INCORPORATED, THE MACMILLAN COMPANY OF CANADA, LIMITED, GEORGE NEWNES, LIMITED, and CASSELL & COMPANY, LIMITED - - - - - - - - - - - *Defendants*

UPON the application of Counsel for the Plaintiff and in the presence of Counsel for the Defendants, H. G. Wells, George Newnes Limited, Cassell & Company Limited, The MacMillan Company Incorporated, and The MacMillan Company of Canada, Limited, for an order admitting the appeal herein from the Judgment of the Second Divisional Court of the Appellate Division of this Honourable Court in this action, to His Majesty in His Privy Council, and approving the security for the Defendants' costs in the said action and appeal, upon hearing read the said Judgment of the Second Divisional Court pronounced herein the 26th day of August, 1931, the affidavits of Kenneth Gibson Morden and William James Elliot, filed, the receipt of the Canadian Bank of Commerce dated the 24th day of October, 1931; and upon hearing what was alleged by Counsel aforesaid, and it appearing that the Plaintiff has under the provisions of the Privy Council Appeals Act, being Chapter 86 of the Revised Statutes of Ontario, 1927, a right of appeal to His Majesty in His Privy Council;

1. IT IS ORDERED that the sum of $2000.00 paid into the Canadian Bank of Commerce to the credit of the Accountant of this Honourable Court, as appears by the receipt of the said Bank dated the 24th day of October, 1931, be and the same is hereby approved as good and sufficient security that the Plaintiff herein will effectually prosecute her appeal to His Majesty in His Privy Council from the said Judgment of the Second Divisional Court, and will pay such costs as may be awarded in the event of the said Judgment being affirmed.

2. AND IT IS FURTHER ORDERED that the appeal by the said Plaintiff herein to His Majesty in His Privy Council from the said Judgment of the Second Divisional Court be and the same is hereby admitted.

3. AND IT IS FURTHER ORDERED that the costs of this application shall be costs in the said appeal.

E. HARLEY,
Senior Registrar, S.C.O.

In the Supreme Court (Appellate Division).

No. 42. Order substituting copies of original exhibits numbered 6, 10, 14, 19, 20, 21. 2nd February 1932.

No. 42.

Order substituting copies of original Exhibits.

IN THE SUPREME COURT OF ONTARIO.

The Honourable The CHIEF JUSTICE IN APPEAL,
The Honourable Mr. Justice MAGEE,
The Honourable Mr. Justice HODGINS,
The Honourable Mr. Justice GRANT,
The Honourable Mr. Justice FISHER,

Tuesday, the 2nd day of February, A.D. 1932.

Between

FLORENCE A. DEEKS - - - - - - - - - *Plaintiff.*

and

H. G. WELLS, THE MACMILLAN COMPANY, INCORPORATED, THE MACMILLAN COMPANY OF CANADA, LIMITED, GEORGE NEWNES, LIMITED, and CASSELL & CO., LIMITED - - - - - - - - - - - *Defendants.*

UPON MOTION made this day unto this Court by Counsel on behalf of the plaintiff and in presence of Counsel for the defendants H. G. Wells, George Newnes, Limited, Cassell & Company, Limited, The MacMillan Company, Incorporated, and The MacMillan Company of Canada, Limited, for an order substituting copies of original exhibits numbered 6, 10, 14, 19, 20 and 21 filed on the trial of this action for the said original exhibits for the purposes of the appeal now pending from this Honourable Court to His Majesty in His Privy Council and for a further order that the plaintiff's manuscript "Love and War" be included among the Exhibits filed on the trial of this action, and upon hearing the affidavit of Florence Deeks filed and upon hearing what was alleged by Counsel aforesaid; and it appearing that the said exhibits numbered 6, 10, 19, 20 and 21 have been lost or mislaid, and that the said Exhibit numbered 14 was returned to the owner after the Judgment of this Court in this matter.

1. THIS COURT DOTH ORDER that copies of original exhibits numbered 6, 10, 19, 20 and 21 filed on the trial of this action be substituted for said original exhibits for the purposes of the appeal now pending from this Court to His Majesty in His Privy Council.

2. THIS COURT DOTH FURTHER ORDER that a copy of the original Exhibit numbered 14 filed on the trial of this action be substituted for the said original exhibit for the purpose of the said appeal now pending as aforesaid.

3. THIS COURT DOTH FURTHER ORDER that the plaintiff's manuscript " Love and War " be transmitted with the proceedings in this matter by the Registrar of this Court to the Registrar of His Majesty's Privy Council.

4. THIS COURT DOTH FURTHER ORDER that the costs of this Motion shall be costs in the said appeal.

E. HARLEY,
Senior Registrar, S.C.O.

Entered O.B. 123, pages 446 and 7,
February 3, 1932, V.C.

In the Supreme Court (Appellate Division).

No. 42. Order substituting copies of original exhibits numbered 6, 10, 14, 19, 20, 21. 2nd February 1932 *continued.*

EXHIBITS.

Exhibits.

Ex. 2. List of Authorities used by Plaintiff, Appellant.

Ex. 2.—List of Authorities used by Plaintiff, Appellant.

AUTHORITIES USED BY MISS DEEKS.

Duruy—History of the World.
Robinson—Essay on History—In " Source Book of Social Origins."
O. T. Mason—Primitive Culture.
J. J. Christie—Advance of Woman.
—I Gathered Greece from Various Sources.
—The Golden Age of Greece?
Ferrero—The Woman of the Cæsars.
Chambers Encyclopædia.
Green—Short History of the English People.
Smeaton—The Medici?
Young— ,, ,,
—Martin Luther and the Reformation.
Washington Irving—Christopher Columbus.
Saunders— ,, ,,
Elton— ,, ,,
Winsor— ,, ,,
A Christopher Columbus by Cassell & Co.—Christopher Columbus & Americus Vespucius.
Mrs. Snowdon—The Feminist Movement.
—The Woman of the United States and at Time of American Revolution.
Gidoro del Lungo—The Woman of Florence.
—Various Periodicals.

There were a number of other authorities—I trusted to memory without making a written list of them—In the course of time I have forgotten them.

22.—Page of the Record Book of Manuscripts of the Macmillan Company of Canada, Limited.

Author	Address	Title of MS.	Date Rec'd	Reader	Sent to Reader	Rec'd from Reader	Disposition
Dawson. Emma R.	Goderich Ont.	Neither do I condemn.	Nov. 13.				
de Cliffonies A.	37 Somerset St. W. Ottawa	Article re Reinforced Concrete Slabs & Beams.	Dec. 13/12.	Sent to N.Y.		Dec 14/12	Rec'd Reg. mail, Jan. 15/14.
Deeks Miss F.A.	140 Farnham Ave. San Francisco, Cal.	"Come into the Garden Maud"	April 2/13.	[illegible]			Ret'd. " " May 31/13.
Douglas V.	944 Pacific Bldg	"Soulmates in Yankeeland"	Aug. 21/13.	in vault			" Prep'd Ex. Copl. 8/13.
Dean H.H.	O.A.C. Guelph. Ont.	"Dawning"	April 28/14	vault. — Sent from Brett Ret'd from New York		Reg mail - May 28/14.	Ret'g to Prof. Dean 6/3/14 Ret'd June 3 of 14.
Dean H.H.	O.A.C. Guelph. Ont.	Holly - Story & Poem Life	June 11/14.	Holding			
Dempster S.	206 Bloor St. East City	A Tragedy of Two Poems	April 14/15				Ret'd. April 14/15
Dagger J. Gordon	1554 Yonge St. City.	Songs of the Aftermath	Sept. 15/15				Ret'd. Sept. 29/15
Durand L.B.	11 Oriole Gardens. Toronto.	Short Stories	May 10/16	vault			Ret'd. Reg. mail Dec 6/16.
Defries A.O.	Box 414. Nassau, Bahamas	Human Side of Pulp	Dec. 4/16.	vault.			Ret'd Reg. Mail
Davies E.J.	Can. Bk. of Commerce. Calgary. Alta.	Poems.	Feby. 26/17				Ret'd Reg. mail Feb 26/17
Defries A.O.	Box 414. Nassau, Bahamas	Sir Sandgrollen Country.	Mar. 2/17				Ret'd Reg. mail Mar. 19/17
Devlin B.J.	346 Daly Ave., Ottawa. Ont	Sonnets and Poems.	June 8/17				Ret'd Reg. mail June 3/17
Dunlop Mair & Co.	48 Chicora Ave., Toronto	Story Method of Teaching Grammar					Ret'd Reg. mail June 29/18
Duffey Mrs. Laura	1319 Pandora St., Vancouver. B.C.	The Three Nations	Feby 13/18				Ret'd Reg. mail ~~June~~ Feby 29/18
Dale E.	33 Hintzpe Ave.,	"Jim Blinks"	March 29/18				Ret'd Reg. mail May 3/18
Deeks Florence	140 Farnham Ave. City	"The Web"	Aug. 8/18	vault.			Ret'd Feb 5/19.
Durand Laura B.	11 Oriole Gardens City	Children's Book on Astronomy		vault.			Ret'd. Jan. 1919.
Tucker J.J.	140 Farnham Ave,	"The Lesson."	26/3/19.	vault			Ret'd. July 15/19
Defries. Miss	London, England.	"The Human Side of Pulp (Spiritual Studies)	22/9/19.				
Dowie. Mrs.	Toronto			"too short"			Ret'd Address given 7/14/19
[illegible]							

Ex. 3.—Letter to H. J. S. Dennison from Registrar of Department of Agriculture as to Registration of interim copyright of "The Web."

Exhibits.

Ex. 3. Letter to H. J. S. Dennison from Registrar of Department of Agriculture as to registration of interim copyright of "The Web," 28th June 1916.

Refer to File No. 88157.

DEPARTMENT OF AGRICULTURE.

OFFICE OF THE REGISTRAR OF COPYRIGHTS, TRADE MARKS, etc.

Ottawa, Canada,
28th June, 1916.

Sir :—

I beg to inform you that the Interim Copyright of the literary work entitled,

"Web"
By A dull Weaver

has been entered, this day, on Folio 1820 of Register of Interim Copyrights No. 8, in the name of Florence Amelia Deeks, of Toronto, Ont. Voucher for fee enclosed.

I have the honour to be,
Sir,
Your obedient servant,

"P. E. RITCHIE,"
Registrar.

H. J. S. Dennison, Esq.,
Star Bldg., Toronto, Ont.

(3)

IN THE SUPREME COURT OF ONTARIO

Deeks v. *Wells.*

This Exhibit 3 the property of the plff. is produced by the plff. this 2nd day of June, 1930.

"C. J. McCABE,"
Asst. Registrar.

S.C.O.

Deeks v. *Wells.*

This is Exhibit 4 produced to in the examination of Plff. taken before me on the 15th day of Oct. 1928.

"JOHN BRUCE,"
Special Examiner.

Exhibits.

Ex. 4 (*a*). Letter, Miss Deeks to MacMillan Co. of Canada, Ltd. (J. Saul), 22nd February 1918.

Ex. 4 (a).—Letter, Miss Deeks to MacMillan Co. of Canada, Ltd. (J. Saul).

Mr. J. Saul,
The MacMillan Co., Toronto.

140 Farnham Ave.,
Toronto.

Dear Sir :—

After a work of over three years I have just completed a short history of the world along lines upon which, so far as I know, it has never before been written, and in so doing I have drawn rather largely for information upon your Greene's " Short History of the English People " and in certain places I have even quoted the direct words. Would you have any objections to this ? I should be glad to let you read the manuscript and see exactly how I have written it; or if there should be anything else that you might care to have me do, and of which I may be entirely ignorant, I should be only too pleased to conform to your wishes in every respect. I now have it practically ready to submit to a publisher for reading and I should be deeply obliged to you for a reply or for any suggestion which you might be good enough to give.

Yours most respectfully,
FLORENCE A. DEEKS.

Feb. 22, 1918.

Ex. 4 (*b*). Letter, MacMillan Co. of Canada, Ltd. (J. Saul), to Miss Deeks, 19th March 1918.

Ex. 4 (b).—Letter, MacMillan Co. of Canada, Ltd. (J. Saul) to Miss Deeks.

THE MACMILLAN COMPANY OF CANADA, LTD.,
Publishers, St. Martin's House, Bond St., Toronto.

EDITORIAL DEPARTMENT.

Miss Florence H. Deeks,
140 Farnham Avenue,
City.

March Nineteenth, 1918.

Dear Miss Deeks :—

I have been absent from Toronto for the better part of two months and have only just returned. This will explain the reason why your letter of February 22nd remained unanswered. I am just now picking up the threads and among other letters lying on my desk awaiting my return I find yours. I regret very much the delay, but, of course, you will quite understand.

I think perhaps it would be best if you would drop down to the office sometime with your manuscript and let me have a look at it. Of course, you are quite aware that if your book was very much like Green's " Short History of the English People " our English house would probably not sanction its publication. I would gather from your letter that you have not made very much use of the book but I cannot tell properly until I have seen your manuscript. If you will telephone me I shall be very glad to make an appointment.

Yours very truly,
THE MACMILLAN COMPANY OF CANADA, LIMITED,
JOHN C. SAUL,
Editor.

Ex. 4 (c).—Letter, Miss Deeks to MacMillan Co. of Canada, Ltd. (J. Saul).

Exhibits.

Ex. 4 (c). Letter, Miss Deeks to MacMillan Co. of Canada, Ltd. (J. Saul), 10th August 1918.

140 Farnham Aven.,
Toronto.

Mr. SAUL.

Dear Sir :—

Would you kindly allow me to say further that the first few chapters of my work are, perhaps, the most raggedly (?) written of all, and can be greatly reduced, but I hope that will not prejudice you with regard to what follows and with regard to the true possibilities of the whole three books.

Yours very truly,
FLORENCE DEEKS.

Aug. 10 1918.

Ex. 4 (d).—Letter, MacMillan Co. of Canada, Ltd. (J. Saul), to Miss Deeks.

Ex. 4 (d). Letter, MacMillan Co. of Canada, Ltd. (J. Saul), to Miss Deeks, 14th August 1918.

THE MACMILLAN COMPANY OF CANADA, LTD.,
Publishers, St. Martin's House, Bond St., Toronto.

August Fourteenth, 1918.

Miss FLORENCE DEEKS,
140 Farnham Avenue, City.

Dear Miss Deeks :—

I am very sorry to say that I have not been able in the few days since I saw you to go over your manuscript with any particular care. I have to make a hurried trip from Toronto leaving to-night and shall be absent for two or three weeks. I shall be very glad indeed if you will allow the manuscript to remain where it is until I get back. I have your note of yesterday and will bear what you say in mind.

Yours very truly,
THE MACMILLAN COMPANY OF CANADA, LIMITED,
JOHN C. SAUL,
Editor.

Exhibits.

Ex. 4 (e). Letter, Miss Deeks to MacMillan Co. of Canada, Ltd. (J. Saul), 21st August 1918.

Ex. 4 (e).—Letter, Miss Deeks to MacMillan Co. of Canada, Ltd. (J. Saul).

140 Farnham Ave.,
Toronto.

Mr. SAUL.

Dear Sir :—

I am only too pleased to leave the manuscript entirely at your convenience, and I am very grateful for your willingness to give it a careful reading.

Yours very truly,

FLORENCE DEEKS.

Aug. 21/1918.

Ex. 4 (f). Letter, Miss Deeks to MacMillan Co. of Canada, Ltd. (J. Saul), 13th January 1919.

Ex. 4 (f).—Letter, Miss Deeks to MacMillan Co. of Canada, Ltd. (J. Saul).

140 Farnham Ave.,
Toronto.

Mr. SAUL,
70, Bond Street.

Dear Sir :—

After having forgotten my manuscript for some time I have been reading it over again and it seems to require so much revision that I think I have been unwarranted in asking you to read it in its present condition. Just now I am inclined to re-write it strictly along the line of " The Rise and Development of Democracy as the world's civilizing influence and the Rise and Development of Militarism as its degenerating influence " and leave woman out of it altogether as my research along that line seems to be unreliable. This would probably reduce the book to half the size or less. I would not hurry you in the least with reading it, but if it be not asking too much, when you do read it, I should be deeply obliged for your opinion in this regard or indeed in any respect, or for any suggestion that you might be willing to give. Also I am wondering if it would be possible to get a reliable collaborator to help in the work of revision.

Yours very truly,

FLORENCE DEEKS.

Jan. 13/1919.

Ex. 4 (g).—Letter, MacMillan Co. of Canada, Ltd. (J. Saul), to Miss Deeks.

Exhibits.

Ex. 4 (*g*). Letter, MacMillan Co. of Canada, Ltd. (J. Saul), to Miss Deeks, 31st January 1919.

THE MACMILLAN COMPANY OF CANADA, LTD.,
Publishers, St. Martin's House, Bond St., Toronto.

EDITORIAL DEPARTMENT.

January thirty-first, 1919.

Miss FLORENCE DEEKS,
140 Farnham Ave.,
Toronto, Ontario.

Dear Miss Deeks :—

Some time ago we received from you a letter with regard to your manuscript. I went over a portion of it at the time and I really thought that for publication purposes it should be materially condensed. I am very glad indeed that you are undertaking to cut out the womens idea and also that you have found that you have not plumbed the depths of this question. I think you will find it much more satisfactory to better your studies as you suggested in your letter.

After tomorrow I will be no longer connected with the Macmillan Company of Canada, and I am just cleaning up everything before leaving. I am very sorry that I have no time to go more fully into the consideration of the manuscript, but after you have condensed it I will be very glad, at any time, to discuss it with you. You will always find my address in the telephone book.

I am leaving the manuscript here at your disposal, and if you will inform the Macmillan Company what you wish done with it, your wishes shall be carried out.

Yours very truly,

THE MACMILLAN COMPANY OF CANADA, LIMITED,
JOHN C. SAUL,
Editor.

Exhibits.

Ex. 4 (*h*). Letter, MacMillan Co. of Canada, Ltd. (M. Liston), to Miss Deeks, 27th March 1919.

Ex. 4 (h).—Letter, MacMillan Co. of Canada, Ltd. (M. Liston), to Miss Deeks.

THE MACMILLAN COMPANY OF CANADA, LTD.,
Publishers, St. Martin's House, Bond St., Toronto.

EDITORIAL DEPARTMENT.

March twenty-seventh,
nineteen-nineteen.

Miss FLORENCE DEEKS,
140 Farnham Avenue,
Toronto.

Dear Miss Deeks :—

I have glanced through the pages of your manuscript, and wish to say quite frankly how it affects me, in reference to your idea of publication.

You have embarked upon a sea of past, present and future. Your subject stretches from the beginning until now. It is evolutionary, psychological, metaphysical, speculative. It must be treated sectionally at encyclopedic length, or you must be satisfied with just a mere skeleton index of what you want to say. An intermediate course is useless where you could never hope to do aught but float hither and thither, without definite purpose, and in a diffuse way at last, achieve nothing.

Within such limits as you propose to yourself, and as would be necessary in a book for others to read in spare time, your plan is impracticable. Buckle's History of Civilization is a modest theme compared with yours. Your speculations as to development, as to causes, as to the birth and evolution of what is called the " world " etc., " calls spirits from the vasty deep " with the celerity of a conjuror or a magician in the Arabian Nights. There are no short cuts nowadays, to understanding existence and ourselves in relation to all the springs of human action. Even one tiny section of such studies demands volumes—not of speculation and dubious suggestion, but of closely ordered, scientific treatment and strictly logical conclusion. Think of all that is opened up by what you propose—what a complex problem! One side might be given to Herbert Spencer, another to the Astronomer Royal, a third to Alfred Russell Wallace, a fourth to Sir James Fraser (Folk Lore of the Old Testament). You cannot mix up something having reference to the Nebular Hypothesis, with the Gospel of St. John (Love one another). The issues are too remote for the covers of a volume. Whether people would buy and read what you have to say, if they were not, is another matter, but also important here. So far, my view.

Now the practicable. You enjoy writing your ideas and you are enthusiastic and a thinker. You could make a bright and entertaining sketch in " Lecture " form of what you feel, and read it among friends and

Exhibits.

Ex. 4 (*h*). Letter, MacMillan Co. of Canada, Ltd. (M. Liston) to Miss Deeks, 27th March 1919—*continued.*

at literary meetings and societies. Or you could make a good "paper" as a subject for debate, and on these lines I think you could condense and remodel your present copy, bringing it within the limits of an evening "paper" and it would be appreciated. Moreover you would set others thinking. At any rate, try this *first*, and as you rewrite, refuse all those conclusions that you do not find convincing to yourself. Charlotte Bronte used to put every sentence on a separate scrap of paper—then look at it—and refuse unless satisfied that it was indispensable. We don't do things in that way now, but in the sphere of work you have marked for yourself, you must beware of the "Pastor Russell" kind of evolution—or even of that of a really great scholar in his day, Archbishop Usher, who recorded 4004 B.C. as the date of the Beginning. (I quote from memory.) One can trust better "A thousand years in Thy sight are but as yesterday."

You may think me quite wrong. I do not mind; I may be. Who knows? "Que Scais-je" (Montaigne's motto). Now set about your short, crisp lecture or pamphlet, "Love and War," and call in one morning when you've read this letter, and let me know what you intend. Very busy here till next Tuesday or Wednesday. 'Phone on Tuesday.

Yours very truly,

THE MACMILLAN COMPANY OF CANADA, LIMITED,
MONTROSE W. LISTON,
Editor.

Ex. 9.—Letter, Miss Deeks to MacMillan Co. of Canada, Ltd. (M. Liston), with the receipt of a manuscript from MacMillans.

Ex. 9. Letter, Miss Deeks to MacMillan Co. of Canada, Ltd. (M. Liston), undated with the receipt of a manuscript from MacMillans, dated 15th July 1919.

140 Farnham Ave.,
Toronto.

Dear Mr. Liston:—

I am sorry not to have this article type-written and I even ran out of writing paper—but perhaps you will be good enough to give me some further suggestion upon which I might rewrite it. I am enclosing a few verses also. I wonder if I could do anything with them.

Yours very truly,
"FLORENCE DEEKS."
July 15th, 1919.

Received Miss Deeks' MS. from the Macmillans this date.
"F. A. DEEKS."

Exhibits.

Ex. 10 (*a*). Letter, Henry S. Canby to H. G. Wells.

Ex. 10 (a).—Letter, Henry S. Canby to H. G. Wells, undated.

31, Holland Park Avenue,
London, W.11.

(Copy of letter is undated but the date would appear to be 16th July 1918. See page 202 of record.)

Dear Mr. Wells :—

I cannot but feel, as a result of our discussion at the Reform Club last night, that an admirable and highly useful result would be an article by you on (for example) "How American History should be taught" in a time of crisis, which would serve, in eighteenth-century fashion, as a prospectus of the book of which we talked, or at least could get to the light your ideas, which seem to me most valuable for America just now. Won't you do such an essay and let us publish it in "The Yale Review" for September or December, just sending advance extracts to the press all over the country so that abundant comment may be had?

We could offer you only twenty pounds for it—our honorariums never being of Saturday Evening Post magnitude—but you would do a service to mutual understanding worth infinitely more. Most of our articles by Britishers have been by men who know precious little about America. I hope you'll feel inclined.

Yours sincerely,
HENRY S. CANBY.

Ex. 10 (*b*). Letter, Sir E. R. Lankester to H. G. Wells, 2nd October 1918.

Ex. 10 (b).—Letter, Sir E. R. Lankester to H. G. Wells.

The Bath Club,
34, Dover Street, W.1.
Oct. 2nd.

My dear H. G. :—

I am bustled off my head and legs by business and friends in London where I arrived last Friday after 9 months absence. I was going today to write to Jane in response to her kind invitation—to say that I should like to come to you on Thursday the 10th (tomorrow week) to spend a few days and get polished up by you both—after my long vegetation—to which I return at the end of the month.

I like your idea of a history of Man. It should include all the present romance of mixed races and nationalities and savages and a sort of traveller's geography (picturesque).

I am without a perch at present—no house in London—nor in Bournemouth till Nov. 1st, and I find it rather a whirly-go-round in London—have to go two miles to get my letters at the only fixed address—as I move about—namely Savile Club—which is as cold as can be and devoid of nearly all food and drink—D——n! Let me have a line there to say if Thursday the 10th would be alright and what train.

Yours ever,
E. R. L.

Ex. 10 (c).—Letter, H. G. Wells to G. P. Brett (MacMillan Co. Inc., New York).

Exhibits.

Ex. 10 (c). Letter, H. G. Wells to G. P. Brett (MacMillan Co. Inc., N.Y.), 20th October 1918.

52, St. James's Court,
Buckingham Gate, S.W.1.
(About October 20, 1918.)

Dear Mr. Brett :—

Every book can't be a Britling. I know you will do all you can to keep my end up over there.

I'm very much taken up with work for the League of Nations movement here and I have been writing very little. But there is an idea I have in hand that I wish I could talk over with you. We think here that the time draws near when instead of the History of England and the History of the U.S.A. and the History of France and so on, the children all over the world ought to learn the History of Mankind and I believe that it is up to me to plan to write the first School History of Mankind.

It will have to be an illustrated book and I see it as a book of about 200,000 words and about 1,000 maps illustrations, full page or smaller. What do you think of the project? It might be produced first of all as the sort of book that is given to a boy as a prize, and then if opportunity arose, inserted into schools in a cheaper edition. I want you to think it over. Something of the sort I feel I must do, because it is one of the things in which I can show the way to well qualified but less broadly imaginative men.

Yours very sincerely,
(Sgd.) H. G. WELLS.

Ex. 10 (d).—Letter, Sir R. A. Gregory to H. G. Wells.

Ex. 10 (d). Letter, Sir R. A. Gregory to H. G. Wells, 31st October 1918.

Publishing Office :
Macmillan & Co., Ltd.
St. Martin's Street, London, W.C.2.
October 31, 1918.

H. G. WELLS, Esq.,
52, St. James Court,
Buckingham Gate, S.W.1.

My dear H. G. :—

I hope you will always write to me for any information I am likely to be able to provide.

The instructive meterological diagram you saw at the recent Exhibition at King's College was prepared by the Meteorological Office. It has been reproduced as one of the Meteorological Charts issued by the Office and you will be able to obtain a copy of the Chart by applying to the Secretary, Meteorological Office, South Kensington, S.W.7. What you should ask for is the Chart showing temperatures and other particulars relating to the exploration of the atmosphere at different heights. I have a lantern slide of the diagram.

Exhibits.

Ex. 10 (*d*). Letter, Sir R. A. Gregory to H. G. Wells, 31st October 1918 —*continued.*

As to the second point, you will find in my " Vault of Heaven " several comparative particulars relating to the sun and Planets. As you may not have the book, and I am sorry not to have a copy here myself, it may be sufficient to say that the Sun's diameter—866,000 miles—is 109 times the diameter—7,900 miles—of the earth, so that if the earth is represented as a ball one inch in diameter, the Sun would be represented by a globe 109 inches, or about 9 feet in diameter. On the same scale of one inch to the diameter of the earth, the distance between the two balls would be about 330 yards. If you take the earth as a ball one foot in diameter, the Sun has, of course, a diameter of 109 feet, and the distance between the two would be about 3,900 yards. On this scale the nearest star would be about 500,000 miles away. A one foot Globe at Buckingham Palace would represent the earth if the Dome of St. Paul's represents the size and relative distance of the sun. The astronomical unit usually employed is the distance of the earth from the sun, 193,000,000 miles. If this is taken as one inch, then 30 inches bring us to the Orbit of Neptune and the nearest star is at a distance of about four miles.

I am sending you a copy of my edition of Huxley's " Physiography " which you may find of use in connection with the book you have in hand.

Ever yours,

R. A. GREGORY.

Ex. 10 (*e*). Letter, G. P. Brett (MacMillan Co. Inc., of New York) to H. G. Wells, 8th November 1918.

Ex. 10 (e).—Letter, G. P. Brett (MacMillan Co. Inc., New York) to H. G. Wells.

The MacMillan Company,
Publishers.

64–66, Fifth Ave.,
New York,
November 8, 1918.

Dear Mr. Wells :—

I have just received your letter in regard to the book which you think of writing to be called The History of Mankind, or some such title.

In the meantime you will have received my letter telling you that JOAN AND PETER was doing better and it now looks as if the book might go to a third edition very soon, about one-half of the second edition just ready being already sold.

There is no doubt in my mind that your plan for the book on the History of Mankind is a very feasible one, and I should think that the book would interest young and old readers alike, although at first it might be difficult to have the books studied in schools as part of the regular course, yet I should not be afraid to venture that in the long run the book itself, or some modification of it, might find use in this way. At any rate I make no doubt the book would be recommended for school reading and this might itself result in a considerable sale.

Exhibits.

Ex. 10 (*e*). Letter, G. P. Brett (MacMillan Co. Inc., of New York) to H. G. Wells, 8th November 1918. —*continued.*

Your letter tells me nothing of the way in which you intend to write the book and of course it might be prepared from the standpoint of social history of mankind, the material history of mankind or the purely natural development of mankind from its physical standpoint.

Naturally one would suppose that you would be more likely to trace the history of mankind from the standpoint of its social development but I should much like to have from you, if you have time for it, a little outline of just what your book is to be so that one might perhaps consult one or more of the well-known educational authorities on this side and see as to whether such a book could perchance be actually used in the schools themselves.

In any case, however, whether this be so or not, I think that the book should be written, and I earnestly hope that you will undertake it, for a valuable and constantly increasing public must be found, it seems to me, for a work of this character.

Hoping that you will give me, by and by, a few more details about the book, and awaiting these anxiously,

I am,

Yours very truly,

GEORGE P. BRETT.

H. G. Wells, Esq.

Ex. 10 (f).—Letter, Sir Frank Newnes to H. G. Wells.

Ex. 10 (*f*). Letter, Sir Frank Newnes to H. G. Wells, 13th November 1918.

Officers' Mess,
Battn. Bedfordshire Regt.,
Portland House,
Tavistock Road,
Croydon,

Dear Mr. Wells :— 13.11.18.

Reference to your letter to me about your proposed History of Mankind and our conversation at the Club, I have since laid the scheme before my colleagues. From what I have been able to tell them of it, they are interested and like the idea very much.

I should like to see you again and go into more detail and endeavour to put the whole thing in a more concrete form.

I am trying to get leave for Friday and anticipate being successful and could you lunch with me that day at the Reform Club say at 1.15 (or as we now write in the army 1315) and have a talk.

If at the last I am detained I suppose I can 'phone you at St. James' Court.

Yrs. sincerely,

FRANK NEWNES,
Capt.

Exhibits.

Ex. 20. Letter, H. G. Wells to Sir Frederick MacMillan (MacMillan & Co., Ltd., London), 19th November 1918.

Ex. 20.—Letter, H. G. Wells to Sir Frederick MacMillan (MacMillan & Co., Limited, London).

52, St. James's Court,
Buckingham Gate, S.W.1.
Nov. 19, 18.

Dear Sir Frederick :—

I'd like you to know of a project I have in hand. I believe it is possible to make a universal History on lines that would be practicable for Upper Form teaching and I am going to write (with proper assistance) a trial *School History of Mankind.* I see it as a book of 200,000 to 300,000 words, with pretty copious illustrations. It would be published first as a prize book and for reading, in a fairly attractive form but with a view (if presently the idea of broadening the teaching of history through altered examination syllabuses and the like) to adaptation to class use.

As you are perhaps the biggest school book publishers I'd like to have you thinking of the project.

Yours truly,
" H. G. WELLS."

S.C.O. *Deeks* vs. *Wells.*

This is the exhibit marked " F.M. 1 " referred to in the evidence of Sir Frederick MacMillan taken before me on Commission this 19th day of June, 1929.

" F. A. C. REDDEN,"
Commissioner.

Ex. 21. Letter, Sir Frederick MacMillan (MacMillan & Co., Ltd., London) to H. G. Wells, 22nd November 1918.

Ex. 21.—Letter, Sir Frederick MacMillan (MacMillan & Co., Ltd., London) to H. G. Wells.

Copy.

Nov. 22, 1918.

Dear Mr. Wells :—

I am much obliged to you for letting me know of your project for " A School History of Mankind " and for the implication contained in your letter that you would consider an offer from us to act as your publishers. I fear however that this is not an occasion on which we can be of any assistance to you.

I am,
Yours very truly,
(Signed) FREDERICK MACMILLAN.

H. G. Wells, Esq.

S.C.O. *Deeks* vs. *Wells.*

This is the exhibit marked " F.M. 2 " referred to in the evidence of Sir F. MacMillan taken before me on Commission this 19th day of June, 1929.

" F. A. C. REDDEN,"
Commissioner.

Ex. 10 (g).—Letter, H. G. Wells to G. P. Brett (MacMillan Co. Inc., New York).

Exhibits.

Ex. 10 (*g*). Letter, H. G. Wells to G. P. Brett (MacMillan Co. Inc., New York), 30th November 1918.

Easton Glebe,
Dunmow.
(About November 30, 1918.)

Private

Dear Mr. Brett :—

This *History of Life and Mankind* is going to be more of a book to produce than a novel because of the illustrations. I see it first of all as a sort of prize book with good margins and so on, and then as a college or school book. I have been looking at two books published by Ginn— Breasteds *Ancient Times* and Robinson's *Medieval and Modern Times*. You ought to look at these. They cover the ground but from my point of view they are badly done. They are crowded and the illustrations in particular are crowded and neither of the men can tell a story clearly and strongly. What I shall do will have much more power in it than these books, more unity of presentation. What I shall want for illustrations will be twenty or thirty very clear outline maps and some hundreds of illustrations drawn in line. If you look at Pirsson's & Schucherts' (I think it is) Geology Vol. II you will see a number of figures of animals in clear outline that strike me as being the sort of thing my book will need. We ought to have some one to handle the whole of the illustration business, who will be artist enough and intelligent enough to be a sort of collaborator. As I go on I note the illustrations I want in this fashion " Lobbock p. 74, fig. 9 " and so on. What will be wanted will be for someone to look up all these pictures at the sources, redraw if necessary, find equivalents if necessary, to produce a proper unity of effect. From what I can see of the books I am consulting, this person is more likely to be found on your side than here. Which opens another field of enquiry. If the illustrating is done on the American side, then can we avoid it being done—and frankly I don't think it can be done as well, here? Can we illustrate for America either by sending cuts over here or by printing in America or bringing stereo plates over?

That is one point we ought to deal with soon. Another is the question of editing. I am working very carefully and verifying by reference and so on, but I feel we ought to have scholarly and scientific prestige behind the enterprise. I have thought that we might fee three or four distinguished people to act as " Editors " and read the MS. or galley proofs. For example there are my friends Sir Ray Lankaster (who has already as a matter of fact been reading the " primitive man " part) and Professor Gilbert Murray the translation of Euripides and so forth. I think both ought to come in as editors for a hundred guineas each let us say. Add to this some modern historian and we shall anticipate all objections to the book as being another by a " novelist out of his depth." You see my drift. I think of first a fine book for presents, reading, prizes, etc. and then the same book in a smaller form at and perhaps with questions at the end of groups of chapters.

Exhibits.

Ex. 10 (*g*). Letter, H. G. Wells to G. P. Brett (MacMillan Co. Inc., New York), 30th November 1918 —*continued.*

If the enterprise really comes off as I see it, the book will go on selling for years—with perhaps an occasional revision.

Finally about terms I see no reason why the book should not fall under the terms of our novel agreement. You will have heavy expenses in the illustrations and editorial fees but I think you will have something very permanent when the job is done.

I've never been so interested by any book as I have by this one. For the time I have put aside a novel I have in hand about a Schoolmaster, who like Job holds his faith and bitter affliction. But the history is going to be a big undertaking and I shall probably finish my schoolmaster novel next spring in time for the autumn season. The history must not be hurried. It goes on well but it seems not only thought and planning but masses of reading.

Yours very truly,

(Sgd.) H. G. WELLS.

Ex. 10 (*h*). Letter, H. G. Wells to G. P. Brett (MacMillan Co. Inc., New York), December, 1918.

Ex. 10 (h).—Letter, H. G. Wells to G. P. Brett (MacMillan Co. Inc., New York).

52, St. James's Court,
Buckingham Gate, S.W.1.
December, 1918.

Dear Mr. Brett :—

I had a letter about my plans for the spring from your firm some week or so ago. I've been thinking that over. The unusual History is going to be a long business . . . I shall call it either *The Outline of History* or *The Shape of History*. But of that more later. Meanwhile I think I shall push the work on my modern Book of Job novel, which I shall call The Undying Flame. That I think I can have ready for publication in May or June. I have been lucky in what I have done. I like it a lot and I fear that there is quite 40,000 . . . either finished or in shape. It won't be one of the big books in size. It will be about 70,000 words, and it will be a sort of cousin of *God the Invisible King* and the *Soul of a Bishop*. Job is a school master.

Yours,

(Signed) H. G. WELLS.

Ex. 10 (i).—Letter, G. P. Brett (MacMillan Co. Inc., New York) to H. G. Wells, and suggested Contract.

Exhibits.

Ex. 10 (*i*). Letter, G. P. Brett (MacMillan Co. Inc., New York) to H. G. Wells, 20th December 1918, and suggested Contract.

The MacMillan Company,
Publishers.

64-66 Fifth Avenue,
New York,
December 20/1918.

Dear Mr. Wells :—

You will be glad to hear that we have at last succeeded in overcoming the opposition to, or the indifference of the public to Joan and Peter so that the book is now selling well, some 43,000 copies having been distributed to date with an active demand for the volume, so that the next edition, which we are publishing this week, will be almost exhausted on its arrival from the binderies.

It is good news to learn from your letter just received that there is to be in all probability a novel for autumn publication in 1919 and I shall be very glad if you will kindly send me particulars as to this as soon as the project finally takes shape.

I am enclosing to you herewith a suggested contract for the publication of the *History of Mankind* because while we are very glad to accept your suggestion that the book should be published under the regular agreement between us there are certain special matters in connection with the publication of this book which should be dealt with by separate agreement.

For instance, there is now no assured place for a large sale for this book in this country except to the general reading public there being no school prize period of custom in this country such obtains in Great Britain, and consequently no demand for the book from this source. Again while there is a demand for a History of Mankind as a general culture study in a secondary school, this study is so closely defined by the curricula now existing that it would be impossible, under present conditions, to adapt such a book for actual study in the schools themselves. It will therefore be the work of the publisher of this book to create a place for it in the schools where it can find its largest and most prominent sale, and this requires not only a good deal of preliminary work but a great deal of hard work on the part of travelling agents when the book is actually published.

Moreover, as you point out the question of illustrations for such a volume is very important one and while I do not think that it will be possible, on account of space limits if for no other reason, to include so many illustrations as you at first planned for the book (one thousand according to your first letter on the Subject) there is no doubt that the book should be well illustrated and that the selection of the illustrations will be a matter involving the publisher in considerable expense, not only for the selection of the illustrations but for the drawing and reproduction of them also.

Exhibits.

Ex. 10 (*i*). Letter G. P. Brett (MacMillan Co. Inc., New York) to H. G. Wells, 20th December 1918, and suggested Contract—*continued.*

There is, again, the matter of the editorial fees, an expenditure which, while it can be ill afforded by the publisher, especially under present high manufacturing costs which have come to stay with us for a considerable time, these editorial fees being, in my opinion, not only a necessary expenditure but also one likely to result in a book being less subject to attack and also being likely to result in the book being more permanent in its worth and in the continued possibilities of its sale.

I am taking it for granted that if we are, as is contemplated in this contract, to undertake not only the expense of illustrations but also the expense of the editorial work that we shall have the market for the book throughout the world and that we shall have the right to make an arrangement for its separate publication in England with whichever English publisher will make the best bargain with us for the publication of the work, we of course to assign the English royalties to you but to be free to deal with the foreign publishers for the sale to them of the illustrations and being free also to make such arrangements in regard to the division of the editorial fees and publishing expenses of the volume as is fair and equitable.

The royalty provided in the agreement for the school sale of the book is the one which we are making, as far as terms are concerned, with the authors of the most popular school books in this country. Indeed the royalty proposed in this agreement is far in excess of the royalty allowed on the sale of such books, the price of which, of course, has to be very low. Our usual royalty to authors of school books is 6 per cent. instead of the 10 per cent. as proposed in the agreement.

I hope that I have in this agreement fully covered the various matters which such an agreement must take cognizance of and if so I shall be glad if, the agreement being satisfactory, you would very kindly sign and return it to me and we shall then be ready to begin the work of taking up the preparations of the illustrations for the volume as soon as we have your notes for these.

Yours very truly,

GEORGE P. BRETT.

H. G. Wells, Esq.

MEMORANDUM OF AGREEMENT made this day of 19 , between H. G. Wells, Esq., of Easton Glebe, Dunmow, Essex, England, hereinafter termed the author, of the one part and THE MACMILLAN COMPANY of new York, hereinafter called the Publishers, of the other part.

WHEREBY it is mutually agreed between the parties hereto for themselves their respective executors, administrators, assigns or successors as follows :—

1. The Publishers shall at their own risk and expense produce and publish the work entitled, HISTORY OF MANKIND, to contain approximately Two Hundred and Fifty Thousand (250,000) words and say not over Two hundred and fifty (250) illustrations, including maps.

Exhibits.

Ex. 10 (*i*). Letter G. P. Brett (MacMillan Co. Inc., New York) to H. G. Wells, 20th December 1918, and suggested Contract—*continued.*

2. The Author guarantees to the Publishers that the said work is in no way whatever a violation of any existing copyright and that it contains nothing of a libelous or scandalous character and that he will indemnify the Publishers from all suits, claims, proceedings, damages and costs which may be made, taken or incurred by or against them on the ground that the work is an infringement of copyright or contains anything libelous or scandalous.

3. The Publishers shall, during the legal term of copyright, have the exclusive right of producing and publishing the work in book form in the English and throughout the world. The Publishers shall pay to the Author any royalties received by them from publication of the work in foreign countries outside of Canada and any advance payments on account of royalty which may be arranged by them with foreign publishers. The copyright and all unspecified rights shall belong to the Author.

4. The Author accepts, and the Publishers shall pay to the Author a royalty of twenty per cent. (20%) of the advertised retail price on all copies of the work sold during the term of legal copyright, excepting as provided in clause 6.

5. The Publishers shall pay to the Author, on the publication of the said work, the sum of Fifteen Hundred Pounds (£1500) on account of the royalty arranged to be paid in clauses 4 and 5 of this memorandum of agreement.

6. The Publishers shall be at liberty to issue an edition or editions of the said work for school purposes or for teacher's reading circles or for other educational purposes and shall pay to the Author on such edition or editions a royalty of ten per cent. (10%) of the price received by the Publishers in lieu of the royalty provided for in Clause 4.

7. The Author shall be at liberty to terminate this agreement at any time after ten (10) years have elapsed from the publication of the work in book form, but if this agreement is so terminated before the royalties earned have equalled the amount paid in advance for them the Author shall be obliged to purchase the plates and remaining stock of the work covered by this agreement at the cost of manufacture. But if the advanced royalties are already earned the Author may at his option buy those plates and stock or decide that they shall be destroyed.

8. The Publishers shall not transfer any of the rights conferred upon them by this agreement to anyone, except as provided in Clause 3, and they shall keep the stock and continue to publish during the validity of this agreement the work covered by this agreement. If the work remains out of print for any longer period than six (6) months all rights whatsoever shall revert to the Author.

9. Accounts are to be made up annually to April 30th, delivered in July and settled in cash in November.

10. The Publishers shall prepare, and be responsible for the payment of, the illustrations for said work not to exceed the number provided for in Clause 1 under advice and notes from the Author as to the illustrations required for said work.

Exhibits.

Ex. 10 (*i*) —*continued.*

11. The Publishers agree to pay for editorial assistance in the preparation of the manuscript of said work, which shall include expert advice and expert reading of the manuscript and proofs by various authorities, as arranged by the Author, but the total expenditure by the Author for such purposes, which shall be repaid by the Publishers, shall not exceed the sum of Two Hundred and Fifty Pounds (£250) in all.

Ex. 10 (*j*). Letter, G. P. Brett (MacMillan Co. Inc., N.Y.) to H. G. Wells, 7th January 1919.

Ex. 10 (j).—Letter, G. P. Brett (MacMillan Co. Inc., New York) to H. G. Wells.

The Macmillan Company,
Publishers.

64-66 Fifth Avenue,
New York,
January 7/1919.

Dear Mr. Wells :—

I am very glad to learn from your letter just received that there is not to be too great haste made in the preparation of the History of Mankind as that book seems to me to be a very considerable problem both from the standpoint of the Author and from the standpoint of the publisher because of the difficulties in many directions in the way of a very large sale. New year will be quite as good a time for the publication of this book, as this year would be, and perhaps better, so that it is good news to know that you are going on with a novel in the meantime and that the History will probably not be done so soon as you at first expected.

I am very glad to hear of the title of the new novel and to know that it can be ready for publication in May or June. Pray make sure, in arranging the date of its issue with your English publishers, that we have finally corrected proofs from which to print in ample time for simultaneous publication on this side.

I am enclosing you a contract for the Sir Harry Johnston novel as requested in your letter although I cannot feel at all sure as to how well this book will sell in this country. That it will have a preface from your own hand is, of course, a help but Sir Harry Johnston is comparatively little known here and as for his work in Africa, America is still, I fear, far too insular to take the interest in it which it should do.

As in the case of your own stories, pray make it clear to Sir Harry Johnston in arranging for the publication of this book in his country that we should have early proof sufficiently in advance of English publication, to ensure our publishing simultaneously with the book's appearance in England.

You will see that the contract, which I enclose in duplicate, is not quite on terms suggested in your letter, your terms being those given only to authors whose books have an extremely large sale on first publication, and indeed, the 20 per cent. which we are now paying you is not, under present manufacturing costs a very profitable royalty from the standpoint of financial return.

The terms of the Johnston contract which I am agreeing to are, as a matter of fact, much better than any terms he could get himself or through

Exhibits.

Ex. 10 (*j*). Letter, G. P. Brett (MacMillan Co. Inc., N.Y.) to H. G. Wells, 7th January 1919—*continued.*

an agent, as I understand the matter, and they are given in this instance only because of your own interest in the matter.

If Sir Harry Johnston will sign the duplicate contract and return it to us and arrange for the sending to us of finally corrected proofs say two months in advance of the date of the appearance of the English edition, we shall be ready to go ahead and do our very best for his book.

With thanks for your letter, I am,

Yours very truly,

GEORGE P. BRETT.

H. G. Wells, Esq.

Ex. 10 (k).—Letter, H. G. Wells to G. P. Brett (MacMillan Co. Inc., New York).

Ex. 10 (*k*). Letter, H. G. Wells to G. P. Brett (MacMillan Co. Inc., N.Y.), about 10th January 1919.

52, St. James's Court,
Buckingham Gate, S.W.1.

Dear Mr. Brett :—

I have your letter of December 20th and I am thinking over the matter carefully. The draft agreement you sent will need some revision, but I do not see why we should not be able to work that revision out successfully. One difficulty arises out of the fact that over here such a work as The Outline of History (that will be the title) is often first published in copiously illustrated parts at -/9 or 1/- each. I have already discussed that with Newnes here. What he would want to do would be to take over all the illustrations as prepared for the standard book edition and add color maps and plates and extra illustrations so as to make about 20 or 24 parts. These will afterwards be bound up at about £1 in a rather gaudy volume.

Then independently of that would come the standard reader's edition. As I see that now with the idea of the Outline and a sort of classical severity dominating the whole thing I do not think that the maps and illustrations need to run to so much as 250. I see it as a dignified, clear, fine volume, rather longer than a novel and selling at 8/6 or 10/- here.

Your proposals leave no room for Newnes.

That is my first part. The next is that when I suggested an advance of $1500 I was thinking only of the American sales. I am now inclined to think that it would be better to leave me to secure and pay the editors any sum I like not less than £300 and for me to take an inclusive advance.

But all that can be worked out as we go on. I hope to be able to produce " copy " of the opening ten or twelve or more chapters (there will be about 50 or 60) soon, so that you can see more clearly what I am driving at.

Yours

(Signed) H. G. WELLS.

N.B.—The Undying Fire is now approximately completed. It will be about 40,000 words in length or a little more. It will be ready for the spring. It is a modernized Book of Job, a cousin of God the Invisible King and the Soul of a Bishop.

Exhibits. filed with Evidence on Commission in England.

EXHIBITS FILED WITH EVIDENCE ON COMMISSION IN ENGLAND.

(For Letters 1-4 see Exhibits 10 (a), (b), (d), (f), and for Letters 5 and 6 see Exhibits 20 and 21.)

No. 7.—Sir Frank Newnes to H. G. Wells.

No. 7. Letter, Sir Frank Newnes to H. G. Wells, 5th February 1919.

Officers Mess,
Battn. Bedfordshire Regt.,
Portland House,
Tavistock Road, Croydon.
5. 2. 19.

My Dear Wells :—

With regard to serialization of your Outline of History there will be no difficulty at all in printing maps etc. such as appear in daily papers—in fact I think such would improve the book and attractiveness of the pages.

As to the necessity of any alteration to adopt it for serialization I can hardly form an opinion upon this as I have not yet seen any of the MS. I should not, however, think that much adaptation would be required. The length for serial purposes we thought should be about 200,000 words.

When I last saw you, you informed me you would soon have about 50,000 words ready for us to see; I shall look forward to reading it with the keenest interest.

As to terms, the figures we thought of were £600 for serial rights and £1000 on account of 10 per cent. royalty on the published price for publication parts the price of each part and the completed volume being dependent upon the cost of production at the time of publication.

I hope you will be in town soon and we can meet and go further into these matters.

Before me,
Yours sincerely,
FRANK NEWNES.

No. 8.—Letter, W. Grierson (G. Newnes, Ltd.) to H. G. Wells.

No. 8. Letter, W. Grierson (G. Newnes, Ltd.) to H. G. Wells, 11th February 1919.

February 11th, 1919.

H. G. WELLS, Esqre,
St. James' Court.

Dear Mr. Wells :—

Sir Frank Newnes has given me your last letter to him with regard to the "History of Mankind." I shall draw up an agreement on the usual lines; meantime, I understand the arrangement is that we run your work serially, and that later we bring it out as a publication in parts. The terms for the serial rights being £1000 and for the Parts £600 advance on a 10 per cent. Royalty. I do not think under existing conditions the Parts could be

No. 8. Letter, W. Grierson (G. Newnes, Ltd.) to H. G. Wells, 11th February 1919—*continued.*

at least, less than one shilling. I understand also we can bind up unsold Parts for sale in volume form. I think Sir Frank said that your MS. would run to about 250,000 words.

I suggest the payment for the serial rights be made £500 when the first half is completed and £500 when the balance is delivered, if that is agreeable to you, and that advance Royalty be made on publication of first part.

If we could commence the serial within a short time, we could probably commence publishing in Part in the Autumn, that is to say if you are ready by that time. Perhaps you would kindly let me know if the above is agreeable to you.

Mr. Wilfred Whitten (John O'London) is the Editor of the new paper Sir Frank spoke to you about. He would like to know some particulars of the work and when he could commence. We are anxious to get it into the first number. Whitten would very much like to talk the matter over with you for a few minutes and could do so tomorrow if you are free at any time. If you would be good enough to 'phone me making an appointment, if you can, I shall arrange with Whitten. We are rather anxious as I have said to get this in the first number which we hope to get out within the next few weeks.

Yours faithfully,

General Manager.

No. 9.—Letter, H. G. Wells to Sir Frank Newnes.

No. 9. Letter, H. G. Wells to Sir Frank Newnes, undated.

52 St. James Court,
Buckingham Gate, S.W.1.

Dear Sir Frank :—

I'm generally willing in the matter of the History of Mankind, but I can't have a publication this autumn. If spring won't do, then next autumn must. The book must be done well and it will have to be rushed for the dates you name and I can't have it rushed.

£600 won't do at all as an advance.

There is no mention of the proposed expenditure upon advertisement.

I don't think John O'London's weekly will be a dignified paper for the first send off. I said when we discussed this before that I thought £1000 would be the proper fee for such a serialization; in which case, I named £600 as the advance on the part publication. Your letter varies from these suggestions and not in my favour.

Still there is no hurry,

Yours,

H. G. WELLS.

Exhibits filed with Evidence on Commission in England.

No. 10. Letter, Grierson (George Newnes, Ltd.) to H. G. Wells, 13th February 1919.

No. 10.—Letter, Grierson (George Newnes, Ltd.) to H. G. Wells.

February 13th, 1919.

H. G. WELLS, Esqre.,
52 St. James' Court, S.W.

Dear Mr. Wells :—

Many thanks for the note Mrs. Wells kindly sent me. I was under a misapprehension. Somehow I had gathered from Sir Frank Newnes that a large part of the book was ready and it was because of that I thought it would be good if we could have it to start off in the proposed new paper.

Would you care to write us for the first number a short article, say, 2000 words expressing something of your ideas on the subject of the work you are writing. It would whet the public appetite and at the same time give us your name as an attraction. I know Whitten would like to have something from you.

Yours faithfully,

General Manager.

No. 11. Letter, H. G. Wells to Sir Frank Newnes, 7th May 1919.

No. 11.—Letter, H. G. Wells to Sir Frank Newnes.

Easton Glebe,
Dunmow,
Wednesday, May 7.

Dear Sir Frank :

You will get in four or five days time duly registered and consigned to you a special copy of the Outline of History of which I want you to take the utmost care. In it, to help you to see what is contemplated, I have stuck four or five of the rough first sketches Horrabin made for the illustrations. I shall be very glad if you can let me have this copy back in three weeks time as I want one for Gilbert Murray to read. Of course this is as yet merely a draft. It has not been looked over by anyone but Ray Lankester and possibly it has a certain amount of matter that will have to be corrected when the historians begin to advise. My idea is that it should be published in chunks of 15,000 to 20,000 words a part in a fairly dignified get up and that afterwards you should publish the parts bound up in one or two volumes at say a guinea (or a guinea and a half) leaving me free to publish at a low price in a single volume.

I think it will run to about 300,000 words and, as you will see, it will stand any amount of extra illustration.

Yours,
H. G. WELLS.

No. 12.—Letter, Sir Frank Newnes to H. G. Wells.

Exhibits filed with Evidence on Commission in England.

No. 12. Letter, Sir Frank Newnes to H. G. Wells, 9th May 1919.

May 9th, 1919.

H. G. WELLS, Esqre.,
Easton Glebe, Dunmow.

Dear Wells :—

Many thanks for your letter informing me that a special copy of your Outline of History will be sent to me in the course of a few days. We shall of course take the greatest possible care of it and I shall look forward with the greatest interest to seeing it and then going into further details with you about it.

Yours faithfully,

Chairman.

No. 13.—Letter, Sir Frank Newnes to H. G. Wells.

No. 13. Letter, Sir Frank Newnes to H. G. Wells, 12th May 1919.

May 12th, 1919.

H. G. WELLS, Esqre.,
Easton Glebe, Dunmow.

Dear Wells :—

Many thanks for your MS. duly to hand. I have of course not had time to read all of it but I have read it sufficiently to be in a position to put certain suggestions before you with regard to it. Could you meet Mr. Grierson and me at lunch one day and have a talk about the whole thing? We could probably settle more in an hour's conversation than by correspondence. Almost any day would suit us that is convenient to you.

Yours sincerely,

Chairman.

No. 14.—Letter, H. G. Wells to Sir Frank Newnes, undated.

No. 14. Letter, H. G. Wells to Sir Frank Newnes, undated.

Easton Glebe,
Dunmow.

Dear Sir Frank,

I think the dummy is very hopeful for a start and there is one illustration in it that we must certainly have. The title I want is :—

The Outline of History
Being a short History of Life of Mankind,

and as I am paying out three hundred golden guineas (really they are paper guineas) for the use of three names I think they ought to have a show too. " With the advice and editorial help of " (Ray Lankester, Gilbert Murray and Ernest Barker) on the inner or outer cover. I don't know whether I

Exhibits filed with Evidence on Commission in England.

No. 14. Letter, H. G. Wells to Sir Frank Newnes, undated—*continued.*

quite like the coloured picture outside. Is it to be a different picture each time? Would it not be better to get a complete cover design and keep to it all the time?

I'm very much in your hands about the figures you give. I think you will find that it is possible to subscribe the parts very extensively among schoolmasters, country doctors, and people of this line of education. My name must count for something. Joan & Peter did me 34,000 at 9/–. I should imagine if you make some concessions in price to subscribers in advance for the 20 parts—say 18/– or 17/6, you could begin on a subscription of 25,000. You could do this because among other things you could get the money in, half a year earlier, if it is subscribed.

But anyhow I'll agree to £1,000 for the first 25,000 of each part and then royalty of 10 per cent. on the sales of each part above 25,000 with a guarantee of another £1,000. That is, if after the whole thing is published the royalties after 25,000 do not amount to £1,000, you will make up the deficit. Could you consider making up accounts monthly on each part?

You say nothing of Horrabin. He will supply nearly 200 small illustrations. I think the £100 I mentioned and 1 per cent. for him is very reasonable and I don't see that he need be affected by the above modification of our agreement. All drawings to be returned to him and the copyright of them to remain his.

I shall be about town until the 21st of August and I've later to go into " get-up " and extra illustration with you. When can we meet?

The two volumes at 15/– seems to me satisfactory. I'll agree to 10 per cent. on 15/– so far as the binding up of unsold parts goes. I hope it is perfectly clear that I retain all book rights to publish at any price with Horrabin's illustrations and that you are restrained from any selling below the price of 30/– for the volumes.

Yours,

H. G. WELLS.

P.S.—Tewson and Mair have both been along since I wrote this about the agency in America. Tewson has been much delayed by the Mersey strike. Perhaps I damned him (in my last letter) a little too soon. Anyhow I think they'd better go on with the American side for a bit. If however you have a regular correspondent in America (not an agent to go into the open market) then I think you might discuss the probability of a salvage publication in America to save copyright in the event of Tewson failing.

He is coming to you to discuss illustrations.

Exhibits filed with Evidence on Commission in England.

No. 15.—Letter, Professor Gilbert Murray to H. G. Wells.

No. 15. Letter, Prof. Gilbert Murray to H. G. Wells, 30th July 1919.

Yatscombe,
Boar's Hill,
Oxford.
July 30th, 1919.

My dear Wells :—

The great bale only met me the day before yesterday, and I am going through it with immense interest. I think it is an extraordinary feat to have written it, and indeed to have got hold of the whole of human history as a unity in the way you have. I have just finished the first volume, and find it fascinating. I have got a few notes here and there, which I will send in due course, but of course most if it is out of my range. I mean, I am not in a condition to criticise. I suppose you have read Myres' little Dawn of History? There is also Chadwick's Herioc Age; but that is rather a specialist book, and I think I can give you the few sentences necessary for bringing it in.

I feel pretty sure that whatever happens it ought to be a good deal revised in later editions. The first throw-off must be in the nature of an experiment, but certainly it is a magnificent experiment to make.

Yours very sincerely,
GILBERT MURRAY.

I enclose a first sheaf of notes on vol. 1. I think you will be able to spot the reference.

No. 16.—Letter, Sir R. A. Gregory to H. G. Wells.

No. 16. Letter, Sir R. A. Gregory to H. G. Wells, 8th August 1919.

17, Grosvenor Road,
Westminster, S.W.1.
8 August 1919.

My dear H. G. :—

I have read with much interest the chapters of your Outline of History returned herewith. They contain an immense amount of material set forth as clearly as it is possible to do and with touches which only a master of literary art can give. The work will be a serious contribution to semi-popular literature, and when it is completed it will be unique. No one else could write such a volume, and everyone interested in science should be glad to assist you in any way in their power.

I have written a number of notes upon the left-hand pages of the typescript, but I am not competent to state whether all the descriptions are in touch with the most authoritative views, though I believe they are. I strongly advise you, however, to get the book by Wright on the Quaternary

Exhibits filed with Evidence on Commission in England.

No. 16. Letter, Sir R. A. Gregory to H. G. Wells, 8th August 1919—*continued.*

Ice Age to which I refer in the chapter on glacial theories. You would be perfectly safe in following Wright in all that relates to this period; and it would be a kind of set-off against the frequent use of American works as regards points of view.

Do you know Smith Woodward, of the Natural History Museum? If so, I suggest you should ask him to read the proofs of the first eleven chapters. I believe he would consider it an honour to do so; and he is really saturated with knowledge relating to the subjects of these chapters.

I hope that the notes I have made will meet with your approval.

With best regards,
Ever yours,

R. A. GREGORY.

No. 17. Letter, Newnes to H. G. Wells, 14th August 1919.

No. 17.—Letter, Sir Frank Newnes to H. G. Wells.

14th August, 1919.

H. G. WELLS,
Easton Glebe,
Dunmow, Essex.

Dear Mr. Wells :—

The arrangements come to between us with regard to the serial publication of " The Outline of History " are as follows :—

1. The work will run to about 300,000 words. We shall publish it in fortnightly parts at the price of 1/- each.

2. We have the right to sell complete sets of the parts bound in two volumes at the price of 15/- each.

3. The history is to be illustrated with approximately 150 maps and drawings to be supplied by you and also certain other illustrations to be supplied at our expense.

4. We are to pay you the sum of £1,000 (One thousand pounds) advance on a Royalty of 10%. This advance of £1,000 to cover all sales up to 25,000 of each part. A further Royalty of 10% to commence after the sale of the first 25,000 of each part. We guarantee you a minimum Royalty on sales over 25,000 of each part an additional £1,000 (one thousand pounds) that is to say, the total guaranteed Royalty is £2,000.

5. We are to pay a Royalty of 10% on the volumes to be published at 15/- each so far as the binding up of old parts goes. If additional numbers have to be printed for the purpose of volumes, the question of Royalty on volumes to be further discussed between us, but on the understanding that the Royalty will not be less than 10%.

6. We are to pay Mr. Horrabin for the illustrations a Royalty of 1% on sales with an advance of £100 (one hundred pounds) on account.

Exhibits filed with Evidence on Commission in England.

7. Your advance Royalty of £1,000 to be paid on receipt of the complete manuscript. The further guaranteed Royalty of £1,000 will be paid at the rate of £50 as each part is published.

8. The rights are for publication in Great Britain, the Colonies, with an entrance into Canada.

No. 17. Letter, Newnes to H. G. Wells, 14th August 1919—*continued.*

9. You retain all Book Rights (other than the bound part volumes) to publish at any price (with Horrabin's illustrations) but it is understood that any new publication in book form will not be brought out before September, 1920.

10. There is to be no remaindering without your consent.

11. We are to commence publication if possible by the end of October.

12. We are to spend a minimum of £2,000 on advertising the publication.

13. The publication of the parts is contingent on American Copyright being adequately secured. Failing the arrangement by you of a serial or part publication securing this we will take the steps necessary to preserve an ad interim copyright in America for you. Should you wish to have this ad interim copyright extended to the full term we shall be prepared to carry out the necessary regulations to do this, if you desire us to do so, we charging to your account the cost thereof.

If the above correctly embodies the arrangements we shall be glad to have a formal confirmation from you.

Yours faithfully,

Chairman.

No. 18.—Letter, Mrs. H. G. Wells to W. Grierson (G. Newnes, Ltd.).

No. 18. Letter, Mrs. H. G. Wells to W. Grierson (G. Newnes, Ltd.), 16th August 1919.

Easton Glebe,
Dunmow,
August 16th, 1919.

Dear Mr. Grierson :—

I am sending with this the first five chapters of The Outline of History so that the printer may make a start at once in setting it up. More shall follow on Monday and further portions as I get it ready.

Yours very faithfully,

CATHERINE WELLS.

It is particularly important to us that this original copy should be sent back to us with the proof, as I have nothing else to check the correctness of the setting. So I should be very much obliged if you could arrange for it to be returned.

Exhibits filed with Evidence on Commission in England.

No. 19. Letter, H. G. Wells to George Newnes, Ltd., undated.

No. 19.—Letter, H. G. Wells to George Newnes, Ltd.

Easton Glebe,
Dunmow.

My Dear Grierson,

Horrabin has been down here for the weekend and he seems to be getting on with the illustration business all right. He has shown me a design for the cover—very effective in its way but a little too much of the popular magazine seller. He says you want some sort of sensational heading on this "From the Creation to Man" or something of that sort. I think you will make a mistake if you make the covers and get-up too violently popular. A certain dignity is much more in the line of business needed. We are aiming at a sale to people of some educational , who are likely to be repelled by the suspicion that the thing is not scholastic but vulgar. I'm paying four hundred guineas for my four distinguished editor helpers—for dignity.

In dividing the MS. into Books, Part I will contain Book I, The Making of our World. You might put that on the cover.

I don't mind that design. As it is, it is enigmatical. I wouldn't have it altered to weaken its effect of light and shade.

Yours,
H. G. WELLS.

No. 20. Letter, Professor Gilbert Murray to H. G. Wells, 17th August 1919.

No. 20.—Letter, Professor Gilbert Murray to H. G. Wells.

Yatscombe,
Boar's Hill,
Oxford.

17 8 19

My Dear Wells:—

Here are some more pages of cavil at your Roman part. You will understand that I pick holes because I conceive that to be my business, but that really I am full of admiration at the way in which you have grappled with such an enormous and impossible task.

About my Greeks, I think part of our difference is like the difference between—in the case of a great artist or thinker—the man who knows his work intimately and the man who knows the facts of life. I say: "Look at those heavenly pictures or magnificent discoveries." You say: "Heavenly? Pooh, the man couldn't even keep his temper or pay his debts, and as for discoveries, why did the old ass not also discover the telephone when it was lying obviously in front of him?"

But the real fun of history is getting into the point of view of one set of people after another: trying to understand both Zeno and Epicurus, both Cato the Censor and Vercingetorix. There is also this curious problem. Each age selects some things as important and leaves records about them

and not about others. A later age thinks something else important and keeps asking questions about that, often in vain, and neglecting the information that is there. We, poor devils that we are, are obsessed by economics and class-war, and tend to go mooning through the history of, say Italian Art of the Building of the Acropolis, asking only where Leonardo got his paints and what wages he paid his servants, or why the workmen of the Erechthemum had a rise of wage at a particular date, and missing all that other ages have valued. Of course such a new valuation from time to time is right; that, again, is where the fun comes in. But the delusion of one's own time is the really dangerous delusion.

I will make few or no notes on the medieval part, or the modern, as I have no special knowledge of either, and the notes of mere casual readers in history books; I can't remember it, and am no good until I read the contemporary literature—the spice and sagas and plays and books of devotion &c. and my medieval reading is all in spots.

Yours ever,

G. M.

I have found my Pagan Retrn. article: will you please return it?

No. 21.—Letter, Professor Gilbert Murray to H. G. Wells.

Beckhythe Manor,
Overstrand,
Norfolk.

28. 8. 19.

Mr. Dear Wells:—

I have been thinking over your History of Man with interest and even excitement. I suppose you know Marvin's book, The Living Past? It touches in part on the same theme, but your range will be much wider and I suppose you will not be writing so definitely to preach a particular doctrine. Anyhow I will most gladly help by reading and criticising any part you like to send. (There are two people cleverer than I am at that sort of job whom I could consult at a pinch: J. L. Myers and Arnold Toynbee, Monsters of learning and ingenuity both.)

About the contractors I cannot help suspecting that they were important in the wars of the early oriental empires. Hdt. implies that great stores of provisions were laid up for Xerxes army at certain places. How were they collected? Partly no doubt by forced gifts and plundering, but surely no commissariat would hold out for a long campaign that depended entirely on such methods. I suspect there must have been contracting. Possibly Pythius the Lydian was a contractor who had made a huge fortune and that is why he wants to make presents to Xerxes. (Hdt about VII 27ff) I do not think contractors were very important in Greece for military purposes. But they had the word, Ergolaboi. And the

Exhibits filed with Evidence on Commission in England.

No. 21. Letter, Professor Gilbert Murray to H. G. Wells, 28th August 1919.— *continued.*

long Walls, I think, were built by contract. Plutarch in the life of Pericles mentions them. There is probably an article on Contractors in Perrot & Chipiez which wd. be useful.

Most classical Gk expeditions were on a small scale and the soldiers were told to bring their own rations, but the macedonian armies were on the big professional scale, and must have had contractors.

As you see, I dont know much and have no clear views, but I should guess that the oriental empires and the Macedonians and Diadochi, all of whom had immense professional armies making long campaigns, had to employ contractors, I cannot remember an example, but the post-Macedonian age was a time of great private fortunes and speculations.

I will ask Myres.

Yours very sincerely,
G. M.

No. 22. Letter, Professor Gilbert Murray to H. G. Wells, 27th November 1919.

No. 22.—Letter, Professor Gilbert Murray to H. G. Wells.

Yatscombe,
Boar's Hill, Oxford.
November 27th, 1919.

My Dear Wells :—

I have raced through the proofs rather hurriedly, and only noted one or two things. I have altered a phrase or two in my description of the Greeks that you quote. Their tools of course were not Polynesian. They did good metal work.

Then, you evidently mistook something that I said about the Stoics and slavery. What you have written looks as if the Stoics were Greeks, and did not mind about other people being slaves. The truth was that a good many of the philosophers were slaves themselves, and the doctrine was that to the wise man there was no distinction between slave and free. They did not recognise any class difference.

You have got the passage from Celsus (not Celsius) a little confused. He quotes the opinions of two opposite schools, and then gives his own. The alleged vivisection in Egypt is quite probable, but it shocked even the Romans, and it would have been impossible in a free Greek City.

I don't seem to have the galleys between 73 and 114, but perhaps there was nothing of mine in them.

Yours,
G. M.

No. 23.—Letter, Sir R. A. Gregory to H. G. Wells.

Exhibits filed with Evidence on Commission in England.

No. 23. Letter, Sir R. A. Gregory to H. G. Wells, 1st December 1919.

Macmillan & Co., Ltd.,
St. Martin's Street,
London, W.C.2.
1 December, 1919.

H. G. WELLS, Esqre.,
Easton Glebe,
Dunmow, Essex.

My Dear H. G. :—

Newnes sent Part I of your " Outline of History " last week, and we shall be very glad to publish a short notice of it. Probably the best plan would be to announce Part I in a sympathetic note, and to publish occasional paragraphs on some of the other parts, leaving a substantial notice until the work is completed. You have produced a very remarkable work, and there is no one alive capable of undertaking such a comprehensive task as that which you have taken up. I believe the work will be the most successful of all you have done, and it will continue for a generation the most illuminating survey of world history in a scientific sense ever attempted. The diagrams and other illustrations are also very instructive, and the whole work is one which makes me proud of you.

With regard to the Index, " Nature " is indexed by Mr. Worsfold, at this office, and the work is done very well indeed. He could undertake a general index of the " Outline of History," but I am afraid he could not make a good pronouncing index. The man who could undertake this indexing, or see that it was done satisfactorily, is Dr. Charles Singer, of Oxford, whom you know. He has a staff of young ladies, keen upon bibliographical details, and could I think, put you in touch with the right person for a pronouncing index. The only other man whom I could suggest might help is Dr. H. Forster Morley, Director of the International Catalogue of Scientific Literature, Southampton Street, Strand, W.C.2, but, here again, I doubt whether he is familiar with the pronunciations of many of the names used in your early chapters. Singer is the man to approach, and Oxford is the place where the index should be prepared.

Ever yours sincerely,

R. A. GREGORY.

Exhibits filed with Evidence on Commission in England.

No. 24.—Letter, Professor Gilbert Murray to H. G. Wells.

Yatscombe,
Boar's Hill,
Oxford.

No. 24. Letter, Professor Gilbert Murray to H. G. Wells, 25th December 1919.

Dec. 25 1919.

My Dear Wells :—

In this latter part one's criticism, such as it is, has to be on different lines. The material is so vast and most of the large facts so well ascertained that criticisms are mostly on matters of proportion and selection. And of course my equipment is nothing much.

839 The Spaniards were about " as bad " as the British in Tasmania, but were a good deal different, weren't they ? From what I used to hear as a boy the English merely drove the Tasmanians away, like vermin or nuisances. There was no interest in their souls and no active persecution. The poor creatures just died of discouragement, combined with a certain amount of shooting at sight. Quite unimportant.

Macchiavelli, I rather agree with your view, but the authorities don't. And perhaps it is intemperately put. I think Phillippe de Commines much more revealing than M about the minds of princes and politicians. On Louis XI and Edward IV he is wonderful. More serious. I can't help feeling that you do injustice to the Renaissance altogether. On the whole I think the evidence shows a moral advance, not a moral collapse, accompanying the increase of knowledge. There was, unfortunately, an enormous increase in frankness and outspokenness, and also in detailed historical writing. But the crimes and immoralities of the Middle Ages are just as extreme as those of the Renaissance—except such cases as the Italian despots. John the Good of Normandy went into battle with his 100 bastards and died in the odour of sanctity. Think of Abelard's history. Or some of the Fabliaux, which are just the same in moral standard as Boccaccio of Macchiavelli. And there was after all an extraordinary awakening of intellect and interest in truth and beauty, and in human sympathy. To move from Abelard or Duns Scotus to Erasmus is a most wonderful step in the advance of humanity.

I feel the same about your treatment of the 18th century. Bottom of p. 875. What about Sir Joshua and Hogarth ? Gray ? And after all eighteenth century prose writing is a great advance, and philosophy and general humanity. Gibbon is the only modern historian whose work remains a standard authority—indeed the standard authority—more than a century after it was written.

Also Voltaire gets rather shabby treatment from you. Some years ago I read the Dictionnaire Philosophique together with some of the contemporary French theologians and the effect was marvellous. You saw what was meant by " lumière." Even during the war I turned sometimes to V's articles on " Guerre " and similar subjects, and felt I would give anything to have him alive again. He constantly made mistakes, of course.

Exhibits filed with Evidence on Commission in England.

No. 24. Letter, Professor Gilbert Murray to H. G. Wells, 25th December 1919 —*continued.*

But he did try to see facts. He hated humbug and prejudice and cruelty. He was very like G B S without eccentricity. I do not admire Rousseau nearly so much, but he too had an element of the prophet and even of the "saint gone wrong", which I think English people generally fail to see. As to V I don't think there is a single case where he was not on the side of humanity, and, though he was very skilful in escaping, he constantly faced the risk of death and torture—sometimes in quarrels which were not his own.

And "l'infame" in his day and nation was infamous. He became obsessed by the horror of it; but the persecuting French church of that day was really an all-pervading source of cruelty and corruption. It was as unlike what you mean by Christianity as anything could be. What Mallet says about the Encyclopedists seems to me quite true; and how could anyone who sought after knowledge in those times avoid hating "religion"—which was from their point of view so much organized persecuting Obscurantism?

All your criticism of the "Power" system is very useful and freshly put.

The French Rev strikes me—if I may say so—as old fashioned and idealizing. Its contemporaries were overcome by its horror, the next generation but one had forgotten, or been bored by, the horrors and idealized the whole movement. I think that by now most historians are getting a soberer view, of both the horrors and the achievements. The achievements you have got; but you have left out the beastliness. The Murderers of September were hired at so much a day. Danton, and almost everyone except Robespierre, took bribes. The President of the Revolutionary Tribuna, Fouquier Tinville, was had up for being drunk and disorderly in the street with his 18-year old son in the midst of the Terror. There were boarding houses which charged fantastic prices because they had a bargain with people in power that no guest of theirs should be executed while staying with them. And so many of the leading men were, as Robespierre said, des scélérats. Just jail-birds and blackguards. And also as Le Notre has shown criminal lunatics. I think it is true that, except Condorcet and perhaps Roland, there is an extraordinary absence of anything like lofty character in the French Rev. as compared for instance with the English Civil War, or the American. Have you seen by chance a new History of the Rev. by a Mrs. Webster? I have not read it, but hear that it has a lot of knowledge.

These remarks are of course not criticism proper, but I jot them down to show how your treatment strikes a general reader. It is an awe-inspiring thought that you will probably be responsible for a new Orthodoxy, which all the clever young people will sharpen their beaks on, and peck to bits.

Yours very sincerely,

G. M.

Exhibits filed with Evidence on Commission in England.

No. 25. Memo. of Agreement between H. G. Wells and Cassell & Co., Ltd., 14th January 1920.

No. 25.—Memo. of Agreement between H. G. Wells and Cassell & Co., Ltd.

MEMORANDUM OF AGREEMENT made the 14th day of January 1920 between H. G. Wells of Easton Glebe, Dunmow, Essex his executors, administrators and assigns (hereinafter called the Author) of the one part and Cassell & Company Limited of La Belle Sauvage, Ludgate Hill in the City of London their successors or assigns (hereinafter called the Publishers) of the other part.

WHEREAS the said Author has written a new and original work entitled "The Outline of History" and the Author hereby grants to the Publishers the right to publish the said work, with all revisions and corrections supplied up to the time of going to press, in volume form at One pound (£1) in the United Kingdom of Great Britain and Ireland its colonies and Dependencies except Canada. Now it is hereby agreed as follows :—

1. The said work shall contain not more than 400,000 words and the Author will deliver the complete copy to the Publishers not later than June 1st 1920 for publication in September 1920.

2. The Author hereby guarantees that the said work shall contain nothing which is a violation of the copyright of any other person or is of a libellous character and he will hold the Publishers harmless from all suits, claims and proceedings which may be brought against them on the ground that the work is a violation of copyright or that it contains anything libellous.

3. In consideration hereof the Publishers agree to pay the Author royalty at the following rates on copies of the said work sold :—

(*a*) On editions published at 20/- Twenty-five per cent. (25%) of the published price of copies sold.

(*b*) On copies sold in the Colonies and Dependencies, except Canada One shilling and eightpence (1/8d.) per copy.

The Publishers shall pay the Author Two thousand pounds (£2,000) in advance and on account of the said royalty on the Publisher's first monthly literary pay day after publication.

5. The Author undertakes not to publish any edition of the work identical with the one herein agreed for likely to compete with it until two years after the date of publication of the edition herein agreed for. The Author, however, reserves to himself the right to publish an abridged edition specially adapted for scholastic use and sold only as a school book for class use. This edition shall not be published until one year after publication of the volume herein agreed for.

6. The Author undertakes to obtain for the Publishers permission to use all the illustrations time charts and maps made by Mr. Horrabin and issued in the edition published by Messrs. George Newnes, Ltd. for the edition arranged for in this agreement. It is understood the copyright of these illustrations remains the copyright of Mr. Horrabin and for their use

the Publishers will pay Mr. Horrabin royalty of 1 per cent. (one per cent.) of the published price of copies of the said work sold. Copies sold in the Colonies and Dependencies being reckoned 3 as 1. The publishers shall also pay Mr. Horrabin One hundred pounds (£100) in advance and on account of the aforementioned royalty.

7. The author shall be entitled to receive on publication 40 or 50 copies of the said work which he will sign and the Publishers agree to despatch such copies to various literary and other people as specified by the Author.

8. The Author shall be at liberty to terminate this agreement seven years after publication of the edition of the work herein agreed for and if this agreement be so terminated the Author shall purchase the plates and remaining stocks of the said work covered by this agreement at the cost of manufacture.

9. Accounts for royalty shall be made up half yearly to the 30th June and 31st December and shall be rendered and settled as soon after those dates each year as practicable.

Stamp 6d.

H. G. WELLS.

No. 26.—Letter, Professor Gilbert Murray to H. G. Wells.

Yatscombe,
Boar's Hill,
Oxford.

April 19 1920.

Dear H. G.,

My sentence about Grey's diplomacy was put in the language that I thought suitable for you. If it is put as a footnote signed by me I should like to put it rather more strongly,—say, as I have typed at foot of galley 417. I have left out the second point, that, as a constitutional minister, he could not say outright "I will fight you"; he could only say "You must expect that we shall fight you"; I think that need not be emphasized.

Shall you refer to Arthur's Life of Kitchener? It seems rather important on the munitions question.

I am just reading Mrs. Webster on the French Rev. She is rather partisan (Royalist) but has a lot of evidence. I am getting to think a revolution here rather more probable than I did a year ago; partly economic troubles, partly lack of resisting power in the conservative elements, partly universal contempt for the Government.

Yours,

G. M.

Exhibits filed with Evidence on Commission in England.

No. 27. Letter, Professor Gilbert Murray to H. G. Wells, 28th May 1920.

No. 27.—Letter, Professor Gilbert Murray to H. G. Wells.

Yatcombe,
Boar's Hill,
Oxford.

May 28 1920.

My Dear Wells :—

I forget whether I told you that I have been—for the first time in my life—examining for Mods, a hard job lasting a solid month, which kept me from finishing the Outline until this afternoon. The end is really beautiful and inspiring. The chapter about Sir Louis Jackson moved me profoundly . . . I call it " about Sir L. J." for purposes of reference only. It is really about the greatest single problem now facing the world. It is a piece of really great imaginative eloquence.

Also your whole account of the War strikes me as exceedingly sane and fair. Of course I should put some things in different proportions, and you are always yourself—not an embodiment of impartiality. But it is very good.

I note one or two trifles,—p. 1203. It might be fairer to state Grey's motive : " The British Foreign Secretary maintained an attitude of heavy ambiguity up to the very end, threatening Germany but making no promise to France. Rightly or wrongly he refused to take any step which might have the effect of stimulating a possible war-party in France or Russia."

p. 1222. Entry to the Baltic. When I was in Copenhagen in 1915-1916 a Danish Minister spoke to me with great anxiety on this point. He was afraid that England would deliberately force Denmark into the war in certain ways; and in particular he urged that if we forced the straits, which were heavily mined by both Danes and Swedes, they would be in an intolerable position and probably have to join Germany. I assured him that, as long as Grey was in office, England would not force any of the small neutrals into the war by foul means. (As a matter of fact he would not even invite any other country to join. He made no overtures to Italy, Rumania or Greece, though he accepted their offers).

This scruple explains the absence of our fleet from the Baltic up to 1917; I don't know what happened afterwards.

p. 1243. Wilson's phrase " too proud to fight " was said in a speech about Mexico. He said it was quite easy to find a casas belli; there was abundant excuse; not difficult to defeat the Mexican armies and kill thousands of poor ill-armed peasants. But in conditions like those there was such a thing as being too proud too fight ". I have not got the reference to my hand, but I have it somewhere. Of course our devils got hold of it at once in a wrong sense.

Of course I think you are too hard on the Covenant. It is a question of calculations, whether such strong condemnation will tend to make people alter it vigorously or merely despite it and let it rot. I should say your language was dangerous and would please the militarists.

I should rather like to review the Outline if opportunity offers. (I don't know whether you would like my review! It would not be insipid praise. But I do think it is a wonderful book).

Yours ever,

G. M.

No. 28.—Letter, Tilley, Johnston, Thomson & Parmenter to George Newnes, Ltd.

Exhibits.

No. 28. Letter, Tilley, Johnston, Thomson & Parmenter to George Newnes, Ltd., 23rd October 1925.

TILLEY, JOHNSTON, THOMSON & PARMENTER.

Barristers & Solicitors.

Toronto General Trusts Building,
255 Bay Street,
Toronto, Canada.

23rd October, 1925.

Messrs. George Newnes Limited,
8-11, Southampton Street,
Strand, London, W.C.2, Eng.

Dear Sirs :—

On the instructions of Miss Florence A. Deeks of this City we have issued a Writ against your Company for an injunction restraining publication of " The Outline of History " containing a reproduction in whole or in part of our client's unpublished literary composition known as " The Web " and for damages for infringement of her proprietary rights therein.

You are no doubt fully conversant with the use that was made of our client's manuscript while it was in England and it is therefore unnecessary for us to elaborate the facts and circumstances relied on by our client in support of her claim. As your publication of the work complained of took place almost six years ago we found it necessary to issue a writ before writing you as we did not wish to be met with a defence that her claim was barred by the statute of limitations.

If you have a representative in Canada we shall be glad to discuss the matter with him in case you are desirous of effecting a settlement of the claim, otherwise our client will have no option but to proceed with the action in the usual way.

This letter is, of course, written entirely without prejudice.

Yours truly,

TILLEY, JOHNSTON, THOMSON & PARMENTER.

Exhibits.

No. 29. Letter, George Newnes, Ltd., to H. G. Wells, enclosing copy of letter from Tilley, Johnston Thomson & Parmenter, 5th November 1925.

No. 29—Letter, George Newnes, Ltd., to H. G. Wells enclosing copy of Letter of Tilley, Johnston, Thomson & Parmenter.

November 5th, 1925.

H. G. WELLS, Esq.

Dear Mr. Wells :—

I enclose a copy of a letter from a firm of solicitors in Toronto. I suppose it is some mad thing. The Writ has not actually come to hand. If it does, I suppose we have to do something. If there is anyone acting for you in the matter, I should be glad if you would let me know.

Yours faithfully,

General Manager.

No. 30. Letter, H. G. Wells' Secretary (M. Craig) to George Newnes, Ltd., 6th November 1925.

No. 30.—Letter, H. G. Wells' Secretary (M. Craig) to George Newnes, Ltd.

4 Whitehall Court,
(Flat 120),
S.W.1.
Nov. 6th, 1925.

Dear Mr. Grierson :—

Mr. Wells asks me to thank you for your letter and for the copy of the Toronto Solicitor's letter enclosed.

A few days ago Mr. Wells had a letter to the same effect from Mr. Brett of the Macmillan Company, New York, and he sent Mr. Brett a Memorandum, a copy of which I enclose.

Mr. Wells is getting into touch with Sir Frederick MacMillan when more information is to hand, and will keep you informed of all developments.

Yours faithfully,

"M. CRAIG,"
Secretary to Mr. H. G. Wells.

W. Grierson, Esq.,
George Newnes, Limited,
8-11, Southampton Street,
W.C.

Exhibits.

No. 19. H. G. Wells' Memorandum of the Case of "The Web" to G. P. Brett of the MacMillan Co. of New York (copy pursuant to Order of Court of Appeal, dated 2nd February 1932).

Ex. 19.—H. G. Wells' Memorandum of the Case of "The Web" to G. P. Brett of the MacMillan Co. of New York. (Copy pursuant to order of Court of Appeal, dated 2nd February 1932.)

MEMORANDUM ON THE CASE OF THE WEB.

Either the claim is a genuine but silly claim or it is a blackmailing claim based on a faked MS.

In the former case the resemblances of the MS. to the Outline will be due to a common obvious idea and to the use of common sources—which should be easy to establish.

In the latter the MS. has been extensively altered since it was in the hands of Macmillan and Co. This should be proveable by the testimony of the reader or readers of MacMillan and Co. to whom it was submitted in 1918. Our case will be that the Web has been rewritten to substantiate this claim since the appearance of the Outline.

In either case Messrs. Macmillan must substantiate that the MS. never left the hands of their representatives in the period during which their responsibility lasted and could not have been seen by Mr. Wells.

Mr. Wells denies having seen such an MS. or being in the least obliged to any report of it. He broached the idea of an Outline of History at a lunch of representative American visitors before the end of the war. A history of the origin of the Outline can no doubt be made up from Mr. Wells's letter files but it would be a tiresome business and he does not propose to do that until he has the statement of the claimant's case and knows what points need refuting.

S.C.O.

This is exhibit XXXI referred to in the examination of George P. Brett taken before me this 4th day of January, 1929.

GEORGE WRIGHT ALLEN,
Commissioner.

No. 31. Letter, George Newnes, Ltd., to Tilley, Johnston, Thomson & Parmenter November 11th 1925.

No. 31.—Letter, George Newnes, Ltd., to Tilley, Johnston, Thomson & Parmenter.

GEORGE NEWNES, LIMITED,

London,
November 11th, 1925.

Messrs. Tilley, Johnston, Thomson & Parmenter,

Dear Sirs :—

We have received your letter dated October 23rd, 1925, in which you say you have issued a writ against our Company on behalf of Miss Florence A. Deeks. This writ so far has not been delivered to us, and we are not, therefore, conversant with the claim.

We understand you have issued other writs, and no doubt they can be all dealt with at the same time. Meanwhile, we await further information.

Yours faithfully,

General Manager.

Exhibits filed with Evidence on Commission in New York.

EXHIBITS FILED WITH EVIDENCE ON COMMISSION IN NEW YORK.

(For Letters 1–7 see Exhibit 10, (c), (e), (g), (h), (i), (j), (k).)

No. 8.—Letter, G. P. Brett (MacMillan Co. Inc., New York) to H. G. Wells.

No. 8. Letter, G. P. Brett (MacMillan Co. Inc., N.Y.) to H. G. Wells, 5th February 1919.

The MacMillan Company,
Publishers.

64-66 Fifth Avenue,
New York.
February 5/1919.

Dear Mr. Wells :—

I have just received your letter in regard to the Outline of History. I had not, I must confess, thought of the plan of publishing in shilling illustrated parts, as such methods for the publication of books have never been successful in this country as I understand the matter, but the Newnes' arrangement for the publication of the book in these shilling parts need not interfere with the general arrangements for the publication of the book excepting of course, as you say, some modifications in our proposed contract will be necessary and it is also important, in connection with the publication of the book in this way, that steps shall be taken to protect the copyright in this country and this will require the publication of the book in America at the time the first parts of Newnes' edition appear.

I gather from your letter that I am to have the pleasure of hearing from you a little later on in regard to the matter of the contract for this book and I will accordingly leave this until I hear from you finally on the subject.

I am delighted to hear of the book for spring publication and its title The Undying Fire is certainly an admirable one. Pray give me, as soon as you have arranged it, the date of its English publication and inform me also as to when we may expect to have finally corrected proofs of the book for the setting up of the American edition.

You do not advise me of the terms for the publication of this book in this country and I am accordingly not sending you an agreement for it. I shall, however, be glad to have information as to the amount of the advance required and trust to hear from you on this point by early mail.

I have not proposed an arrangement for the monthly payments on account of royalty for the coming year, not knowing as to whether the arrangements for the monthly payments which have been made between us for the last year or two have been satisfactory or not. I shall be glad, however, to arrange a monthly payment on the basis of recent royalty earnings if it should be satisfactory from your point of view to receive such a monthly remittance from us on account.

Yours very truly,
GEORGE P. BRETT.

H. G. Wells, Esq.

Exhibits filed with Evidence on Commission in New York.

No. 9.—Letter, H. G. Wells to G. P. Brett (MacMillan Co., Inc. New York).

No. 9. Letter, H. G. Wells to G. P. Brett (MacMillan Co. Inc., N.Y.), about 25th February 1919.

52, St. James's Court,
Buckingham Gate, S.W.1

Dear Mr. Brett :—

About The Undying Fire which will have reached you by this time I think, though the book is short we might have the usual agreement, don't you? My idea has always been to have the same advance for all novels. If the advance is to be less because the book is slight what is to happen presently when the next big work comes? You would be a little startled to hear of the seductive offers that come drifting in.

Don't be afraid of the Outline of History. It will be a fine thing. I have got I suppose nearly half way through it but the later parts may prove less compressible. About the illustrations and maps I think now that I shall get them here and pay for them myself. There is a man here, Horrabin, who does the war maps for the *Daily News* who does a clear strong black and white map beautifully lettered with whom I can virtually collaborate. I shall cut back all the essential maps and figures to a minimum, perhaps with a little over a hundred. Then the book can be extra-illustrated to any extent by the publisher, if the publication takes that form. About the three Readers also I think it will be best for me to arrange to pay. Then I can make all the arrangements for publication as the sole proprietor exactly as one does for a novel.

The monthly royalty payments have suited us very well hitherto and they may perhaps go on while there is a balance of 5000 dollars or over due to me on your books. After that it might cease.

Yours,
(Sgd.) H. G. WELLS.

No. 10.—Letter, G. P. Brett (MacMillan Co. Inc., New York) to H. G. Wells.

No. 10. Letter, G. P. Brett (MacMillan Co. Inc., N.Y.) to H. G. Wells, 13th March 1919.

March 13/1919.

Dear Mr. Wells :—

In reply to your letter just received I am enclosing to you contract in duplicate for the publication of the Undying Fire as we are accepting the terms of publication which you propose for the work and as the contract is in the exact form of others which we have previously had the pleasure of arranging with you I am signing both copies so that it will only be necessary for you very kindly to sign one of these and return it to us, thus completing the arrangement.

We have received typewritten " copy " for this book but have not as yet put it to press as it has been usual to send us for typesetting purposes for the American edition press proofs, finally corrected, of the English

Exhibits. filed with Evidence on Commission in New York.

No. 10. Letter, G. P. Brett (MacMillan Co. Inc., N.Y.) to H. G. Wells, 13th March 1919—*continued.*

edition and I am awaiting the arrival of these. If by any chance the date of English publication is arranged for earlier than some date in May I will ask you very kindly to have a cable sent me on receipt of this letter advising me of the date of English publication so that we may set up from the typewritten copy we now have and publish on that date, but, if, as I suppose, some date in May is arranged by the English publisher for publication, then I will ask that you very kindly have sent to me press proofs of the book for setting up the American edition and as soon as possible I shall be glad to be informed as to the date when the English edition is to be published as we shall wish, if possible, to publish here on that day.

In order to make sure of the copyright, if an early date of publication is arranged, will you kindly have the English publisher mail us two copies of the book on or before the date of English publication.

I am very glad to learn from your letter as to the progress which is being made on the History and I shall await your further word in regard to the terms of publication of this work and word also as to the arrangements and date of its appearance. Your plan in regard to the handling of the editorial fees and preparation of the illustrations will certainly simplify matters much.

I am now enclosing you, in view of what you say in regard to the monthly payments, our cheque for £630 : 11 : 8 for the January, February and March payments of $1000 each and monthly payments of $1000 will be made hereafter until the time of the annual settlement in November.

Yours very truly,
(Sgd.) GEORGE P. BRETT.

No. 11. Letter, H. G. Wells to G. P. Brett (MacMillan Co. Inc., N.Y.), about 25th August 1919.

No. 11.—Letter, H. G. Wells to G. P. Brett (MacMillan Co. Inc., New York).

Easton Glebe,
Dunmow.
(About August 25, 1919.)

Dear Mr. Brett:—

Will you please take up this matter on my behalf and do what you think proper. I don't know whether it is just or reasonable to ask for some return in this matter but I suppose my Essay will help to sell the book. Will you do the right thing for me in this case?

I'm nearly through with the Outline of History. It will begin to be published in parts this autumn. I will presently send you proof of this rather important book and we will discuss the book publication. The parts will be extra illustrated and will make an expensive new volume but I am making the utmost speed for book publication and what I want for September undoubtedly is a dignified book at a price that will give it a big sale. 300,000 words and about 120-150 diagrams, maps and figures that are essential to the text. Soon I will be writing a novel again—all the better for the rest.

Yours very truly,
(Sgd.) H. G. WELLS.

No. 12.—Letter, G. P. Brett (MacMillan Co. Inc., New York) to H. G. Wells.

Exhibits. filed with Evidence on Commission in New York.

No. 12. Letter, G. P. Brett (MacMillan Co. Inc., N.Y.) to H. G. Wells, 12th September 1919.

The Macmillan Company,
64/66 Fifth Avenue,
New York.

Dear Mr. Wells :— September 12/1919.

I beg to acknowledge receipt of your letter enclosing that from Professor McGeoch. People like this gentleman do not expect to pay anything for the use of such material, they generally consider that they are giving quid pro quo by printing such material in their unique, valuable, and at the same time compiled, volumes. I think on the whole, however, that it is best not to refuse such requests and I am telling the gentleman if he will remit us £5 for you that we will give him permission to include the essay in his volume. I hope my action in the matter has your approval and I am, in mentioning this sum, which of course is entirely inadequate, merely following the usual custom in this country in such cases. If he pays the money we shall remit it to you at once.

I learn from your letter of the publication in Parts, beginning this autumn, of the Outline of History and I shall be glad to receive " copy " for this book together with information as to the date of English publication at your convenience. We must be careful that the English publication in Parts does not cause the loss of the American copyright and to prevent this it is necessary that you should send to me by post two copies of each of the Parts as soon as these are published. We have then sixty days after the date of English publication in which to secure American copyright and publish the book so that it will be well, I think, to make sure of actual publication on this side for the volume not later than sixty days after say one-half or thereabouts of the book has been published in Parts in England.

We ought to make some arrangement with the English publishers of this volume by which we could secure duplicates of the illustrations for publication in the American edition and if you will kindly give us the name of the English publishers we will enter into correspondence with him to that end. Better still it would be if you would kindly ask him to send us a set of the proofs of the cuts, quoting us a price for a set of electros or cliches of the illustrations for use in our American edition.

We have never, if I recollect rightly, finally made with you an agreement for the publication of this volume, and if you will send me your views as to the terms for its American publication I shall be glad to take up this matter with you at once.

I am delighted to hear that you are shortly to be at work again on another novel—this for spring publication, I presume. Pray give me information in regard to the book at your earliest convenience and believe me,

Yours very truly,

H. G. Wells, Esq. GEORGE P. BRETT.

Exhibits filed with Evidence on Commission in New York.

No. 13.—Letter, Catherine Wells to G. P. Brett.

No. 13. Letter, Catherine Wells to G. P. Brett, 9th October.

Easton Glebe,
Dunmow.
Oct. 9.

Dear Mr. Brett :—

With this I am sending proof of the first few chapters of my husband's new work The Outline of History.

Yours sincerely,
CATHERINE WELLS.

No. 14.—Letter, G. P. Brett (MacMillan Co. Inc., New York) to H. G. Wells.

No. 14. Letter, G. P. Brett (MacMillan Co. Inc., N.Y.) to H. G. Wells, 31st October 1919.

The Macmillan Company,
64-66 Fifth Avenue,
New York.

October 31/1919.

Dear Mr. Wells :—

We seem to have lost touch with Mr. Tewson in the last few days, who appears to have left the city. I understand, however, that the negotiations carried on by our Mr. Marsh with Mr. Tewson with reference to the publication of your Outline of History have reached the stage of practical agreement between them.

I am accordingly enclosing a contract for the publication of the book along the lines suggested in your cable and with one or two modifications which have been discussed at length in our interviews with Mr. Tewson and the reasons for these modifications in certain contingencies having been carefully explained to him.

As the contract as enclosed does not in any way depart from our usual arrangements with you, as I understand them, I think you will have no hesitation in signing it and I am accordingly enclosing the contract in duplicate and will beg you, if you will be so good, to sign one copy and return it to me.

I have received the first instalment of " copy " from Mrs. Wells. May I take it for granted that this " copy " is ready for the printer and that you do not care to read proofs of the book again ?

Yours very truly,
GEORGE P. BRETT.

H. G. Wells, Esq.

No. 15.—Letter, H. G. Wells to G. P. Brett (MacMillan Co. Inc., New York).

Exhibits filed with Evidence on Commission in New York.

No. 15. Letter, H. G. Wells to G. P. Brett (MacMillan Co. Inc., N.Y.), 10th December 1919.

December 10, 1919.

Dear Mr. Brett :—

I have been waiting week after week for some news from Tewson about the serialization of the Outline of History. Nothing comes to hand from him, not even a report of progress and so I think we had better set him aside and go on with our business without him. We will deal directly as usual and all monies, etc. will pass without any agent's intervention.

I am greatly disappointed about this failure of his. As here the serialization has proved a big thing. Newnes printed 160,000 of the first number, sold out and is reprinting. His selling price is 1*s.* 2*d.* so that on twenty odd numbers I shall clear something like £10,000 on this method of publication alone. For once England seems likely to beat America in my banking account. Cassells will almost certainly publish the book at 12/6 or 15/- in two fair volumes—in September next.

The Newnes editor has a series of about fifty colour plates (of very inequal merit) about 400 half tone blocks, and the outline illustrations, maps and time charts done by Horrabin and myself. He can't sell at a lower price than 30/- and cannot remainder copies.

The Cassells edition will have only the outline illustrations, maps and charts and will be a seemly library book.

I assume you will do the equivalent of the Cassels edition—a dignified book in two volumes.

But if now or at any time you would like to super-illustrate I have no objection provided that any additional plates or illustrations are submitted to me and that I have an absolute veto on any of them.

The question of a school edition we defer for the present.

Now as to terms.

The agreement you sent is quite satisfactory and I enclose herewith one copy signed, but the copyright of the Horrabin outline drawings which are essential to the text is his. I have guaranteed him a certain sum for drawing these, he has given me full power to act for him, and I want you to pay him 500 dollars as advance on a royalty of one per cent. on the book and ½ per cent. on the second book. His work is so good that I foresee a great use of it for school diagrams and lantern slides. Will you send me a note which I can hand to him, citing these terms.

And now as to the working of the business I will send you nextweek corrected copies of Parts I and II of the Outline and I will continue to send the Parts as they appear. The Horrabin illustrations are marked "H." I want to do this as long as possible because the Parts are being scrutinized by thousands of intelligent readers and many small errors are likely to be detected. But as we get on towards publication you will be unable to wait for the parts, you will want the text in galleys, so as to get printed in time. Will you let me know exactly about this?

Exhibits filed with Evidence on Commission in New York.

No. 15. Letter, H. G. Wells to G. P. Brett (Macmillan Co. Inc., N.Y.), 10th December 1919 —*continued.*

Next the illustrations. I will arrange with Cassels to let them have Horrabin's originals for reproduction at the earliest possible date. As soon as the plates are made, these precious drawings (which must be taken great care of and returned duly) can come on to you unless it is possible for you to have your plates made in this country. These illustrations will rather fix the minimum size of the page. I enclose a handful for you to see. The maps and the time charts yet to come cannot be reduced with clearness to anything much less than 8 × 6 inches.

In estimating for the book count on a minimum of 400,000 words and about 120 of these illustrations.

Will you ask your people to let me know exactly how they are going to work all these things.

I think this is about all I have to say except . . . . . .

I am sending the agreement and the proofs of illustrations under separate cover.

Yours very truly,

(Sgd.) H. G. WELLS.

No. 17. Letter, H. G. Wells to G. P. Brett (MacMillan Co. Inc., N.Y.), 13th December 1919.

No. 17.—Letter, H. G. Wells to G. P. Brett (MacMillan Co. Inc., New York).

Easton Glebe,
Dunmow.

Dec. 13, 1919.

Dear Mr. Brett :—

The " Cross Atlantic " Agency (Tewson), seems to have let me down badly on The Outline of History. Nothing is to hand from them and so it is necessary to protect copyright. Part I was published here Nov. 21st and an interim copyright has been secured giving us altogether 60 days for that part. The parts follow on fortnightly.

I am sending you copies of Part I and II finally corrected for press and I will be glad if you will take all necessary steps to secure copyright on them forthwith.*

The book figures out at over 400,000 words with 120 to 150 essential illustrations in line. Size and make-up I leave to you but the minimum size of page if the diagrams are not to be spoilt must be 8 by 6 inches.

Yours sincerely,

(Signed) H. G. WELLS.

*The illustrations marked H. are those by Mr. Horrabin.

Exhibits filed with Evidence on Commission in New York.

No. 18.—Cablegram, MacMillan Co. Inc., New York, to Wells.

No. 18. Cablegram, MacMillan Co. Inc., N.Y., to Wells, 27th December 1919.

WESTERN UNION CABLEGRAM.

December 27/1919.

WELLS
DUNMOW—ESSEX

MUST HAVE TWO UNMARKED COPIES EACH PART FOR COPYRIGHT WITHIN THIRTY DAYS PUBLICATION

MACMILLAN.

No. 19.—Letter, G. P. Brett (MacMillan Co. Inc., New York) to H. G. Wells.

No. 19. Letter, G. P. Brett (MacMillan Co. Inc. N.Y.) to H. G. Wells, 29th December 1919.

The MacMillan Company,
64-66 Fifth Avenue,
New York,
December 29, 1919.

Dear Mr. Wells :—

I supposed that the requirements of the American copyright law were well known on your side and having understood from Mr. Tewson that he was attending to the copyright of the Outline of History for you I gave, I regret to say, but scant attention to the matter, feeling that your arrangements with Mr. Tewson which provided for the taking care of the copyright would be sure to be adequately carried out.

Under the American law a book either has to be published simultaneously with its appearance in any other country, the American copy to be printed from type set within the limits of the United States to secure the copyright, or a complete copy of the English edition of the book may be deposited at Washington within 30 days of the appearance of the book elsewhere and an interim copyright is then granted and this copyright becomes effective if an American printed copy of the book in question is deposited at Washington within thirty days after the deposit of the foreign copy, so that at most a period of sixty days is possible in which to obtain copyright on books published elsewhere than here.

In order to obtain an interim copyright on a book it is therefore necessary that at least two copies of the book shall be sent us to reach us not later than thirty days after the appearance of the book in Great Britain.

Part 2 of the Outline which I have just received from you (and only one copy has been received) is marked with corrections and I am somewhat doubtful as to whether the authorities in Washington will be willing to receive it under these circumstances as complying with the law, and sending it there as I am doing on the latest possible date, to wit: January 2nd, I am left without a copy of this Part from which to set up and print the American edition, which must be deposited as I say within thirty days thereafter.

It will accordingly probably turn out to be the case that the copyright on Parts 1 and 2 of the book will have been lost and whether we are to get a valid copyright on the succeeding Parts will depend upon your publishers

Exhibits filed with Evidence on Commission in New York.

No. 19. Letter, G. P. Brett (MacMillan Co. Inc., N.Y.) to H. G. Wells, 29th December 1919 —*continued.*

sending us at or prior to the date of English publication two copies of each Part as published and sending at the same time the exact date on which the respective Parts are actually published in Great Britain.

If the succeeding parts of the book reach me within 30 days of the date of their original publication in Great Britain you can take it for granted that the copyright on all these Parts will be properly secured but don't fail to have two copies sent me instead of one and in one of these copies any necessary corrections or changes can be made and we will use that copy for setting up the American edition of the book.

This will, of course, protect the book adequately as far as the text matter is concerned but will leave the illustrations unprotected by copyright in this country.

Yours very truly,

GEORGE P. BRETT.

H. G. Wells, Esq.

P.S.—I think a mistake was made in sending me both copies of the agreement for the Outline of History as I received one copy of the agreement with your letter of December 10th and another copy was enclosed with the illustrations you sent me. I am returning herewith this second copy of the agreement.

No. 16. Letter, G. P. Brett (MacMillan Co. Inc.) to H. G. Wells, 31st December 1919.

No. 16.—Letter, G. P. Brett (MacMillan Co. Inc.) to H. G. Wells.

The Macmillan Company,
64/66 Fifth Avenue,
New York,
December 31/1919.

Dear Mr. Wells :—

In reply to your letter just received I may say that the publication of the Outline of History in Parts is impossible on this side as no machinery whatever exists in this country for the distribution of books under this plan of publication. The experiment has been tried a number of times in the past of publishing books in Parts and always without success.

We are, however, not neglecting the possibilities which this book has for publication in other forms than the regular edition which we are to bring out in September simultaneously with the English publication of the book by Cassells and are, as a matter of fact, now endeavoring to arrange for the publication of the work in either four or five volumes in a so-called subscription edition to be issued under a somewhat similar plan to that which has been so successful in the case of the Encyclopedia Britannica and other books of permanent value. I have considerable hope that we shall be able to make an arrangement for the issue of such a subscription edition and I may later on cable you some particulars in regard to this matter.

I am writing in the meantime merely to assure you that we are not losing sight of the possibilities of this work in other directions than the regular publication of the book through the book-sellers and trade generally.

Exhibits filed with Evidence on Commission in New York.

No. 16. Letter, G. P. Brett (MacMillan Co. Inc.) to H. G. Wells, 31st December 1919 —*continued.*

Between ourselves, I may say that I do not think Mr. Tewson's activities have been very helpful in this matter as his want of success in securing Part publication for the book on this side has in a way seemed to make the possibility of success in the regular subscription field doubtful. I still feel, however, that success can be achieved in this direction and that an enormous popular sale for the book in a subscription edition is certainly feasible.

If we succeed in arranging for a subscription edition, as I hope we shall, as this is the only other practicable way of getting a large sale for the book in this country, it will be necessary to use in the subscription edition all the illustrations which Newnes is using in the Part edition now being issued in London, and I am accordingly asking Newnes by cable to give us a price on a set of blocks of all the illustrations which he is using in this English Part edition.

For the edition for the regular trade we are proposing a two volume, octavo form, with approximately 120 illustrations, as used in the Cassell edition. We should, however, have the originals of these illustrations here in order to reproduce them for the American edition, and at the earliest possible date in order to obtain some copyright on the illustrations to the book which, at present, as far as the Parts already published in Great Britain are concerned, are without copyright protection here.

The copyright on the work itself has now been properly arranged for and provided the two copies of each Part reach us in time you may take it for granted that the copyright of the text is adequately safeguarded but unless we receive the originals of the illustrations which we are to use in the American edition very shortly there will be no copyright in these and anyone can reproduce them who wishes to do so.

It becomes particularly important that a copyright should be obtained on the illustrations when we consider your request that a further payment should be made for the use of these cuts over and above the costs of reproduction.

Will you kindly then see what can be done towards getting us the originals of the illustrations, which are to go into the Cassell edition, at the earliest possible moment and we will then reproduce them copyright them in all the Parts that are issued after we receive them and return the originals as soon as possible.

I am much obliged to you for your kind suggestion in regard to the MS. by G. P. Stern. Pinker has written to us that he is sending this MS. and I will read it the moment it arrives and hope to be able to make arrangements for its publication here in accordance with your kind suggestion.

Yours very truly,

GEORGE P. BRETT.

H. G. Wells, Esq.

Exhibits filed with Evidence on Commission in New York.

No. 24.—Letter, H. G. Wells to G. P. Brett, 9th January 1920.

52, St. James's Court,
Buckingham Gate, S.W.1.
January 9th, 1920.

No. 24. Letter, H. G. Wells to G. P. Brett, 9th January 1920.

Dear Mr. Brett :—

The posts go slowly nowadays and I am still waiting for an answer to my letter and bale of illustrations and so forth, sent just before Christmas. Meanwhile the copyright difficulty has been squeezing me into a corner. All this could have been avoided if I had taken the Century proposal of 30,000 dollars for the several rights and book advance, but I felt that would have been a gross breach of the spirit if not the letter of our agreement and I called that off. Since then Tewson has simply muddled away time. I am now confronted with a proposal of the sale of the parts in America which will secure copyright but which involves holding back the book publication until March 1st, 1921. This I think we must concede. It is not altogether disadvantageous to do so. We shall have an opportunity of printing the American book from fully revised copy for we, they and I, gather you are still short of papers.

Yours sincerely,

(Signed) H. G. WELLS.

No. 26.—Letter, H. G. Wells to G. P. Brett, 15th January 1920.

52, St. James's Court,
Buckingham Gate, S.W.1.
Jan. 15, 1920.

No. 26. Letter, H. G. Wells to G. P. Brett, 15th January 1920.

Dear Mr. Brett :—

Your letter of Dec. 31st to hand. By this time you will have a later letter from me raising the question of an exploitation of the British part issue to America. Newnes propose £2000 advance for that and a further £1000 guarantee. But your proposal of a subscription edition is a very attractive one and I shall be very glad to hear further from you in that matter. I've cleared Tewson quite out of the way now and I am dealing directly with all this business. I don't often use an agent and the Tewson experience seems to justify me.

The Newnes extra coloured illustrations are not very good. The coloured ones are the weakest and I strongly advise you not to touch these but only use the half-tone blocks.

The Horrabin illustrations create great difficulties if they are to be reproduced on your side. Shall we send you photographs? Here both Newnes and Cassells have to make blocks before the originals can be released for America. But in several cases Horrabin is either redrawing his maps or altering them and we are making several new charts and diagrams which do not appear in the Newnes edition. These anyhow we can effectively secure.

Exhibits filed with Evidence on Commission in New York.

No. 26. Letter, H. G. Wells to G. P. Brett, 15th January 1920—*continued.*

Yours sincerely,

(Signed) H. G. WELLS.

No. 20.—Cablegram, Wells to MacMillan, New York.

No. 20. Cablegram, Wells to MacMillan, N.Y., 16th January 1920.

WESTERN UNION.

Anglo-American. Direct United States.

CABLEGRAM.

Received at 16 Broad Street, New York. Jan. 16 AM 7 13.

oo4803

LONDON A 40 5/16 16

MACMILLAN PUBLISHERS
NEW YORK.

PLEASE CABLE PROPOSITION SUBSCRIPTION EDITION HAVE AMERICAN SERIAL PROPOSAL WILL THEY INTERFERE.

WELLS.

No. 21.—Cablegram, MacMillan, New York (Brett), to Wells.

No. 21. Cablegram, MacMillan, N.Y. (Brett) to Wells, 16th January 1920.

WESTERN UNION.

WELLS January 16/1920.

DUNMOW—ESSEX.

NOTHING DEFINITE YET SUBSCRIPTION EDITION WILL NOT INTERFERE PROPOSED SERIAL PUBLICATION

BRETT

Exhibits filed with Evidence on Commission in New York.

No. 22.—Letter, G. P. Brett (MacMillan Co. Inc., New York) to H. G. Wells.

No. 22. Letter, G. P. Brett (MacMillan Co. Inc., N.Y.) to H. G. Wells, 21st January 1920.

The Macmillan Company,
64/66 Fifth Avenue,
New York,
January 21/1920.

Dear Mr. Wells :—

In reply to your cable I may say that we have now tried every large subscription publishing house in the United States with a view to placing on this market a subscription edition of your Outline of History and so far I am sorry to say we have had no success, although some of these concerns have shown some interest in the matter which we may later on succeed in arousing into a desire to acquire the subscription rights in the book.

The working of books by the subscription method requires, as perhaps you know, a large machinery which cannot be established except after great delay so that it is necessary to sell the book, if a subscription edition is to be published, through some existing subscription concern.

I have by no means lost faith in the possibilities of a subscription edition of the book and we shall keep the matter constantly before some of these houses and may later on be able to put the matter before you.

In the meantime I may also say, in response to your inquiry in the cable, that the proposed subscription edition would not interfere in any way with the publication of the book in instalments for serial use, for which I understand from Mr. Tewson you have the likelihood of a very favorable offer from the New York Times, heading a syndicate of American newspapers.

Yours very truly,

H. G. Wells, Esq.

GEORGE P. BRETT.

No. 23. Letter, H. G. Wells to G. P. Brett, undated.

No. 23.—Letter, H. G. Wells to G. P. Brett, undated.

52, St. James's Court,
Buckingham Gate, S.W.1.

Dear Mr. Brett :—

I've just been talking to Horrabin about the illustration difficulty. We are just handing over to Cassells the originals of the J. F. H. maps, diagrams and figures and before doing so we are revising them, replacing one or two, adding three or four and writing in a word here and a date there. Cassells will proceed to make plates for their edition. Will it not meet all your needs and also the copyright point, if Cassells sent you matrices of the plates for you to manufacture from over there. Your book will then have illustrations and an arrangement of illustrations which will be pretty effectively copyrighted.

But of course this involves your producing your book with a page practically identical in size with the Cassells page.

Yours,
(Sgd.) H. G. WELLS.

No. 25.—Letter, G. P. Brett (MacMillan Co. Inc., New York) to H. G. Wells.

Exhibits filed with Evidence on Commission in New York.

No. 25. Letter, G. P. Brett (MacMillan Co. Inc., N.Y.) to H. G. Wells, 27th January 1920.

The Macmillan Company,
64/66 Fifth Avenue,
New York,
January 27/1920.

Dear Mr. Wells :—

I hasten to say in reply to your letter of January 9th just received that there is no trouble whatever, as I understand the matter in regard to the copyright of the text of the Outline of History as we are now copyrighting each part as it is issued in London under the interim copyright clause of the International Copyright Act and a valid copyright is being obtained for each of the Parts so that the text of the book is adequately protected. Mr. Tewson told me the other day that he had a very good offer for the syndicate use of this book in connection with a number of newspapers throughout the country, the syndicate being headed by the New York Times and the proposal was to publish each Part as a part of the Sunday Supplements of the papers comprising this group and I think I understood Mr. Tewson to say that $25,000 was offered to you for this arrangement but that the New York Times people were unwilling to conclude the arrangement until you had allowed them to see the whole of the material and that Mr. Tewson was anxiously awaiting the arrival of a complete typescript copy of the book so that he might close with the New York Times and be able to advise you that the matter was arranged.

Of course if this proposal means that the book publication in this country must be postponed until the Parts are all published in this way why we shall simply have to acquiesce in this arrangement. I am asking Mr. Tewson to let me know definitely as soon as he has completed arrangements with the Times, which, as I tell you, he expected to do the moment you sent him complete typescript for the work.

The making of this arrangement too will solve the problem in regard to the copyright on the illustrations, which are at present being left unprotected because we have no way of reproducing them in this country, not having received the originals for that purpose.

Yours very truly,

GEORGE P. BRETT.

H. G. Wells, Esq.

Exhibits filed with Evidence on Commission in New York.

No. 27. Letter, G. P. Brett (MacMillan Co. Inc.) to H. G. Wells, 29th January 1920.

No. 27.—Letter, G. P. Brett (MacMillan Co. Inc., New York) to H. G. Wells.

The Macmillan Company,
64/66 Fifth Avenue,
New York,
January 29/1920.

Dear Mr. Wells :—

I have just received your letter of January 15th and one not dated by the same mail.

In reply to the question in your letter of the 15th I may say that I do not think under our laws here Newnes edition of the book could be imported, either in Parts or otherwise, into this country as our law expressly provides, as I understand the matter, that on a copyrighted work importation is prohibited and it would be held, I think, that if importation of a copyrighted work were permitted by the owner of the copyright that he would be deemed to have abandoned the copyright in the work in question.

As a matter of fact I do not think that this question has ever been decided in Court but I am persuaded that any good copyright lawyer would inform you that under the American law books copyrighted in the United States cannot be imported into this country.

Altogether the most hopeful plan for the use of this material in Parts which I have heard of is the one which Tewson outlined to me and which I understood from him was practically closed, as set forth in my letter of the 27th, which is going by the same mail as this.

We are inclined to use in our regular edition of the book the same illustrations as will appear in the Cassell edition and accordingly it would seem to me advisable that either we or Cassell should reproduce these illustrations, making two sets of blocks and each house paying one-half the expense of so doing. I am inclined to think that the illustrations, if this plan were adopted, could be made more cheaply in this country than in London but if the Messrs. Cassell (provided the plan is satisfactory to them) would send us their estimate of the cost of the blocks it would be very easy to settle the matter as to the most economical way of doing the work.

I recognise, of course, that if the plan of making the illustrations in duplicate for ourselves and Cassell is adopted that we shall be obliged to reset the book in order that our page may correspond exactly with the Cassell page and this, of course, will mean abandoning the type that we are setting up for the copyright of the parts, an expensive process but absolutely necessary in the conditions under which the work is issued.

I am asking our manufacturing department to write to Cassell in regard to this matter of the costs of the illustrations and shall hope for an early reply.

Yours very truly,
GEORGE P. BRETT.

H. G. Wells, Esq.

No. 28.—Memo. of Agreement between H. G. Wells and the MacMillan Co. Inc. of New York, for the publication of "The Outline of History."

Exhibits filed with Evidence on Commission in New York.

No. 28. Memo. of Agreement between H. G. Wells and the MacMillan Co. Inc. of New York for the publication of "The Outline of History," 31st October 1919.

MEMORANDUM OF AGREEMENT made this thirty-first day of October 1919, between H. G. WELLS, ESQ., of Easton Glebe, Dunmow, Essex, hereinafter termed the Author, of the one part and THE MACMILLAN COMPANY of New York, hereinafter called the Publishers of the other part.

WHEREBY it is mutually agreed between the parties hereto for themselves and their respective executors, administrators, assigns or successors as follows :—

1. The Publishers shall at their own risk and expense produce and publish the work entitled The OUTLINE OF HISTORY, title subject to agreement, to contain approximately 400,000 words with illustrations from material to be selected or designated by the Author.

2. The Author guarantees to the Publishers that the said work is in no way whatever a violation of any existing copyright and that it contains nothing of a libelous or scandalous character and that he will indemnify the Publishers from all suits, claims, proceedings, damages and costs which may be made, taken or incurred by or against them on the ground that the work is an infringement of copyright or contains anything libelous or scandalous.

3. The Publishers shall during the legal term of copyright have the exclusive right of producing and publishing the work in book form in the English language in Canada and the United States of America. The Publishers shall have the general control of the publication and the sale of the work. The copyright and all unspecified rights shall belong to the Author.

4. The Publishers shall pay the Author on all copies sold of the said work, a royalty of twenty per cent. (20%) of the advertised retail price.

5. The Publishers shall have the right to issue this book in a special edition or editions for schools at a retail price not exceeding one-half of the original price of publication, and they shall pay to the Author on the copies sold in this special edition or editions a royalty of ten per cent. (10%) of the retail published price. If at the end of three years from the date of first publication of the book in question the Publishers have not exercised the right to publish such special edition then the right to publish a special edition or editions in the United States of America and Canada shall lapse.

6. The Publishers shall pay to the Author on publication of the work the sum of Ten Thousand Dollars ($10,000) on account of the royalty provided for in Clauses 4 and 5 of the memorandum of agreement.

7. The Author shall be at liberty to terminate this agreement for the respective editions of the work at any time after five years have elapsed

Exhibits filed with Evidence on Commission in New York.

No. 28. Memo. of Agreement between H. G. Wells and the MacMillan Co. Inc. of New York for the publication of "The Outline of History," 31st October 1919—*continued.*

from the respective publication of the editions of the work in book form, but if this agreement is so terminated before the royalties earned have equalled the amount paid in advance for them the Author shall be obliged to purchase the plates and remaining stocks of the respective editions of the work covered by this agreement at the cost of manufacture. But if the advanced royalties are already earned the Author may at his option buy those plates and stock or decide that they shall be destroyed.

8. The Publishers shall not transfer any of the rights conferred upon them by this agreement to anyone and they shall keep the stock and continue to publish during the validity of this agreement the editions of the work covered by this agreement. If any edition of the work remains out of print for any longer period than six months all rights whatsoever in that edition of the work shall revert to the Author.

9. Accounts are to be made up annually to April 30th, delivered in July and settled in cash in November.

THE MACMILLAN COMPANY,

(Sgd.) GEORGE P. BRETT, President.

(Sgd.) H. G. WELLS.

No. 30. Letter, H. G. Wells' Secretary, M. Craig, to G. P. Brett (MacMillan Co. Inc., N.Y.), 29th October 1925.

No. 30.—Letter, H. G. Wells' Secretary, M. Craig, to G. P. Brett (MacMillan Co. Inc., New York).

4, Whitehall Court,
(Flat 120),
S.W.1.
October 29th, 1925.

Dear Mr. Brett,

Mr. Wells asks me to thank you for your letter of October 20th.

Mr. Wells has written the enclosed memorandum on the Web, two copies of which he asks me to send you, one for yourself and one for your Toronto lawyer. He is also sending a copy to Sir Frederick MacMillan.

Yours sincerely,

M. CRAIG,
Secretary to Mr. H. G. Wells.

G. P. Brett, Esq.,
The MacMillan Co.,
65 Fifth Avenue,
New York, U.S.A.

No. 31.—Memorandum of " the Case of The Web " attached to H. G. Wells' Letter of October 29th, 1925, to G. P. Brett. (MacMillan Co. Inc. of New York).

Exhibits filed with Evidence on Commission in New York.

No. 31. Memorandum of the Case of " The Web " attached to H. G. Wells' letter of 29th October 1925 to G. P. Brett (MacMillan Co. Inc. of New York).

MEMORANDUM OF THE CASE OF THE WEB.

Either the claim is a genuine but silly claim or it is a blackmailing claim based on a faked MS.

In the former case the resemblances of the MS. of the Outline will be due to a common obvious idea and to the use of common sources—which should be easy to establish.

In the latter the MS. has been extensively altered since it was in the hands of Macmillan & Co. This should be proveable by the testimony of the reader or readers of Macmillan & Co. to whom it was submitted in 1918. Our case will be that the Web has been rewritten to substantiate this claim since the appearance of the Outline.

In either case Messrs. Macmillan must substantiate that the MS. never left the hands of their representatives in the period during which their responsibility lasted and could not have been seen by Mr. Wells.

Mr. Wells denies having seen such an MS. or being in the least obliged to any report of it. He broached the idea of an Outline of History at a lunch of representative American visitors before the end of the War. A history of the origin of the Outline can no doubt be made up from Mr. Wells' letter files, but it would be a tiresome business and he does not propose to do that until he has the statement of the claimant's case and knows what points need refuting.

Exhibits.

No. 32. Order Blank of MacMillan Company from MacMillan Company of Canada.

No. 32.—Order Blank of MacMillan Company from MacMillan Company of Canada.

ORDER FORM.

From THE MACMILLAN COMPANY OF CANADA LIMITED,
St. Martin's House, Bond Street,
Toronto, 2, Nov. 2/28.

To The Macmillan Company, #2685
New York, N.Y.

Please supply us with the following; per 1st Freight at the usual terms, and charge to our account :—

Brought forward

2 Gale—Friendship Village.
6 Hockett—Political and Social History of the United States Part I.
3 Shakespeare—Henry VI. Part II. Tudor Shakespeare.
5 Ogg—Government of Europe.
2 Eastman—These Changing Times.
50 Wells—Outline of History 1 Volume Ed. @ 2.16 plus 10% Royalty.
10 Forbes—Mario's Castle.
10 Austin—Emma M.R.S. 1/2 lea.
10 Matthews & Coffin—City Stories.
10 Bridges—Taking the Name of Science in Vain.
2 Hadley—Economic Problems of Democracy.

Yours truly,
THE MACMILLAN COMPANY OF CANADA LIMITED,
by.....

Ex. 7. Comparison of the plans of " The Web " and " The Outline of History."

Ex. 7.—Comparison of the plans of " The Web " and " The Outline of History."

The Plan or Framework of " THE WEB " and
" THE OUTLINE OF HISTORY."

In arranging this plan I have inserted the sub-headings of the various chapters of " The Outline ". The Chapters of " The Web " were not divided into sub-headings. Yet, in order to show that the Chapters of " The Outline " deal with the same subjects as do the Chapters of " The Web " I have placed in the various Chapters of " The Web " the sub-headings of the corresponding Chapters of " The Outline "—i.e. wherever " The Web " and " The Outline " deal with these same subjects. Thus, we shall see that from the beginning to the end both works include the same subjects and both omit the same subjects. At times even the order of sequence is the same in both. At times it is different. Although

the Inclusion and Exclusion of subjects are virtually the same in both works yet " The Outline " contains much material that is not in " The Web " and " The Web " contains much that is not in " The Outline ". For example " The Web " features " feminism " in history and " The Outline " omits it.

Both " The Web " and " The Outline " start from the same viewpoint.

" The Web."	" The Outline."
(I wrote with a view to showing whence we have come and whither we are going and to pointing out the forces which have produced the humanity of to-day bound together as it is by some unifying power—the spirit of altruism, and torn asunder as it is by some disintegrating power—the spirit of selfishness—forces which are capable of carrying the human race on to prosperity or of sinking it into degradation, and I closed with suggestions for the future).	Pg. VII, Preface, says :— It (this history) is an attempt to tell how our present state of affairs, this distressed and multifarious human life about us, arose in the course of vast ages and out of the inanimate clash of matter, and to estimate the quality and amount and range of the hopes with which it now faces its destiny.
(When the Great War broke out in 1914 my mind became more bent upon the wars of history, their causes and effects, and as I continued my work I discovered what I believed to be the basis of human development, namely, that peace and altruism were the fountain heads of industry and idealism out of which arose civilization; and that selfishness and hunting were the fountain heads of aggression and militarism out of which arise degradation and destruction.)	Pg. VI says :— The need for a common knowledge of the general facts of human history throughout the world has become very evident during the tragic happenings of the last few years. War has become a universal disaster, blind and monstrously destructive. Without such (historical) ideas to hold them together in harmonious co-operation races and peoples are bound to drift towards conflicts and destruction.

These passages from Mr. Wells preface are as applicable to " The Web " as to " The Outline ".

These-view points are 100% equal. From the analysis which follows we shall see that the plan or framework of " The Web " and " The Outline " are 100% equal.)

Exhibits.

Ex. 7. Comparison of the plans of "The Web" and "The Outline of History" —*continued.*

THE PLAN.

The substance of Chapter I of "The Web" is expanded into Chapters I to VIII of "The Outline".

"The Web"	"The Outline"

(*The * indicates subjects which I did not touch upon.*)

Chapter I.	Chapter I. The Earth in Space and Time.
	„ II. Record of the Rocks.
	„ III. Natural Selection and the changes of the Species.
The Dawn.	„ IV. The invasion of Dry Land by Life.
	„ V. Changes in the World's Climate.
	„ VI. The Age of Reptiles.
	„ VII. „ „ Mammals.
	„ VIII. The Ancestry of Man.

For example—see sub-headings.

Ch. I.	Ch. I.—VIII.
1. The Earth in Space and Time.	I. 1. The Earth in Space and Time.
	II. 1. The first living things.
3. The First Living Things.	* 2. How old is the World.
5. Natural Selection and Changes of the Species.	III. Natural Selection and the Changes in the Species.
2. Life and Water.	IV. 1. Life and Water.
4. The Earliest Animal Life.	2. The Earliest Animals.
	* V. 1. Why Life must Change.
	* 2. The Sun and Steadfast Stars.
	* 3. Changes from within the Earth.
	* 4. Life may control Change.
	* VI. 1. The Age of Lowland Life.
	* 2. Flying Dragons.
	* 3. The First Birds.
	* 4. The Age of Hardships and Death.
	* 5. The First Appearance of Fur and Feathers.
	*VII. 1. A New Age of Life.
	* 2. Tradition comes into the World.

" The Web "	" The Outline "
6. The Age of Brain Growth.	3. The Age of Brain Growth.
	* 4. The World grows hard again.
7. Man descended from something like an Ape.	VIII. 1. Man descended from a Walking Ape.
8. First traces of Man-like Creatures (about 300,000 or more years ago.	2. First traces of Man-like Creatures (about 500,000 years ago).
Palaeolithic and Eolithic Remains.	* 3. The Heildelberg Sub-Man.
	* 4. The Pildown ,,
	* 5. The Riddle of the Piltdown Remains.

In this section :—

Both " The Web " and " The Outline " adopt the La Place Nebula Hypothesis which had been discarded about 1905 for the Planatessimal Hypotheses of Chamberlin (and also later for the Great Star Hypotheses of Jeans).

Every sentence of this first chapter of " The Web " has been incorporated in " The Outline "—That is 100%—partly in paraphrase or revision in the first Chapter and partly in expansion into the first eight Chapters.

Both pass through the same epochs, and although there is a difference in treatment the plan remains the same in both.

Chapter VIII of " The Outline " runs on into the next Chapter II of " The Web ".

Ch. II.	Ch. IX to XIV.
First Steps.	IX. The Neanderthal Man (Early Palaeolithic Age).
	X. The First True Man (Later Palaeolithic Age).
(" The Web " makes no distinction between the Early Palaeolithic, Later Palaeolithic and Neolithic Ages).	XI. Neolithic Man in Europe.
	XII. Early Thought.
	XIII. The Races of Mankind.
	XIV. The Languages of Mankind.
	XV. The Aryan-speaking People.

Ch. III. The Transition.
Ch. IV. The Right of Might.

For example—see sub-headings.

Ch. II.	*Ch. IX.
	1. The World 50,000 years ago.
1. Daily Life of the First Men and Women (Palaeolithic) (Ch. II, pg. 2, etc.)	2. Daily Life of the First Man.
	* 3. Last Palaeolithic Man.

Exhibits.

Ex. 7. Comparison of the plans of "The Web" and "The Outline of History" —*continued.*

"The Web"	"The Outline"
	*Ch. X. 1. The coming of Men like Ourselves.
	* 2. Subdivisions of the Later Palaeolithic.
(Splendid savagery is suggested throughout this Chapter.)	3. The earliest True Men were splendid Savages.
	* 4. Hunters give place to Herdsmen.
	* 5. No sub-Men in America.
4. The Age of Cultivation begins (by woman) II : 2.	,, XI. 1. The Age of Cultivation begins (by man).
	* 2. Where did the Neolithic Culture arise.
2. Everyday (Neolithic) Life II : 2, etc.	3. Everyday Neolithic Life.
3. How did sowing begin (by women) II : 2.	4. How did sowing begin (by Man).
	5. Primitive trade.
	* 6. The flooding of the Mediterranean.
5. Early Thought or Primitive Religion II : 5.	,, XII. is entitled Early Thought. 1. Primitive Philosophy.
6. (The Old) Woman in Religion II : 5.	2. The Old Man in Religion.
7. Love and Peace in Religion II : 8.	3. Fear and Hope in Religion.
(Stars and Season touched on III : 7.)	4. Stars and Seasons.
	* 5. Story - Telling and Myth - Making.
	* 6. Complex Origins of Religion.
8. The Differentiation of Mankind II : 11.	,,XIII. 1. Is Mankind still Differentiating.
9. The Main Races of Mankind II : 11.	2. The Main Races of Mankind.
	* 3. Was there an Alpine Race.
	* 4. The Brunet Peoples.

"The Web"		"The Outline"	
		*Ch. XIV.	The Languages of Mankind.
Language merely touched on VI : 1.			
Bits of II	1. The Spreading of the White (Aryan-speaking) People.		1. The Spreading of the Aryan Speakers.
III	II : 11, 12.		2. Primitive Aryan Life.
IV	V : 4, 6.		
V	VI : 1, 6.		
VI	2. Primitive Aryan Life.		
	III : 3.		
	IV : 6.		
	VI : 1.	*	3. Early Aryan Daily Life.

In this section :—

1. Both introduce a primitive family group under the leadership of the oldest woman the "Old Woman" (in "The Web") and the "Old Man" (in "The Outline").

2. Both introduce civilization and war into human affairs about the same time,

Exactly the same epochs are passed through. "The Web" does this in a few typescript pages, "The Outline" covers many printed pages. But in both the plan remains the same.

Chapter XV of "The Outline" runs on into the next chapter V of "The Web".

The substance of Chapter V of "The Web" is expanded into Chapters XVI to XXI of "The Outline".

Ch. V.	Ch. XVI to XXI.
	XVI. The first civilization.
The Turned Tide.	XVII. Sea Peoples and Trading Peoples.
	XVIII. Writing.
	XIX. Gods and Stars, Priests and Kings.
	XX. Serfs, Slaves and Social Classes.
	XXI. Scriptures and the Prophets.

For example—sub-headings.

Exhibits.

Ex. 7. Comparison of the plans of "The Web" and "The Outline of History" —*continued.*

"The Web"	"The Outline"
Ch. V. (and bits of II, III, IV, and even V)	Ch. XVI.
4. Assyria, II : 12-13, III : 8-9, V : 14-15, 20-23.	*1. Early cities and Early Nomads.
2. Chaldea or Babylonia II : 11-12, III : 7-9, IV : 9.	*2. (*a*) The Sumerians.
1. India, II : 11, IV : 5-6, V : 6, 29-30	* (*b*) Empire of Sargon the First
5. China, II : 13, III : 9, IV : 7-8, V : 30, 5-8, 37-39.	(*c*) ,, ,, Hammurabi (Babylonian Empire).
3. Egypt, II : 12, III : 3-7, IV : 8-9, V : 1-14.	(*d*) The Assyrians and their Empire.
	(*e*) The Chaldaian Empire.
	3. The Early history of Egypt.
	4. ,, civilization of India.
	5. The Early history of China.
6. Phoenicia and Carthage V : 13, 17, 21.	*6. While the civilizations were growing.
	Ch. XVII.
7. Crete, VI : 3.	*1. The Earliest Ships and Sailors.
8. Trade and Exploration, III : 6, 8, V : 4, 6, 13, etc.	2. The Aegean Cities before history (Crete, Phoenicia, Carthage).
	3. First Voyages of Exploration.
	4. Early Traders.
	*5. Early travellers.
9. Picture writing II : 12.	Ch. XVIII.
10. Syllable writing II : 12.	1. Picture writing.
	2. Syllable ,,
	*3. Alphabet ,,
	*4. The Place of Writing in Human Life.
Chapters II, III, IV, V dealt with religion and government but differently from "The Outline" in this Chapter.	Ch. XIX.
	1. Nomadic and Settled Religion.
	2. The Priest comes into history.
	3. Priests and Stars.
	4. Priest and Dawn of Learning.
	5. King against Priest.
	6. How Bel-Marduk struggled against the Kings.
	7. The God-Kings of Egypt.
	8. Shi Hwang-ti destroys the books.

Exhibits.

Ex. 7. Comparison of the plans of "The Web" and "The Outline of History" —*continued.*

"The Web"	"The Outline"
	Ch. XX.
11. The Earliest Slave, IV : 2.	*1. Common Man in ancient times.
13. Property in hands of individuals IV: 3 (First Independent Persons)	2. The Earliest Slaves.
12. Beginning of Social Classes, IV : 3.	3. First Independent Persons.
13. Caste in India, IV : 5, 6, V : 6, 26-27.	4. Social Classes 300 years ago.
14. Chinese Civilization, IV : 7-8, V : 31	*5. Classes hardening into Castes.
	6. Caste in India.
15. Summary touch upon V : 13, 39-40.	7. System of the Mandarins (Chinese Civilization).
	8. A Summary of 5,000 years.
	Ch. XXI.
16. Place of Israelites in History V: 1-3, 7-12, 23-25, V : 8-12, 15-16.	1. Place of the Israelites in History.
17. Saul, David and Solomon, V : 16-19	2. Saul, David, Solomon.
18. Importance of the Hebrew Prophets (touched upon) V : 21.	*3. The Jews a people of mixed origin.
	4. The Importance of the Hebrew Prophets.
19. Rise of the Persians in the East V : 4-5, 25, 39.	
20. Buddha—V; Confucius VI : 31-36.	

Here 19 comes into the next chapter XXII of "The Outline"
20 comes into the next chapter XXVI of "The Outline"

1. Both carry the main story down to about B.C. 500, although both at times go a little beyond B.C. 500.

2. Both bring in the civilizations of India and China along with those of Egypt, Babylonia, etc. (In my revised work I changed this plan somewhat for a better one.)

1. Both omit to give any adequate account of the civilizations of early Egypt, the Tigris-Euphrates region and Western Asia.

2. Both omit to show the great advantages that the Orient passed on to Western civilization.

Here exactly the same epochs are passed through. There is a difference in treatment, but in both the plan remains the same.

Chapter XXI of "The Outline" runs on into the next Chapter VI of "The Web."

The substance of Chapters VI and VII of "The Web" is taken up in Chapter XXII of "The Outline."

Ch. VI.	Ch. XXII.
The Land of the Nymph and the Dryad.	The Greeks and the Persians.
Ch. VII.	
The Warriors Advance.	

For example—sub-headings.

Exhibits.

Ex. 7. Comparison of the plans of "The Web" and "The Outline of History" —*continued.*

"The Web"	"The Outline"
Ch. VI.	Ch. XXII.
1. The Greek (Hellenic) people XXII, VI : 1, 2.	1. The Hellenic Peoples.
2. Distinctive Features of Hellenic Civilization (touched on) VI : 2-6, VII: 6.	2. Distinctive Features of Hellenic Civilization.
3. Monarchy, Aristocracy and Democracy VI : 5, VII : 4, 18, VII : 3.	3. Monarchy, Aristocracy and Democracy in Greece.
(Rise of Persians in East V : 30.)	4. The Kingdom of Lydia. 5. The Rise of the Persians in the East.
VII. 4. Persia (Darius) invades Europe VII : 19.	6. The Story of Crœsus. 7. Darius (Persia) invades Russia (Europe).
5. The Battle of Marathon VII : 19.	8. The Battle of Marathon.
6. Thermopylæ and Salamis, VII : 20.	9. Thermopylæ and Salamis.
7. Platæa and Mycale, VII : 21.	10. Platæa and Mycale.

"The Web", Chapters VI, VII, VIII, IX, takes up also the history of Rome concurrent with that of Greece.

"The Outline" does not take up the history of Rome until it has finished the history of Greece.

Therefore in this plan I shall not take up the history of Rome until I have finished the history of Greece. I shall then take up the history of Rome in order to make clear the comparison. Thus :—

Chapter XXII of "The Outline" runs into the next chapter VIII of "The Web."

The substance of Chapter VIII of "The Web" is taken up in Chapter XXIII of "The Outline".

Ch. VIII.	Ch. XXIII.
The Golden Age.	Greek Thought and Literature.
For example—sub-headings.	
VIII. 1. The Athens of Pericles.	XXIII. 1. The Athens of Pericles.
1. Pg. 1-9, 12-15.	
2. Socrates, 11-12, 16.	2. Socrates.
3. The Quality of the Common Athenian, VII, 20, 22; VIII, 13.	3. What was the Quality of the Common Athenian.
4. Greek Tragedy and Comedy, 8-10.	4. Greek Tragedy and Comedy.

Exhibits.

Ex. 7. Comparison of the plans of "The Web" and "The Outline of History" —*continued.*

"The Web"	"The Outline"
5. Plato, 11, 16, 17.	5. Plato and the Academy.
6. Aristotle, 17.	6. Aristotle and the Lyceum.
	7. Philosphy becomes unworldly.
	8. Quality and limitations of Greek Thought.

This Chapter XXIII of "The Outline" runs on into the next Chapter IX of "The Web".

The substance of Chapter IX of "The Web" is expanded in "The Outline" into its next 3 Chapters XXIV, XXV and XXVI.

Ch. IX. Greece Submerged.	Ch. XXIV. The Career of Alexander the Great.
	Ch. XXV. Science and Religion at Alexandria.
	Ch. XXVI. The Rise and Spread of Buddhism.

For example—sub-headings.

IX. 1. Philip of Macedonia, IX : 2.	XXIV. 1. Philip of Macedonia.
2. Murder of King Philip, 3.	2. Murder of King Philip.
3. Alexander's First Conquests, 3-5.	3. Alexander's First Conquests.
	*4. Wanderings of Alexander
4. Alexander was *not* Great, 4.	5. Was Alexander, indeed, Great? (No.)
5. Successors of Alexander, 6-7.	6. The Successors of Alexander.
	*7. Pergamum a Refuge of Culture.
	8. Alexander a Portent of World Unity.
6. The Science of Alexandria, 7-8.	XXV. 1. The Science of Alexandria.
7. Philosophy at Alexandria, 8.	2. Philosophy at Alexandria.
	*3. Alexandria as a Factory of Religions.
V. Takes up Buddhism, 31-32, etc.	XXVI. 1. The Rise and Spread of Buddhism.
,, Confucianism, 34-36.	(This includes Confucianism.)

Exhibits.

Ex. 7. Comparison of the plans of "The Web" and "The Outline of History" —*continued.*

In this section :—

1. Both retrace their steps.

2. Both give an arc-like dispersion of the White or Aryan-speaking people.

1. Both omit to show the great range of oriental civilization which entered Greece.

Here also the epochs passed through are the same in both, and in both the plan or framework remains the same.

This Chapter XXVI of "The Outline" runs on into the history of Rome as taken up in Chapters VI to IX of "The Web".

The substance of the sections on Roman History in Chapters VI to IX of "The Web" is taken up in Chapter XXVII of "The Outline."

"The Web."	"The Outline."
Ch. VI to IX. (Take up the early sections of the history of Rome and Carthage "the two Western Republics.")	Ch. XXVII. The Two Western Republics.
For example—see sub-headings.	
Ch. IX and bits of VI, VII, VIII.	Ch. XXVII.
1. The beginnings of the Latins VI : 10–11; VII : 13–17; VIII : 18–25; IX : 9, etc.	1. The beginning of the Latins.
2. A new sort of State—Rome VIII : 21; IX : 9.	2. A New Sort of State.
3. Carthage, IX : 10.	3. The Carthaginian Republic of Rich Men.
4. The First Punic War, IX : 11.	4. The First Punic War.
5. „ Second „ „ IX : 11–13	5. Cato the Elder and the Spirit of Cato.
6. Cato (and the Spirit of Cato), IX : 14–15.	6. The Second Punic War.
7. The Third Punic War, IX : 17.	7. The Third Punic War.
8. How the Roman War undermined Roman Liberty, X : 1–3.	8. How the Punic War undermined Roman Liberty.
9. (Takes up the Gladiators, X : 11.)	9. Comparison of the Roman Republic with a modern State (takes up Gladiators).

This Chapter XXVII of "The Outline" runs on into the next Chapter X of "The Web."

The substance of Chapter X of "The Web" is taken up in "The Outline" in Chapter XXVIII (and also in the last sections 8 and 9 of XXVII).

"The Web."	"The Outline."
Ch. X.	Ch. XXVIII.
Rome the Oppressor.	From Tiberious to the God-Emperor.

For example—sub-headings.

X.	XXVIII.
1. (Touched upon), X : 5, 8, 9.	1. The science of thwarting the common man.
2. The last years of Republican Politics (The Gracchi), X : 3, 5.	*2. Finance in the Roman State.
3. The Era of the Adventurer Generals, X : 9–15.	3. The last years of Republican Politics (The Gracchi).
4. Julius Caesar and his death, X : 7–18.	4. The Era of the Adventurer Generals.
5. The End of the Republic, X : 12–19, XI : 1–4.	5. Caius Julius Caesar and his death.
XI. 6. (Failure of Rome treated differently, 11 : 6, 20, 28, 30.	6. The end of the Republic.
	7. Why the Roman Republic failed (could not keep its unity).

This Chapter XXVIII of "The Outline" runs on into the next Chapter XI of "The Web."

The substance of Chapters XI and XII of "The Web" is taken up in Chapters XXIX and XXX of "The Outline."

Ch. XI.	Ch. XXIX.
Hope.	The Caesars between the sea and the plains.
Ch. XII.	Ch. XXX.
Doomed.	The beginning of Christianity.

For example—sub-headings.

Exhibits.

Ex. 7. Comparison of the plans of "The Web" and "The Outline of History" —*continued.*

"The Web."	"The Outline."
Ch. XI.	Ch. XXIX.
2. Roman Civilization at its Zenith, XI : 2–6.	1. A Short Catalogue of Emperors.
1. A Short Catalogue of Emperors	2. Roman Civilization at its Zenith.
5. (Judea at Christian Era touched upon), XI : 16.	*3. Limitations of the Roman Mind.
6. The Teachings of Jesus, XI : 16–18.	4. The Stir in the Great Plains.
7. The Crucifixion of Jesus, XI : 18.	5. The Western (True Roman) Empire crumples up.
8. Doctrines added, etc., touched upon, XI : 19.	*6. The Eastern (Revived) Hellenic Empire.
Ch. XII.	Ch. XXX.
9. The Struggles and Persecutions of Christianity, XII : 2, 6.	1. Judea at the Christian era.
	2. The Teachings of Jesus of Nazareth.
3. The Stir of the Great Plains, XII : 3, 7, 13.	*3. The New Universal Religions.
10. Constantine, XII : 6, etc.	4. The Crucifixion of Jesus of Nazareth.
11. The Establishment of Official Christianity, XII : 8.	5. Doctrines added to the teachings of Jesus.
4. The Western (true Roman) Empire Crumples up, XII : 8, 13, 14.	6. The Struggles of Persecutions of Christianity.
	7. Constantine the Great.
Ch. XIII.	8. The Establishment of Official Christianity.
12. (Map of Europe touched upon, XIII : 2).	9. The Map of Europe A.D. 500 (Dark Ages).
13. The Salvation of Learning by Christianity, XIII : 8.	10. The Salvation of Learning by Christianity.

In this section :

1. Both omit to give any adequate account of Roman civilization.
    1. Roman architecture, art and literature.
    2. Roman life and character.
    3. Roman Bureaucracy.
    4. Roman military system.
    5. The significance of Roman citizenship which enabled men of barbarian descent to become Roman generals.

2. Both omit any mention of the great work of the Roman lawyers or any account of Roman and German law.

Ex. 7. Comparison of the plans of "The Web" and "The Outline of History" —*continued.*

3. Both omit any mention of Rome's contribution to modern civilization.

Here also the epochs passed through are the same in both, and in both the plan remains the same.

We see that Chapter XXX of "The Outline" carries the history on so far that its sections 9 and 10 deal with the substance of the first part of the next Chapter XIII of "The Web."

By shifting forward these sections (9 and 10) of "The Outline" then this Chapter XXX of "The Outline" runs on into the next Chapter XIII of "The Web."

The substance of Chapters XIII, XIV, XV, XVI is taken up in "The Outline," in Chapters XXX (9 and 10), XXI, XXXII, XXXIII, XXXIV.

"The Web."	"The Outline."
Ch. XIII. A New Empire, Military and Holy.	Ch. XXX. 9, 10, have been dealt with.
„ XIV. The Dark Ages.	„ XXXI. Seven Centuries in Asia.
„ XV. A Gleam.	„ XXXII. Mohammed and Islam.
„ XVI. The Dawn of Democracy and of Royal Absolutism.	„ XXXIII. Christendom and the Crusaders.
	„ XXXIV. Jengis Khan and his successors.

for example—sub-headings.

XIII. 1. Justinian, XIII : 4.	XXXI. 1. Justinian the Great.
	*2. The Sassanid Empire of Persia.
4. Mohammed & Islam, XIII : 9–12 (Zoroaster is taken up, V : 4, 5).	*3. Decay of Syria under the Sassanids.
	4. The First Message from Islam.
	5. Zoroaster & Mani.
	*6. Hunnish People in Central Asia and India.
	*7. The Great Age of China.
	*8. Intellectual letters of China.
	*9. The Travels of Yuan Chwang.
	XXXII. This Chapter XXXII is an expansion of sec. 4, Ch. XXXI.)

Exhibits.

Ex. 7. Comparison of the plans of "The Web" and "The Outline of History" —*continued.*

"The Web."	"The Outline."
	XXXIII. 1. The Western world at its lowest ebb.
2. The Feudal System, XIII: 3, 5.	2. The Feudal System.
3. The Frankish Kingdom, XIII: 3, 7, 12, 15.	3. The Frankish Kingdom of the Merovingians.
4. The Christianization, etc. touched on, XIII: 2.	4. The Christianization of the Western Barbarians.
5. Charlemagne becomes Emperor of the West, XIII: 2, 8.	5. Charlemagne becomes Emperor of the West.
6.	6. The Personality of Charlemagne.
XIV. 1. The Dark Ages (lowest ebb), XIV.	
6. Charlemagne, XIV: 16, 17.	
7. The French and Germans become Distinct, XIV: 18.	7. The French and Germans become Distinct.
8. The Normans, the Saracens, the Hungarians and the Turks, XIV: 20–22; XVI: 32.	8. The Normans, the Saracens, the Hungarians and the Seljuk Turks.
	*9. How Constantinople Appealed to Rome.
XV. 15. Last two sentences of "Outline," XXXIII.	10. The Crusaders.
9. (touched on), XVI: 34, 38.	11. The Crusaders as a test of Christianity.
10. The Crusaders, XVI: 38–43, 49.	
12. The Emperor Frederick II, XVI: 47, 49.	12. The Emperor Frederick II.
13. (touched on), XVI: 43, 36; XVII: 63, 64.	13. Defects and Limitations of the Papacy.
14. A list of Leading Popes, XIII: 8, 14, 34, 38.	14. A list of Leading Popes.
XVI. The Mongol Invasion mentioned, XVI: 51.	15. The last two sentences touch upon the thought of "The Web," Ch. XV.
	XXXIV. Jengis Khan and his Successors (The Mongol Invasion).

This Chapter XXXIV of "The Outline" runs on into the last section of Chapter XVI of "The Web."

The Substance of Chapters XVI (last section), XVII, XVIII, XIX, XX of "The Web" is woven up into the next Chapter XXXV of "The Outline."

"The Web."	"The Outline."
Ch. XVI. (last section).	Ch. XXXV.
,, XVII. Democracy and the Renaissance.	The Renascence of Western Civilization.
,, XVIII. Democracy and New Worlds.	
,, XIX. Triumphant Absolutism.	
,, XX. Democracy and the Reformation.	
,, XXI. Absolutism for World Conquest.	

For example—sub-headings :

XVI.	1. Christianity and Popular Education, XVI : 56–57.	XXXV.	1. Christianity and Popular Education.
			2. Europe Begins to think for itself.
	3. The Dawn of Communism, XVI : 30–31, 35, 38.		3. The Great Plague and the dawn of Communism.
			4. How Paper Liberated the Human Mind.
	10. The Republic of Switzerland, XVI : 60–61.		5. Protestantism of the Princes.
			Protestantism of the Peoples.
XVII.	2. Europe begins to think for itself, XVII : 64, 70, 71, 75.		
	4. (Printing is touched on), XVII : 85.		
	6. The Reawakening of Science (in Italy, etc.), XVII : 63, 70, 74, 76, 78, 80.		6. The Reawakening of Science (in Northern Europe).
	7. The Growth of European Towns, XVI : 52–54, 57 ; XVII : 72, 89–90.		7, New Growth of European Towns.

Exhibits.

Ex. 7. Comparison of the plans of "The Web" and "The Outline of History" —*continued.*

	"The Web."	"The Outline."
XVIII.	8. America Comes into History, XVII : 81–84, XVIII : 93–104.	8. America Comes into History.
XIX.	9. (We might say—the condition of Europe), XIX, XX : 132.	9. What Machiavelli thought of the World.
XX.	5. Protestantism of the Princes. Protestantism of the Peoples. XX : 114–130; XXI : 133, 144.	10. The Republic of Switzerland.
XXI.	11a. The Life of the Emperor Charles V, XX : 130–131; XXI : 132–150.	11a. The Life of Emperor Charles V.
	11b. Protestants if the Prince wills it, XXI : 139.	11b. Protestants if the Prince wills it.
		11c. The Intellectual Undertow.

This Chapter XXXV of "The Outline" runs on into the next Chapter XXII (one section) and XXIII of "The Web."

In this section :

1. Both works give inadequate accounts of Feudalism—without mentioning such characteristic features as its hard and fast class system of titled nobility and commoners, or of its importance as the basis of local government, justice, legislation, the army and all executive power.

2. Both omit any mention of the social organization of the Middle Ages, any mention of the agricultural organization with its manors or villas, its lords and tenants, its rise and decline, any mention of the growth of municipal freedom in town life, of guilds, fairs, markets and fortifications.

3. Both omit, with regard to ecclesiasticism and monasticism, any mention of ecclesiastical and monastical organization, of the great monastery of Cluny and the Cluniac revival, of St. Bernard and the Cistercians, of convent life and convents for women, of the great wealth and power of the monasteries, or of their decline and dissolution.

4. Both omit in dealing with the Papacy any account of such important points as the Petrine succession, the College of Cardinals.

5. Both omit any adequate account of the territorial organization of Medieval Europe and of the development of centralized authority.

6. Both omit in medieval culture any mention of literature, sculpture or art, of troubadours or minnesingers or of chivalry and knighthood with all its picturesque beauty and military prowess.

7. Both omit, in medieval commerce, any account of the great trade organizations of Northern Europe, of the Lex Mercatoria, the trade in wool, cloth and eastern spice, and any adequate account of the Hanseatic League which both describe in similar terms as the only factor in Northern European commerce and which both insert, for no very clear reason, in the same position in the two surveys.

12. Both omit in dealing with the Protestant Reformation any mention of the decisive moment where Luther threw down his challenge to the Church by leading the students outside the wall of Wittenberg and there before a large number of citizens solemnly burning the Cannon Law and the Papal Bull which condemned his teaching.

13. Both omit any adequate account of the condition of Germany which favoured such a challenge.

14. Both omit any mention of eminent scholars who took part in the struggle, or of the Edict of Worms which declared Luther an outlaw and a menace to the State.

15. Again Dr. Barker says in his note "Above all there is no account of Calvinism, perhaps the greatest new inspiration of the period" and "Outline" 11, 163. "If I were writing a history of democracy I should" (take another plan). Both omit any discussion of Calvinism or any mention of Presbyterianism among the results of the Reformation.

16. Both omit in dealing with the Grand Monarchy of Louis XIV any account of his government or of his great minister, Colbert, to whom was due much, if not all, of the glory of the first twenty-five years of his reign.

This might be said to be the close of another section. Exactly the same epochs are passed through in both works and the plan or frame work remains the same in both.

The substance of Chapter XXII (one section), XXIII, XXIV, XXV, XXVI (one section) of "The Web" is woven up into Chapter XXXVI of the "Outline."

Ch. XXII. (one section). The Dutch Republic.
Ch. XXIII. The Pope and Ferdinand II against Democracy.
Ch. XXIV. Democracy crowned in England, Absolutism at its zenith in France.
Ch. XXV. Queens Royal and Democratic.
Ch. XXVI. (one sec.) The Industrial Revolution.

Ch. XXXVI.
Princes, Parliaments and Powers.

For example—sub-headings.

Exhibits.

Ex. 7. Comparison of the plans of "The Web" and "The Outline of History" —*continued.*

XXII. The Dutch Republic, 158–9, 167, 176–7, 187.	XXII, XXXVI.	1. Princes and Foreign Policy. 2. The English Republic. 3. The Dutch Republic.
XXIII.	1. (touched on in Ch. XVII, 70–71, 84, 88–89; XIX, XXII, XXIII.	4. Break-up and Disorders of Germany (30 years war).
	2. The English Republic, XXIII, 189; XXIV.	5. The Splendours of Grand Monarchy in Europe.
	4. The break-up and disorders of Germany (30 years war), XXIII, 198–9, 201, 211, 217–18, 220–21.	*6. The Growth of the idea of the Great Powers.
XXIV.	8. The first Scramble for Empire Overseas, XXIII, 194–197, 208, XXV, 24, 26, 27.	
	5. The Splendours of Grand Monarchy in France, XXIV, 240, 246–7, XXV, 13.	
XXV.	7. Poland and its Fate, XXV, 31–2.	7. The Crowned Republic of Poland and its Fate.
	9. Britain Dominates India, XXV, 20–21.	8. The First Scramble for Empire Overseas.
	10. Russia's Ride to the Pacific, XXV, 5, 10, 16–17, 22, 30, 31, 34, 35.	9. Britain Dominates India. 10. Russia's Ride to the Pacific.
XXVI.	11. Democratic Republic of America.	*11. What Gibbon Thought of the World.
	12. The Industrial Revolution, XXVI, 38–41.	12. The Social Truce draws to an end (The Industrial Revolution).

Here "The Web" takes up the Democratic Republic of America at the end of Chapter XXV. By shifting this into Chapter XXVI and also by shifting sec. 12, XXXVI (the Industrial Revolution) of "The Outline" into Chapter XXXVII, then,

This Chapter XXXVI of "The Outline" runs on into the next Chapter XXVI of "The Web."

Thus the substance of Chapter XXV (last sec.) and XXVI of "The Web" is taken up in Chapter XXXVII of "The Outline."

Exhibits.

Ex. 7. Comparison of the plans of "The Web" and "The Outline of History" —*continued.*

Ch. XXV. (last sec.) The Democratic Republic of America.

Ch. XXVI. Absolutism, a Cataclysm (in France).

Ch. XXXVII. The Democratic Republic of America and France.

For example—sub-headings.

XXV.	1.	XXXVII.*	1. Inconvenience of the Great Power System.
	2. (touched upon) XXIII, 194–197.		2. The thirteen colonies before their revolt.
	3. (briefly) XXV, 32–33.		3. Civil War is forced upon the colonies.
	4. (briefly) XXV, 35–37.		4. The War of Independence.
	5. (touched upon) XXV, 37.		5. The Constitution of the United States.
	6. (touched upon) XXV, 37.		6. Primitive features of the United States Constitution (slavery).
XXVI.	7. (taken up in) XXVI, 40–42.		7. Revolutionary ideas in France.
	8. (taken up) XXVI, 42–44.		8. The Revolution of the year 1789.
	9. (taken up) XXVI, 45–46, 48.		9. The French Crowned Republic of '89–'91.
	10. (taken up) XXVI, 48–51.		10. The Revolution of the Jacobins.
	11. (taken up) XXVI, 51–54.		11. The Jacobins Republic.
	12. The Directory, XXVI, 54.		12. The Directory.
	13. ("The Web" harped on economics).		13. The Pause in Reconstruction and the Dawn of Modern Socialism (currency).

This Chapter XXXVII of "The Outline" runs into the next Chapter XXVII of "The Web."

The substance of Chapters XXVI (last sec.), XXVII, XXVIII of "The Web" is taken up in Chapter XXXVIII of "The Outline."

Exhibits.

Ex. 7. Comparison of the plans of "The Web" and "The Out line of History" —*continued.*

Ch. XXVI. (last sec.) Bonaparte a Republican General.

Ch. XXXVIII. The Career of Napoleon Bonaparte.

" XXVII. Napoleon Bonaparte against Democracy.

" XXVIII. Democracy a Liberator.

" XXIX. To be or not to be.

For example—sub-headings.

XXVII. 1.
2. Bonaparte as a Republican General, XXVI, 54–55, XXVII, 56, 57.
3. Bonaparte First Consul 1799 to 1804, XXVII, 57–60.
4. Napoleon I, Emperor 1804–14, XXVII, 60–67.
5. The Hundred Days, XXVII, 67–72, XXVIII, 79–80.

XXVIII. 6.
7. The Map of Europe in 1815, XXVIII, 80–93, XXVII, 68–71.

XXVIII.*1. The Bonaparte Family in Corsica.
2. Bonaparte as a Republican General.
3. Napoleon, First Consul, 1799–1804.
4. Napoleon I, Emperor, 1804–14.
5. The Hundred Days.
*6. The Cult of the Napoleonic.
7. The Map of Europe in 1815.

This Chapter XXXVIII of "The Outline" runs on into the last section of Chapter XXIX of "The Web."

The substance of Chapter XXIX (one section), XXX, XXXI, XXXII of "The Web" is taken up in Chapter XXXIX of "The Outline."

Ch. XXIX. The Mechanical (and Industrial) Revolution.

Ch. XXXIX. The Realities and Imaginations of the Nineteenth Century.

" XXX. Democracy to Be.

" XXXI. The Hohenzollerns against.

" XXXII. Militarism against Democracy.

For example—sub-headings.

XXIX. The Mechanical Revolution, XXIX, 106–108.	XXXIX. 1. Mechanical Revolution.
2.	*2. Relation of Mechanical to the Industrial Revolution.
3. The Fermentation of Ideas, 1848, XXVIII, 78, XXIX, 108–113.	3. Fermentation of Ideas, 1848.
4.	*4. Development of the Idea of Socialism.
5.	*5. Short-comings of Socialism as a scheme of Human Society.
6.	*6. How Darwinism affected Religious and Political Ideas.
XXX. 7. Gladstone and Disraeli, XXX, 124.	7. Gladstone and the Idea of Nationalism.
8. Europe between 1848–1878, XXX, 114–133, XXXI, 137–151, XXXII, 152–160.	8. Europe between 1848–1878.
9. (touched upon), XXX, 134–135, etc.	9. The (second) Scramble for Overseas Empire.
10.	*10. The Indian Precedent in Asia.
11. (touched upon) XXX, 133	11. The History of Japan.
12.	*12. Close of the Period of Overseas Expansion.
13.	*13. The British Empire in 1914.

This Chapter XXXIX of "The Outline" runs on into portions of Chapter XXXIII and then into Chapter XXXIV of "The Web."

Chapter XXXIII of "The Web" is a chapter on feminism and is omitted in "The Outline" except for possibly a few suggestions.

The substance of portions of Chapters XXXIII and XXXIV of "The Web" is expanded into Chapters XL and XLI of "The Outline."

Ch. XXXIII. (a few paragraphs).	Ch. XL. The Catastrophe of 1914.
Ch. XXXIV. The Climax.	Ch. XLI. The Unification of the World.

For example—sub-headings.

XXXI. 1. (touched on) XXXI, 150, XXXII, 161, 170–71.	XL. 1. Armed Peace before the Great War.
XXXII. 2. (touched on) XXXII,	2. Imperial Germany.

Exhibits.

Ex. 7. Comparison of the plans of "The Web" and "The Outline of History" —*continued.*

XXXIII.	162, 166–7, XXXIII, 193.	
XXXIV. 3.	(touched on) XXXI, 216, XXXIV, 226, 230, XXXI, 146, 157, XXXII, 163.	3. The Spirit of Imperialism in Britain and Ireland.
4.	(touched on), XXXIV, 207.	4. Imperialism in France, Italy and the Balkans.
5.	(touched on) XXXII, 164–166.	5. Russia Still a Grand Monarchy.
6.	(touched on), XXX, 135.	6. The United States and Imperial ideas.
7.	(touched on), XXXIV, 207–209.	7. The Immediate Causes of the Great War.
8.		*8. A Summary of the Great War to 1917.
9.		*9. The Great War from the Russia collapse to the Armistice.
10.		*10. The Political, Economic and Social Disorganisation caused by the War.
11.		*11. Pres. Wilson and the Problem of Versailles.
12.		*12. Summary of the First Covenant of the League of Nations.
13.		*13. A General Outline of the Treaties of 1919 and 1920.
14.		*14. A forecast of the Next War.
15.		*15. The State of Men's Minds in 1920.
1.	(touched on), XXXIV, 1.	XLI. 1. Possible Unification of Men's Wills in Political matters.
2.	(touched on), XXXIV, 212, 213.	2. How a Federal World Government may come about.
3.	(suggested), XXXIV.	3. Some Fundamental Characteristics of a Modern World State.
4.	(suggested) XXXIV, 211–214, IX, 20, XIX, XXII.	4. What this world might be were it under one law and justice.
5.	(suggested), XVI, 55.	5. The Stages beyond.

Exhibits.

Ex. 7. Comparison of the plans of " The Web " and " The Outline of History " —*continued.*

In this section :—

1. " The Web " took up the origin of Free Holland in the reign of Elizabeth (XX, 158 &c., 178). " The Outline " (XXXVI, 232) takes it up in the Stuart period but says " We have given this account of the origin of Free Holland after our account of the English Revolution—but, it came to its climax in the reign of Queen Elizabeth ". Thus it virtually fits into the plan of " The Web." (It might be added here that " The Outline " barely touched the reign of Elizabeth, whereas " The Web " had enlarged upon it. Mr. Wells' omission of this period might be attributed to the fact that many women figure here besides Queen Elizabeth. These were Mary, Queen of England, and her mother, Catherine of Aragon, whose mother, Isabella of Spain, was the grandmother of Charles V on his mother's side : and also Lady Jane Grey, Mary Queen of Scots, and Catherine de Medici of France.)

2. Both bring in Russia, Prussia and the War of the Spanish Succession together with France (" The Web " XXV, 5-24, 26-35) (" The Outline " pg. 240-242). (I changed this place in my last revision for a better one).

3. Both divide the account of the Industrial Revolution into two sections, placing one before the French Revolution of 1789 and the other before the Revolution of 1848. This was a confused and awkward arrangement of my own as far as I know, and one which has not been followed by any author that I know of.

4. Both reach the same climax or crisis. The last chapter of " The Web " is entitled " The Climax ". The last chapter of " The Outline " says " this story—rises to a crisis ".

5. At the beginning of the last chapter both introduce a similar summarization of the work. " The Web " does this also at the beginning of the last book. This summarization was original in " The Web ".

6. In the last chapter both take an outlook into the future and advocate a federal world-government.

Ex. 14.—Duruy's History of the World—(Extracts printed).

Ex. 14. Duruy's " History of the World " (Extracts printed).

Page

1 & 2. Our solar system, with all the stars which compose it, is only a speck in immensity. According to the hypothesis of Laplace, which nothing so far has disproved, those stars themselves

Exhibits.

Ex. 14. Duruy's "History of the World" (Extracts printed)—*continued.*

Page.

originally formed but a single whole. It was one of those prodigious nebulæ, such as are still seen in the vastitude of the heavens, and are probably so many suns in process of formation. Our Nebula became concentrated into a focus of heat and light, but as it followed its path through space, it now and again threw off masses of cosmic matter which formed the planets. The latter, as if demonstrating their origin, still revolve in the orbit of the sun from which they emanated.

The globe which we inhabit is therefore a tiny fragment of the sun, which extinguished as it cooled and enveloped itself successively in a gaseous ocean, the atmosphere; then in a liquid ocean, the sea; and finally in a solid crust, the land, the highest points of which emerge above the waves.

5. The White Race: The Aryans and Semites.—The White Race, which has accomplished almost alone the work of civilisation, is divided into two principal families; the Semites, in the south-west of Asia and Northern Africa; the Aryans or Indo-Europeans, in the rest of Western Asia and Europe. They appear to have had their cradle in the lands north-west of the Indus toward ancient Bactria, now the Khanate of Balkli in Turkestan. Thence powerful colonies set out which planted themselves at intervals from the banks of the Ganges to the uttermost parts of the West. The kinship of the Hindus, Medes, and Persians in the East; of the Pelasgi and Hellenes in Asia Minor, Greece, and Italy; of the Celts, Germans, and Slavs north of the Black Sea, the Balkans and the Alps, has been proved by their idioms, by grammatical analogies, and by word-roots.

16 & 17. These Aryans formed part of a large group of white people permanently established in the valleys of the Hindu-koosh, the Indian Caucasus, possessing the same degree of civilization with similar languages, habits, and beliefs. When long centuries had crowded into this narrow place a too numerous population, had accentuated tribal differences, and aroused political and religious quarrels, then from this table-land, in four directions and at different epochs, streams of men poured forth who inundated half of Asia, India, and the whole of Europe. The Celts, Pelasgi, and Ionians, flowed toward Asia Minor, Greece, Italy, and Gaul; the Iranians toward Media and Persia; the Germans and Slavs, from the Ural Mountains to the Rhine; as for the Aryans, they turned to the south-east and crossed the Indus. They subjected the region of the Five Rivers, or Punjab.

Page. Exhibits.

Ex. 14. Duruy's "History of the World" (Extracts printed)—*continued.*

24 & 25. The first inhabitants of Egypt . . . founded, at least five thousand years before our era, the first royal race . . .

First Dynasties (5000 years B.C.).—Little is known of the first three dynasties . . . Under the fourth we behold all the marvels of a civilization then unparalleled.

37. While Carthage thus monopolized the commerce of the western Mediterranean, the Phoenicians of the mother country shared with the Greeks that of the eastern Mediterranean, and endeavoured to form closer relations with the countries washed by the Indian Ocean. They forced the Jews to cede to them two ports on the Red Sea, Eliath and Eziongeber, whence their fleets sailed to seek ivory and gold dust in the land of Ophir, incense and spices in Arabia Felix, the most beautiful pearls then known in the Persian Gulf, and in India a thousand precious wares. For them numerous caravans traversed Babylonia, Arabia, Persia, Bactriana, and Tibet, whence they brought back the silk of China, which sold for its weight in gold, the furs of Tartary, and the precious stones of India. They added to this commerce the products of their national industry in glass, purple, and a thousand articles of attire.

42. But, notwithstanding outward splendor, the provinces were being impoverished, and Solomon himself destroyed the foundation of his power by introducing idolatry into his palace. The Idumaeans and Syrians revolted. His subjects rose in rebellion because of the growing burden of taxation, and he died in the midst of public misery (978).

52. For Greece the most important event of this far-distant age was the invasion of the Hellenes. From the north of Greece, their first halting-place, they scattered all over the country.

56-57. Religion.—Their religion was, at first, only the naturalism brought by them from Asia which had been their cradle. At the side of the legends of the heroes and gods, we find the adoration of forests, mountains, winds, and rivers.

72. The younger Cyrus, who was already plotting the overthrow of his brother, King Artaxerxes II, then held command in Asia Minor. . . . . .

The younger Cyrus was pursuing his plans. With thirteen thousand Greek mercenaries, he made his way as far as the

Exhibits. Page.

Ex. 14. Duruy's "History of the World" (Extracts —printed) *continued.*

neighbourhood of Babylon, and won the battle of Cunaxa, but he died in the moment of triumph (401). . . . . .

This famous retreat, known as that of the Ten Thousand revealed the weakness of the great empire.

99. Capua with a part of southern Italy believed that the Romans were lost and renounced their allegiance.

108. He (Marius) wedded the patrician Julia, great-aunt of Caesar.

121. Caesar, . . . won the people by magnificent games, and in spite of the senate had restored to the Capitol the trophies of his great-uncle Marius.

126. Cassius was its head.

206. Charlemagne Emperor (800).—Beginning with 800 the master of this vast dominion was an emperor. During the Christmas festivals of that year, Pope Leo III placed upon his head the crown of the Caesars. Thus was consummated the alliance between the supreme chief of German society and the supreme chief of the Church.

279. But when he died in Hungary, the kingdom of Naples relapsed into anarchy, fought over by the princes of Anjou, Hungary and Aragon. . . . . .

At the end of the thirteenth century Venice had 35,000 sailors and monopolized the commerce of Egypt, while Genoa controlled that of Asia Minor, the Dardanelles, and the Black Sea. Milan was a great industrial city in the middle of a rich country. Florence manufactured 80,000 pieces of cloth a year, and Verona one-fourth as many. Canals fertilized Lombardy. Banks put money in circulation. No other European state was so advanced in civilisation, but no country was so divided. Consequently it possessed much wealth to excite the greed of foreigners, but not a citizen or a soldier to defend it.

18. The discovery of the Cape of Good Hope and the arrival, in 1498, of Vasco da Gama at Calicut, placed India for the first time in direct relations with Europe.

314. Vasco da Gama soon sailed round the African continent and reached Calicut on the Malabar coast (1498).

Page. Exhibits.

Ex. 14. Duruy's "History of the World" (extracts printed)—*continued.*

315. After sailing for two months he landed on October 11, 1492, in Guanahani, one of the Lucaya Islands which he named San Salvador, only during his third voyage in 1498 did he touch the continent without knowing it, and on the fourth in 1502 discovered the coast of Columbia. He still believed that he had reached the shores of India. Hence was derived the name, West Indies, which long prevailed.

315 & 316. In 1513 Balboa traversed the Isthmus of Panama and caught sight of the Great Ocean. In 1518 Grijalva discovered Mexico, of which Fernando Cortés effected the conquest (1519-1521). In 1520 Magellan reached the strait to which his name has been given between South America and Tierra del Fuego. He traversed the Pacific Ocean, where he died. They were the first to make the circuit of the globe.

478 & 9. He felt himself called upon to revive the ancient monarchy "In France," he said, "the king consults the Chambers. He pays great heed to their advice and their remonstrances; but, when the king is not persuaded, his will must be done." These words were a denial of the charter and an intimation of its speedy violation. At the very beginning of his reign he asked from the Chambers an indemnity of $200,000,000 for the emigrants, the re-establishment of convents for women, the restoration of the rights of primogeniture, a rigorous law against the press and another concerning offences committed in churches. The latter was called the law of sacrilege. The new Chamber of extremists accorded everything. There was no resistance, except in the Chamber of Peers, which by its opposition won a few days of popularity.

544. President Monroe, in 1823, in a message to the Senate, established the principle which has remained the rule of the Cabinet at Washington.

604. Frederick I (1888).—The Crown Prince Frederick succeeded. He had made a splendid record as a soldier in the Austro-Prussian and Franco-Prussian wars. On several occasions he had shown liberal tendencies, which his marriage with Victoria, crown princess of Great Britain and eldest daughter of Queen Victoria, was supposed to fortify. He had even protested against the Army bill of 1862 and given public expression of his dissent from a subsequent despotic action of the government. But a fatal throat disease had fastened upon him before his accession. It was only as a doomed and speechless invalid that he occupied the throne. His three months' reign is memorable for his spirit of self-forgetfulness and devotion to duty.

Exhibits.

Ex. 14. Duruy's "History of the World" (extracts printed)—*continued.*

Page.

Reign of William II (1888).—William II was twenty-nine years old when he became emperor. His first proclamation was addressed to the army and navy, and he has manifested ever since an almost passionate interest in these branches of the public service. His speech on opening the Reichstag, as well as his first address to the German people, indicated his absolutist policy. Louis XIV himself, in the seventeenth century, was not a more convinced impersonification of the divine right of kings. "The supreme guardian of law and order," he regards himself as crowned by God, as the anointed elector of the divine will, and as entitled to the unquestioning obedience of his subjects.

Ex. 23. Passages from "The Web" and "The Outline" with passages from other authors.

Ex. 23.—Passages from "The Web" and "The Outline" with passages from other Authors.

Florence A. Deeks vs. *H. G. Wells, The MacMillan Company, Limited, The MacMillan Company, The MacMillan Company of Canada Limited, George Newnes Limited and Cassell & Company Limited.*

The following memorandum takes passages from the Mimeograph copy of comparisons prepared by the plaintiff and gives passages taken from standard works covering the same subject. In this memorandum the following abbreviations are used :—

23
IN THIS HONOURABLE COURT OF ONTARIO
Deeks v. *Wells.*
This is Exhibit 23 the property of the Deft. produced by the Deft. this 6th day of June, 1930.
C. McCABE,
Asst. Registrar.

Mimeograph	-	Mimeograph copy of comparisons prepared by the Plaintiff.
Web	-	The Web by Miss Florence A. Deeks.
Outline	-	The Outline of History by H. G. Wells, 1920, 2 volume edition.
Duruy	-	General History of the World by Victor Duruy, Revised Edition 1925.
Breasted	-	History of Ancient Times by Breasted.
Robinson	-	Introduction to the History of the Western World by Robinson.
Greene	-	A short History of the English People by Greene.

Ex. 23. Passages from "The Web" and "The Outline" with passages from other authors—*continued.*

COMMON ERRORS.

The plaintiff on her examination for discovery, commencing on page 148, Question 1426, gives certain passages in which she claims both Wells and herself made the same error.

(1) Mimeograph—page 31—Web X (15)—' it looked as if Caesar had so got the start . . . that he would . . . keep them all in servile fearfulness. Then lest he should . . . prevent,' said Brutus.

(17) Caesar, betrayed by subtle flattery, went forth . . . Portia (Brutus' wife) remained at home.

"I prithee, boy, run to the senate house" she commanded . . . "And take good note what Caesar doth, what suitors press to him." . . . and conspiracy struck its blow, and even at the base of Pompey's statue, which all the time ran blood . . . Great Caesar fell, on March 15, B.C. 44.

Outline Vol. I (513).—Finally (44 B.C.) he was assassinated by a group of his own friends and supporters . . . He was beset in the Senate, and stabbed in three and twenty places, dying at the foot of the statue of his fallen rival Pompey the Great . . . Brutus, the ringleader of the murderers . . .

Plutarch—Everyman Edition—Vol. 2, page 578.—"For which reason Brutus also gave him one stab in the groin. Some say that he fought and resisted all the rest, shifting his body to avoid the blows, and calling out for help, but that when he saw Brutus's sword drawn, he covered his face with his robe and submitted, letting himself fall, whether it were by chance, or that he was pushed in that direction by his murderers, at the foot of the pedestal on which Pompey's statue stood, and which was thus wetted with his blood. So that Pompey himself seemed to have presided, as it were, over the revenge done upon his adversary".

(2) Examination—Page 150—Question 1454.

Mimeograph—page 1—Web I (1).—There floated in the immensity of space a speck comparatively but in reality, a prodigious nebulae which in the course of time became concentrated into a focus of heat and light known as the sun. The sun as it pursued its immeasurable path through space at times threw off masses of—matter which became planets, and those planets following their natural impetus continued to revolve in the orbit of the sun. Thus the sun and its planets form the wonderful solar system which we call ours, and which is surrounded—by multi-millions of stars scintillating in the incomprehensively great and well-regulated universe beyond. The principal planets are Mercury, Mars, Venus, the Earth, Neptune, Saturn, Uranus, Jupiter . . . The earth was a tiny fragment of the sun.

The earth . . . became . . . concentrated into a solid crust of land covered with waters above which . . . high portions of that land emerged, and enveloping it all was the air.

Exhibits.

Ex. 23. Passages from "The Web" and "The Outline" with passages from other authors—*continued.*

Outline Vo. I (3).—The earth on which we live is a spinning globe. Vast though it seems—it is a mere speck of matter in the greater vastness of space. Space is for the most part emptiness. At great intervals there are in this emptiness flaring centres of heat and light, the fixed stars . . . so far off that for all their immensity they seem to be mere points of light . . . A few . . . we call nebulae. They are so far off that a movement of millions of miles would be imperceptible. One star . . . is the sun. The sun . . . is a mass of flaming matter. (4) About it . . . circle not only our earth but certain kindred bodies called the planets . . . Mercury and Venus . . . Mars, Jupiter, Saturn, Uranus and Neptune. (5) Vast ages ago the sun was (6) a spinning flaring mass of matter not yet concentrated into a compact centre of heat and light . . . as it whirled a series of fragments detached themselves from it which became planets. Our earth is one of these planets. (5) Its (the earth's) surface is rough, the more projecting parts . . . are mountains, and in the hollows of its surface . . . is . . . water . . . Above this sphere is a covering of air.

Duruy—Page 1.—Our solar system, with all the stars which compose it, is only a speck in immensity. According to the hypothesis of Laplace (questioned in modern days), the sun and its planets originally formed but a single whole. It was one of those prodigious nebulae, such as are still seen in the vastitude of the heavens, and are probably so many stellar systems in process of formation. Our nebula became concentrated into a focus of heat and light, but as it followed its path through space, it now and again threw off masses of cosmic matter which formed the planets. The latter, as if demonstrating their origin, still revolve in an orbit around the sun from which they emanated.

The globe which we inhabit is therefore a tiny fragment of the sun, which as it cooled enveloped itself successively in a gaseous ocean, the atmosphere; then in a liquid ocean, the sea; and finally formed a solid crust, the land, the highest points of which emerge above the sea.

(3) Examination—Page 152—Question 1474.

Mimeograph—Page 38—Web XIII (38).—During the Christmas period of A.D. 800 Pope Leo III—placed upon his head the crown of the Cæsars. Thus . . . Thus Charlemagne was now Emperor, or Cæsar or Kaiser of the Holy Roman Empire.

Outline Vol. 2—page 58.—On Christmas day in the year 800 as Charles was rising from prayer . . . the Pope . . . clapped a crown upon his head and hailed him Cæsar and Augustus . . . so the Empire of Rome rose again as the Holy Roman Empire.

Duruy—Page 206.—Beginning with 800 the master of this vast dominion was an emperor. During the Christmas festivals of that year, Pope Leo III placed upon his head the crown of the Cæsars.

Bryce—The Holy Roman Empire—Ch. 5.—The Empire and Policy of Charles (beginning page 50). The coronation of Charles is the central event of the Middle Ages . . . If the Roman Empire had not been restored

in the West in the person of Charles it would never have been restored at all, and endless train of consequences for good and for evil that followed could not have been.

(4) Examination—Page 155—Question 1493.

Mimeograph—Page 30—Web X (11).—Sulla triumphed! and after slaying with the sword he undertook to destroy the popular party with laws. He had himself proclaimed dictator and he took all measures to assure power in Rome to the aristocracy. Sons and grandsons of the prescribed were declared for ever ineligible to public office . . . But debauch had numbered the days of the great warrior Sulla and he was therefore obliged to abdicate, in B.C. 76, and a year later he died.

Outline Vol. I (504).—And (Sulla) then feeling bored by politics and having amassed real riches he retired with an air of dignity . . . and presently died, eaten up with some disgusting disease produced by debauchery. (1) (To which Gilbert Murray adds) It is generally believed that Sulla died through bursting a blood vessel in a fit of temper.

Plutarch—Everyman Edition—Vol. 1, p. 175.—"By these courses he encouraged a disease which had begun from unimportant causes; and for a long time he failed to observe that his bowels were ulcerated, till at length the corrupted flesh broke forth into lice. He went frequently by day into the bath to scour and cleanse his body, but in vain. Sulla not only foresaw his end but may be also said to have written of it."

SIMILAR PASSAGES.

(1) Mimeograph—Page 6.

Web—III (8).—In the immense plains of Chaldea where the horizon extends so far under the cloudless sky, and the nights are so beautiful because the stars shine there with a wonderful brilliancy, the dominating worship became . . . the worship of the stars. The sun, Baal, was the great god; and in the celestial bodies they located spirits which were supposed to exercise a powerful influence upon the destiny of men."

Outline—Vol. I (127).—The sun by day and presently the stars by night helped to guide (him) . . . He would begin to note particular stars and star-groups . . . He would begin to think of the chief stars as persons, very shining and dignified and trustworthy persons, looking at him like bright stars in the night. Particular stars ruled his heavens when seedtime was due. The beginnings of agriculture were in the sub-tropical zone or even nearer to the equator, where stars of the first magnitude shine with a splendour unknown in more temperate latitudes.

Duruy—Page 35.—At the base of the religion of these peoples, the idea of a single God can be described; but there also this idea was concealed by a throng of secondary divinities, who are always the personification of some force of nature. In those immense plains of Chaldaea, where the horizon extends so far, under that cloudless sky, and during the nights which the Orient makes so beautiful, because the stars shine there with a brilliancy unknown to us, the dominating worship was Sebianism, or the adoration of

Exhibits.

Ex. 23. Passages from "The Web" and "The Outline" with passages from other authors—*continued.*

the stars. The sun, Baal, was the great god of the Assyrians, and in the celestial bodies they located spirits which exercised upon man and upon his destiny a powerful influence. Thus their priests had a great reputation as astronomers. To them we owe the zodiac, the division of the circle into 360 degrees, and that of the degree into sixty minutes, the calculation of lunar eclipses, the so-called table of Pythagoras, and a system of measures, weights, and money which served nearly all the commerce of the ancient world, since it was employed by the Phoenicians and the ancient Greeks.

Mimeograph—Page 7.

Web—II—(10).—Intermarriage and the influence of habitation, soil, and climate, in time produced many varieties of race, but the four principal classes are usually grouped as: . . .

Outline—Vol. I (136).—Man, so widely spread and subjected to great differences of climate, consuming very different food . . . attacked by different enemies . . . has been tending to differentiate into several species or varieties. (141) There are no doubt four main groups but each is a miscellany and there are little groups that will not go into any of the four main divisions . . . There are . . .

Duruy—Page 4.—Intermarriage and the influence of habitation, that is, of soil and climate, have produced many varieties of race. These are generally grouped in three principal classes, the White, the Yellow, and the Black. To them may be added a number of intermediate shades arising from amalgamations that have taken place on the borders of the three dominant classes.

Mimeograph—Page 10.

Web—V (1).—An Egyptian inscription . . . in which are detailed the results of several expeditions. (5 & 6) One king commemorated his victories by columns on the banks of the Euphrates and the Nile; and the exploits of the regent Hatasu, were carved on the temple . . . at Thebes. Thothes III "set the frontiers of Egypt wherever he pleased" says a heroic song carved on a pillar in the museum of Boulag; and Amenophis III was the king of the speaking statue . . . Among the architectural masterpieces of the period were pyramids, rock tombs, the labrinth, the enormous sphinx, the two temples of Ipsamboul, the Ramesseum of Thebes and the pillared Hall of Carnak—whose vault was supported by 140 collossal columns . . . and upon the walls of which a poem was carved vainly commemorating the military exploits of one of its kings. Rameses II was truly a warlike prince and a great builder. He was a Pharaoh who knew not Moses and treated the Israelites like . . . slaves. They built Pyramids . . . and even cities.

Outline—Vol. I (229).—Even in Sumeria men scratched on walls, and all that remains to us of the ancient world, its rocks, its buildings, is plastered thickly with the names of the boasting of those foremost among human advertisers, its kings. Perhaps half the early inscriptions in that ancient world are of this character, if, that is, we group with the name writing, and boasting the epitaphs which were probably in many cases

pre-arranged by the deceased. . . . the desire for crude self-assertion of the name-scrawling sort.

Duruy—Page 26.—This epoch begins with the princes of the eighteenth dynasty (1703-1462): Ahmes the Liberator; Thothmes I, who commemorated his victories by columns on the banks of the Euphrates and Nile; the regent Hatasu, whose exploits the temple of Deir-el-Bahari at Thebes hands down; Thothmes III, the conqueror of western Asia and of the Soudan, "who set the frontiers of Egypt wherever he pleased", so says the author of a heroic song carved on a pillar in the Museum of Boulaq; Amenophis III, the Memnon of the Greeks, the King of the Speaking Statue, which at sunrise saluted Aurora, his divine mother. In the tomb of the mother of Ahmes a veritable treasure of precious stones of the rarest workmanship has been found.

(4) Mimeograph—Page 11.

Web—V (13).—Phœnician fleets sailed the Red Sea and found their way to the Indies, and their caravans traversed the land of Asia gathering up the best productions,—"ivory and gold dust from the land of Ophir, incense and spices from Arabia, the most beautiful of pearls from the Persian Gulf, precious stones and a thousand other precious wares from India, silks from China that sold for their weight in gold, furs from Tartary" . . . and a great amount of valuable information . . . and all of these together with their own great . . . productions . . . they carried to the west by way of Mediterranean along whose shores they established colonies and counting houses in Africa, Sicily, Spain and even up in Gaul.

Outline—Vol. I (273).—Phœnician shipping under Egyptian owners was making its way into the East Indies and perhaps even further into the Pacific. Across the deserts of Africa and Arabia and through Turkestan toiled the caravans with their remote trade; silk was already coming from China, ivory from Central Africa and tin from Britain to the centres of this new life in the world. Man had learnt to weave fine linen; . . . they made the most beautiful pottery and porcelain; there was hardly a variety of precious stone in the world that they had not found and cut and polished, . . .

Duruy—Page 37.—"They forced the Jews to cede to them two ports on the Red Sea, Eliath and Esiongeber, whence their fleets sailed to seek ivory and gold dust in the land of Ophir, incense and spices in Arabia Felix, the most beautiful pearls then known in the Persian Gulf, and in India a thousand precious wares. For them numerous caravans traversed Babylonia, Arabia, Persia, Bactriana, and Thibet, whence they brought back the silk of China, which sold for its weight in gold, the furs of Tartary, and the precious stones of India. They added to this commerce the products of their national industry in glass, purple, and a thousand articles of attire."

Exhibits.

Ex. 23. Passages from "The Web" and "The Outline" with passages from other authors—*continued.*

(5) Mimeograph—page 17.

Web—VII (5).—In order to secure the peaceful continuance of the empire which Athens had acquired . . . Pericles sent out colonies which became fortified cities or garrisons to hold in peaceful subject the country in which they were established. . . . (6) He invited to Athens all the distinguished persons of Greece and provided every means for the encouragement and development of their talent and genius. From all directions men flocked to the city of Athens as an intellectual capital.

Outline—Vol. I (346).—Alliances were formed under his guidance, new colonies and trading stations were established from Italy to the Black Sea . . . It was the peculiar genius of this man and of his atmosphere that let loose the genius of men of great intellectual vigor to Athens.

Duruy—Page 68-69.—" To assure its continuance, he sent out numerous colonies, which did not, like those of preceding centuries, become cities independent of the mother country, but rather fortresses and garrisons whereby the country in which they were established was held in submission to Athens. Pericles desired that Athens should be not only rich and powerful but also glorious. He invited thither those superior men who then honored the Hellenic race. From all directions mankind flocked to the city of Minerva as an intellectual capital.

(6) Mimeograph—Page 23.

Web—IX (3).—Alexander completed the overthrow of rebellious Thebes, after which he slew 6,000 of its inhabitants and sold 30,000 into slavery.

Outline—Vol. I (377-8).—By that time the city of Thebes was in rebellion . . . Thebes . . . was treated with extravagant violence, all its buildings except the temple and the house of the poet Pindar were razed and thirty thousand people were sold into slavery . . .I

Duruy—Page 78.—" He took Thebes, slew six thousand of its inhabitants, and sold thirty thousand into slavery."

Plutarch—Everyman Edition—Vol. 2 p. 472.—" So that, except the priests, and some few who had heretofore been the friends and connections of the Macedonians, the family of the poet Pindar, and those who were known to have opposed the public vote for the war, all the rest, to the number of thirty thousand were publicly sold for slaves; and it is computed that upwards of six thousand were put to the sword."

(7) Mimeograph—Page 39.

Web XIV—(20, 21). . . . The Northmen, Scandinavians, were now landing all along the coast of Europe at favourable points whence they ascended the rivers, sacked the cities and spread desolation everywhere. Farther east they ploughed through the Baltic to the end of the Gulf of Finland and penetrated to the centre of the Slavs in 862. Others of them appeared in the Faroe Islands off the north coast of Scotland in A.D. 861, in Iceland in 870 and a century later in Greenland whence they reached

Exhibits.

Ex. 23. Passages from "The Web" and "The Outline" with passages from other authors—*continued.*

Labrador and Nova Scotia which they called "Vineland"—Thus early were they in America while their kinsmen in Europe were making serious attacks upon the feudal states of the Germans . . . In France the Northmen got possession of the province of Burgandy . . .

Outline—Vol. 2 (53).—Throughout the period between the fifth and the ninth centuries these Vikings or Northmen were learning seamanship, becoming bolder and ranging further. They braved the northern seas until the icy shores of Greenland were a familiar haunt, and by the ninth century they had settlements (of which Europe in general knew nothing) in America . . . (66) . . . They spread across the North Sea to the West, and across the Baltic and up the Russian rivers into the very heart of what is now Russia. One of their earliest settlements in Russia was Novgorod, the Great . . .

Duruy—Page 216.—"The larger number of these hardy adventurers descended towards the south where they found wine and gold. Others worked their way through the Baltic to the very end of the Gulf of Finland, or climbed above the North Cape, for the joy of seeing the unknown and doing the impossible. In 861 they made their appearance in the Faroe Islands; in 870 in Iceland, and a century later in Greenland whence they reached Labrador and Vinland, the country of the Vine. Thus they were in America four or five centuries before Columbus!

SIMILARITIES OF LANGUAGE.

Miss Deeks, on her examination for discovery, gave certain examples of where the exact language was used in "The Web" and in "The Outline of History."

(1) Examination—Page 143, Question 1366.

Mimeograph—Page 26.

Web—IX (12)—(says, "After this reverse (of Trasymenus and Cannæ) a large part of Southern Italy seceded from Rome" . . . "Capua (was) the first to give offence . . .). (This (it is noted) brought about the interventions and wars that through Illyria reduced Greece and Macedonia to provinces of Rome . . .).

Outline—Vol. 1 (476)—But Cannæ produced other fruits—A large part of Southern Italy came over to Hannibal including Capua . . . (480)—Complicated interventions led to the reduction of Illyria and Macedonia to tribute-paying province of Rome.

Duruy—Page 9—"Capua with a part of southern Italy believed that the Romans were lost and renounced their allegiance."

Breasted—Page 542—"Within a few years Southern Italy forsook Rome and Joined Hannibal."

Botsford—History of the Ancient World—Page 384—"With the battle of Cannæ the character of the war changed. Nearly all the allies of Rome in Southern Italy, including the great cities of Capera and Tarentum, revolted."

Exhibits.

Ex. 23. Passages from "The Web" and "The Outline" with passages from other authors—*continued.*

(2) Examination—Page 144, Question 1376.

Mimeograph—Page 28.

Web—X (7)—He (Marius) had associated with him (in the war in Africa) that brave, eloquent and aristocratic, but unscrupulous youth, Sulla. The aristocratic Sulla, crushed them (the Italians) . . . As war made the fortune of the democrat, Marius, so wars were now making the fortune of the aristocrat, Sulla.

Outline—Vol. 1 (503)—Marius and an aristocratic general Sulla, who had been with him in Africa and who was his bitter rival . . .

Botsford—History of the Ancient World—(Page 417)—"Finally Lucius Cornelius Sulla, a young aristocrat, captured Jugurtha by treachery."

Goodspeed—History of the Ancient World—Page 338—"Lucius Cornelius Sulla, a man of noble family, an aristocrat in temper and tastes."

(3) Examination—Page 144, Question 1392.

Mimeograph—Page 28.

Web—X (5)— . . . the new democratic or popular party . . . champion of the popular party.

Outline—Vol. 1 (494)—Too many of our histories dealing with this period of Roman history write of "the popular party" and of . . . These modern phrases are very misleading, unless they are carefully qualified.

Duruy—Page 114—The popular party was crushed at Rome.

Botsford—Page 40—"In politics the masses of common citizens and their leaders were called populares."

P. Myers—Rome: its Rise and Fall, Page 239—"the popular party being almost as unwilling as the aristocratic party to share any of their privileges with outsiders." Page 210—"Thus the Roman people had become divided into two great classes which are variously designated as the Rich and the Poor, the Possessors and the Non-Possessors, Optomates, the Best and Populares, the People. We hear nothing more of patricians and plebians."

(4) Examination—Page 185—Question 1740.

Mimeograph—Page 46.

Web—XVIII (95)—Early on a beautiful Friday morning, Aug. 3, 1492 . . . the little expedition set sail in three small boats, the Santa Maria, Pinta and Nina. And when after a prolonged journey of allurements, discouragements, dangers, hopes and fears the wonderful and magnificent expanse of a "new world" opened to their startled eyes they gave way to a transport of wild delight. Columbus, richly attired in scarlet and carrying the royal standard of Spain, landed . . .

Outline—Vol. 2—(186)—The little expedition . . . went south to the Canaries and then stood out across the unknown seas in beautiful weather and with a helpful wind . . . The story of that momentous voyage must be read in detail to be appreciated. The crew was full of doubts

and fears; they might they feared, sail on for ever. They were comforted by seeing some birds and later by finding a pole worked with tools and a branch with strange berries. At ten o'clock on the night of Oct. 11th, 1492 Columbus saw a light ahead; the next morning land was sighted and while the day was still young Columbus landed on the shores of the new world. (187) richly apparelled and bearing the royal standard of Spain.

Encyclopedia Britannica (11th edition) Vol. 6—Page 741—"About this time too (1471), if not earlier he seems to have arrived at the conclusion that much of the world remained undiscovered, and step by step conceived that design of reaching Asia by sailing west . . . In 1474 he is said to have corresponded with Paolo Toscanelli, the Florentine Physician and cosmographer . . . He believed the world to be a sphere; he underestimated its size; he overestimated the size of the Asiatic continent.

Page 742—On Friday, the 3rd of Aug., 1492, at 8 in the morning the little fleet weighed anchor and stood for the Canary Islands. An abstract of the admiral's diary is yet extant made by Las Casas; and from it many particulars may be gleaned concerning this first voyage.

Page 743—On 12th Oct. 1492, a sailor aboard the Nina announced the appearance of what proved to be the New World . . . The same morning Columbus landed, richly clad, and bearing the royal banner of Spain. He was accompanied by the brothers Punzon, bearing banners of the Green Cross. When they all had "given thanks to God, kneeling upon the shore, and kissed the ground with tears of joy for the great mercy received," the admiral named the island and took solemn possession of it for this Catholic Majesties of Castile & Lear.

(5) Examination—Page 191—Question 1797.

Mimeograph—Page 47.

Web—XVIII (102)—Also in 1498 the Portuguese under Vasco da Gama sailed around the African continent and reached Calicut on the Malabar coast, where they founded the first European establishment in the Indies.

Outline—Vol. 2 (187)—The news of his discoveries caused a great excitement throughout Europe. It spurred the Portuguese to fresh attempts to reach India by the South African route. In 1497 Vasco da Gama sailed from Lisbon to Zanzibar and thence with an Arab pilot he struck a across the Indian ocean to Calicut in India . . .

Duruy—Page 314—They had become familiar with its tempests and had gained confidence in the compass. The Normans had been the first to enter upon the path of maritime discoveries along the western Coast of Africa. There the Portuguese, more advantageously situated, followed and outstripped them. In 1472 they crossed the equator. In 1486 Bartolomeo Diaz discovered the Cape of Storms, which King John II more wisely named the Cape of Good Hope. In fact Vasco da Gama soon sailed round the African continent and reached Calicut on the Malabar coast (1498). Later on Camoens in his Lusiad painted this herioc expedition. At Calicut Alvarez Gabral founded the first European establishment in the Indies.

Exhibits.

Ex. 23. Passages from "The Web" and "The Outline" with passages from other authors—*continued.*

OTHER SIMILARITIES TAKEN AT RANDOM FROM THE COMPARISONS.

(1) Mimeograph—Page 14.

Web—VII (9)— . . . The Greeks preserved their national unity by means of the institutions of the past . . . their language, religion, games, Amphyctionic councils and oracles. At the Amphyctionic councils the deputies and a dozen people met together and discussed common interests and in order to consult the chief oracle, which was a Delphi flocked from all parts of the Greek world. The importance of their games may be judged from the fact that their first existing historical record is connected with the Olympic games. In B.C. 776 the name of Coroebus was inscribed on the public register of the Elians as having won the prize of the stadium, and it became customary to take this date as the starting point of history, The Asiatic colonists who came over to all these events . . .

Outline—Vol. 1 (313)—There was always a certain tradition of unity between all the Greeks based on a common language and script, on the common possession of heroic epics, and on the continuous intercourse that the maritime position and the states made possible. And in addition, there were certain religious bonds of a unifying kind. Certain shrines of the god Appollo in the island of Delos and at Delphi, for example, were sustained not by single states, but by leagues of states or Amphictyonies . . . Which in such instances as the Delphic amphiclyony became very wide-reaching unions . . . (314) a still more important link of Hellenic union was the Olympian games that . . . and a record of victors and distinguished visitors was kept. From the year 776 B.C. onward. I. these games were held regularly . . . I. 776 B.C. is the year of the First Olympiad, a valuable starting point in Greek Chronology.

Breasted—Page 291—" Influence which tended towards unity—among such influences were the contests in arms and the athletic games, which arose from the early custom of honoring the burial of a hero. As early as 776 B.C. such contests were celebrated as public festivals at Olympia. Religion also became a strong influence toward unity because there were some gods at whose temples all Greeks worshipped. The different city states formed several religious councils (amphyctyonies). Each city had a voice in the joint management of the temples. The most notable of them were the council for the control of the Olympic games, another for the famous sanctuary of Apollo at Delphi, and also a council for the great annual feast of Apollo in the island of Delos. Their common language helped to bind together the people of the many cities."

(2) Mimeograph—Page 22.

Web—IX (18)—Venality got such a hold upon men that everything was for sale, and as the king of Persia has gold he bought it all . . . It was with 13,000 Greek mercenaries that Cyrus, King of Persia made his way as far as Babylon.

Outline—Vol. 1 (363)—One took Persian money. Everybody took Persian money; What did it matter? or one enlisted for a time in their

armies . . . Until at last a voice in Athens began to shout. Macedonia . . . It was Demosthenes hurling warnings and threats and denunciation at King Philip of Macedon.

Plutarch—Everyman edition—Vol. 3—Page 172—"If he had kept his hands clean . . . he might deservedly have had his name placed in the highest rank with Cimon, Thucydies and Pericles . . . But being not inaccessible to bribery (for however invincible he was against the gifts of Philip and the Macedonians, yet elsewhere he lay open to assault, and was overpowered by the gold which came down from Susa)." Page 177—"The King (of Persia) sent letters to his lieutenants commanding them to supply Demosthenes with money."

(3) Mimeograph—Page 45.

Web—XVII (81)—Although the Normans had been the first to enter upon maritime discoveries yet the Portuguese soon outstripped them. In A.D. 1417 they had discovered—the Madeira Islands—and zeal redoubled when the Pope took it upon himself to offer the king sovereignty over all the lands which should be discovered from the Canary Isles as far as the Indies . . . In 1432 they began to take possession of the Azores —in the mid-Atlantic ocean 800 or 1,000 miles due west of Portugal. In 1434 Cape Badajor was passed, and then Blanco and then Verde . . . Indeed Portuguese navigators are said to have visited America in the region of Newfoundland but . . .

XVIII (94)—Meanwhile Diaz in 1486 discovered the Cape of Storms or of Good Hope.

Outline—Vol. 2 (185)—The Portuguese—were asking whether it was not possible to go round to India by the Coast of Africa. Their ships followed . . . to Cape Verde (1445). They put out to sea to the west and found the Canary Isles, Madeira and the Azores. I. That was a fairly long stride across the Atlantic. In 1486 a Portuguese Diaz, reported that he had rounded the south of Africa. By the thirteenth century . . merchants were sailing to Iceland . . . adventurous voyagers had long ago found a further land beyond . . . Vinland . . . Nova Scotia. I. In these maritime adventures . . . the Portuguese were preceded . . . by Normans, Catalonians and Genoese.

Robinson—Page 234.—"The Portuguese who soon began to undertake extended maritime expeditions. By the middle of the 14th century they had discovered the Canary Islands, Madeira and the Azores".

Duruy—Page 314.—"They had become familiar with its tempests and had gained confidence in the compass. The Normans had been the first to enter upon the path of maritime discoveries along the western coast of Africa. There the Portuguese, more advantageously situated, followed and outstripped them. In 1472 they crossed the equator. In 1486 Bartolomeo Diaz discovered the Cape of Storms, which King John II more wisely named the Cape of Good Hope."

Exhibits.

Ex. 23. Passages from "The Web" and "The Outline" with passages from other authors—*continued.*

(4) Mimeograph—Page 16.

Web—IX (2).—Pericles, although an Athenian born aristocrat . . . separated from his citizen wife at her own request . . . a custom which seems to have been common at the time and was considered quite right . . . and he married one of those free women, Aspasia who was a native of Miletus. Aspasia's eloquence and knowledge of politics were remarkable and her influence upon her husband was singularly great. (3) Aspasia made her home a resort not only for the brilliant women associated with her but for all the learned and distinguished men of Athens. Anaxagores, Sophicles, Euripides, Socrates and Pludias rejoiced to be in her society and to learn of her . . . Pericles espoused the democratic cause and he acquired a great influence . . . (5) the Democratic party of Athens which was not headed by Pericles who . . .

Outline—Vol I (345).—For a time they (the people of Athens) were capable of following a generous leader . . . and Fate gave them a generous leader. In Pericles there was mingled in the strangest fashion political ability with a real living passion for deep and high and beautiful things . . . He was sustained by what was probably a very great and noble friendship. There was a woman of unusual education, Aspasia from Miletus whom he could not marry because of the law that restricted the citizenship of Athens to the home-born, but who was in effect his wife. She played a large part in gathering about him men of unusual gifts. All the great writers of the time knew her and several have praised her wisdom.

Plutarch—Vol I (248).—" What art of charming faculty had she that enabled her to captivate the greatest statesmen and to give the philosophers occasion to speak so much about her, and that too not to her disparagement. She was a Milesian by birth. Aspasia, some say, was courted and caressed by Pericles on account of her knowledge and skill in politics. Socrates himself would sometimes go to visit her . . . Pericles had a wife . . . afterwards, when they did not agree well, he parted with her and himself took Aspasia and loved her with wonderful affection ".

(5) Mimeograph—Page 18.

Web—III (13).— . . . she (Sparta) precipitated in B.C. 431 a war for supremacy . . . the Peloponnesian war. (the slow and sad progress of the war is then taken up) . . . (14) But while he was advocating sacrificial devotion to a common cause the pestilence which had set in was carrying off his own sons. Two had gone . . . but when the death of his favorite son left his house without a representative . . . . his grief was uncontrollable. At the obsequies the great statesman burst into tears as he placed a garland on the dead body of his son . . . his own time had come . . . (15) He died B.C. 429. . . . Arrogant demagogues undertook to fill the place left vacant by the death of Pericles. Cleon gave free rein to the passions of the crowd.

Outline—Vol. I (349).—In 431 B.C. came the war with Sparta . . . But the war was a slow and dangerous one . . . A certain Cleon

Exhibits.

Ex. 23. Passages from "The Web" and "The Outline" with passages from other authors—*continued.*

arose, ambitious to oust Pericles from his leadership . . . his (Pericles) oldest son . . . was carried off by the plague. Then the sister of Pericles died and then his last legitimate son. When after the fashion of the time he put the funeral garlands on the boy he wept aloud. Presently he himself took the contagion and died 428 B.C.).

Plutarch—Vol. I (258).—"Cleon also was among his assailants, making use of the feeling against him as a step to the leadership of the people". (260)—Xantaippus (his eldest son) died in the plague time of sickness. At which time Pericles also lost his sister . . . At last he lost his only remaining legitimate son. "When he came to perform the ceremony of putting a garland upon the head of the corpse, he burst into exclamations and shed copious tears".

(6) Mimeograph—Page 25.

Web—VIII (23) says: more and more power was passing into the hands of rich capitalists . . . both patricians and plebeians . . . who were forming a social aristocracy founded upon wealth.

Outline—Vol. I (459) says: 'And the Senate, no longer a purely patrician body . . . since various official positions were now open to plebeians and such plebeian officials became senators . . . was becoming now an assembly of all wealthy, able, energetic and influential men of the state . . .

Breasted—Page 509.—"the Senate, the members of which had formerly been appointed from among the patricians by the consuls. A new law, however, authorized the censors to make out the lists of senators, giving the preference to those who had been magistrates. Thus the new nobility of ex-magistrates, formerly plebeians, entered the Senate, bringing in fresh blood from the ranks of the people. While he (the consul) was in office for only a year, the men confronting him held their seats in the Senate for life. As a result the consul became a kind of senatorial minister carrying on the government according to instructions from the Senate. Thus the Roman Senate became a large committee of experienced statesmen guiding and controlling the Roman State. They formed the greatest council of rulers which ever grew up in the ancient world or perhaps in any age. They were a body of aristocrats and their control of Rome made it an aristocratic state in spite of its republican form.

(7) Mimeograph—Page 26.

Web—IX (18).—Carthage was utterly destroyed in B.C. 146 . . . . Both Greece and Macedonia then became mere Roman provinces in the same year that saw the destruction of Carthage.

Outline—Vol. 1 (485)—(described the utter destruction of Carthage and says)—'in the same year (146 B.C.) the Roman Senate and Equestrians also murdered another great city . . . Corinth (in Greece).

Breasted—Page 547.—"In the three years' war which followed, the beautiful city was captured and completely destroyed (146 B.C.). The same year which saw the destruction of Carthage witnessed the burning of

Exhibits.

Ex. 23. Passages from "The Web" and "The Outline" with passages from other authors—*continued.*

Corinth also (146 B.C.) . . . Those Greek States whose careers of glorious achievements in civilization we have followed were reduced to the condition of Roman vassels ".

Mimeograph—Page 27.

Web—X (2).—The first outbreak of the slave wars took place in Sicily in B.C. 1934. With all these wars the citizens, neither at home nor abroad, could resume normal life and the soldiers became unfit for either good citizens or good farmers. The freedom and wantonness of camp life had so grown upon them that they had become indolent spendthrifts, and if they had paternal estates they allowed them to slip into the hands of capitalists who were on the lookout for them. . . . The rich had come into possession of vast areas which they had appropriated from the domain lands of the State and which they turned largely into pastures instead of into agriculture. Moreover, they dealt extensively in corn from other lands. (3) where slave labor made it cheap and thus they completely outdid the small farmer. This consequent decay of agriculture had completely exterminated the proud . . . plebeians of old. . . . two or three hundred families now possessed pilfered millions while very far below them was an idle, hungry crowd of 300,000 beggars who were continually recruited from the slaves.

Outline—Volume I (480).—At home men were acquiring farms by loans and foreclosure, often the farms of men impoverished by war service. They were driving the free citizens off this land and running their farms with the pitilessly driven slave labour that was made cheap and abundant. Such men regarded alien populations abroad merely as unimported slaves. Sicily was handed over to the greedy enterprise of tax-farmers. Corn could be grown there by rich men using slaves and imported very profitably into Rome and so the homeland could be turned over to cattle and sheep feeding. (482) The senatorial gang who were steadily changing Italy from a land of free cultivators to a land of slave-worked cattle-ranchers. (486) Great wars had been won, the foundations of the Empire . . . laid. In the process the farmers had disappeared. The change was complete . .

Breasted—Page 566.—The most respectable form of wealth was lands. Hence the successful Roman noble bought farm after farm, which he combined into a great estate or plantation. Only here and there were still to be found the little farms of the good old Roman days. The small farm seemed in a fair way to disappear as it had done in Greece. . . . It was impossible for a wealthy landowner to work these great estates with free hired labor. Roman conquests had brought to Italy great numbers of captives of war. These unhappy prisoners were sold as slaves. The life of the slaves on the great plantations was little better than that of the beasts. The brutal treatment which they received was so unbearable that at various places in Italy they finally rose against their masters. . . . The conditions in Sicily were worse than in Italy. In central and southern Sicily the revolting slaves gathered some 60,000 in number, slew their masters, captured towns and set up a kingdom," Page 565—" The great

conquests and the wealth they brought had made the rich so much richer and the poor so much poorer that the two classes were completely trust apart and they no longer had any common life. . . . Too often as the returning soldier approached the spot where he was born he no longer found the house. His family was gone and his little farm, sold for debt, had been bought up by some wealthy Roman of the city and absorbed into a great plantation. He wandered into the great city to increase the poor class already there. The sturdy farmer citizens, the yeomanry from whom Rome had drawn her splendid armies, were now perishing. They saw the government of a world empire in the hands of a corrupt Senate and a small body of more and more brutalised citizens at home". Page 572—"We are now to watch the Roman people in the deadly internal struggle which we have seen impending between rich and poor."

(9) Mimeograph—Page 30.

Web—X (11).—Cæsar was soon made Consul and one power after another was rapidly conferred upon him . . . Cæsar chose Gaul because the Germans were invading it . . . Cæsar conquered the Germans, subdued Gaul and made two descents upon Britain.

Outline—Vol. I (505).—We cannot relate in any detail how Julius Cæsar accumulated reputation in the west, by conquering Gaul, defeating the German tribes upon the Rhine, and pushing a punitive raidacross the straits of Dover into Britain.

Breasted—Page 588. "In 8 years of march and battle he subdued the Gauls. He drove out a dangerous invasion of Gaul by the Germans . . . invaded their country and established the frontier of the new Gallic Province at the Rhine. He even crossed the Channel and carried an invasion of Britain as far as the Thames".

(10) Mimeograph—Page 33.

Web—XI (16).—Following the conquest of the East and especially of Egypt came . . . (20) Caligula was imbued with a passion for everything Egyptian and he decided to . . . make his palace a court similar to that of Alexandria and of himself a 'divine' king adored as were the sovereigns on the banks of the Nile . . . Finally his efforts to impose upon the empire the worship of himself caused sedition, &c. . . .

Outline—Vol. I (520).—"Monarch-worship which had now spread out from Egypt. . . . and which was coming to Rome in the head of every oriental slave and immigrant. By natural and imperceptible degrees the idea of the God-Emperor came to dominate the whole Roman world.

Breasted—Page 623.—"The Cæsars had gained a position of unique reverence. Beginning with Julius Caesar the emperors were defied and their worship was widely practised throughout the empire. It was indeed an obligation of citizenship to pay divine homage to the emperor."

(11) Mimeograph—Page 34.

Web—XII (14).—(Notes the overthrow of the emperor of the West, A.D. 476 by Odoacer.)

Exhibits.

Ex. 23. Passages from "The Web" and "The Outline" with passages from other authors—*continued.*

Outline—Vol. 1 (58).—So the Empire of Rome which had died at the hands of Odoacer in 476. . . .

Breasted—Page 695.—"The German soldiery who put Odoacer, one of their number, in his place. Thus in 476 A.D., two generations after Theodosius, the last of the western emperors disappeared.

(12) Mimeograph—Page 44.

Web—XVII (81).—The mariners' compass had been invented and had given a new impetus to navigation, especially among the people on the Atlantic coast who had long loved to speculate upon the mysterious circle of the western horizon and the great unknown beyond it. Portugal had no future at all except towards the sea. It had been cut off from the land of Europe by Castile—and it was therefore shut out from all the European commerce which was carried on between the cities of the interior and the countries of the Mediterranean. King John's son now established himself on Cape Vincent, summoned thither mariners and geographers, founded a naval academy and launched navigators upon the sea.

Outline—Vol. 2 (184).—And there were now new peoples taking to the sea trade and disposed to look for new ways to the old markets because the ancient routes were closed to them. The Portuguese for example were developing an Atlantic coasting trade. The Atlantic was waking up again. It is rather a delicate matter to decide whether the western European was pushing out into the Atlantic or whether he was being pushed out into it by the Turk who lorded it in the Mediterranean. (185) The high seas called for the sailing ship and in the fourteenth and fifteenth centuries it appears keeping its course by the compass and the stars . . . All over Europe in the fifteenth century merchants and sailors were speculating about new ways to the East.

Robinson—Page 347.—"The Portuguese who soon began to undertake extended expeditions. By the middle of the 14th century they had discovered the Canary Islands, Madeira and the Azores". Page 348—"In 1445 some adventurous sailors came within sight of a headland beyond the desert and called it Cape Verde (the green cape) . . . At last in 1498 Vasco da Gama, spurred on by Columbus' great discovery, after sailing round the Cape of Good Hope and northward beyond Zanzibar, steered straight across the Indian Ocean and reached Calicut by sea".

(13) Mimeograph—Page 58.

Web—XXIII (225),—As the peers made objections the Commons resolved that the people are, under God, the original of all just power that the Commons of England in Parliament assembled . . . being chosen by and representing the people—have the supreme power in this national . . . After a trial Charles I, was condemned to death as a tyrant, traitor, murderer and enemy of his country.

Outline—Vol. 2 (224).—The House of Lords rejected the ordinance for the trial and the Rump (Commons) then proclaimed " that the people are under God the original of all just power," and that " the Commons of England " . . . have the supreme power in this nation " . . . and proceeded with the trial. The king was condemned as a " tyrant, traitor, murderer, and enemy of his country ".

Greene—Page 571.—" The rejection of this Ordinance by the few peers who remained brought about a fresh resolution from members who remained in the Lower House " that the People are under God the original of all just power . . . He was condemned to die as a tyrant, traitor, murderer and enemy of his country ".

In the Privy Council.

No. 18 of 1932.

On Appeal from the Appellate Division of the Supreme Court of Ontario.

BETWEEN

FLORENCE A. DEEKS - -
(Plaintiff) Appellant

AND

H. G. WELLS, THE MACMILLAN COMPAN INC., THE MACMILLAN COMPANY O CANADA LIMITED, GEORGE NEWNE LIMITED, CASSELL & COMPANY LIMITE
(Defendants) Respondents.

RECORD OF PROCEEDINGS.

FLORENCE A. DEEKS,
Appellant in person.

GEDGE, FISKE & CO.,
Hastings House,
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CASSELL & CO., LTD.

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THE MACMILLAN CO. INC. &
THE MACMILLAN CO. OF CANADA LTD.

EYRE AND SPOTTISWOODE LIMITED, EAST HARDING STREET, E.C.